



Appeal Decision

Inquiry held on 14, 15, 16, 17 and 24 November 2023

Site visit made on 13 November 2023

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 09/02/2024

Appeal Ref: APP/X0360/C/23/3325869

Brick Barns, White Hill, Remenham Hill, Wokingham RG9 3HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the 1990 Act). The appeal is made by Mr John Bateman against an enforcement notice issued by Wokingham Borough Council.
- The notice was issued on 14 June 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised change of use of the Land to residential garden including, the erection of five buildings; changing of ground levels; and formation of hardstanding.
- The requirements of the notice are to:
 - i. Cease the use of the Land as residential garden.
 - ii. Remove all vehicles and residential paraphernalia associated with the residential use from the Land.
 - iii. Return the ground levels to those prior to the unauthorised use including the removal of the retaining wall marked by a black line A-B on the attached plan.
 - iv. Remove all ornamental non-native tree and hedge planting from the Land including but not limited to the laurel hedging.
 - v. Demolish building 1 shown in the approximate position outlined in green on the attached plan including breaking up all foundations.
 - vi. Demolish building 2 shown in the approximate position outlined in black on the attached plan including breaking up all foundations.
 - vii. Demolish building 3 shown in the approximate position outlined in yellow on the attached plan including breaking up all foundations.
 - viii. Demolish building 4 shown in the approximate position outlined in blue on the attached plan including breaking up all foundations.
 - ix. Demolish building 5 shown in the approximate position outlined in purple on the attached plan including breaking up all foundations.
 - x. Disconnect and excavate all services associated with the unauthorised buildings referred to in v-ix above.
 - xi. Excavate the hardstanding, remove the metal edging, brick and stone setts and flint stones shown in the approximate location shaded in pink on the attached plan and stop up the access including removal of visibility splay and associated hardstanding up to the private way/road (White Hill).
 - xii. Remove the post and rail fence "estate railings", posts and gates from between points 'A', 'B', 'C' and 'D' also shown by the green line, annotated on the attached plan.
 - xiii. Remove all external lighting including any associated lampposts, including disconnecting and excavating the services from the Land.
 - xiv. Return "the Land" to its former condition prior to the breach by re-seeding using grass seed at 50 grammes per square metre.
 - xv. Remove the resultant materials from carrying out steps (ii to xiii) from the Land.
- The period for compliance with the requirements is: 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the 1990 Act. 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 1990 Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Preliminary Matters and Background

1. The Inquiry commenced on 14 November 2023 and was programmed to sit for 4 days. However, an additional sitting day was required to hear all the evidence, and this was held virtually on 24 November 2023. I undertook an accompanied site visit at the request of the main parties on the 13 November 2023. All of the oral evidence given to the Inquiry was given by sworn affirmation.
2. The appeal site comprises a relatively large area of land to the south and east of the dwelling now known as Brick Barns, formerly known as the Bungalow. Bounding the site to the west is an access road, cited as Dairy Lane in the evidence before me (also known as White Hill), and to the east are grounds associated with equestrian/polo facilities. To the north, Noble Barn is a grade II listed building and there are several other buildings that were part of the home farm, Park Place Farm, to the Park Place Estate (PPE). PPE has historically been part of the land owned and connected with Park Place, a 19th Century country house, and it is a grade II* registered park and garden - Park Place and Temple Combe (RPG). The evidence before me indicates that there are grade II listed buildings within the PPE and the RPG and that in the 1980's a golf course had been constructed within the north-eastern part of the PPE and RPG. By 2008 the golf course was closed.
3. In 2008 outline planning permission¹ (the 2008 permission) was granted for *'the demolition of 8 dwellings and erection of 5 new dwellings. Change of use of 3 dwellings to form 2 boathouses and guest accommodation. Conversion of 2 dwellings to form 1 dwelling. Alterations to the barns and the bungalow to form a single residential unit plus alterations and extensions to existing buildings.'* The 2008 permission applied to most of the area that constitutes the PPE and RPG. A Conservation Management Plan (CMP) for the RPG was published in 2005 and an Integrated Estate Management Plan (IEMP) was submitted as part of the 2008 permission. A legal agreement completed as part of the 2008 permission required, amongst other things, that *"on commencement of development the owner would implement the IEMP and thereafter comply with the IEMP at all times for its duration"*.
4. A reserved matters permission² (RM permission), relating to the 2008 permission, was granted in 2010 for the erection of one dwelling, Aspect West-New Dairy Farm. The proposed means of access and drive for that dwelling was shown from Dairy Lane and traversed across the appeal site. There is no dispute that the RM permission has not been begun and is not extant. In 2014 an application³ for refurbishment of the Bungalow including the removal of a previous extension and erection of a new barn-style extension with the conversion of Noble Barn to provide ancillary parking, storage and workshop,

¹ Ref No: O/2008/1353

² Ref No: RM/2010/1243

³ Ref No: 140994

with change of use of an area of former golf course to provide additional residential curtilage was submitted but was later withdrawn.

5. In 2016 the appellant purchased Brick Barns, Noble Barn and land adjacent to those barns which included the appeal site. Also, in 2016 planning permission and listed building consent⁴ (the 2016 permissions) were granted for the proposed refurbishment and change of use of Noble Barn to a dwelling. At the same time an application⁵ for proposed refurbishment and erection of a single storey rear extension, conversion of open cart shed to create habitable accommodation to dwelling, plus the installation of rear roof lights and front wood burner flue at Brick Barns was submitted but was later withdrawn.
6. In 2021 planning permission and listed building consent⁶ (Noble Barn permissions), relating to Noble Barn, were granted for *'change of use from a barn to a dwelling (use class C3), including external alterations to the eastern elevation, insertion of eleven flush mounted skylights, insertion of twelve flues /extracts, changes to the fenestration and formation of new vehicle access and new boundary treatments (Retrospective)*.
7. Three planning applications⁷ (the 2022 applications) relating to Brick Barns and the appeal site were submitted in 2022 but they were later withdrawn. Later that year 2 Certificate of Lawful Use or Development applications were submitted. The one related to *'the use of building known as Brick Barns as a dwelling'*⁸ was approved in January 2023 (the 2023 LDC). The second one related to *'the annex, driveway and gates situated within the grounds of the property known as Brick Barns'*⁹ and this was refused in April 2023 (the LDC refusal). No appeal has been submitted in relation to the LDC refusal.
8. The appeal was originally lodged under grounds (a), (c), (d), (f) and (g). Prior to the Inquiry opening the appellant confirmed that a ground (b) appeal was being made in so far as they consider that the breach of control alleged in the enforcement notice (the EN) has not occurred as a matter of fact. As both parties were aware of this prior to the Inquiry opening, I am satisfied that neither party are prejudiced by the inclusion of this. I have thus determined the appeal on this basis.
9. On 19 December 2023 the Government published a revised National Planning Policy Framework (the Framework). Both parties have been given the chance to comment on whether revisions to the Framework have relevance to their case. I have taken into account the responses received in my reasoning below.

The Notice

10. On an appeal any defect, error, or misdescription in an EN may be corrected using the powers available in section 176(1) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
11. Section 55 of the 1990 Act states, amongst other things, that "development," means the making of any material change in the use of any building. To

⁴ Ref Nos: 160202 & 160203

⁵ Ref No: 160204

⁶ Ref Nos: 200972 & 200973

⁷ Ref Nos: 220359 & 220321 & 220332

⁸ Ref No: 223387

⁹ Ref No: 230335

ensure that the description of the alleged breach reflects section 55 of the 1990 Act I consider that the wording '*unauthorised change of use*' within the description of the alleged breach should be corrected to '*unauthorised material change of use*'. Additionally, both parties agreed at the Inquiry that the word '*garden*' was superfluous within the description of the alleged breach as that alleged breach relates to residential use and I therefore intend to delete it from that description. To ensure that the requirements match the description of the alleged breach I intend to delete the wording '*use of the Land as residential garden*' from requirement i. and replace it with '*residential use of the Land*'. It is clear from the evidence, including the oral evidence heard at the Inquiry, that both parties understand what is alleged by the description of the alleged breach as corrected. As such, I can carry out these corrections and variation without injustice to the parties.

12. At the accompanied site visit, it was apparent that the agreed extent of the land associated with the residential use of Brick Barns prior to the alleged breach commencing did not reflect that shown on the plan, titled 'Brick Barns', attached to the EN. Moreover, the position and extent of the fencing and retaining wall, the location of building no 3 and the extent of hardstanding is incorrectly shown on that plan. The extent of the retaining wall is incorrect as an additional section between building no 1 and the retaining wall, shown with a black line on that plan, is not indicated. The appellant considers that to include that section of wall within the amended plan would make the notice more onerous on him and therefore injustice would be caused. However, in any case, its removal would be required to return the ground levels to those prior to the unauthorised use as part of requirement iii. Therefore, the extent of the retaining wall shown on the plan does not need to be corrected.
13. It was also apparent that the bell mouth adjoining Dairy Lane is not within the site identified in the plan attached to the EN and is therefore not attacked by the EN. The appellant considers that to extend the area to cover the bell mouth would make the EN more onerous on them and therefore injustice would result. I agree that the EN cannot be corrected in this respect without injustice. Furthermore, as the requirements can only require works to be undertaken within the area attacked by the EN, I intend to vary requirement xi. by deleting the wording '*including removal of visibility splay and associated hardstanding up to the private way/road (White Hill)*'. I am satisfied I can carry out that variation without injustice to the parties.
14. An amended plan has been produced by the appellant, agreed with the Council, which reduces the extent of the area attacked by the notice, reduces the extent and position of the fencing and hardstanding identified and alters the position of building No 3. The amended plan provides clarity and there is no dispute that given the reduction in the extent of the area, fencing and hardstanding that the plan can be substituted without any injustice to the appellant and the Council accepted no injustice would be caused to it. I therefore intend to delete the plan titled 'Brick Barns' and the references to it, within the enforcement notice, and substitute it with the plan annexed to this decision and the references to it with the wording 'Amended Plan – January 2024'. On that amended plan the buildings 1 through to 5 are not shown in different colours so I intend to delete the references to colours within requirements v. through to ix. Moreover, the fence and gates are shown as points C and D and a green line therefore I intend to delete the wording '"A', 'B',"' from requirement xii. It

was agreed at the Inquiry that these corrections and variations would not cause injustice to any party.

15. Requirement xiv. requires that the land be returned to its former condition prior to the breach by re-seeding using grass seed at 50 grammes per square metre. However, it was confirmed at the Inquiry that the Council could not verify that prior to the breach the land was sown with seed at the density identified. Therefore, the requirement may be excessive if it would not return the land to its former condition. Nevertheless, the wording '*by re-seeding using grass seed at 50 grammes per square metre*' is superfluous and can be deleted without injustice to any party.
16. Requirement iv. relates to the removal of all ornamental non-native tree and hedge planting including laurel hedging. I was told at the Inquiry by Mr Ryder that a planting plan would be required to enable the identification of what constituted an ornamental non-native tree and hedge. Therefore, in my judgement this requirement can reasonably be treated as vague and a recipient could not tell with reasonable certainty what they had to do to comply with it. Nevertheless, this requirement can be deleted without injustice to both parties as the varied requirement xiv. requires the land to be returned to its former condition prior to the breach.
17. Following the variations set out above to the requirements I intend to amend the numbering of each requirement and the references to the numbering of the requirements.
18. Within an EN the requirements ideally should follow on from the description of the alleged breach. In this case the requirements include the removal of fence, posts and gates, requirement xii. and the removal of external lighting, requirement xiii. The allegation does not specifically refer to those items but as corrected it states, "*the unauthorised material change of use of the Land to residential including*". Given that the word '*including*' is within the description of the allegation the list following is not a closed list and so it is not definitive. Therefore, I consider that it is unnecessary for the description of the alleged breach to be corrected by adding in references to those items.
19. Notwithstanding all of the above, the notice has a logical structure. If read in a straightforward way, and not forensically, the alleged breach is expressed in a manner and form that is understandable. The requirements relate directly back to the material change of use and its associated operational development. My conclusion is that the corrected and varied notice, which I have found would not cause injustice to either party, tells the recipient fairly what he has done wrong and what he must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds available in an appeal and make corrections where they have been shown to be justified.
20. For the reasons given above, I conclude that the enforcement notice is valid and that no injustice would be caused by correcting the errors and misdescriptions and making variations as set out above to the requirements in accordance with my powers under section 176(1) of the 1990 Act.

The ground (b) appeal

21. To succeed on this ground, the onus is upon the appellant to show on the balance of probabilities that the allegation has not occurred as a matter of fact.

The appeal site had formed part of a golf course that had closed by 2008 and Mr Titchner's evidence describes how it was used when he occupied Brick Barns prior to the appellant purchasing it. Nevertheless, under this ground of appeal, the appellant's primary submission, is that the whole of the appeal site is not in residential use. They contend that the land to the east and south of the access drive (the access drive), that forms part of the hardstanding cited within the EN, is and always has been parkland. The Council considers that the appeal site forms one planning unit, with Brick Barns and the land adjoining that building, in residential use.

22. The planning unit is a concept which has evolved as a means of determining the most appropriate physical area against which to assess the materiality of a change of use. Under this ground of appeal, the materiality of the change of use is not to be considered. However, the concept of the planning unit is useful in assessing whether the alleged material change of use to residential has occurred across the whole site within the ownership of the appellant, whether there are 2 planning units in different uses on the site or the use of the site comprises a mixed use. The broad criteria for determining the appropriate planning unit are set out in the *Burdle* judgment¹⁰. Whenever it is possible to identify a single main purpose of an occupier's use of land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.
23. Secondly, the judgment identified that it may be appropriate to consider the entire unit of occupation in the case of a composite or mixed use where an occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another and where those uses are not confined within distinct and separate parts of the site. Thirdly, it may frequently occur that on a single unit of occupation two or more physically separate and distinct areas of land are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose, together with its incidental and ancillary activities ought to be considered as a separate planning unit.
24. In this case, the appeal site, Brick Barns and the land adjoining that building is all within the appellant's ownership and it is all occupied by him and his family. When the appellant purchased Brick Barns in 2016 there was a tall hedge, gate and some fencing traversing the land to the south of the dwelling. The line of that boundary treatment reflects the boundary line of the appeal site immediately to the south of that dwelling, as shown on the amended plan. That boundary treatment had been removed by March 2017.
25. The part of the appeal site to the west and north of the access drive has raised planting beds, areas of hardstanding, 2 buildings and closely mown grassed areas within it. Building 1 (as shown on the amended plan attached to this decision) is in use as home offices and a gymnasium and building 2 is in use as a bedroom with ensuite bathroom. The evidence before me indicates that at the time the EN was issued that the use of these buildings was not materially different to what I observed. There is no dispute that this part of the appeal site is used in association with the residential use of Brick Barns.
26. There are hedges and fencing/gates between the part of the site referred to in the previous paragraph and the remainder of the appeal site. I observed that

¹⁰ *Burdle & Williams v SSE & New Forest RDC* [1972] 1 WLR 1207

the landscaping of this remaining part is less formal with the grass being left longer and there are no formal planting beds. Moreover, the photographs submitted by the Council from site visits undertaken in 2022 show that this part of the appeal site contained hardstanding and benches/seats and a fire pit and at those times the grassed areas were more closely mown. Whilst, parts of the hardstanding, seating and the firepit has since been removed there are footpaths/areas of hardstanding and three outbuildings within it and compost bins near to building 4. I acknowledge that those latter features can be found in parkland.

27. However, I observed that these 3 outbuildings are used to store gardening equipment and supplies and general domestic items. The plans and evidence submitted as part of the 2022 applications identifies them as a hosepipe store, potting shed and maintenance shed. Building 5 which is identified as a potting shed appears to be laid out internally to carry out general indoor gardening activities typically undertaken in a potting shed. Given the proximity of buildings 3 and 5 to Brick Barns and the raised planted beds it is more likely than not that the gardening equipment and supplies and the gardening activities undertaken are functionally linked to the residential use of Brick Barns.
28. In addition, the appellant stated at the Inquiry that there were 2 reasons the fence and gates were erected within the appeal site one being to delineate the areas they considered were garden and parkland. The other being to ensure they could care for dogs for a charity they supported as they had been informed that access to the pond for the dogs had to be restricted. It is highly likely that this latter reason was the determining factor for the erection of the fence and gates. In any case, I observed that people could move freely between the two areas of the appeal site using the gates.
29. There is currently little residential paraphernalia within the remainder of the appeal site and the landscaping is now more informal in character in that area. Nonetheless, the footpaths and hardstanding areas and their materials visually and physically link the parts of the site delineated by the hedges, fence and gates. The whole of the appeal site has the character and appearance of a large residential garden with some areas being more informal than others.
30. Taking into account all of the above, and on the balance of probability it is more likely than not that the use of the whole of the appeal site was physically and functionally associated with the residential use of Brick Barns prior to the EN being issued. As a result, I consider that the land owned and occupied by the appellant at Brick Barns is one planning unit. The primary use of the planning unit is the residential use of Brick Barns. As such, I conclude, that the alleged breach of planning control had occurred at the date the notice was issued and the ground (b) appeal is dismissed.

The ground (c) appeal

31. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the onus is on the appellant to show on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. The appellant's case within this ground of appeal is limited to the erection of the fence and gates shown as a green line on the amended plan annexed to this decision, the means of access to Dairy Lane, part of the

- hardstanding and the change of ground levels. Accordingly, there is no basis on which the notice could be quashed under ground (c), but there is scope for argument as to whether the notice can require removal of those items.
32. The appellant argues that the fence and gates would have fallen within that 'permitted' under Article 3 and Schedule 2, Part 2, Class A (Class A) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns the erection of a gate, fence, wall or other means of enclosure. There is no dispute that the fence and gates meet the limitations and conditions of Class A. Based on my observations and the evidence before me I have no reason to disagree. Nevertheless, there is dispute between the parties as to whether Article 3 (5) of the GPDO would apply in this case.
 33. Moreover, the Council considers that the fence and gates are operational development which is integral to the alleged breach of planning control namely the material change of use and therefore the notice can require its removal taking into account a number of judgments including *Murfitt v Secretary of State for the Environment* (1980) 40 P&CR 254 (Murfitt) and *Kestrel Hydro v SSCLG* [2016] EWCA Civ 784 (Kestrel Hydro). Both parties are also aware of the recent judgment of *Caldwell v SSLUHC* [2023] EWHC 2053 (Caldwell).
 34. As stated above, Mr Bateman gave evidence as to the reasons why the fence and gates were erected. Given those reasons it is more likely than not that but for the unauthorised change of use, the fence and gates probably would not have been provided. Their provision was part and parcel of the physical works associated with that change of use and not for a different, lawful use. Therefore, even if I agreed with the appellant that Article 3(5) of the GPDO did not apply in this case, for the reasons given, and having regard to the judgments in Murfitt, Kestrel Hydro and Caldwell the notice can nevertheless require their removal.
 35. Even though, the bell mouth is not part of the works affected by the EN there is no dispute that the hardstanding adjoining that bell mouth can be treated as a means of access to a highway. In relation to that means of access the appellant considers that it is permitted by Article 3, Schedule 2, Part 2, Class B (Class B) of the GPDO which states that *the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in this Schedule (other than by Class A of this Part)*. There is no dispute that Dairy Lane is not a trunk or classified road. Consequently, any means of access must be 'required' to serve a development that is permitted by any class in Schedule 2, except class A of Part 2. Taking the ordinary meaning of the word, it seems to me that there must be a reasonable degree of need for the access to be 'required'.
 36. It is stated that the means of access was required to undertake the insertion of rooflights and other alterations such as the windows within Brick Barns. However, the evidence before me indicates that Brick Barns was accessible from the driveway shared with Noble Barn until the 2 properties began to be separated. It appears that the rooflights and the alterations cited by the appellant were carried out in late 2018 and at a similar time the new access to Noble Barn was being installed. Nevertheless, Noble Barn was still within the appellant's ownership until November 2019 and pedestrian access was

available between the properties until after that later date. Moreover, the appellant has indicated that the first phase of the works to renovate Brick Barns took about 12 months during 2016/2017 and at that time the shared access with Noble Barn was used. There is nothing to indicate that the shared access would have been inadequate to carry out the insertion of the rooflights or the other alterations to Brick Barns.

37. Therefore, whilst a new means of access was desired by the appellant, to enable the separation of the properties it is more likely than not that it was not required in connection with the insertion of the rooflights and other alterations to Brick Barns. In addition, there is no substantiated evidence to indicate that the means of access was required in connection with development permitted by any other class in Schedule 2 of the GPDO. Therefore, the means of access does not benefit from the permitted development rights conferred by Class B.
38. Mr Clemon's evidence on behalf of the appellant states that the hardstanding for the parking of cars to the north and east of Brick Barns is permitted by Article 3, Schedule 2, Part 1, Class F (Class F) of the GPDO. Class F relates to hard surfaces incidental to the enjoyment of a dwellinghouse and it permits development consisting of, amongst other things, the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such. The hardstanding to the north of Brick Barns is not affected by the EN as it is not within the appeal site. A very small amount of the hardstanding to the east of it is also not affected by the EN. The remainder of the hardstanding to the east of Brick Barns is used for the parking of cars and this can be reasonably considered to be a purpose incidental to the enjoyment of that dwelling.
39. However, there is little evidence before me to demonstrate that that part of the hardstanding is within the curtilage of Brick Barns. Moreover, in the appellant's closing submissions it states '*taking the extent of the residential curtilage as that defined by the Council there were a number of items of development which did not require planning permission at the point the Notice was issued*'. Mrs Maynard's proof of evidence on page 28 defines what the Council considers is the curtilage of Brick Barns and its southern and eastern boundaries adjoin the appeal site. Therefore, the hardstanding to the east of Brick Barns that is within the appeal site is not within the curtilage of Brick Barns as defined by the Council.
40. I have found that the appeal site and the remainder of the land owned and occupied by the appellant are part of the same planning unit. As stated above it is widely accepted that the concept of the planning unit is a means of determining the most appropriate physical area against which to assess the materiality of a change of use. Nonetheless, there may well be situations where the planning unit covers a different area to the curtilage of a building. The two concepts are not the same, and many of the factors that go into defining the planning unit will not apply to determining curtilage.
41. The GPDO does not attempt to define the term 'curtilage' and there is no other all-encompassing, authoritative definition. The Courts have often addressed the meaning of 'curtilage', and the most recent is the *Blackbushe*¹¹ judgment of the Court of Appeal. The evidence before me including the oral evidence of

¹¹ *Hampshire CC & the Open Spaces Society & Others v SSEFRA & Blackbushe Airport Ltd* [2020] EWHC 959 (Admin), [2021] EWCA 398, [2020] JPL 1359

Mr Titchner confirms that there was a tall hedge, iron gate and small country fence on the southern boundary of Brick Barns prior to 2016. That evidence also indicates that there was no boundary treatment between Brick Barns and the area of trees to the east and that the trees may have formed part of the golf course. Prior to the southern boundary treatment being removed it would have imparted a compelling perception of enclosure to Brick Barns.

42. Brick Barns and the appeal site have been owned and occupied by the appellant since 2016, prior to that they formed part of the wider PPE land holdings and land to the south and east of Brick Barns appears to have formed part of the golf course. I acknowledge that after the golf course had closed down, the tenants of Brick Barns could access the land to the east and south and were able to use it for informal recreational activities such as barbecues, family gatherings and golf practice. However, those activities appear to have been intermittent and focussed in the area to the south of Brick Barn. Mr Titchner confirmed that he mowed a section of grass 200-300 yards from the iron gate about once a month during the summer when he occupied Brick Barns. Consequently, there is little to indicate that the use or function of part or all of the appeal site had been intimately associated with the dwellinghouse, Brick Barns prior to 2016.
43. Therefore, I find as a matter of fact and degree, on the balance of probabilities that prior to the alleged breach of planning control that the appeal site did not form part and parcel of Brick Barns. Moreover, based on the evidence before me I have no reason to dispute the Council's findings in this regard. Hence, it has not been demonstrated that the part of the hardstanding to the east of Brick Barns that is attacked by the EN is within the curtilage of Brick Barns. That part of the hardstanding is therefore not permitted by Class F of Part 1 of Schedule 2 of the GPDO.
44. The appellant's statement of case indicated it would be demonstrated that the alleged changes of ground levels do not constitute development. However, little substantiated evidence has been provided on this matter on behalf of the appellant. Section 55 of the 1990 Act includes in the definition of the word 'development' the carrying out of 'building, engineering, mining or other operations in, on, over or under land'. From what I observed and based on the evidence before me I am satisfied that changes of ground levels comprising engineering or other operations have taken place within the appeal site and that those operations constitute development for the purposes of section 55 of the 1990 Act. Section 57(1) of that Act states that planning permission is required for any development of land. Section 55(2) sets out some exclusions to this but the development at the appeal site does not fall to be considered against any of the exclusions. Planning permission is therefore required for the changes of ground levels.
45. Taking into account all of the above the ground (c) appeal fails.

The ground (d) appeal

46. This ground of appeal is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
47. Together with a material change of use, the corrected allegation in the EN refers to the erection of five buildings and the formation of hardstanding. The

appellant is not contesting that the material change of use is immune from enforcement action. The appellant's case on ground (d) is limited to the building shown as Building 2 (Building 2) on the plan annexed to this decision and part of the hardstanding. Therefore, there is no basis on which the EN could be quashed under ground (d), but there is scope for argument over whether it can require removal of Building 2 and part of the hardstanding.

48. There is now no dispute that Building 2 was substantially completed more than 4 years prior to the issue of the EN, namely by 14 June 2019. However, the Council's case reflects that made in relation to the fence and gates above. It considers that the erection of Building 2 is part and parcel of the material change of use and a physical manifestation of that change having regard to the Murfitt, Kestrel Hydro and Caldwell judgments. The appellant considers that Building 2 is fundamental to or causative of the change of use and with regard to Caldwell there is no power to secure its removal and in any case, it is too late to take action against that building.

49. In Caldwell Lieven MJ extensively reviews several other judgments including Murfitt and Kestrel Hydro and she states at paragraphs 33 and 34 that

"The caselaw, starting with Murfitt, clearly establishes that the power to require restoration can include the removal of operational development, which could not be enforced against on its own, because of s.171B. That principle has been endorsed in numerous subsequent cases, including in the Court of Appeal in Kestrel Hydro. However, it is also clear that the Murfitt principle is subject to limitations. Most importantly, as has been frequently stated, it cannot override or extend the statutory scheme, see Kestrel Hydro at [27]."

She goes on to state at paragraph 39 that

"In my view both the statute itself and the caselaw point to a limitation on the power described in Murfitt, where the operational development is itself the source of or fundamental to the change of use. Whether that limitation is reached is a matter of fact and degree."

50. Mr Bateman stated within his oral evidence that Building 2 was initially used as a home office and later, after building 1 was completed, it has been used as a bedroom and bathroom. I observed that this is how Building 2 is currently used. He also stated that both of these buildings had not otherwise been used other than as ancillary to the dwellinghouse, Brick Barns. It is apparent that immediately prior to the EN being issued and until the time of my site visit Building 2 has been used for the provision of additional living space associated with the residential use of Brick Barns. Therefore, it is part and parcel of the residential use of that dwelling.

51. The dwellinghouse, Brick Barns is not within the appeal site, but I have found that the appeal site forms one planning unit with it and the land adjoining that dwellinghouse. The primary residential use of the planning unit is generated by the use of Brick Barns as a dwellinghouse. Whilst the use of Building 2 is part and parcel of that overall residential use, its use in isolation is not the source of, and does not generate, the primary residential use. Nevertheless, the outbuilding and its use facilitate and support the material change of use to residential that has occurred on the appeal site. Therefore, as a matter of fact and degree and having regard to the judgments cited above even though

Building 2 was completed before 14 June 2019 and would normally be immune from enforcement action the EN can nevertheless require its removal.

52. In relation to the hardstanding the appellant contends that the part of it that forms the means of access and drive and was included within the LDC refusal was substantially complete prior to 14 June 2019. There is no dispute that in December 2018¹² the majority of the access and drive had been formed using rolled type 1 railway track hardcore/hogging (type 1 hogging). The line of that access and drive can be seen on the aerial photograph dated 14 September 2019¹³. However, it can be seen from that aerial photograph and the one dated 15 April 2020¹⁴ that the hardstanding areas nearest to Brick Barns appear as a lighter colour than the remainder of the hardstanding.
53. Photographs dated 20 March 2019¹⁵ indicate that the areas closest to Brick Barns have a similar appearance to that I observed with light coloured stone surface, metal edging and stone setts within. Nonetheless, another photograph also dated 20 March 2019¹⁶ shows part of the hardstanding near to the bell mouth on Dairy Lane and its appearance is significantly different to that seen in the other photos of that date. The hardstanding shown in this photograph has a worn and slumped surface and no metal edging is apparent. Mr Bateman indicates within his proof of evidence that the initial driveway was installed with a temporary wearing course of type 1 hogging for expediency but that it quickly became slumped and potholes appeared.
54. He goes on to state that the contractor returned dug out the potholes and slumped areas, reinforced them, rerolled type 1 and then laid and rolled crushed stone. The same chippings, metal edging and plastic gravel mesh as a ground reinforcement were used as at Nobel Barn. Mr Bateman also states in his proof of evidence that during 2020 the contractor returned again scraped off the chippings, tar sprayed the base and rerolled the chippings as it is today. There is little specific evidence to indicate when these later works were carried out. The 20 March 2019 dated photograph, in that proof, of the hardstanding near to the bell mouth indicates that these works are more than likely to have occurred after that date. The submitted invoices for the contractor (DH Bond) all pre-date March 2019 and cannot therefore be for these later works.
55. Mr Bateman's oral evidence indicates that the works to the drive had to be carried out 3 times and he agreed that the aerial photographs from 2019 and 2020 indicated that parts of the access drive appeared on those photos as a lighter and a darker colour. Mr Betts stated in his oral evidence that when they moved into Noble Barn the removal lorry had to utilise the means of access and drive at Brick Barns to deliver their belongings. They moved into Noble Barn in November 2019. Therefore, the access drive was capable of providing vehicular access at that point in time. However, the base wearing course is a temporary measure and, in my experience, it is utilised during the construction phase of a project. It is reasonable as a matter of fact and degree for me to find that the access drive cannot be treated as being substantially complete until the plastic gravel mesh, crushed stone and metal edging had been installed as this was the intended permanent construction. It has not been

¹² Dated photographs pages 19 and 22 of Appellant's PoE

¹³ Page 56 of Helen Maynard's PoE

¹⁴ Page 57 of Helen Maynard's PoE

¹⁵ Dated photographs page 24 of Appellant's PoE

¹⁶ Dated photograph page 19 of Appellant's PoE

demonstrated that the access was completed, with plastic gravel mesh, crushed stone and metal edging finishes, prior to 14 June 2019.

56. In any case, as part of the application submitted for the LDC refusal Mr Bateman submitted a statutory declaration¹⁷ that included a copy of a case study of a landscape masterplan proposal from the autumn of 2018 by Peter Williams Studio for both Noble and Brick Barns. The masterplan site plan¹⁸ (the masterplan) was also submitted as part of the Noble Barn permissions. That masterplan indicates an access drive in a similar position to that which exists, parking areas and a path from the access drive towards the pond. Mr Bateman confirmed in his oral evidence that the paths towards the pond were only grassed at the time of the aerial photograph dated 14 September 2019 and that they had been surfaced with stone by the time of the aerial photograph dated 15 April 2020. Further paths towards building one and an area around that building were constructed by 2021 and can be seen on the aerial photograph dated 16 July 2021.
57. Taking into account all of the above, parts of the hardstanding close to Brick Barns were substantially complete prior to the 14 June 2019. However, other parts were not substantially complete until 2020 and 2021. The masterplan does not show all of the hardstanding as it exists today, but it indicates that the areas of hardstanding were planned with a consistency to their construction and appearance including the parking areas, access drive and paths. Those parking areas, paths and the access drive form a visually cohesive feature within the site. Even though it appears to have been carried out in phases the hardstanding, as a whole is, inextricably linked physically and visually. Consequently, even if the access drive part of the hardstanding was substantially complete by the relevant date, as a whole the hardstanding was not. I find on the evidence available that all the hardstanding attacked by the notice was conceived as one operation and that the hardstanding as a single operation was not substantially complete by the relevant date. Therefore, it is not immune from enforcement action through the passage of time. The appeal on ground (d) therefore fails.

The ground (a) appeal and deemed planning application

58. During the Inquiry the appellant submitted amended plans relating to 2 alternative schemes, Option A¹⁹ and Option B²⁰ (the option plans). Within the Statement of Common Ground, it is stated that an area of disagreement is whether planning permission should be granted for Option A or Option B. Moreover, within the appellant's closing submissions it is stated that planning permission is sought for some of the matters stated in the EN on 2 alternative bases, either Option A or Option B. Therefore, the appellant is only seeking planning permission for Option A or Option B as part of his ground (a) appeal and the deemed planning application.
59. Option A relates to retaining an area of land in residential use to the east and south of Brick Barns. The boundaries would follow the line of the parking area/access drive to the east and to the south the boundary would traverse the large, grassed area, close to a mature tree within that grassed area. Buildings

¹⁷ CD 2.14

¹⁸ CD 3.17 drawing no: 101 CD-105 C

¹⁹ Drawing Ref: X101—Nov 2023

²⁰ Drawing Ref: X20—Nov 2023

1 and 2, the parking area and part of the access drive would be within that area. Option B relates to retaining a larger area of land in residential use to the east and south of Brick Barns. The boundary of the site would follow the eastern/southern side of the access drive. As such, buildings 1 and 2 are within that area as is all the parking area and the access drive. The remainder of the appeal site within both options is annotated as parkland.

60. Section 177(1)(a) of the 1990 Act states that 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 the whole or any part of the land to which the notice relates*'. There is no dispute that the lawful use of the appeal site is as parkland. Therefore, I consider that the deemed planning applications for either Option A or Option B can reasonably be considered on the basis of the material change of use to residential, including the erection of 2 buildings; changing of ground levels; and formation of hardstanding, of the land shown on the option plans as '*extended residential curtilage*' (the development). In these respects, Option A or Option B can be treated as falling within section 177(1)(a) of the 1990 Act. Even if planning permission was granted for Option A or Option B the enforcement notice and its requirements (as corrected and varied) would still be in place on the residual parts of the land attacked by that notice (the residual parts). As Options A and B relate to similar developments, I have dealt with them together in my reasoning except where specified.

Main Issues – both options

61. The main issues are:

- Whether the development constitutes inappropriate development in the Green Belt, having regard to the development plan and the Framework;
- The effect of the development on the openness and purposes of the Green Belt;
- The effect of the development on the character and appearance of the surrounding area taking into account the grade II* Registered Park and Garden;
- The effect of the development on biodiversity;
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, whether this amounts to the very special circumstances required to justify the development.

Reasons

Whether the development constitutes inappropriate development

62. The parts of the land within Option A and Option B (the option sites) lie within the Metropolitan Green Belt and Policy CP 12 of the Wokingham Borough Core Strategy (the CS) states that '*Planning permission will not be granted for inappropriate development within the Metropolitan Green Belt as defined in PPG2*'. Policy TB01 of the Wokingham Borough Managing Development Delivery Document (MDDD) states, amongst other things, that:

'2. Within the Green Belt, development for the purposes set out in paragraphs 89 and 90 of the National Planning Policy Framework and as set out in point 3 below will only be permitted where they maintain the openness of, and do not conflict with the purposes of including land in, the Green Belt.

3. The alteration and/or extension of a dwelling and the construction, alteration or extension of buildings ancillary to a dwelling in the Green Belt over and above the size of the original building(s) shall be limited in scale.'

63. The supporting text to this policy states that 'limited' means a cumulative increase of generally no more than a 35% increase in volume over and above the original dwelling. Both of these policies pre-date the current version of the Framework but they are broadly consistent with its chapter 13. Paragraphs 154 and 155 of the current Framework are similar to paragraphs 89 and 90 cited within MDDD Policy TB01. Paragraph 154 of the Framework states that the construction of new buildings within the Green Belt should be regarded as inappropriate development. One of the exceptions to this is:

'c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building'.

Paragraph 155 of the Framework states that

'certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it'. These are, amongst other things, 'b) engineering operations and e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds).'

64. Neither the Framework nor the development plan policies make any specific reference to the erection of detached outbuildings as being not inappropriate development within the Green Belt. Nevertheless, the Warwick²¹ judgment found that:

'[149(c)] is not to be interpreted as being confined to physically attached structures but that an extension for the purposes of that provision can include structures which are physically detached from the building of which they are an extension'.

Paragraph 149 (c) is paragraph 154 c) in the current Framework. Within the Warwick judgment it is also stated that:

'A building can readily be regarded as being an adjunct to another building even though the two are not physically connected. As Miss Hutton said, buildings can readily be considered to be extensions of other buildings even though the buildings are not physically connected. In the domestic setting it is not artificial to describe garages or other outbuildings as being extensions of the principal dwelling house.'

65. Buildings 1 and 2 are detached from Brick Barns, rectangular in floor plan with the longest sides of those rectangles being perpendicular to Brick Barns's southern elevation. Building 2 is close to the one corner of Brick Barns and

²¹ *Warwick DC v SSLUHC, Mr J Storer & Mrs A Lowe* [2022] EWHC 2145 (Admin)

building 1 is around 13 metres from Brick Barns's southern elevation. Both buildings, 1 and 2, are constructed in black timber cladding with pitched roofs. As stated previously, they are used as additional living accommodation and as home offices and a gym in association with the residential use of Brick Barns. As such, they have a functional relationship with Brick Barns, and they are seen in views, from the south, with that dwelling. Therefore, in my judgment both buildings 1 and 2 can reasonably be treated as normal adjuncts and as extensions to the dwelling when applying Green Belt Policies.

66. There is no dispute that the Framework does not provide any guidance as to what constitutes a disproportionate addition in the context of a building extension or alteration. The wording of MDDD Policy TB01 does not specify what limited in scale would entail. However, the supporting text to that policy explains what 'limited' means for the purposes of that policy. I acknowledge that figure 8.19 of the Borough Design Guide Supplementary Planning Document (the SPD) states that 'a 50% increase in volume for a 1 storey development is acceptable when compared with the original building.' Nevertheless, the sentence prior to that states '*guidance for the volume of replacement dwellings*'. I therefore consider that it is reasonable that the text to that figure applies to the volume of replacement dwellings and is not relevant in this case.
67. There is no dispute that the original building that forms Brick Barns existed on 1 July 1948. According to the appellant's figures the volume of Brick Barns is approximately 852 m³ and the total volume of buildings 1 and 2 together is approximately 383 m³. This represents an increase of around 45% in volume over and above the original building. Furthermore, even though the buildings are seen with Brick Barns in views from the south, buildings 1 and 2 are sited a substantial distance apart from each other as they are roughly in line with the opposite ends of Brick Barns's southern elevation. In addition, the built form of building 1 extends significantly from that elevation. When considered together, buildings 1 and 2 considerably increase and elongate the built form, associated with Brick Barns, to the south. I acknowledge that the buildings are not visible from the public realm and Dairy Lane is a private drive. However, they are seen by visitors arriving at the option sites. Additionally, building 1 is visible in glimpsed views from Dairy Lane in the winter months when the vegetation is not in full leaf. Consequently, when considered together they are not limited in scale and they result in disproportionate additions over and above the size of the original building. The buildings do not meet the exception at paragraph 154 c) of the Framework and they do not comply with point 3 of MDDD Policy TB01.
68. The material change of use of the option sites would be to residential use. Lieven MJ found in the recent Kingston judgment²² that residential changes of use do not fall within what was previously paragraph 150(e) of the Framework and is now paragraph 155 e). Given that judgment it is apparent that the material change of use to residential use does not fall within paragraph 155 e). I have had regard to the Bromley judgment²³ cited by the appellant but given my findings above in relation to buildings 1 and 2 I consider that the findings of that judgment are not relevant in this case. The material change of use, of the

²² *Kingston upon Thames RLBC v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2055 (Admin).

²³ *Bromley BC v Secretary of State for Communities and Local Government* [2016] P.T.S.R. 1186

option sites, to residential does not fall within the exception indicated at paragraph 155 e) of the Framework.

69. Even if I concluded that the engineering operations, the hardstanding and the changes in ground levels, were not inappropriate development in the Green Belt, that conclusion would not override my findings above as they form part of the material change of use. I have no evidence before me to show that the development would fulfil any of the other categories as set out at paragraphs 154 and 155 of the Framework. Against this background, the development forming Option A or Option B, is inappropriate development within the Green Belt.

Green Belt openness and purposes

70. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Paragraph 143 sets out five Green Belt purposes. During Mrs Maynard's cross examination, it was conceded that the only purpose relevant to the development is to assist in safeguarding the countryside from encroachment.
71. There are existing properties nearby along Dairy Lane and the development is not visible from the public realm. Existing vegetation helps to screen the development from Dairy Lane when it is in full leaf. Nevertheless, both of the option sites prior to the development being undertaken constituted undeveloped parkland. Within both Options A and B buildings 1 and 2 have been constructed to the south which considerably increases and elongates the built form, associated with Brick Barns. These buildings have a spatial and visual impact on the openness of the Green Belt. Moreover, notwithstanding the way in which the present occupiers use the option sites and their current appearance, domestic activities would still take place within the garden areas of Option A or B. In Option A only part of the existing hardstanding would be retained with the existing means of access to Dairy Lane being removed when the requirements of the EN had been complied with and the garden area associated with Brick Barns would extend to the south of buildings 1 and 2. In Option B most of the existing hardstanding would be retained including the means of access and a larger area to the south of buildings 1 and 2 would be utilised as garden.
72. Gardens can normally be used for any purpose which is part of the residential use or ancillary to it. Gardens are generally therefore used for a range of activities many of which involve the placement of items such as tables, chairs, equipment used for children to play or for gardening. Part of the land is hardsurfaced with stone for footpaths, potential seating areas and for the use of vehicles to park and turn. Each of these activities and in particular the physical manifestations of objects including vehicles being positioned on it, emphasise its residential use. Even if some of those activities result in only ephemeral or occasional changes, at those times, the openness of the Green Belt is and would be adversely affected.
73. The impact of Option B on the openness of the Green Belt is and would be slightly greater than Option A given the somewhat larger area of hardstanding and garden to be retained. Nevertheless, it is more likely than not that the existing areas of hardstanding within the application site for Option A would be

repurposed when an alternative means of access is formed. Visitors to Brick Barns can see the development when they are within the option sites. Moreover, pedestrians and occupants of vehicles using Dairy Lane get glimpsed views of building 1 when the vegetation is not in full leaf and part of the hardstanding near to the bell mouth that forms part of Option B.

74. Therefore, I consider that whilst the impact of Option B on the openness of the Green Belt would be slightly greater than that of Option A both can be considered to have a modest harmful impact on openness in spatial and visual terms. For similar reasons, there is also a clear conflict with regard to safeguarding the countryside from encroachment with both options.

Character and appearance

75. The option sites are within the RPG which is an 18th and 19th Century designed landscape which has been designated because of its special historic interest. That special historic interest/significance mainly derives from the changes that were made to the landscape associated with Park Place by past owners including General Conway, Mr Fuller-Maitland and Mr John Noble with the latter employing Robert Marnock to carry out extensive landscape gardening.
76. The RPG falls within the National Character Area NCA 110-Chilterns and the Council's Landscape Character Assessment (LCA) indicates that the option sites are within the Remenham Arable Chalk Plateau (RACP). The LCA also indicates that the key characteristics of this character area include the designed landscape at Park Place, the predominantly flat landform with upland plateau character and restored hedgerows and shelterbelt planting within the PPE reinforced by estate rail fencing. It goes on to state that the strategy required to maintain the landscape character of RACP is to conserve and enhance the existing rural character and the parkland landscapes associated with PPE. Consequently, the landscape character of the RACP is inextricably linked to the special interest/significance of the RPG. Due to its special historic interest the RPG can reasonably be treated as a valued landscape for the purposes of the Framework.
77. The CMP that was produced in 2005 for the owner of PPE states that it was prepared in coordination with English Heritage (now Historic England) and Wokingham District Council. The CMP contains policies as a framework to evaluate the effect of proposed changes on the significance of the RPG but it does not form part of the development plan. The IEMP submitted with the 2008 permission and cited within the legal agreement associated with that permission, was produced to support that application. In determining this appeal, it is not within my jurisdiction to decide whether the obligations outlined within that legal agreement apply to the development of the option sites. Nevertheless, the IEMP was produced in consultation with numerous bodies including Historic England. As such, I consider that both the CMP and the IEMP can be treated as material considerations.
78. The CMP divides the RPG into character areas, the option sites being within H: Aspect Park. At the time the CMP was published the golf course was still open and it states that:

'Forming the eastern extension of the Estate this area was in agricultural use (until the introduction of the golf course) although it was sub-divided by the

carriage drive to the house from the London Lodge and later, by the wooded carriage drive network, introduced by Fuller-Maitland. Enclosed on almost all sides and sub-divided by woodland belts, it retains much of its 19th century character despite the presence of the golf course, which is a recent introduction.'

79. The eastern parkland within Aspect Park with its specimen trees, belts of trees, grassland and woodland has historic interest imparted by its design and those features. The IEMP sets out the action programme to realise the policy objectives of the CMP. Plan IEMP 3b within the IEMP is the landscape masterplan and it indicates that proposed tree planting to screen properties with reference to the 1st edition 1883 Ordnance Survey Map (the 1883 OS) formed part of that masterplan. Plan IEMP 4a illustrates the Historic Landscape recommendations and on that plan the option sites are within an area where replanting to follow pattern of clumps and park trees was proposed.
80. Mr Clemons produced evidence at the Inquiry that indicates that the plan identified as the 1883 OS at Figure 30c of the CMP does not appear to be based on the same plan as Figure 18 of the same document which is also identified as the 1883 OS. He also submitted evidence to indicate that the plan cited within his proof of evidence as the 1875 OS Map is the same as the 1883 OS. This is because the 1883 OS was surveyed in 1875 but published in 1883. The 1883 OS shows a belt of trees that was to the south and east of the option sites. Nevertheless, there is no dispute that Brick Barns and Noble Barn were constructed after the 1883 OS as they first appear on the edition of the OS cited as dating from 1898 (the 1898 OS) within the evidence before me. The belt of trees to the east of the option sites is not shown on the 1898 OS and an area of landscaping is shown to the immediate south of Brick Barns. It is not known if the alterations to the landscaping near to the option sites in the late 19th Century was undertaken as part of the extensive landscaping carried out by Robert Marnock. It is also not known if the landscaping was carried out after Brick Barns was constructed.
81. In any case, there is no dispute that since the late 19th Century the belt of trees shown to the east of the option sites on the 1883 OS has not existed. Whilst it may have formed an integral part of the landscaping prior to 1883 it has not done so for most of the time that Brick Barns has been constructed and formed part of PPE. Footpaths, access drives, buildings and trees/hedges can be found within the parkland of the RPG. Therefore, in principle these features would not appear incongruous in the RPG.
82. However, the development as proposed within both options would retain 2 buildings that extend significantly to the south of Brick Barns into an area that since its construction has largely constituted grassland of the eastern parkland. Combined with those buildings are relatively large areas of hardstanding, those to be retained in Option B being more extensive than those in Option A. The hardstanding part of Option B, that adjoins Dairy Lane, is in a similar position to that approved through the RM permission. The RM permission indicates that at the time of that permission the Council considered that a means of access from Dairy Lane would be acceptable. However, the RM permission is not extant. In addition, an area extending into what was that grassland would be retained in residential use as a garden. The garden area forming part of Option A would be appreciably smaller than that forming part of Option B.

83. Nonetheless, the residential use, landscaping, buildings and hardstanding within those garden areas erodes the historic interest of those parts of the eastern parkland through their physical and visual impact. This is because the combination of these factors results in the option sites having a domestic and suburban character and appearance. That impact would be limited given the size of the option sites in relation to the size of the overall RPG and that the development is not visible from the public realm. Yet, the ability of visitors to Brick Barns to appreciate that historic interest would be significantly eroded. Moreover, as stated previously, pedestrians and occupants of vehicles using Dairy Lane get glimpsed views of building 1 when the vegetation is not in full leaf and part of the hardstanding near to the bell mouth that forms part of Option B. Therefore, their ability to appreciate that historic interest would also be appreciably eroded. Consequently, the significance of the RPG would not be preserved.

84. The Berkshire Gardens Trust have stated, amongst other things, that:

'The works have resulted in fragmentation and suburbanisation of the parkland.... We accept that Brick Barn is residential, and no longer in agricultural use, but the laying out of the grounds need to respect their historic location and setting and not lead to urbanising intrusion into the open parkland character..... The appeal site works therefore result in 'less than substantial harm' to the historic significance of the parkland at Park Place, failing to conserve, or indeed enhance, an important Grade II historic asset. I am of the view that this development falls within the middle of the range of the 'less than substantial' category due to the numbers of buildings, hardstandings, and substantive groundworks, all well beyond the former curtilage of Brick Barn.'*

85. Nevertheless, that assessment takes into account the whole of the development attacked by the EN rather than part of it as proposed in Option A or Option B. In my judgment, the development as part of Option A would have a moderate impact on the special interest/significance of the RPG and the character and appearance of the area. The visual and physical impacts of Option B would be slightly greater given the retention of the means of access and larger garden area. However overall, its impact would also be moderate on the special interest/significance of the RPG and the character and appearance of the area. The degree of harm must also be considered in the context of the sum of the significance of the RPG as a whole. Therefore, in my judgement, the impact of Option A or Option B would be at the lower end of the scale of less than substantial harm on the significance of the RPG. As the RPG is a designated heritage asset the balance in paragraph 208 of the Framework is relevant.

86. The harm to the heritage asset would not accord with CS Policy CP3 which states, amongst other things, that, planning permission will be granted for proposals that have no detrimental impact upon important heritage or landscape features. It would also not comply with MDDD Policy TB24 which states, amongst other things, that the Borough Council will conserve and seek the enhancement of designated heritage assets in the Borough by requiring works to or affecting heritage assets to demonstrate that the proposals would at least conserve and, where possible enhance the important character and special historic interest of the park and garden. However, these policies make

no provision for the consideration of public benefits and in this respect are inconsistent with the Framework.

87. The appellant considers that the recreation of the woodland belt shown on the 1883 OS plan is a public benefit as it would restore part of the landscaping that he considers was an integral part of the design of the parkland prior to 1898. However, as stated above that woodland belt has not been part of the landscape design for the majority, if not all, of the time that Brick Barns has formed part of PPE. Consequently, the recreation of that woodland belt attracts little weight as a public benefit.
88. As stated below, in other considerations, a replacement vehicular means of access appears to be possible, and Brick Barns is in residential use. Therefore, the residential use of Brick Barns does not appear to be dependant on retaining the development. Therefore, any public benefits derived from that residential use attract little weight. Overall, the public benefits would not be sufficient to outweigh the less than substantial harm and provide the clear and convincing justification for that harm. As a result, Option A and Option B would conflict with paragraphs 206 and 208 of the Framework.
89. Moreover, as stated previously the landscape character of the RACP is inextricably linked to the special interest/significance of the RPG. For the reasons given above, Option A or Option B would not conserve and enhance the existing rural character and the parkland landscapes associated with PPE. As such, the valued landscape would not be protected and enhanced and neither Option A nor Option B would comply with paragraph 180 of the Framework. MDDD Policy TB21 states, amongst other things, proposals shall retain or enhance the condition, character and features that contribute to the landscape and thus this would also not be complied with. This policy is broadly consistent with the Framework.

Biodiversity

90. The Secretary of State has published lists under section 41(1) of the Natural Environment and Rural Communities Act 2006, (the 2006 Act) of living organisms and types of habitat which, in the Secretary of State's opinion, are of principal importance for the purpose of conserving or enhancing biodiversity. One type of habitat listed under that section of the 2006 Act is Wood-Pasture and Parkland Priority Habitat (WP&PPH). The option sites are within an area identified as WP&PPH. Moreover, the woodland adjoining the former carriage drive, which is close to the option sites, is part of a Local Wildlife Site (LWS), Park Place School.
91. Within the IEMP²⁴ it is stated that the key management issues in respect of ecology in the Aspect Park character area are summarised as: the ecological interest of the species poor grassland and mixed broad-leaved woodland is diminished by the golf course management regime and that Great-Crested Newts are present in a pond on the western boundary of the golf course. Plan IEMP 4b which is titled Phase 1 Habitat Plan indicates that the option sites are mainly within an area classed as improved grassland. Plan IEMP 3b titled Masterplan indicates that the golf course is proposed to be removed and parkland reinstated.

²⁴ Section 2.02 of the IEMP

92. The golf course and its features such as tees, bunkers and hazard areas have been largely removed. In 2013, 2014 and 2015 the aerial photographs indicate that the option sites appear to be mainly grassland with few trees at those times. Some physical remodelling works appear to have been carried out to remove the golf course features prior to the appellant purchasing the appeal site. However, there is very little evidence to indicate what specific works had been initiated and whether a management regime with regard to ecology/biodiversity was in place before 2016.
93. The Ecological Appraisal Report dated October 2023 (the EAR) relates to a wider area than the option sites. It assesses the impact of the development that was proposed to be retained within the 2022 applications and it states that it determines the wildlife value of the site post works. It is clear that the author of the EAR had visited Brick Barns on numerous occasions from 2010 through to 2022 to carry out survey work. Nevertheless, other than protected species survey results, including for bats and Great-Crested Newts, there is little evidence to indicate what habitats were present on the option sites prior to 2016. The EAR report indicates that with regards to protected species the development of the wider site was carried out using Reasonable Avoidance Measures and under a Precautionary Method of Working. As such, there is little to indicate that protected species have been or would be harmed by the development of the option sites.
94. Nonetheless, the use of the option sites as residential garden and the development means that those parts of the WP&PPH and their biodiversity would not be conserved or enhanced. It is therefore not possible to avoid significant harm to biodiversity resulting from the development on the option sites. The appellant considers that the restoration of the residual parts to wood pasture or parkland habitat would compensate for that harm. The requirements of the EN would ensure that the residual parts are returned to their former condition prior to the alleged breach occurring.
95. However, as stated previously there is little evidence before me to indicate whether a management regime relating to ecology/biodiversity was in place prior to 2016 on the appeal site. The proposals relating to the management of the parkland included within the IEMP may be enforceable through the legal agreement associated with the 2008 permission. Yet there is little evidence to indicate that the Council has enforced that legal agreement since 2008. Moreover, if I was minded to allow the appeal a planning condition relating to the submission and implementation of a Landscape and Ecology Management Plan (LEMP), covering the option sites and the residual parts, could be imposed. This would ensure an enforceable method to achieve the restoration, enhancement and future management of this part of the WP&PPH. I consider that the enhancement and future management of the residual parts would compensate for the harm to biodiversity that has occurred.
96. Laurel hedging has been planted along parts of the access drive and the boundary with Noble Barn. I heard at the Inquiry that due to the proximity of those hedges to the LWS there is an increased risk that the berries will be transported to the woodland by birds and animals. That transportation would be likely to lead to laurel growing within those woodland areas adversely affecting the overall biodiversity value of the LWS. Nevertheless, the requirements of the EN would ensure that the residual parts of the appeal site would be returned to its former condition. Moreover, when combined with the

imposition of a planning condition in respect of the LEMP, this would mean that through restoration, enhancement and future management any indirect harm to the LWS from the laurel hedging would be minimised and/or removed.

97. Overall, the imposition of a planning condition with regard to a LEMP would avoid the indirect harm to the biodiversity of the LWS and would compensate for the significant harm to the biodiversity of the WP&PPH. As such, in these respects the development would comply with paragraph 186 a) of the Framework and CS Policy CP7 which is broadly consistent with the Framework.

Other Matters

98. There is no dispute that the development does not/would not harm the special interest of nearby listed buildings. Yet, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the LBCA Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest.
99. Noble Barn is grade II listed and dates from the late 19th Century. The special interest of this building largely derives from its architectural quality, most notably for its brickwork detailing, and its considerable rarity, dating from a period of severe agricultural recession. The Obelisk is within the parkland on the opposite side of Dairy Lane, and it is also grade II listed. It is late 17th Century and formed the top of the original steeple of St. Brides, Fleet Street. It was erected at PPE in 1837 by Mr Fuller-Maitland. Its special interest is mainly derived from its age and its associations with a nationally important architect and a former owner of PPE.
100. Their special interest/significance is experienced mainly within their immediate contexts due to the topography, landscaping and the location of each of them. That experience and views of them within their immediate contexts and the ability of the viewer to understand and appreciate their significance is unaffected by the development. As such, there is no impact from the development on the contribution that setting makes to their special interest.

Other Considerations

101. The Officer Report associated with the 2008 permission states that '*the purpose of the masterplan is to provide a framework for the restoration of the entire estate. It defines the extent of building works and associated hard and soft landscaping ...*'. It goes on to state that, amongst other things, the overall effect of the masterplan would be to reduce the number of dwellings from 22 to 18 and reduce the volume of buildings from 47,756 m³ to 42,707 m³. The Officer Report relating to a planning application²⁵ for the proposed erection of a detached dwelling at Strowdes (the Strowdes permission) indicates that the updated figures for the total reduction in volume within the PPE is 18,771 m³. The total volume of buildings 1 and 2 is 383 m³.
102. The option sites are within the 2008 permission application area. However, that permission related to the 'alterations to the barns and the bungalow to form a single residential unit'. The barns and the bungalow (Noble Barn and Brick Barns) are 2 dwellings and do not form a single residential unit. In

²⁵ Core Document 3.21 – Ref No 213587

addition, the option sites are not within one of the development areas identified within the 2008 permission and the approved plans indicate that they are within the integrated estate management area. Therefore, the development proposed to be retained in either Option A or Option B was not considered as part of the masterplan approved by the 2008 permission.

103. I acknowledge that the application area of the Strowdes permission is not within one of the development areas identified within the 2008 permission. Nevertheless, the Officer Report for the Strowdes permission indicates that the principle of a substantial replacement mansion was established by the 2008 permission and had been endorsed in various subsequent planning permissions. The appellant considers that the volume of buildings 1 and 2 can be considered as part of the total reduction in volume established by the 2008 permission. Yet the 2008 permission did not establish the principle of extending Brick Barns to the south or extending the area associated with the residential use of that dwelling. As such, in my judgment the 2008 permission provides only modest weight in support of Option A or Option B.
104. The conversion of Noble Barn to a dwelling appears to have been initially granted by the 2016 permissions. Nonetheless, the Council considered that the conditions attached to those permissions were not discharged. As a result, in 2021 planning and listed building applications were submitted retrospectively and the Noble Barn permissions were subsequently granted. The area associated with Noble Barn and granted planning permission for residential use is a relatively large area and it extends to the boundary with the parkland that is currently in polo/equestrian use. The Officer Report for the Noble Barn permissions states that *'the 2016 planning permission concluded that overall the change in character of the site as a whole would be minimal and not to a level that would cause detriment to the listed building, countryside or green belt. Moreover, the proposal represented an appropriate use that brought a disused Listed Building back into use, subject to the use of conditions the proposed works were considered to be acceptable. A similar conclusion is made here.'* The appellant considers that given the proximity of Noble Barn to the option sites that the decisions are material considerations in favour of this appeal.
105. However, the majority of the garden areas associated with Noble Barns are identified as a development area in the 2008 permission. Moreover, those permissions related to the conversion and reuse of a designated heritage asset. Therefore, they are not directly comparable to the development before me and as such they provide only modest weight in support of the development.
106. Prior to the conversion of Noble Barn as a separate dwelling both Noble and Brick Barns were served off Dairy Lane from a shared access. That access was altered and separated to only serve Noble Barns by the Noble Barn permissions. The hardstanding and access drive serving Brick Barns from Dairy Lane is illustrated on the masterplan that was submitted as part of those permissions. However, the Brick Barns access drive and hardstanding were not within the application site for those permissions. It is not clear why the Council did not query the access arrangements during the determination of the Noble Barn permissions.
107. Brick Barns would not have a vehicular access to the hardstanding, that is not attacked by the EN, if the EN was upheld. The appellant considers that this

would preclude the residential use of Brick Barns when there is no dispute that the Council has a shortfall in its housing land supply. Nonetheless, I heard at the Inquiry that the Council had no objections in principle to a means of access being formed to the northern hardstanding area by removing part of the boundary hedge to Dairy Lane. Therefore, a replacement vehicular means of access appears to be possible, and the residential use of Brick Barns does not appear to be dependent on retaining the development. As such, this consideration carries little weight in favour of the development.

108. I have found above that the recreation of the woodland belt attracts little weight as a public benefit. The residual parts of the site would be required to be returned to its condition prior to the alleged breach occurring and as stated previously the lawful use of those parts is as parkland. Therefore, a parkland use on those parts of the site does not weigh in support or against the development.
109. The appellant considers that if the ground (c) and (d) appeals are successful in relation to Building 2 and the access drive that there would be no real harm in granting planning permission for the residential use as the site would appear much the same as it does today. However, given my findings within the ground (c) and (d) appeals, Building 2 and the hardstanding are not immune from enforcement action. Therefore, this consideration does not weigh in support of the development.
110. I have found that the imposition of a planning condition with regard to a LEMP would avoid the indirect harm to the biodiversity of the LWS and would compensate for the significant harm to the biodiversity of the WP&PPH. As such, the LEMP does not weigh in support or against the development and is a neutral consideration.

Conclusions and Overall Planning Balance – ground (a) appeal and deemed planning application

111. The development as part of Option A or Option B is inappropriate development in the Green Belt and results in a modest harmful impact to openness and limited conflict with Green Belt purposes. This attracts substantial weight. Both Option A and Option B would result in less than substantial harm to the RPG and the valued landscape would not be protected and enhanced.
112. Against the totality of this harm there are other considerations which I have set out above. For the reasons given above, I find that the other considerations do not, either individually or cumulatively, clearly outweigh the harm to the Green Belt by reason of inappropriateness, and the harm to the RPG and the valued landscape. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the development conflicts with CS Policy CP12 and MDDD Policy TB01. These policies predate the current version of the Framework. Nonetheless, with regard to paragraph 225 of the Framework they are broadly consistent with the Framework and the conflict with them has significant weight.
113. The development also conflicts with CS Policy CP3 and MDDD Policy TB24 but I have found that these policies are inconsistent with the Framework. The conflict with them has modest weight. Moreover, I have found that the public benefits do not outweigh the less than substantial harm arising from the development. As a result, there is conflict with paragraphs 206 and 208 of the

Framework. There is also conflict with MDDD Policy TB21 and this policy is broadly consistent with the Framework and that conflict has significant weight. The development, either Option A or Option B, is contrary to the development plan as a whole and material considerations do not indicate that the appeal should be determined other than in accordance with the development plan.

114. For the reasons set out above, I conclude that the appeal on ground (a) should not succeed. I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act.

The ground (f) appeal

115. An appeal on ground (f) is made on the basis that the steps required by the EN to be taken, or the activities required by the EN to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
116. The purpose of the EN (as corrected and varied) is clearly to remedy the breach of planning control since the residential use of the land is to cease and the land is to be restored to its previous condition prior to the breach taking place.
117. I have not found in favour of the appellant in respect of the ground (a), (b), (c) and (d) appeals. I intend to delete requirement iv. The requirements, as varied, of the corrected EN are necessary and sufficient to remedy the breach by ceasing the residential use of the land and returning that land to its former condition prior to the breach taking place. Given that the corrected and varied EN does no more than seek to achieve the purposes of section 173(4)(a) of the 1990 Act, it is not excessive. The ground (f) appeal fails.

The ground (g) appeal

118. A ground (g) appeal is that any period specified in the EN in accordance with section 173(9) of the 1990 Act falls short of what should reasonably be allowed. The appellant has requested that the time for compliance be extended from 12 to 24 months as he considers that to meet the requirements is potentially a very complex task with regard to ecology and planning consent.
119. To ensure that the residential use of the land ceases and enable access to Brick Barns a new means of access to Brick Barns would need to be formed. Planning permission may be required to enable that means of access to be formed. In any case, part of the boundary hedge on Dairy Lane would need to be removed and therefore that removal will need to be carried out taking into account any impact on protected species. Moreover, the removal of the buildings and restoring the land to its condition prior to the breach taking place will also have to be undertaken taking into account its impact on protected species and licences from Natural England may need to be obtained.
120. I acknowledge that the works required will need careful planning and programming to enable them to be carried out within 12 months. Nevertheless, there is little substantiated evidence to indicate that the time taken to obtain planning permission and licences, if required, would be materially different to the time scales that are normally required for those processes. Therefore, in my judgment a reasonable and proportionate time is

12 months in these circumstances whilst ensuring the harms do not continue for longer than necessary.

121. The ground (g) appeal therefore fails.

Formal Decision

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

- Deleting the wording '*unauthorised change of use*' within the description of the alleged breach and substituting it with '*unauthorised material change of use*'.
- Deleting the word '*garden*' from the description of the alleged breach
- Deleting the plan titled '*Brick Barns*' and the references to it, within the enforcement notice, and substitute it with the plan annexed to this decision and the references to it with the wording '*Amended Plan – January 2024*'.

And varied by

- Deleting the wording '*use of the Land as residential garden*' from requirement i. and replace it with "*residential use of the Land*".
- Deleting the references to colours within requirements v. through to ix.
- Deleting the wording '*including removal of visibility splay and associated hardstanding up to the private way/road (White Hill)*' within requirement xi.
- Deleting the wording "'A', 'B'," from requirement xii.
- Deleting the wording '*by re-seeding using grass seed at 50 grammes per square metre*' within requirement xiv.
- Deleting requirement iv.
- After the deletion of requirement iv. amend the numbering of the requirements v to iv, vi to v, vii to vi, viii to vii, ix to viii, x to ix, xi to x, xii to xi, xiii to xii, xiv to xiii, xv to xiv. Amend the reference '*in v-ix above*' in the renumbered requirement ix to '*in iv-viii above*' and the reference '*(ii to xiii)*' in the renumbered requirement xiv to '*(ii to xii)*'.

Subject to the corrections and variations the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

D Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Dr Ashley Bowes Counsel, instructed by Vitruvius Heritage Ltd. (VHL)

He called:

Mr Matthew Titchner Factual Witness

Mr John Bateman Appellant

Mr Jason Clemons Executive Director, VHL

FOR THE LOCAL PLANNING AUTHORITY:

Mr Hugh Flanagan Counsel, instructed by Wokingham Borough Council (WBC)

He called:

Mr Stuart Ryder Director, Ryder Landscape Consultants Ltd.

Mr Keith Frost Built Heritage Officer, WBC

Mr Duncan Fisher Ecologist, Green Infrastructure, WBC

Mrs Helen Maynard Team Leader, Development Management and Compliance, WBC

Mrs Louise Evans Betts Factual Witness

Mr Thomas Betts Factual Witness

INTERESTED PARTIES:

Mr John Halsall Ward Councillor

DOCUMENTS – Submitted during the Inquiry

Doc 1 – Plan showing approximate location of Strowdes

Doc 2 – Drawing X101 – Site Plan

Doc 3 – Drawing Number X001 revised 16/11/23

Doc 4 – Map Research

Doc 5 – Volume Figures – buildings 1 and 2

Doc 6 – Amended Enforcement Plan 23 November 2023

Doc 7 – Option A Drawing Ref: X101 – Nov 2023

Doc 8 – Option B Drawing Ref X20 – Nov 2023



The Planning Inspectorate

Amended Plan – January 2024

This is the plan referred to in my decision dated:

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

Land at: Brick Barns, White Hill, Remenham Hill, Wokingham RG9 3HN

Reference: APP/X0360/C/23/3325869

Scale: Not to Scale

