

Appeal Decisions

Site Visit made on 9 October 2024

By J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th January 2025

Appeal A Ref: APP/N0410/C/21/3272389

Land on the East Side of Pyebush Lane, Beaconsfield, Buckinghamshire

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Ian Caldwell against an enforcement notice issued by Buckinghamshire Council - South Area (South Bucks) (the LPA).
- The notice was issued on 23 February 2021.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land from agricultural use to residential use, and the carrying out of operational development to facilitate the aforesaid unauthorised material change of use comprising of the construction on the Land of a building occupied as a dwelling (in the approximate position shown cross hatched in black on the Plan) and incidental structures (in the approximate position shown hatched in black on the Plan) (the "Unauthorised Development").
- The requirements of the notice are:
 1. Cease the residential use of the Land; and
 2. Demolish or dismantle the building occupied as a dwelling (shown on the approximate position shown cross hatched in black on the Plan); and
 3. Demolish or dismantle the incidental structures (shown in the approximate position shown hatched in black on the Plan); and
 4. Remove from the Land all paraphernalia that has been brought onto the Land in connection with the unauthorised material change of use; and
 5. Remove from the Land all debris and materials resulting from compliance with steps 5.1 to 5.3 of this Notice.
- The period for compliance with the requirements is: 6 months.
- The appeal was made on the grounds set out in section 174(2)(a), (b), (c), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal succeeds in part, and permission for that part is granted but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Appeal B Ref: APP/N0410/X/21/3286932

The Goose House, Pyebush Lane, Beaconsfield HR9 2RX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Ian Caldwell against Buckinghamshire Council - South Area (South Bucks).
- The application ref PL/21/2984/EU is dated 22 July 2021.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is retention of a building.

Summary of Decision: The appeal is allowed, and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Preliminary Matters

1. The original appeal decisions dated 14 February 2023 were challenged under S288 (Appeal B) and S289 (Appeal A) of the Act. The challenges were principally made on the ground that the Inspector erred in relation to the scope of the power to require the removal of operational development in an enforcement notice directed against a material change of use, pursuant to the power in S173(4)(a) of the Act. The principle, as explained in *Murfitt*¹, establishes that the power to require the restoration of the land under S172(3) of the Act can include the removal of operational development which could not be enforced against on its own because of the time limits set out in S171B.
2. The High Court found that statute and case law point to a limitation on the *Murfitt* principle and concluded the Inspector had erred in not considering the limitation. The Court ordered the decisions be remitted to the Secretary of State for redetermination. A subsequent appeal to the Court of Appeal was dismissed.
3. A third appeal², made under S195 of the Act and also determined on 14 February 2023, was not subject of challenge under S288. The Inspector's decision in respect of that appeal still stands.
4. The appeals were originally heard by way of the Inquiry procedure. Following the findings of the Court, the appellant and the LPA have produced a Statement of Common Ground (July 2024) (SOCG). In summary, the parties are now in agreement on most of the main issues of dispute. There remains only a narrow degree of dispute between them in respect of suggested conditions should Appeal A on ground (a) succeed. On that basis, it is considered appropriate to determine the appeals by written representations.

APPEAL A

Procedural Matters

5. Appeal A originally included grounds (b) and (c) of S174(2) of the Act. The appellant chose not to proceed with a ground (c) appeal prior to the Inquiry. In addition, the SOCG sets out that the appellant withdraws the appeal on ground (b). The LPA makes no objection. On that basis, Appeal A proceeds on grounds (d), (a), (f) and (g) of S174(2) of the Act.

The Enforcement Notice

6. Errors have been identified by the parties in respect of the plan attached to the notice. It is agreed that the plan inaccurately refers to the boundaries of the Land and the location of the structures subject of the notice. I have been provided with a revised plan which accurately reflects both and includes annotations of each building. I am satisfied I can correct the notice to substitute the plan without injustice to the LPA or the appellant.
7. Likewise, the parties agree that the description of the alleged breach of planning control need not refer to agriculture as the former use. The parties also consider it necessary to make clear the Land subject of the notice is that outlined by a thick black line on the attached plan. I can correct the notice accordingly without injustice to the LPA or the appellant.

¹ *Murfitt v Secretary of State for the Environment* [1980] 40 P&CR 254

² Planning Inspectorate Reference: APP/N0410/X/21/3268510

8. The notice is targeted, in part, against the construction of incidental structures. There are four such structures targeted by the notice. It is necessary to correct the alleged breach to refer to the incidental structures as "B, C, D and E" to cross reference them with those identified on the plan attached to the notice, albeit because of success on ground (d) below, no correction to refer to incidental structure 'E' is necessary. No injustice would arise from the correction to either the LPA or the appellant.

Appeal A on ground (d)

9. An appeal on ground (d) is brought on the basis 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 stated in the notice.
10. S171B(1) of the Act now specifies that, where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations, no enforcement action may be taken after the end of the period of 10 years. However, that has only recently been introduced by The Levelling-up and Regeneration Act 2023. At the time the enforcement notice was issued, the relevant period was four years.
11. The notice is directed against, in part, the construction of a building occupied as a dwelling (Building A – "The Goose House") and incidental structures (Buildings B, C, D and E).
12. The parties agree that Building A and Building E (the Utility Enclosure) were substantially completed in April 2014 and 2012 respectively. I have no reason to conclude otherwise. Thus, in their own right, the buildings are immune from enforcement action under S171B(1) of the Act.
13. Moreover, I am satisfied that the *Murfitt* principle does not extend to the Goose House. The enforcement notice cannot require its removal on the basis that it has facilitated the material change of use of the Land to residential since the building was fundamental to that material change. Indeed, it was the principal operational development which gave rise to it.
14. Furthermore, it is agreed between the parties that Building E has not facilitated the material change of use at all and thus the notice cannot require its removal. I see no reason to conclude otherwise. The *Murfitt* principle is thus not engaged.
15. As a result, I find that, at the date when the enforcement notice was issued, no enforcement action could have been taken in respect of the carrying out of operational development comprising of the construction on the Land of a building occupied as a dwelling and the incidental structure shown as Utility Building E on the plan attached to the notice, as corrected.
16. The appeal on ground (d) succeeds to that extent. I will correct the notice to delete reference to the construction of a building occupied as a dwelling and incidental structure E.
17. The appeals on grounds (a), (f) and (g) in respect of those parts of the matters do not therefore fall to be considered.

Appeal A on ground (a)

Preliminary Matters

18. A new National Planning Policy Framework (the Framework) was published on 12 December 2024. I have determined the appeal in accordance with the new Framework. I have sought the views of the main parties on the implications of the policies of the Framework relevant to the appeal and have taken them into account. All references to the Framework relate to the December 2024 version.

Main Issues

19. An appeal on ground (a) is brought on the basis that planning permission ought to be granted for the matters stated in the notice, as corrected, as constituting a breach of planning control. The matters, as corrected, are the material change of use of the Land to residential use, and the carrying out of operational development to facilitate the material change of use comprising of the construction on the Land of incidental structures "B, C and D".
20. The main issues are:
- whether the development is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - the effect of the development on the openness of the Green Belt; and,
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstance required to justify the proposal.

Inappropriate Development in the Green Belt

21. There are two limbs of the development now before me, namely the material change of use of the Land to residential use and the construction of incidental structures B, C and D.
22. The Land lies within the Green Belt. Paragraph 153 of the Framework is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations³.
23. Saved Policy GB1 of the South Bucks District Local Plan 1999 (the LP) states that in the Green Belt, planning permission will not be granted for development other than the change of use of existing buildings or land, or the construction of new buildings or extensions to existing buildings for various exemptions. One such exemption, is the re-use of buildings of permanent and substantial construction. The policy is broadly consistent with the Framework.
24. Saved Policy GB2 of the LP states that proposals for the re-use of buildings in the Green Belt will only be permitted subject to several criteria relating to the impact of the re-use on the Green Belt. Whilst the broad thrust of Policy GB2

³ The Framework – Paragraph 153

is consistent with the Framework in that it allows the re-use of buildings that are permanent and of substantial construction, it goes further than the Framework by requiring consideration of criteria such as the design of the building, the effect on the open character of the Green Belt, the loss of employment land and the effect on the character and amenities of the area. Nonetheless, beyond the effect on openness of the Green Belt, which I will return to in due course, there is no evidence that the criteria is relevant here.

25. Paragraph 154 of the Framework makes clear that development in the Green Belt is to be regarded as inappropriate. Paragraph 154 of the Framework sets out exceptions from the definition of inappropriate development. Paragraph 154(h)(iv) states that the re-use of buildings, provided that the buildings are of permanent and substantial construction, is not inappropriate development. Paragraph 154(h)(v) of the Framework exempts material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds) from the definition of inappropriate development. Both exemptions are on the basis that the development preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
26. The parties agree that the residential use of the area edged in red on the plan attached to the notice, that being the Goose House and its immediate garden, falls within the exceptions of paragraph 154(h)(iv) and 154(h)(v). In the absence of submissions to the contrary, and on the facts of the case here, I see no reason to conclude otherwise.
27. In terms of openness, the residential use of the building would have very little perceptible impact, both spatially and visually. Moreover, whilst residential paraphernalia on the land immediately adjacent to the building could in principle have a perceptible impact on openness, the garden area is relatively small and is almost entirely screened by dense planting and hedging. To that end, I agree with the parties that the residential use of the building and adjacent land will not materially affect openness such that it will be preserved.
28. In terms of purposes of including land within it, I see no reason why the use of an existing building and a small parcel of land adjacent to it would conflict with any of the Green Belt purposes. It does not involve the sprawl of large built-up areas nor the merging of neighbouring towns. Moreover, there is no evidence that the Green Belt on this land preserves the setting and special character of historic towns. Furthermore, since the building is lawful, the use of it and the adjacent land will not conflict with the purpose of safeguarding the countryside from encroachment or assisting urban regeneration.
29. I conclude, therefore, that the residential use of the land edged in red on the plan is not inappropriate development in the Green Belt. Consequently, there is no conflict with the Framework, Saved Policies GB1 and GB2 of the LP or indeed the development plan taken as a whole.
30. In contrast, the residential use of the land outside of that edged in red on the plan and incidental structures B, C and D do not fall within any of the exceptions set out in Framework paragraphs 154. That is agreed by the parties, and I see no reason to conclude otherwise.
31. I conclude, therefore, that the residential use of the land outside that edged in red and incidental structures B, C and D amount to inappropriate development

in the Green Belt. As such, they are in conflict with the Framework, as well as Saved Policy GB1 of the LP. In accordance with paragraph 153 of the Framework, I afford substantial weight to the harm to the Green Belt by reason of inappropriateness.

Openness

32. I have found the residential use of the land edged in red on the plan is not inappropriate development, in part due to its lack of harm to openness. There is thus no need to separately consider its effect on openness or indeed whether very special circumstances exist.
33. Nonetheless, it is necessary to consider the effect of the wider residential use and incidental structures B, C and D on openness. The residential use of the wider land would introduce paraphernalia associated with a dwelling across the site. The site is substantial in scale in contrast to that of the Goose House. The incidental structures are scattered across the Land. There is little by way of perceptible relationship between the buildings.
34. Moreover, whilst there is planting around the boundaries of the Land, it is more sporadic and less densely contained and screened than the land containing the Goose House and its garden. Furthermore, in contrast to the use of the Goose House and its small garden for domestic purposes, the residential use with its paraphernalia and incidental structures have introduced elements of built form and structures of such scale on land where previously there was none.
35. I conclude, therefore, that residential use of the land outside that edged in red and incidental structures B, C and D will harm openness in that it will not be preserved, in conflict with Saved LP Policy GB1 and the Framework. I afford substantial weight to the Green Belt harm which arises to openness.

Other Considerations

36. The appellant does not advance any other considerations in support of the residential use of the land outside that edged red or indeed incidental structures B, C and D. Nor are any apparent to me on the evidence.

Very Special Circumstances

37. There are no considerations in favour of the residential use of the land outside that edged red on plan or the incidental structures. On the other hand, I afford substantial weight to the Green Belt harm which arises by reason of inappropriateness and openness. Consequently, I conclude that the harm to the Green Belt is not clearly outweighed by other considerations. The very special circumstances necessary to justify residential use of the land outside that edged in red and incidental structures B, C and D do not exist and those aspects of the development conflict with the development plan taken as a whole, as well as the Framework.

Conditions

38. In respect of the planning permission which is to be granted as a result of the partial success on ground (a), the parties agree a condition requiring parking spaces associated with the Goose House shall be kept available at all times for

residents and their visitors to prevent harm to highway safety by parking on the road. I see no reason to disagree.

39. The LPA suggests a condition which prevents the implementation of permitted development rights for works under Classes A to E of Part 1 of Schedule 2, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
40. Paragraph 55 of the Framework states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Paragraph 57 of the Framework sets out the tests that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and the development, enforceable, precise and reasonable in all other respects. The National Planning Practice Guidance states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity⁴.
41. The LPA states that, if the building were to benefit from permitted development allowances, any resultant extensions or new buildings would result in development in the Green Belt which could detract from its openness.
42. However, the site simply being located in the Green Belt is not clear justification. Such is the small scale of the Goose House and its garden, that any alterations or extensions are likely to be no more than limited in scale. Moreover, the GPDO contains limitations which restricts the scale of extensions in proportion with the size of the building and curtilage to which it relates.
43. Overall, I find the LPA has not provided clear justification to restrict permitted development rights from Classes A-E of Part 1 of Schedule 2 of the GPDO and thus I conclude such a condition is not reasonable or necessary.

Conclusions

44. For the reasons given above, I conclude that the appeal on ground (a) should succeed in part only. I will grant planning permission for the material change of use of the land edged in red on the plan attached to the notice to residential use, but otherwise I will uphold the notice, with corrections and variations, and refuse to grant planning permission for the material change of use of the Land other than that edged in red on the plan to residential and the construction on the Land of incidental structures B, C and D.

Appeal A on ground (f)

45. An appeal on ground (f) is brought on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.

Given the notice, as corrected and varied, requires the cessation of the use and the removal of the structures, I am satisfied that the purpose of the notice is to remedy the breach by restoring the land to its condition before the breach took place.

⁴ Planning Practice Guidance – Paragraph: 017 Reference ID: 21a-017-20190723

46. The requirements of the notice in respect of the demolition of the building occupied as a dwelling and the incidental structure E have been deleted as a consequence of the success of the appeal on ground (d).
47. The requirement to cease the use of the Land for residential use, and the removal of paraphernalia in connection with that use will cease to have effect under S180 of the Act insofar as they relate to that part of the Land edged in red on the plan as a consequence of my decision to grant planning permission on the deemed application.
48. The remaining requirements to cease the use of the remainder of the Land for residential, the demolition of incidental structures B, C and D, the removal of paraphernalia brought onto the Land in connection with the residential use of the Land outside the red line and the removal of resultant debris, do not exceed what is necessary to remedy the breach. The parties do not dispute that point.
49. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

50. An appeal on ground (g) is brought on the basis that the time for compliance with the requirements of the notice falls short of what should reasonably be allowed.
51. The appellant's case on ground (g) was made only on the basis that the ground (a) appeal did not succeed in respect of residential use of the Land edged in red. Otherwise, the appellant accepts that the six-month period for compliance for the remaining requirements is acceptable.
52. The appeal on ground (g) therefore fails.

Appeal A - Overall Conclusion

53. For the reasons give above, I conclude that Appeal A should succeed in part only. I will grant planning permission for the material change of use of the land edged in red on the plan attached to the notice to residential use. The notice is corrected and varied as a result of the partial success on ground (d) in respect of the construction of a building occupied as a dwelling and incidental structure E.
54. Otherwise, I will uphold the notice with corrections and variations and refuse to grant planning permission for the material change of use of the Land, except that edged in red, to residential use and the carrying out of operational development comprising of the construction on the Land of incidental structures B, C and D to facilitate the aforesaid unauthorised material change of use.
55. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant, by virtue of S180 of the Act.

APPEAL B

Preliminary Matters

56. The “retention” of a building is not an act of development. It is the erection of the building that amounts to development for the purposes of S55 of the Act. I have determined the appeal on that basis.

Main Issue

57. The main issue is whether, if the LPA had decided to refuse the LDC application, their refusal would have been well-founded.

Reasons

58. S191(2) of the Act sets out that operations are lawful at any time if: (a) no enforcement action may then be taken in respect of them; and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
59. Appeal B solely relates to the building known as the Goose House. There is no dispute between the parties that the building was constructed and first occupied as a dwellinghouse in May 2014. To that end, in accordance with S171B(1) of the Act, enforcement action could not have been taken against the building at the date the LDC application was made, since more than four years had passed since the building was substantially completed.
60. The erection of the building would contravene the requirements of the enforcement notice subject of Appeal A as they were worded when issued on 21 February 2021. The building formed part of the breach of the notice as issued and the notice required its demolition.
61. Nonetheless, an appeal under S174 of the Act against the notice was brought on 1 April 2021. An enforcement notice is not in force where an enforcement appeal is outstanding. At the date of the LDC application, the appeal against the notice was outstanding and thus, the notice was not in force.
62. Consequently, I find that both limbs of S191(2) of the Act are met and, at the date the LDC application was made, the building would have been lawful.

Appeal B – Overall Conclusions

63. For the reasons given above I conclude, on the evidence now available that, had the Council refused to grant a certificate of lawful use or development in respect of the erection of a building that refusal would not have been well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

FORMAL DECISIONS

APPEAL A

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

- the substitution of the plan attached to the enforcement notice by Plan A annexed to this decision;
- the deletion of the words, "from agricultural use", from section 3 of the enforcement notice;
- the deletion of the words, "a building occupied as a dwelling (in the approximate position shown crossed hatched in black on the Plan) and", from section 3 of the enforcement notice;
- the insertion of the words, "(outlined by a black thick line on the attached plan), between the words "Land" and "to residential" in section 3 of the enforcement notice;
- the insertion of the words, "B, C and D", after the word "structures" in section 3 of the enforcement notice;
- the insertion of the words, "as shown", before the word "in" in section 3 of the enforcement notice;
- the insertion of the words, "and edged in blue", between the words "black" and "on" in section 3 of the enforcement notice;

65. And varied by:

- the deletion of the section 5.2 of the notice in its entirety;
- the insertion of the words "B, C and D", between the words "structures" and "shown" in section 5.3 of the enforcement notice;
- the insertion of the words, "and edged in blue", between the words "black" and "on" in section 5.3 of the enforcement notice.

66. Subject to the corrections and variations, the appeal is allowed insofar as it relates to the land edged red on Plan A now attached to the enforcement notice and planning permission is granted on the application deemed to have been made under S177(5) of the 1990 Act as amended, for the material change of use of the land edged in red on the plan attached to the enforcement notice to residential use, and subject to the following condition:

- 1) The car parking spaces within the land edged red on the plan attached to the enforcement notice shall be kept available at all times for the parking of motor vehicles by residents of the building known as The Goose House and their visitors and for no other purpose.

67. The appeal is dismissed and the enforcement notice is upheld, as corrected and varied, insofar as it relates to the land edged black, except that edged red, on Plan A attached to the enforcement notice and planning permission is refused for the material change of use of the land edged in black, except that edged in red, on plan A attached to the enforcement notice to residential use and the carrying out of operational development to facilitate the aforesaid unauthorised material change of use comprising of the construction on the

Land of incidental structures B, C and D (in the approximate position shown hatched in black and edged in blue on Plan A) on the application deemed to have been made under S177(5) of the 1990 Act as amended.

APPEAL B

68. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operations which are found to be lawful.

J Whitfield

INSPECTOR

Plan A

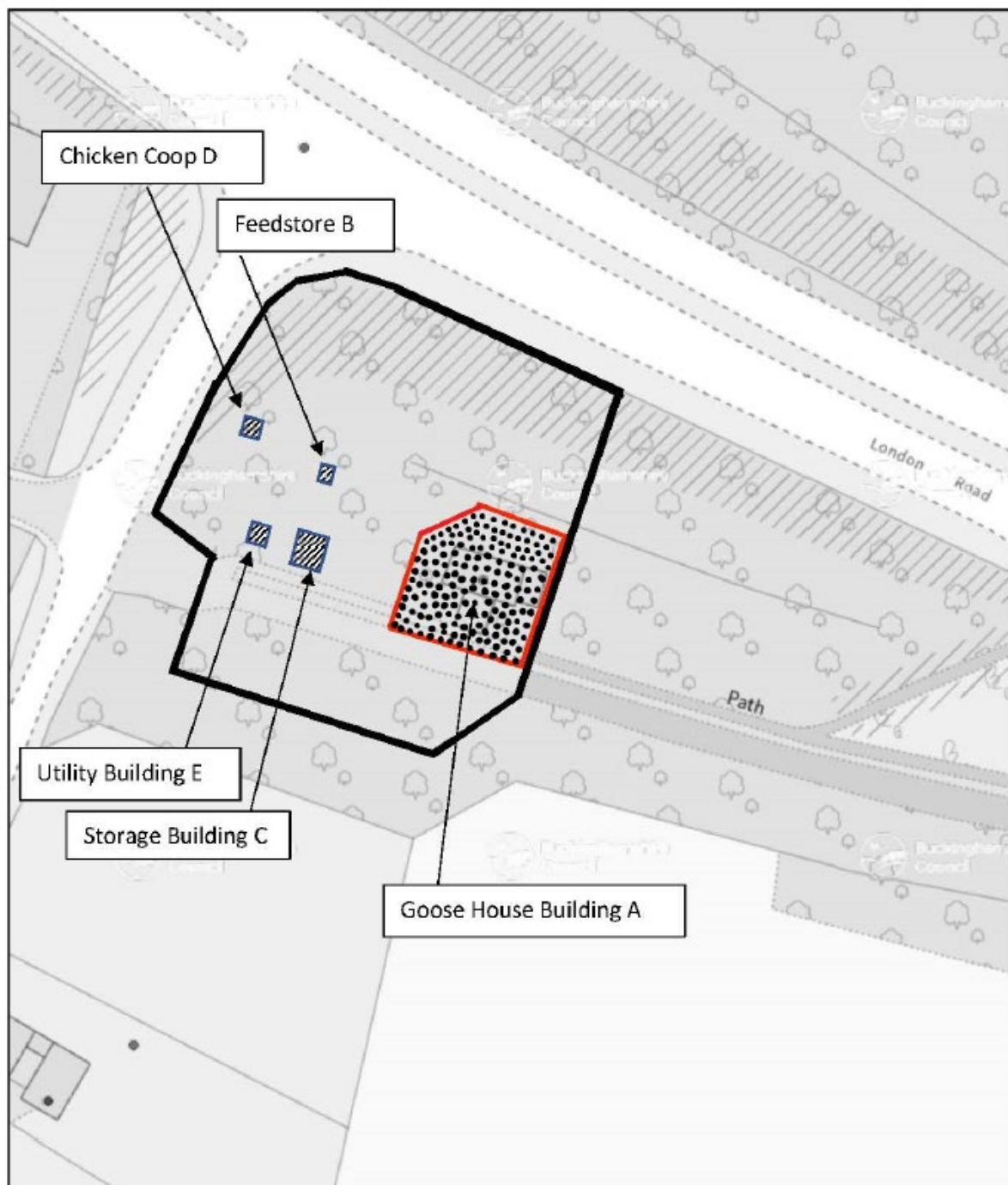
This is the plan referred to in my decision dated: 24th January 2025

by J Whitfield BA (Hons) DipTP MRTPI

**Land at: The Goose House, East Side of Pyebush Lane, Beaconsfield,
Buckinghamshire HP9 2RX**

Reference: APP/N0410/C/21/3272389

Scale: NTS





The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 22 July 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on Plan B attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

At the date of the LDC application, no enforcement action may then have been taken in respect of the erection of a building as the time for taking enforcement action had expired.

The operations did not constitute a contravention of any of the requirements of any enforcement notice then in force.

The use was therefore lawful under S191(2) of the Act at the date of the LDC application.

Signed

J Whitfield

INSPECTOR

Date: 24th January 2025

Reference: APP/N0410/X/21/3286932

First Schedule

Erection of a building.

Second Schedule

The Goose House, Pyebush Lane, Beaconsfield HR9 2RX

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan B

This is the plan referred to in my decision dated:

by J Whitfield BA (Hons) DipTP MRTPI

Land at: The Goose House, Pyebush Lane, Beaconsfield HP9 2RX

Reference: APP/N0410/X/21/3286932

Scale: NTS

