Appeal Decisions

Inquiry held on 16-18 September 2025

Site Visit made on 16 September 2025

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th October 2025

Appeal A Ref: APP/F0114/C/25/3364346
Weigh Bridge House, Fry's Bottom, Chelwood, Bristol, BS39 5QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Stephen Willcox against an enforcement notice issued by Bath and North East Somerset Council.
- The notice was issued on 21 March 2025.
- The breach of planning control as alleged in the notice is, without planning permission, the construction of a dwelling house.
- The requirements of the notice are to: demolish the dwelling house buildings on the land and remove all resultant materials from the land (for the avoidance of doubt, this does not require the demolition of the stables).
- The period for compliance with the requirements is: 4 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.

Appeal B Ref: APP/F0114/C/25/3364347
Fry's Bottom, Chelwood, Bristol, BS39 5QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Stephen Willcox against an enforcement notice issued by Bath and North East Somerset Council.
- The notice was issued on 21 March 2025.
- The breach of planning control as alleged in the notice is:
  1. Without Planning Permission, the construction of a non-agricultural storage building in the approximate location marked ‘A’ on the attached plan.
  2. Without Planning Permission, the importation of material and carrying out of Engineering Operations in the form of the expansion of a level area of hardstanding.
- The requirements of the notice are:
  1. Demolish the building shaded in YELLOW and labelled A on the attached plan and remove all resultant materials from the land.
  2. Remove all engineered land forms, together with their constituent deposited material, from “the land” and restore “the land” to its previous condition prior to the unauthorised development taking place.
- The periods for compliance with the requirements are:
  1. 4 months for requirement 1.
  2. 6 months for requirement 2.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction.

Appeal C Ref: APP/F0114/C/25/3364348
Fry's Bottom, Chelwood, Bristol, BS39 5QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Stephen Willcox against an enforcement notice issued by Bath and North East Somerset Council.
- The notice was issued on 21 March 2025.
- The breach of planning control as alleged in the notice is, without planning permission, the importation of material and carrying out of Engineering Operations in the form of the construction of access tracks, and construction of dams in a water course.
- The requirements of the notice are
    1. Remove the engineering operations, comprising access tracks and dams (with the exception of the dam in the approximate location marked by the BLUE line and the track marked by the PURPLE line on the attached map) and remove all resultant materials from the land.
    2. Restore the land to its condition prior to the Breach of Planning Control specified in Part 3 of this Notice occurring.
- The periods for compliance with the requirements are:
    1. 4 months for requirement 1.
    2. 6 months for requirement 2.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and a variation.

Appeal D Ref: APP/F0114/C/25/3364349
Fry's Bottom, Chelwood, Bristol, BS39 5QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Stephen Willcox against an enforcement notice issued by Bath and North East Somerset Council.
- The notice was issued on 21 March 2025.
- The breach of planning control as alleged in the notice is, without planning permission, the change of use of land from forestry to a mixed use consisting of forestry, storage, firewood production, motorbike trials practice, equestrian, a waste transfer site and associated structure (circled in red in Image 1 attached to this notice).
- The requirements of the notice are:
    1. Cease the use of the land for the mixed use consisting of forestry, storage, firewood production, motorbike trials practice, equestrian and a waste transfer site (For the avoidance of doubt, this requirement does not require the cessation of the lawful use of the land as forestry).
    2. Remove all items stored on the land not relating to its lawful forestry use (included but not limited to vehicles, skips and waste).
    3. Remove the wooden structure circled in red in Image 1 attached to this notice and remove the resultant materials from the land.
- The periods for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with a correction.

FORMAL DECISIONS

Appeal A

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

   - the insertion of the word “partial” between the words “the” and “construction” in Section 3 of the notice; and,
   - the deletion of the word “buildings” and its substitution with the word “building” in Section 5 of the notice.

2. Subject to the corrections, the appeal is allowed, and the enforcement notice is quashed.

Appeal B

3. It is directed that the enforcement notice is varied by:

   - the insertion of the words, “OR, amend the building and its use so that it complies with the terms, conditions and limitations of planning permission reference 22/03198/FUL granted on 13 January 2023 for the erection of a forestry building for the storage of felled trees/logs and timber on the Land” after the words “the land” in Requirement 1 of section 4 of the notice.

4. Subject to the variation, the appeal is dismissed, and the enforcement notice is upheld.

Appeal C

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

   - the deletion of the words “the construction of access tracks” and their substitution with the words “the construction of a single access track marked as 1G1 on the Plan 2 attached to the notice” in section 3 of the notice.
   - the insertion of the plan marked Plan 2 annexed to this Decision into the notice.

6. And the notice is varied by:

   - the deletion of the words “comprising access tracks” and their substitution with the words “comprising the construction of a single access track marked as 1G1 on the Plan 2 attached to the notice” from section 5 of the notice.

7. Subject to the corrections and variation, the appeal is dismissed, 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 as amended.

Appeal D

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

   - the insertion of the word “material” between the words “the” and “change” in Section 3 of the notice.

9. Subject to the correction, the appeal is dismissed, 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 as amended.

APPLICATION FOR COSTS

10. An application for an award of costs was made by Bath and North East Somerset Council against Mr Stephen Willcox. The application is the subject of a separate Decision.

PROCEDURAL MATTERS

11. Appeals on ground (a) of Section 174 of the Act were duly brought in respect of Appeal A and B. However, prior to the Inquiry, the appellant decided they no longer wished to pursue those ground (a) appeals. I have therefore taken no action in respect of them and have not considered any application deemed to have been made under section 177(5) of the Act.

12. All evidence at the Inquiry was given under affirmation.

APPEAL A

The Enforcement Notice

13. The notice is directed against a breach of planning control comprising the construction of a dwellinghouse. However, it was clear at the Inquiry that the LPA's case was predicated on the basis that the breach comprised the construction of a partially built dwellinghouse. The LPA therefore suggests that I correct the notice, such that the breach of planning control is described as, "the partial construction of a dwelling house". Whilst maintaining their ground (b) position that no dwellinghouse been constructed, partially or otherwise, the appellant accepts that no injustice would arise from such a correction. It seems to me that the LPA has characterised the breach as such throughout the appeal and indeed, before then. Moreover, the appellant's case is largely made on the basis it addresses the allegation as a partially constructed dwellinghouse. Furthermore, I cannot see how the appellant's case on appeal would have been any different had the breach been correctly described in the notice from the outset. To that end, I am satisfied no injustice would arise to the appellant or indeed the LPA and I will correct the notice accordingly.

14. The requirements of the notice are to demolish the dwellinghouse 'buildings', plural whereas the breach is targeted at the singular. I can correct the requirements of the notice to the singular accordingly without causing injustice to the appellant or the LPA.

Appeal A on ground (b)

15. An appeal on ground (b) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters have not occurred. The breach stated in the notice, as corrected, is the partial construction of a dwelling house. The LPA argues that the building is a dwelling house under construction. In contrast, the appellant argues that the building is not a dwelling house but a building for office, forestry storage, tack and dry feed store building.

16. I asked the parties at the Inquiry for their views of the relevance and application of the tests laid out by the High Court in *Gravesham*[1] regarding the distinctive characteristics of a dwellinghouse to assist in defining what constitutes a dwellinghouse. However, my reasons for doing so were to establish the point on the breach having been initially framed as, "the erection of a dwelling house". Clearly, the building as it stood at the time of the notice did not meet the test of *Gravesham.* It did not have cooking facilities of any sort and the toilet, sink and shower on the first floor did were not plumbed or indeed compatible with human use.

17. But the failure of the building to meet the *Gravesham* test does not mean the building is not a dwellinghouse under construction. Quite clearly, any dwellinghouse at various points throughout its construction will not meet the *Gravesham* test. Since both parties agree that the breach cannot properly as, "the erection of a dwelling house" and, notwithstanding the appellant's ground (b) arguments, is to be properly described as the "partial construction of a dwelling house", then the tests of *Gravesham* are of little assistance and do not go anywhere on the ground (b) appeal.

18. Both parties rely on the principal authority of *Sage*[2]. In *Sage*, a building had been erected which looked like a dwellinghouse but which required work to complete it such that it could not be used as a dwellinghouse. A notice was issued targeting the partial erection of a dwellinghouse and required its removal. The appeal was successful, despite the argument put before the Inspector that, since no building work had been carried out on the structure during the four years before the notice, it was immune from action under S171B(1) of the Act. Despite the High Court and thereafter the Court of Appeal finding in favour of the appellant on that point, the House of Lords found against the appellant, favouring the Inspector's conclusions.

19. Whilst the principal point of *Sage* arising from the Courts regarded substantial completion is with relevance to the ground (d) appeal here, there are nevertheless findings which are relevant to the matter before this ground (b) appeal. Indeed, one of the arguments advanced at appeal in *Sage* was similar to that before me here, namely, that the building was not a dwellinghouse, but an agricultural building.

20. The Inspector determined that, having regard to the layout, construction and appearance of the building, it was not an agricultural building but a dwellinghouse. Lord Hobhouse, in the House of Lords judgement, stated that the character and purpose of a structure falls to be assessed and that the actual use of the building does not alter the answer to be given. He gave the example of "keeping a pig in the sitting-room or hens in the kitchen does not turn a dwelling house into an agricultural building, even if the humans move out." The starting point, he said, for considering the permitted use of a new structure is the character of the building for which permission has been given or does not require to be given. The Inspector's conclusion that, as a matter of fact and degree, having regard to its layout and appearance the building is not an agricultural building and was designed as such, was endorsed by the Lords.

[1] *Gravesham BC v SSE & O'Brien* [1983] JPL 306
[2] *Sage v SSETR & Maidstone BC* [2003] UKHL 22

21. There is a distinction between the facts here, and those in *Sage*, namely, in *Sage* the appellant sought to argue that the breach constituted an agricultural building, not a dwellinghouse. In contrast, the appellant here argues that what has been done is not the partial construction of a dwellinghouse, but an office, forestry storage, tack and dry feed store building.

22. Clearly the character and purpose of an agricultural building will differ in some ways from an office, forestry storage, tack and dry feed store building. Nonetheless, the principle endorsed by Lord Hobhouse in *Sage* is relevant, that being that one must look to the layout and appearance of the building to derive its purpose rather than actual use of the building from time to time or indeed, the appellant's intentions at various stages in the history.

23. There is no dispute that, as a matter of fact, a building exists on the Land. The appellant gave detailed evidence at the Inquiry of the history of the building and its construction to the point the notice was issued. Both parties have provided photographs which depict the building around the time the enforcement notice was issued[3].

24. Externally, the building essentially comprises four sections, gradually stepping down in height from south to north. It is said that the building grew out of the ruined remains of the original Weigh Bridge House. The photo evidence supports this. A first floor was added to the stone component at the southern end which then adjoins a two-storey timber clad component. The third component then contains timber doors with a timber clad first floor elevation above. All three of these components are roofed with tiles. The final, most northerly component of the building, is a single storey breeze block construction with a corrugated dual pitched roof.

25. The building contains a singular entrance door within the stone-built component which leads only into a small ground floor room with a narrow spiral staircase and what appears to be an original open fireplace. The door is covered by a small, open porch consisting of a dual-pitched tile roof supported by two timber posts. Images provided show topiary hanging from the porch. The windows in the stone component are, apart from a very narrow window above the porch, larger than one would typically expect to find in a residential property, albeit they are likely reflective of the building's historical fabric

26. Internally, the room has been plaster-boarded and wood flooring has been laid. First fix electrics have also been installed. However, whilst there is a window opening to the adjoining component, this room is the only ground floor room that can be accessed by the aforementioned entrance door. The remaining ground floor space in the other components can only be accessed by the double timber doors. In terms of the remainder of the ground floor, entering the large double timber doors, leads into an open space with access through the rear out into the land behind which it is said is used as a paddock. This seems logical, given the provision of a single, storey lean to structure on the rear of the building which is in use as a stable.

27. To the right, in the single storey breeze block element, I saw from my site visit that it is mostly used for hay storage. To the left, in the ground floor of the two storey

[3] CD3.1 and CD5.16

timber clad component, there is a single square shaped room, in use at the time of my visit for the storage of tack.

28. To that end, the small, single room in the ground floor of the stone-built component would likely be insufficient to provide living and cooking areas of sufficient size to meet the everyday needs of a person living there. Moreover, one could not reasonably expect a person living in this building to have to go outside in order to move between say their kitchen and their sitting room. In contrast, one is able to see how the ground floor room in the stone component would be of sufficient size and shape to facilitate use as an office as it could accommodate a desk and other office paraphernalia.

29. At first floor level, at the top of the narrow, spiral staircase, there is a small landing area. From here, one can enter the shower and toilet room or the remainder of the first floor of the building. One is able to move freely between the entirety of the upper level, the walls of each element providing a sense of sub-division and the creation of separate rooms, but there are door openings between each.

30. Nonetheless, one is not able to independently access each of these first floor rooms by a landing or corridor as one would expect in a residential property. Thus, if provision was made upstairs for facilities which cannot be accommodated downstairs, then there would be no separation between movement between the rooms. For example, if the kitchen was provided downstairs in the small room, then an occupier would find themselves having to move through their living room to access their bedroom or vice versa. Moreover, it is questionable to my mind whether the upstairs is of sufficient width and size to facilitate residential use. In contrast, the lack of separate circulation between rooms is not an issue for an office space. Again, the upstairs space throughout is of sufficient size and space to facilitate use as an office and, in my view, is far more of commercial character internally in terms of its layout than it is of residential. I note that some of the rooms have been boarded and electrics put in place, but these are not elements exclusive to dwellinghouses. The are essential components of other uses, such as offices.

31. The adjoining timber clad element has four windows, two at ground floor and two at first floor. These windows are evenly spaced, are smaller in scale than those on the stone component. They are domestic in appearance and layout, including the pitched gable features at first floor. However, as with the porch and door, whilst these are features which are found in dwellinghouses, they are not exclusive to dwellinghouses, either in themselves or in the arrangement they are found in here. They equally appear commercial in character and equally, can be found in office buildings.

32. Moreover, the shower and toilet room is accessible by external stone steps which the appellant constructed. Whilst it could be accessed from the ground floor via the narrow, internal spiral staircase, the provision of the external access suggests the use of the room is not intended to be limited to those solely with internal access to the property. Rather, it suggests that use could also be made of the shower and toilet room by those persons who do not have access internally. This supports the appellant's evidence for its intended use by those engaged on the wider land for non-residential uses, including forestry use.

33. Inverting Lord Hobhouse's animal analogy in *Sage*, inserting features which are found in dwellinghouses, such a shower, sink and toilet, into an office, forestry storage, tack and dry feed store building does not make that building a dwellinghouse, even if the activities associated with an office, forestry storage, tack and dry feed store building are removed.

34. Overall, whilst I accept there are elements to the building which appear domestic, these are elements which are not exclusive to dwellinghouses. In contrast, I consider the layout and appearance of the building is not that of a dwellinghouse but is in keeping with the character of appellant's submission that what has been carried out is the erection of an office, forestry storage, tack and dry feed store building.

35. The LPA raised points at the Inquiry on the appellant's submission of an application for a Permission in Principle (PIP) in August 2023[4]. The documents submitted with that application show how the building could be extended and completed with the layout and appearance of a dwellinghouse. However, whilst clearly, with further works, the building could be adapted to become residential dwellinghouse (most buildings could be within reason), the submitted plans make clear that would require significant further work beyond that which had been done at the time the notice was issued, in terms of physical extensions to the building, changes in the roof and internally in the opening up of rooms, the moving of a staircase and the installation of ground floor bathrooms. There is no evidence that the work done to date seeks to facilitate that. For example, one would expect the stable area of the rear to be demolished and rebuilt before the internal works that have been done to the building were carried out. Whilst the appellant accepted in cross examination that the development undertaken between June 2019 and June 2023 was broadly in line with the plans in the PIP application, I am not satisfied the evidence supports the assertion that the works were done to facilitate the proposed creation of a dwellinghouse.

36. In accordance with *Sage,* the owner's intentions are of little assistance. Rather, for the reasons I have set out above, the layout and appearance of the building do not support the claim that what has been done is the partial erection of a dwellinghouse. The appellant's submission is that the PIP application was speculative to evaluate the principle of residential development on the site and was ultimately withdrawn. I have no reason to believe that is not the case.

37. As a result, I find on the evidence before me that, the partial construction of a dwelling house has not occurred.

38. The appeal on ground (b) therefore succeeds.

Appeal A - Conclusions

39. In light of the success of the appeal on ground (b), the enforcement notice will be corrected and quashed. In these circumstances, the appeal on grounds (d), (f) and (g) do not need to be considered.

[4] CD5.39

APPEAL B

Appeal B on ground (b)

40. An appeal on ground (b) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters have not occurred. The breach stated in the notice is the construction of a non-agricultural storage building and the importation of material and carrying out of engineering operations in the form of the expansion of a level area of hardstanding.

41. In respect of the first limb of the breach, it is a matter of fact which is not disputed that a building has been constructed on the Land. Likewise, the appellant accepted at the Inquiry that the building has been used for storage of items other than used for forestry purposes. On that basis, there appears to be no dispute that the construction of a non-agricultural storage building has occurred.

42. Likewise, there is no dispute that an area of hardstanding exists. Rather, the appellant argues that the area of hardstanding has not been expanded.

43. The appellant says the area in question, which was the spoil tip from the old colliery, was first levelled in 1995. Aerial images from June 2018 show an area of hardstanding in situ. The same area is shown again in an aerial image from April 2021. On both images, the hardstanding appears to comprise an area of compacted soil. Only a quantity of lose material being stored on the southern part of the hardstanding is apparent. Otherwise, there appears to have been little change in the size and surfacing of the hardstanding between June 2018 and April 2021.

44. In contrast, a series of photographs are provided by the LPA which, it is agreed, were taken in February 2023. These images show a significant quantity of inert waste has been tipped on the existing hardstanding, raising the level of the hardstanding. Moreover, photographs show large quantities of material have been deposited beyond the existing hardstanding into the trees, with significant quantities of rubble around its base.

45. Furthermore, I saw from my site visit that the level of the hardstanding had been raised further than that shown on the images from February 2023. Whilst the surface was covered in sawdust, it seems to me that it is unlikely the height increase was entirely due to sawdust given the depth and solidity. It seems to me probable that further material had been deposited since February 2023 before being topped with sawdust.

46. The appellant accepts that the hardstanding has been resurfaced but that this amounts to repairs and improvements. However, it seems to me that a substantial quantity of material has been deposited on the top of the existing hardstanding. Such quantities would go far beyond resurfacing. Moreover, the material that has been deposited has increased the size of the hardstanding. Furthermore, the operations seem to have taken place within specific periods rather than continual maintenance over an extended period of time. As such, on the evidence before me, I consider that the carrying out of engineering operations in the form of the expansion of a level area of hardstanding has occurred.

47. The appeal on ground (b) therefore fails

Appeal B on ground (c)

48. An appeal on ground (c) is brought on the basis that, those matters stated in the notice as consisting of a breach of planning control, do not constitute a breach of planning control.

49. Section 171A(1) of the Act states that (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control.

50. The notice is targeted against a breach comprising the erection of a non-agricultural storage building and thus a breach of planning control under Section 171A(1)(a) of the Act.

51. The erection of the building will not amount to a breach of planning control under S171A(1)(a) if it complies with the terms and limitations of a planning permission provide that permission is extant i.e. that it was commenced lawfully and not in breach of a condition precedent.

52. Planning permission was granted on 13 January 2023 for the erection of a forestry building for the storage of felled trees/logs and timber (retrospective) (the 2023 permission)[5] on the Land.

53. The first question then is whether building subject of the notice, is that for which planning permission was granted by the 2023 permission. Sections 56(2) and 56(3) of the Act set out that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) of the Act is clear that material operation means, inter alia, any work of construction in the course of the erection of a building.

54. The permission was granted subject to a condition which states that the development shall only be implemented in accordance with the listed plans. In terms of the layout and external design and scale of the building, the building shown on the photographs submitted by the parties and the building I saw from my site visit, appears to be the same building as approved. It comprises a metal frame with two dual pitched roofs sited in the same position as approved.

55. The officer's report for the 2023 permission states that, "the structure of the proposed building has already been installed on the site. The development is therefore partially complete." The appellant's evidence is that the building's steel frame was erected in December 2021.

56. To date, the building has not been completed in accordance with the approved plans. However, it seems to me that on the evidence available, the building subject of the notice is the same building for that which permission was granted for in 2023. There appears to be no dispute from the LPA that is the case.

57. The question then turns to whether the permission was lawfully implemented such that the matters are not a breach of planning control because they comply with a lawfully implemented planning permission.

[5] LPA Ref: 22/03198/FUL

58. The LPA's position is that the building has not been completed in accordance with the permission and has not entered into its permitted use at any point. However, where a building has been been carried out in accordance with a grant of permission but has been left uncompleted, the works would not constitute a breach of planning control simply because the development had not been finished. That is the case here.

59. Nonetheless, it cannot be assumed a new planning permission will lawfully be implemented even when it is granted retrospectively. The fact that the development subject of the permission has commenced, does not mean that it was done so lawfully such that it does not amount to a breach of planning control.

60. The appellant accepted at the Inquiry that the purpose of the building for which permission was granted for was the storage of felled tress, logs and timber by storing them to dry before being processed into firewood. He also accepted that the building was currently open sided and the walls had not been installed as approved. This has therefore prevented the appellant from using the building for its permitted purpose.

61. The permission expressly relates to the erection of a forestry building for the storage of felled trees/logs and timber. Condition 5 sets out the building shall be retained in forestry use only. I saw from my site visit that, whilst some small quantities of timber were being kept in the building, there was substantial amounts of non-timber storage including machinery, storage, waste and other unrelated items. The evidence suggests that was the case at the time the notice was issued. The courts have established that it is possible to commence a development for the purpose of Section 56, but to later deviate from the permission in a manner that becomes a breach of condition issue because the works do not match the permission. However, there is very limited evidence before me that at any point since the permission was granted in January 2023, the building has been used solely for forestry use.

62. On that basis, whilst I find the building subject of the notice is that for which planning permission was granted in January 2023, I find that the permission has not been lawfully implemented in accordance with its terms and conditions. As a result, the erection of the building constitutes a breach of planning control on the basis it amounts to development without planning permission.

63. In respect of the hardstanding, as I have set out the development has occurred. It does not constitute the maintenance or improvement of an existing hardstanding area rather, the undertaking of new engineering operations in their own right. To that end, the works constitute development for which planning permission is granted. There is no evidence before me that such planning permission has been granted, either expressly or by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Consequently, the carrying out of engineering operations in the form of the expansion of a level area of hardstanding constitutes a breach of planning control.

64. The appeal on ground (c) therefore fails.

Appeal B on ground (d)

65. An appeal on ground (d) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, 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.

66. S171B of the Act sets out the relevant time limits for taking enforcement action. The time limits have recently been amended with transitional arrangements in place[6]. In this instance, the relevant period is four years beginning with the date of the breach.

67. In respect of the carrying out of engineering operations in the form of the expansion of a level area of hardstanding, the photographs submitted by the LPA it is agreed are from February 2023. The appellant's evidence at the Inquiry was that the works shown were undertaken around two years ago (i.e. 2023) and in the period shortly prior to the LPA's photographs in February 2023. Moreover, the aerial image from the appellant dated April 2021 shows no evidence of the fresh import of material and increase in area of the hardstanding. On that basis, the development was not substantially completed on or before 21 March 2021. Consequently, at the time the notice was issued, the time for taking enforcement action had not expired.

68. In respect of the building, the appellant's own evidence is that the building's steel frame was erected in December 2021. On that basis, at the time the notice was issued, the time for taking enforcement action had not expired.

69. The appeal on ground (d) therefore fails.

Appeal B on ground (f)

70. 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 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.

71. The notice requires the building to be demolished and the engineered landforms to be removed. On that basis, I am satisfied the purpose of the notice is to remedy the breach of planning control.

72. Section 173(4) of the Act sets out that to remedy the breach, the notice shall restore the Land to its condition before the breach took place. Clearly demolishing the building would remedy the breach.

73. Nonetheless, Section 173(4) of the Act also sets out that the breach can also be remedied by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land.

[6] Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008(Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a)).

74. On that basis, given my findings in respect of the appeal on ground (c), it seems to me that the breach could be remedied by requiring the building subject of the notice to comply with the terms, including the conditions and limitations, of the 2023 permission. Such an approach would remedy the breach whilst also being an obvious alternative to overcoming the planning harm at less cost and disruption to the appellant. On that basis I will vary the notice so it offers the appellant the choice of either demolishing the building or requiring it to comply with the 2023 permission.

75. In respect of the hardstanding, there are no lesser steps than removal of the engineered land form, including its deposited material and restoring the Land back to its condition before the breach took place, that would remedy the breach of planning control. The courts have held that the appellant is best placed to know the condition of the land before the breach took place.

76. The appeal on ground (f) therefore succeeds but only to a limited extent.

Appeal B on ground (g)

77. An appeal on ground (g) is brought on the basis that the period specified in the notice for compliance falls short of what should reasonably be allowed.

78. The notice, as varied, provides a time period of four months to demolish the building or amend it to accord with the 2023 permission, and a time period of six months to remove the hardstanding and restore the land to its previous condition.

79. It seems to me that six months is an appropriate period of time to remove the hardstanding and restore the land to its previous condition. There is nothing before me which suggests this could not be achieved in the timescale.

80. In terms of the building, I accept the appellant indicated at the Inquiry that the building could be removed in a little longer period than it did to erect, which was around two and a half days. Moreover, whilst I have also varied the notice to provide the appellant with the option of retaining the building in accordance with the 2023 permission, it seems to me in practice that little would need to be done to bring the building into compliance, bearing in mind compliance with the permission does not mean completion of the development subject of the permission. Certainly, I cannot see that compliance with the permission would require any period longer than the building's demolition.

81. The appeal on ground (g) therefore fails.

Appeal B - Conclusions

82. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation.

APPEAL C

The Enforcement Notice

83. The enforcement notices is directed against an alleged breach of planning control comprising the importation of material and the carrying out of engineering operations in the form of the construction of access tracks and the construction of dams in a water course.

84. It is apparent that there are several access tracks and dams on the Land. The description of the breach does not identify which access tracks or dams the notice is targeted against. The requirements do, however, indicate that the access tracks and dams are to be removed with the exception of the dam in the approximate location marked by the blue line and the tracked marked by the purple line on the plan attached to the notice. To that end, it can reasonably be inferred from the notice that the notice is directed against all those tracks and dams apart from those which are specifically excluded by the notice itself. I am satisfied thus that the notice tells the recipient with sufficient precision what the breach of planning control is and what must be done to remedy it.

Appeal C on ground (d)

85. An appeal on ground (d) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, 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.

86. S171B of the Act sets out the relevant time limits for taking enforcement action. The time limits have recently been amended with transitional arrangements in place[7]. In this instance, the relevant period is four years beginning with the date of the breach. It is necessary, therefore, for the appellant to demonstrate that the tracks and dams subject of the notice were substantially completed on or before 21 March 2021.

87. The appellant says he purchased Fry’s Bottom Wood in 1995. He goes on to state that all tracks from the northern access of Fry’s Bottom Lane have been on the Land since the winter of 1995/1996, with what he describes as the lake crossing having been constructed in 1997. In 1998, he says the forestry tracks were continued to the colliery site at the southern end of the Land. It is said that all the tracks have been put in place to facilitate forestry operations which have been licensed since 1995.

88. Excerpts of Forestry Licences from 1995 and 1998 show plans of the Land. They broadly show lines in the areas where tracks now exist. Nonetheless, they are not of sufficient detail to ascertain whether the entirety of the track network which exists now was in place at the time of those licences.

89. Nonetheless, plans accompanying a July 2013 forestry licence more clearly depict the network of tracks which existed at the site at the time of the notice (with the exception of the western loop the appellant says was done in 2022). They are clearly identifiable on the plan in blue ink.

90. Moreover, an aerial image has been provided which is dated 20 May 2018 in which the appellant says the tracks are clearly present. Whilst the full network of tracks is not clearly visible from the image, there is sufficient detail to extrapolate from the image the network of tracks which were present at the time of the enforcement notice. Aerial images from April 2021 and a photograph from 2025 do not assist in demonstrating substantial completion before March 2021.

[7] Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008(Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a)).

91. Nonetheless, the appellant gave lengthy, detailed and compelling evidence on oath at the Inquiry regarding the history of the Land, its use for forestry and how the network of tracks was created to facilitate that use. In contrast, the LPA, understandably, is unable to offer first hand evidence of sufficient precision to make the appellant's version of events any less than probable. There are no photographs from the site from and no first-hand sworn evidence to the Inquiry to the contrary.

92. On that basis, I am satisfied, on the balance of probabilities that the tracks subject of the enforcement notice were in place before 21 March 2021.

93. Nevertheless, the LPA makes the argument that the tracks have been expanded and resurfaced to that extent that the tracks which existed before March 2021 have been replaced by new tracks which were substantially completed in 2022.

94. The LPA has presented three photographs from September 2022 which show sections of the tracks surfaced in what appears to be rubble, brick and other waste materials. However, the photographs do not show the entirety of the track network. They only show a very small portion of the network. Moreover, whilst those parts which can be seen appear to have been widened slightly, the tracks still appear to follow the same route as the original tracks, with no evidence of any material deviation from the established network.

95. The appellant accepted at the Inquiry that he was resurfacing the tracks at that time and that the photos showed part of a track which was different in nature and size of the original tracks. However, I do not consider that the fact that a part of the tracks have had a new surface laid on top of them, or indeed that because some of the material has slightly spilled out of the side of the track, points towards an entirely new engineering operation. It simply points towards the material used for resurfacing not having been compacted sufficiently. Indeed, the tracks have not been partially resurfaced with a solid or bound material. Whilst I accept there are recorded instances of waste material found within the surfacing, the nature of the material is largely loose rubble or stone, in keeping with the informal character of the tracks which has been established.

96. Ultimately, on the balance of probabilities, I find the tracks subject of the notice were substantially complete on or before 21 March 2021. The works carried out to resurface part of the tracks in 2022 depicted in the LPA's photographs were de-minimis and did not constitute fresh engineering operations in their own right. It is possible for works to be substantially completed and later maintained or amended without altering the fact that the development remains substantially completed.

97. In respect of the dams, the appellant's evidence is that the dams subject of the notice were completed in the winter of 2020/2021. The LPA's position is that an officer visited the Land in September 2022 and had seen the dams where they were "fresh" and "lightly covered in earth". The LPA also gave evidence at the Inquiry that there was no existing vegetation around of the four dams and that the areas behind them were dry without water.

98. However, no photographic or documentary evidence is provided in support of the LPA's observations at that visit. Moreover, any lack of vegetation or water present is not necessarily evidence that the dams had not been constructed. The appellant's evidence is that the dams were constructed by the movement of

material, noting that he had been offered clay to use and constructing the dams was with the intention of using them as a silt crossing.

99. Ultimately, the appellant gave sworn evidence to the Inquiry that the first two dams subject of the notice were first constructed in 1997 and in and around 1996/1997 with the next in the winter of 2019/2020 followed by the final dam in 2020/2021. The LPA accepted at the Inquiry that the appellant is best placed to understand the history of the land. In this instance, I am satisfied the appellant's evidence was sufficiently precise and unambiguous.

100. I am satisfied therefore, that the appellant has demonstrated, on the balance of probabilities, that the dams subject of the enforcement notice were substantially completed on or before 21 March 2021.

101. On that basis, in accordance with the provisions of Section 171B, at the date the notice was issued, no enforcement action could be taken in respect of the breach of planning control stated in the notice as the time for taking enforcement action against the breach of planning control had expired.

102. Nonetheless, the appellant has accepted that a new single track, that which was used as a link access to the western loop of tracks, was completed in the last four years. This track is depicted as tracked 1G1 on page 8 of CD 5.9. The appellant accepts this was substantially completed in 2022. Since this forms part of the breach of planning control, and it is not immune from enforcement action, it is necessary to uphold the notice but correct it such that it only relates to that track. I will correct the notice accordingly.

103. The appeal on ground (d) therefore succeeds to an extent.

Appeal C on ground (a)

104. An appeal on ground (a) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

105. The development subject of the ground (a) appeal is that which comprises the breach of planning control stated in the notice, as corrected. Permission may only be granted, in whole or in part, for that development. The development subject of the notice, as corrected, is the construction of a single access track marked as 1G1 on the Plan 2 attached to the notice.

Main Issues

106. The main issues are:

- Whether the development is inappropriate development in the Green Belt;
- The effect of the development on the openness of the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on protected species, habitats and trees;
- Whether the development is acceptable in terms of ground stability; 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 circumstances required to justify the development.

Reasons

Inappropriate Development in the Green Belt

107. Paragraph 153 of the National Planning Policy Framework (the Framework) states that development in the Green Belt is inappropriate unless one of the exceptions apply. One of those exceptions is buildings for agriculture and forestry under paragraph 154(a).

108. The evidence before me suggests the track is essential to provide access to the lawful forestry operations which are carried out on the Land.

109. The LPA argues that the works amount to engineering operations. Even if that is the case, paragraph 154(h)(ii) lists engineering operations as not inappropriate provided they preserve openness and do not conflict with the purposes of including land within the Green Belt.

110. The visual impacts of the track are largely limited. The track is not in an area readily apparent from public views. In spatial terms it does not materially increase the level of built form within the Land to the extent that it effects the openness of the Green Belt. The LPA also agrees that the track would not conflict with any of the Green Belt purposes. Thus, whether considered under paragraph 154(a) or 154(h) of the Framework, I am satisfied that the track meets the exceptions from inappropriate development.

111. I conclude, therefore, that the development does not amount to inappropriate development in the Green Belt and does not unduly affect Green Belt openness, in accordance with the Framework.

Character and Appearance

112. The track is located within the woodland, far from public vantage points, such that it does not unduly harm the character or appearance of the area in terms of its visibility. Moreover, I consider the materials used are not inappropriate for the provision of an access track in a woodland setting. In contrast, they are appropriate for the form of development. Likewise, the landform of the track created does not appear unusual or discordant and is typical of a woodland track,

113. I conclude, therefore, that the development will not harm the character and appearance of the area, in accordance with Policy NE2 of the Bath and North East Somerset Local Plan (Core Strategy and Placemaking Plan) Partial Update (LPPU) (January 2023) and Policy D2 of the Bath and North East Placemaking Plan (PP) (July 2017) which state that development should not harm local character.

Protected Species, Habitats and Trees

114. Policy NE3 of the LPPU states that development which results in significant harm to biodiversity will not be permitted. Any harm to nature conservation value of the site should be avoided where possible and mitigation or compensation should be considered.

115. The Land is located within the Clutton Dismantled Railway and Fry's Bottom Site of Nature Conservation Interest (SNCI). This SNCI is designated for its semi-

natural broadleaved woodland, mixed woodland, scrub, tall ruderal, unimproved neutral grassland and running wate, together with marginal habitats. It also supports a number of protected and notable species.

116. The creation of the track has involved the importation of material and the movement of earth to facilitate its provision. The appellant has provided very little evidence regarding the ecological baseline of the site or the likely effects of the creation of the single access track. In the absence of any such evidence, I am unable to ascertain that the development will not have a harmful impact on ecology and biodiversity within the site. Likewise, as a heavily wooded area, there is no information before me as to whether the development has adversely affected trees within the woodland for which the SNCI has been designated.

117. Policy NE3a of the LPPU states that 10% biodiversity net gain is necessary for major development whilst for minor development, development will only be permitted where no net loss and appropriate net gain of biodiversity is secured using the appropriate metric.

118. The appellant says that no biodiversity net gain is required on the basis that the Environment Act 2021 does not apply to retrospective applications. However, the provisions of the Environment Act do not disapply the requirement to have regard to the development plan. In the absence of any demonstration of biodiversity net gain, the development has not complied with the provisions of Policy NE3a of the LPPU.

119. I conclude, therefore, that the development will likely have a detrimental effect on ecology and habitats, in conflict with Policy NE3 and NE3a of the LPPU as well as LPPU Policy NE6 which states that development should avoid adverse impacts on trees and woodlands.

Ground Stability

120. It is evident that, as a former coal mining site, the Land contains several pits throughout the woodland as a result of its historical use. The Land is within the Coal Referral Area – a location identified by the Coal Authority has containing potential hazards from former coal mining.

121. Policy PCS6 of the PP states that, where there is a risk that land may be unstable, development will only be permitted where it can be demonstrated that the site is capable of being developed without adversely affecting the stability of the development or the neighbouring land, and any remedial and/or precautionary measures proposed do not adversely affect local amenities or environmental interest.

122. The appellant has proffered very little evidence which demonstrates how the track was constructed or indeed which demonstrates it was constructed without adversely affecting the stability of the track or indeed the surrounding area.

123. I conclude, therefore, that the development will likely have a detrimental effect on ground stability, in conflict with PP Policy PCS6.

Other Matters

124. The enforcement notice indicates that one of the reasons for issuing the notice was that the LPA had insufficient information to confirm the development would not result in increased surface water runoff and that it would not contribute to flood risks elsewhere.

125. However, the LPA's evidence to the appeal cites flood risk impacts only in respect of the dams, which no longer form part of the alleged breach. On that basis, I have not considered the flood risk effects in respect of the creation of the single track.

Conclusions

126. I have found that the construction of a single access track marked as 1G1 on the Plan 2 attached to the notice does not amount to inappropriate development in the Green Belt, does not affect Green Belt openness and does not harm the character and appearance of the area. However, I have found that the development will likely have a harmful effect on ecology, habitats and trees, as well as ground stability. They are the prevailing considerations.

127. As a result, for the reasons given above, I consider the appeal should not succeed and the application deemed to have been made under section 177(5) of the Act should be refused.

Appeal C on ground (f)

128. 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 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.

129. The notice, as corrected and varied, requires the single access track marked as 1G1 on the Plan 2 attached to the notice to be removed. The purpose of the notice is therefore to remedy the breach of planning control by restoring the Land to its condition before the breach took place. On the evidence before me, there is no lesser step than removal of the access track that would remedy the breach of planning control.

130. The appeal on ground (f) therefore fails.

Appeal C on ground (g)

131. An appeal on ground (g) is brought on the basis that the period specified in the notice for compliance falls short of what should reasonably be allowed.

132. The notice requires the single access track to be removed within four months. There is little evidence before me that the track could not be removed within four months or indeed that any adverse effects would arise as a result. A period of four months seems to me to be reasonable.

133. The appeal on ground (g) therefore fails.

Appeal C - Conclusions

134. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act (as amended).

APPEAL D

The Enforcement Notice

135. The enforcement notice alleges a change of use of the Land. I will insert the word "material" to reflect the correct definition of development as defined in statute and can do so without causing injustice to the appellant or the LPA.

Appeal D on ground (b)

136. An appeal on ground (b) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters have not occurred. The breach stated in the notice, as corrected, is the material change of use of land from forestry to a mixed use consisting of forestry, storage, firewood production, motorbike trials practice, equestrian, a waste transfer site and associated structure.

137. The concept of a mixed use is one of two or more primary uses existing within the same planning unit. One is not incidental to the other.

138. The appellant accepts that, apart from the alleged waste transfer use, the alleged component activities of the mixed use were ongoing on the Land at the time the notice was issued.

139. Photographs said to have been taken in December 2024 provided by the LPA show skips, some full of waste, others empty, being stored on the Land. One full skip is located on the back of a skip lorry. At the Inquiry, the appellant accepted that waste was received on the Land, that it would be stored in skips and then sorted in order to comply with his exemption from the Environment Agency. Moreover, he accepted that around September 2024, he allowed a friend to run a skip business on the Land. Logs provided by the LPA from a local resident indicate that skips, both empty and full, had been coming and going from the Land in period September 2024 to March 2025.

140. To that end, I am satisfied that the evidence before me demonstrates that a waste transfer site was occurring on the Land at the time. Furthermore, I am satisfied that the firewood production was not ancillary to forestry. The evidence before me indicate that the appellant had imported timber logs which were used for firewood production, separate to any use of the Land for forestry.

141. At the Inquiry, the appellant also advanced the argument that the breach had not occurred because the Land was not a single planning unit but rather separate planning units.

142. The leading case for determination of the planning unit is *Burdle*[8] in which it was held that the planning unit is usually the unit of occupation, unless a smaller area

[8] *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes. The concept of physical and functional separation is key.

143. The appellant identifies what they say are four separate units. They are Unit 1 which comprises forestry and B8 storage and is confined to the Land to the west side of Weigh Bridge House. Unit 2 is said to comprise B8 storage and is confined to the yard area to the front of Weigh Bridge House. Unit 3 is said to comprise equestrian use on the small parcel of land to the rear of Weigh Bridge House, whilst Unit 4 relates to the entire woodland which is in forestry use.

144. However, there is substantial crossover between the aforementioned areas of the Land. Namely, forestry use is not confined to “Unit 4”. The evidence in Appeal A was that Weigh Bridge House is used for forestry tasks, whilst the building in Appeal B is used for the storage of wood in association with the forestry use. It was also accepted by the appellant at the Inquiry that firewood production also occurred in “Unit 1” and “Unit 2”. It was also said that storage is not confined to “Unit 2” it also takes place in “Unit 1” whilst trial bike use also occurred across the Land. Furthermore, it was evident that horse riding would take place throughout the Land, whilst waste transfer use occurred at both the Weigh Bridge House end of the Land as well as the northern end of the Land.

145. Moreover, there is little to no physical separation between the areas identified by the appellant. One is able to freely move between them and indeed, a lack of physically separation supports the lack of functional separation.

146. To my mind, the evidence before me suggests that all the uses alleged comprise primary uses. None are incidental to the other. Moreover, there are no smaller areas of the Land which can be identified which are physically or functionally separable and confined to a single component use of the mixed use. To that end, I am satisfied that the Land comprises a single planning unit, put to a mixed use. Thus, the alleged breach of planning control has occurred.

147. The appeal on ground (b) fails.

Appeal D on ground (c)

148. An appeal on ground (c) is brought on the basis that, those matters stated in the notice as consisting of a breach of planning control, do not constitute a breach of planning control.

149. Section 171A(1) of the Act states that (a) carrying out development without the required planning permission; or (b) failing to comply with any condition or limitation subject to which planning permission has been granted constitutes a breach of planning control.

150. Even if component uses of the mixed use are lawful in themselves, the question before me is whether the alleged breach, that being the material change of use of the Land of a mixed use, constitutes a breach of planning control.

151. There is no evidence before me that the mixed use of the Land for forestry, storage, firewood production, motorbike trials practice, equestrian, and a waste transfer site and associated structure benefits from planning permission, either expressly or by virtue the GPDO. As a result, the material change of use of the

Land of a mixed use constitutes a breach of planning control constitutes a breach of planning control under S171A(1)(a) of the Act.

152. The appeal on ground (c) therefore fails.

Appeal D on ground (d)

153. An appeal on ground (d) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, 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.

154. S171B of the Act sets out the relevant time limits for taking enforcement action. The time limits have recently been amended with transitional arrangements in place[9]. In this instance, the relevant period is ten years beginning with the date of the breach. It is necessary, therefore, for the appellant to demonstrate that the material change of use of the Land to a mixed use of forestry, storage, firewood production, motorbike trials practice, equestrian, and a waste transfer site and associated structure took place on or before 21 March 2015 and continued without interruption for 10 years thereafter.

155. Where an additional primary use is added to an existing mixed use, the comparison is to be made between the previous mixed use and the new mixed use. If they are materially different, there would be a material change of use of the whole planning unit to a different mixed use. The appellant will need to show that the material change of use to the new mixed use occurred more than ten years before the date of the notice and then continued for a ten year period. It does not matter how long previous component uses continued for unchanged.

156. The evidence before me suggests that the waste transfer use of the Land began in September 2024. To my mind, introducing a waste transfer use on the Land at the scale and character that the evidence suggests it was, would amount to a significant difference in the character of the activities from what had gone on previously as a matter of fact and degree.

157. To that end, I find, on the balance of probabilities, that the material change of use of the Land to the mixed use alleged in the notice took place in September 2024. On that basis, it cannot be demonstrated that, at the date the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters stated in the notice.

158. The appeal on ground (d) therefore fails.

Appeal D on ground (a)

159. An appeal on ground (a) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted

[9] Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008(Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a)).

Preliminary Matter

160. The parties agree that, suitably conditioned, planning permission can be granted for the equestrian use of the Land. I raised the question at the Inquiry as to whether it is open to me to decouple elements of a mixed use in order to grant planning permission for components of the mixed use. Whilst submissions were made on that point, which I will return to in due course, the parties thereafter put to me that the appropriate course of action would be to delete reference to equestrian use from the alleged breach of planning control stated in the notice.

161. However, as established in *East Sussex*[10], it is not open to LPAs to decouple component uses from a mixed use. The use is the single mixed use with all its component activities, even if some of those component activities are lawful or indeed considered acceptable on their planning merits.

162. Neither party submits that, as a matter of fact, the equestrian use was not taking place as part of the mixed use alleged. To that end, it is not open to me to correct the notice by deleting equestrian use from the alleged breach of planning control.

163. In terms of whether it is open to me to grant planning permission for component activities of a mixed use, an appeal on ground (a) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

164. Section 177(5) of the Act states that, where an appeal on ground (a) is brought, the appellant shall be deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control.

165. Section 177(1) of the Act sets out that, on the determination of an appeal under Section 174, the Secretary of State may, (a) 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.

166. Thus, it is only open to me to consider the grant of planning permission for the breach alleged in the notice, either in whole or in part.

167. Nonetheless, whilst the power to make a split decision under Section 177(1) is not limited to operational development, in mixed use cases, the mixed use should be treated as the use of the Land. In order to grant permission only for the equestrian use, or the equestrian and firewood production uses, I can only do so where it has been clearly shown that the carrying out of those components would not be materially different to the alleged breach. Clearly, in this case, it would.

168. In contrast, the activities of the forestry or forestry and firewood production use would be significantly different in character to the alleged mixed use. Even if the parties consider the planning impacts from those differences in character to be acceptable, there is a significant difference in the character between the Land put to use for the component uses suggested as acceptable and the Land put to use for the breach of planning control. To that end, I conclude it is not open to me to decouple the component activities of the mixed use here to grant planning

[10] *East Sussex CC v SSCLG* [2009] EWHC 3841 (Admin)

permission for them. The use of the Land for such component activities would not form part of the matters. They would in essence form a different development to that alleged in the notice and it is thus not open to me to consider granting planning permission for them under Section 177(1) of the Act.

169. It is not open to me to remove the requirement to cease the use of the Land for equestrian in order to grant planning permission for it under Section 173(11) of the Act as doing so would result in an unconditional grant of planning permission. The LPA submits that the equestrian use is only acceptable subject to conditions. Thus, injustice to the LPA would arise were I to do so.

170. Nonetheless, the notice requires the mixed use to cease, it does not require the individual component activities to cease as if they were individual uses of the Land themselves. Indeed, the notice is clear that is the case in respect of forestry use, as it refers to as such.

Main Issues

171. The main issues are:

- Whether the development is inappropriate development in the Green Belt;
- The effect of the development on the openness of the Green Belt;
- The effect of the development on the character and appearance of the area;
- The effect of the development on highway safety;
- The effect of the development on protected species and habitats;
- The effect of the development on the living conditions of nearby residents in respect of noise and disturbance, and pollution;
- The effect of the development in terms of watercourse pollution;
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

Reasons

172. The appellant's case on ground (a) only seeks to argue that the equestrian and firewood production component activities are acceptable in planning terms. However, for the reasons set out above, it is not open to me in this case to decouple component activities for the purpose. My consideration of the ground (a) is restricted to the mixed use as a whole.

173. The appellant does not dispute that the mixed use as a whole constitutes inappropriate development in the Green Belt nor indeed harms the openness of the Green Belt. Likewise, the appellant does not advance evidence that the development as a whole does not unduly harm the character and appearance of the area, highway safety, or the living conditions of nearby residents in respect of noise and disturbance and pollution. Moreover, there is little evidence before me that the mixed use does not result in harm to protected species and habitats or indeed result in watercourse pollution.

174. Evidence regarding the benefits of the mixed use as a whole are limited. Whilst I appreciate there will be benefits in economical terms, evidence regarding such benefits is very limited, such that I can afford them only very limited weight.

175. On the other hand, I afford substantial weight to the Green Belt harm which arises by reason of inappropriateness in accordance with the National Planning Policy Framework. I also attach substantial weight to the harm which arises to the openness of the Green Belt. In terms of any other harm, I attach significant weight to the harm to the character and appearance of the area, highway safety, protected species and habitats, the living conditions of nearby residents, and the pollution of watercourses.

176. In conclusion, the weight afforded to other considerations in support of the appeal does not, either individually or collectively, clearly outweigh the cumulative harm arising to the Green Belt by reason of inappropriateness and harm to openness and any other harm. There are no planning conditions that could be imposed which would overcome the identified harm.

Conclusion

177. As a consequence, the very special circumstances necessary to justify the mixed use of the Land do not exist. I conclude, therefore, that the development would conflict with the development plan taken as a whole, in particular CP8 and DW1 of the Bath and North East Somerset Core Strategy 2014, ST7, PCS5, NE2, NE3 and NE6 of the LPPU, Policies GB1, PCS3 and D6 of the PP, Policy 12 of the West of England Joint Core Waste Strategy 2011 and Policy CNP15 of the Clutton Neighbourhood Plan 2015 as well as the relevant policies of the Framework.

Appeal D on ground (f)

178. 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 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.

179. The notice requires cessation of the use of the land for the mixed use alleged in the notice. It also requires items stored on the land which have facilitated the unlawful use, including the wooden structure, to be removed. On that basis, I am satisfied the purpose of the notice is to remedy the breach of planning control.

180. To that end, there are no lesser steps other than ceasing the unauthorised mixed use of the Land and removing items which have facilitated the use that would suitably remedy the breach of planning control. There are no obvious alternatives which would overcome the planning harm at less cost and disruption to the appellant. On that basis, the steps required by the notice to be taken do not exceed what is necessary.

181. The appeal on ground (f) fails.

Appeal D on ground (g)

182. An appeal on ground (g) is brought on the basis that the period specified in the notice for compliance falls short of what should reasonably be allowed.

183. The notice requires the mixed use to cease and the facilitating items and structure to be removed within six months. It seems to me that simply ceasing the use

could be easily carried out in the time period. There is limited evidence that would result in difficulty for the appellant. Likewise, the removal of all items stored on the land relating to the unlawful use, including the removal of the wooden structure do not appear to be a particularly arduous or time consuming task that could not be achieved in six months. I am satisfied the time period given in the notice is reasonable.

184. The appeal on ground (g) therefore fails.

Appeal D - Conclusions

185. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act (as amended).

J Whitfield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Bell of Counsel

He called:

Stephen Willcox	Appellant
Edward Downing	Head of Planning, AGM Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Christopher Moss, of Counsel

He called:

Sam Grant	Senior Planning and Enforcement Officer, Bath and North East Somerset Council

INTERESTED PARTIES:

Rachel Tadman	Tadman Planning Consultants Ltd

Documents Submitted at Inquiry

1) Appellant Opening Statement
2) LPA Opening Statement
3) Bath and North East Somerset Historic Environment Record
4) Suggested Conditions
5) LPA Closing Submissions
6) LPA Costs Submissions
7) Appellant Closing Submissions
8) Appellant Costs Response

Plan 2

This is the plan referred to in my decision dated: 28th October 2025

by J Whitfield BA(Hons) DipTP MRTPI

Land at: Fry's Bottom, Chelwood, Bristol BS39 5QN

Reference: APP/F0114/C/25/3364348

Scale: Not to scale