



Appeal Decision

Inquiry held on 12 and 13 May 2026

Site visits made on 11 and 12 May 2026

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2026

Appeal Ref: APP/W1525/C/26/3377239

Land north of Highfields Farm Barn, Highfields Mead, East Hanningfield, Chelmsford CM3 8AW

- 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 Eli Low against an enforcement notice issued by Chelmsford City Council.
 - The notice was issued on 19 November 2025.
 - The breach of planning control as alleged in the notice is Without planning permission, the construction of three buildings, a path, lighting columns and concrete platform.
 - The requirements of the notice are: i) Demolish the building shown outlined in blue at the approximate location on the attached plan, including the concrete base and/or any foundations. ii) Demolish the building shown outlined in green at the approximate location on the attached plan, including the concrete base and/or any foundations. iii) Demolish the building and hard surface shown outlined in orange at the approximate location on the attached plan, including any foundations. iv) Demolish/remove the path and concrete platform shown in the approximate locations marked purple and brown on the attached plan. v) Remove all lighting columns constructed along/adjacent to the path marked purple in the approximate location on the attached plan. vi) Restore the land affected by these works carried out at steps (i) to (v) to its pre-development condition. vii) Remove from the land all material and debris resulting from the actions taken at steps (i) to (vi).
 - The period for compliance with the requirements is 3 months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Summary of Decision

1. The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Application for costs

2. An application for costs has been made by Chelmsford City Council against Mr Eli Low. This is dealt with in a separate decision.

Preliminary matters

Procedure

3. The appeal was lodged on grounds (a), (c) and (g). The appeal on ground (c) was withdrawn at the Case Management Conference, where the merits of the appeal were not discussed.
4. Evidence relating to how the land is and has been used, the appellant's personal circumstances, and whether the development is intentional unauthorised

development¹ (IUD) was provided under sworn affirmation on Day 1 of the Inquiry. All other oral submissions were heard by round-table discussions on Day 1. Closing submissions were made during an online meeting hosted by the Council on Day 2, which was open to members of the public. The Inquiry was formally closed in writing following receipt of the Council's final comments on its costs application.

Background

5. The site is a parcel of land measuring approximately 5 acres to the north (rear) of Highfields Farm Barn, which is a large dwelling with detached triple garage to the front and modest lawned garden to the rear. A public right of way (PROW) runs along the eastern boundary and crosses the site, north of an area of allotments. Highwater Farm is located further to the north, comprising an agricultural holding of approximately 155 acres. The PROW crosses that land too. At least part of the site is referred to as East Hanningfield Common in an 1898 Ordnance Survey map and a plan which accompanied a 1993 planning application.
6. A mikvah² (Jewish ritual bath) has been constructed in a roughly central part of the site. A path³ lined with low-level lighting columns runs across the site between Highfields Farm Barn and Highwater Farm, with an intervening concrete platform⁴ roughly halfway along, running in front of the mikvah. Buildings described as a garden room⁵ and a storage shed⁶ have also been constructed close to the southern boundary of the site, where it has a parking area and adjoins the lawned garden of Highfields Farm Barn.
7. Mr Low owns the site, Highfields Farm Barn and Highwater Farm. Highfields Farm Barn is a substantial dwelling, but it is not big enough to accommodate Mr Low's immediate family, which is why family members will also stay in accommodation at Highwater Farm when visiting. There is some dispute as to whether all of the accommodation at Highwater Farm is lawful, but the evidence shows that prior approval has been granted for the change of use of former agricultural buildings to dwellings there. The lawfulness of development at Highwater Farm is of little relevance to the main issues in this appeal, except in respect of whether any of the development the subject of the notice is IUD, which I shall address later in this decision.
8. The use of the site and whether the site forms part of the curtilage of Highfields Farm Barn are relevant to the appeal on ground (a) and the deemed application for planning permission. I shall therefore address these matters first.

Use of the site and whether within the curtilage of Highfields Farm Barn

9. It is in dispute whether the site has a lawful use for residential purposes and whether it comprises part of the curtilage of Highfields Farm Barn. The Council confirmed at the Inquiry that it has no concerns over the current use of the site, development carried out prior to 2018, or the allotments and allotment buildings on part of the site. There is no dispute that the lawned garden between the dwelling at Highfields Farm Barn and the site has a lawful use for residential purposes and is in the curtilage of that dwelling. I see no reason to find otherwise.

¹ In the context of the planning policy statement issued by the government on 31 August 2015

² A Jewish ritual bath, edged in orange on the plan attached to the notice

³ Marked in purple on the plan attached to the notice

⁴ Marked in brown on the plan attached to the notice

⁵ Edged in blue on the plan attached to the notice

⁶ Edged in green on the plan attached to the notice

10. Historic aerial photographs, including those in sales particulars dating from 2018, show the state of the site prior to the appellant purchasing it and give a good indication of how the former owner used it alongside Highfields Farm Barn. In particular, I note ornamental domestic items, such as a decommissioned jet-aeroplane, a pagoda, a pair of ponds with intervening decked sitting area, at least three lampposts, and gardening/animal husbandry features such as an orchard, vegetable patches, a polytunnel, and a collection of at least eight sheds/animal shelters present on the land in those photographs. A parking area can also be seen accessible from the southeastern corner of the site. This gives a clear indication that part of the site was in use for residential purposes in 2018, consistent with other aerial photographs dated 2016 and April 2017 and the statutory declaration (SD) of Roger John Hill.
11. An aerial photograph dated March 2011 is less clear, but it appears to show the orchard and polytunnel in place, while shapes which may be buildings or disturbed land can be seen in the positions of the sheds/animal shelters and ponds. The 2014 aerial photograph more clearly shows a difference between the state of the land to the south of the site and the north of the site, where that at the southern end is greener and less patchy, with the lakes, sheds/animal shelters and polytunnel present. Tree cover in the southeastern corner of the site in the 2014 aerial photograph makes it difficult to tell whether the aeroplane or parking area existed then. By the time of the 2016 aerial photograph, the aeroplane and parking area can be clearly seen, as well as a pathway between the lawned garden to Highfields Farm Barn and the sheds/animal shelters, and there is a clearer differentiation between the grass to the south of the site and the north of the site.
12. The SD of Mr Hill states that there was an ornamental lake, play equipment, a number of sheds, and a greenhouse/polytunnel on the land from November 2011 when he moved into a nearby property, and that the previous owner kept poultry in a poultry house and grew fruit and vegetables at the site. It goes on to say that Mr Low has made changes, but he has continued to use the land as part of his domestic garden in the same way the previous owner had for many years before. There is very little to show otherwise, although Mr Low was unclear in oral evidence on the details of how he has used the land consistently since purchasing it.
13. Mr Hill did not provide oral evidence to the Inquiry, but the Perjury Act 1911 sets out serious implications where a false statement is made in a SD. He is a member of the public and apparently not a planning expert, but this does not devalue his evidence which describes what he claims he saw happening on the site in clear and simple terms. I therefore assign his claims, as undetailed as they are, significant weight, but less weight than would have been assigned had they been tested by cross-examination at the Inquiry.
14. The Council has referred to the site as appearing to be in a mixed use for small-scale agriculture and recreation, although it does not consider any residential use of the land to be lawful. It is not necessary for me to confirm the lawful use of the site, but the evidence shows, as a matter of fact and degree, it is more likely than not that at least a residential element of a mixed use, associated with Highfields Farm Barn, if not a primary residential use, has been ongoing at the site for more than 10 continuous years. This does not mean the site forms part of the curtilage of the dwelling, and in any case, the use of the site is not the subject of any formal enforcement action. There is very little before me to suggest a residential use is in

breach of planning control and on the evidence, I see no reason to take the existing use of the site as unlawful, so far as relevant to this appeal.

15. In respect of matters relating to curtilage, I have been referred to various case law, starting with *Methuen-Campbell v Walters* [1979] QB 525 where Buckley LJ commented: *'In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.'* In that case an area of rough pasture beyond a cultivated garden, separated by a wire fence with gate, which was later boarded up, was found to be clearly divided off physically from a nearby house and garden, and outside the curtilage of the house rather than forming an integral whole.
16. Stephenson LJ identified three factors to be taken into account when identifying curtilage in *Att-Gen ex rel Sutcliffe v Calderdale BC* [1982] 46 P&CR 399: (i) physical layout; (ii) ownership, past and present; and (iii) use or function, past and present. He also noted, in respect of listed buildings: *'Where they are in common ownership and one is used in connection with the other, there is little difficulty in putting a structure near a building or even some distance from it into its curtilage'*.
17. The Oxford English Dictionary definition⁷ of curtilage was also referred to in *Dyer v Dorset CC* [1989] 1 QB 346, where Nourse LJ accepted that *'an area of land cannot properly be described as a curtilage unless it forms part and parcel of the house or building which it contains or to which it is attached'*.
18. The concept of 'smallness' in the context of a substantial listed building with extensive grounds was found to be so completely relative as to be almost meaningless in *Skerritts of Nottingham Ltd v SSETR* [2001] QB 59, and unhelpful as a criterion to identify curtilage. The curtilage of a building must not always be small, but the relative size between a building and its claimed curtilage remains a relevant consideration.
19. Finally, these cases were referred to in *R (Hampshire CC) v SSEFRA* [2021] EWCA Civ 398, where it was confirmed necessary to ask whether land claimed to form part of the curtilage of a building comprises part and parcel of that building, as a matter of fact and degree.
20. With the above in mind, it is relevant to note that much, if not all, of the site has been in use for residential purposes ancillary to Highfields Farm Barn, at least in part, for a significant period. The two parcels of land were bought by Mr Low as a single parcel, but for accounting purposes, they now form separate land registry titles owned by different companies, but Mr Low effectively remains the owner.
21. While under previous ownership in 2018, a low hedge existed along part of the boundary of the site shared with the lawned garden, with a gap allowing access between the two, across a parking area within the appeal site. At some point prior to 4 June 2020, Mr Low erected low picket and tall bamboo fences along that boundary, with a gate in the picket fencing allowing movement between the two areas. The intention was to protect young family members from wandering toward

⁷ 'A small court, yard, garth or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its outbuildings.'

the ponds from the lawned garden/house, and all fencing along that boundary was removed shortly after the notice was issued.

22. I have already explained how the aerial photographs and the SD of Mr Hill indicate that at least part of the site was likely in use for residential purposes ancillary to Highfields Farm Barn, at least as part of a mixed use, since at least 2011. This resulted in the erection of various structures and the placing of ornamental items on the land, which the Council did not enforce against. In oral evidence Mr Low explained that he started visiting the site immediately after purchasing it in 2018, but that stays at Highfields Farm Barn took time, resulting in a lapse in active use of the site for an unknown period of months, rather than weeks or years. During that time, however, the orchard, parking area, pagoda, ponds, decking, polytunnel, lampposts, and sheds/animal shelters remained in place even if they were not being actively managed/used.
23. I have been referred to various planning permissions going back 50 years for agricultural worker's accommodation on the site, which pre-date the 2005 planning permission for the residential conversion of Highfields Farm Barn. Little information has been provided for those pre-2005 planning permissions, but a black and white location plan shows the position of an approved agricultural worker's dwelling within the site, which is annotated 'East Hanningfield Common', with Highfields Farm Barn shown within a thick boundary line annotated 'blue'. It therefore appears that the site and Highfields Farm Barn historically formed part of the same agricultural unit, but there is very little to suggest the site fell within the curtilage of what was an agricultural barn at those times.
24. I have been provided with site plans relating to planning permissions granted in 2005, 2013, and 2020, which show Highfields Farm Barn and its lawned garden area edged in red, excluding the appeal site. While the red line on those plans is not indicative of the curtilage of the dwelling, it provides a good indication of the land intimately associated with the dwelling at the times of those applications, even if the applicants had no intention of defining any specific curtilage. They suggest there was some form of differentiation between the site and the lawned garden identifiable to the applicants which influenced the consistent position of the northern red line boundary on those plans. In the three planning permissions referred to, I find it unlikely that the planning fee may have influenced the exclusion of the site from the red line boundaries.
25. In summary, there has been some form of physical separation between the site and the lawned garden at least since Mr Low became owner, but it has been low-level and has not hindered free movement between the dwelling and the site. Moreover, the site has been in some form of use for residential purposes ancillary to the dwelling for a significant period. The red lines on previous planning applications show the ease with which applicants identified a difference between those areas.
26. I have seen that there is a functional difference between the more formally kept and modestly sized lawned garden close to the dwelling and the less formal and more expansive area of the site, beyond the boundary identified by red lines on planning applications between 2005 and 2020. There is a notable difference between the function and association of the land when moving between the lawned garden and the site, despite them both being used for purposes ancillary to the dwelling, which is on account of their layout and appearance in relation to the dwelling. The two areas are distinct, yet they were purchased as one parcel, and they have remained

in the same ownership for a very long time, but as a matter of fact and degree the site is not so intimately associated with Highfields Farm Barn as to form part and parcel of that dwelling.

27. Drawing the relevant points from the above case law together, I find that the site does not form part of the curtilage of Highfields Farm Barn.

Ground (a) and the deemed application for planning permission

Main issues

28. The main issues are the effect of the development on the character and appearance of the area and the personal circumstances of Mr Low and his family.

Character and appearance

29. The site is beyond the Urban Areas and Defined Settlements boundary identified by the Chelmsford Local Plan (2020) (CLP). It is therefore within the countryside, which is referred to as the Rural Area in the CLP. The site's immediate surroundings are characterised largely by open agricultural fields skirted by mature treelines to the north, east and west, and low-density residential development to the south.
30. When walking the PROW to the north of the site, the presence of development within Highwater Farm is obvious beyond tall fencing. There are also views of a former agricultural building converted into dwellings immediately to the east of the site from the PROW. The parking area, pagoda and ponds with intervening decking and tall lampposts within the site are also clearly visible from the PROW. A range of former agricultural buildings, apparently in some form of light industrial/storage use, are located opposite a vehicular entrance to the southeastern corner of the site. Allotments occupy part of the northwestern area of the site, which are accompanied by a small collection of modest sheds and netted/plastic polytunnels.
31. The site and its immediate surrounding area therefore have the character and appearance of a typical edge of village location where there is a transition between low-scale residential land use/development to agricultural land use/development. It is not a secluded rural area devoid of development or residential activities, and the evidence before me is that much of the development I have seen (apart from that the subject of the notice) is either lawful or not objectionable to the Council. That said, I note the written submissions of local residents who object to alleged unauthorised development at Highwater Farm. Overall, the site and its immediate surroundings do not typify the intrinsic character and beauty of the countryside, although the site is within the Rural Area.
32. The site is not within the curtilage of Highfields Farm Barn, and the buildings the subject of the notice do not therefore draw support from part D of Policy DM8 of the CLP. This states, amongst other things, that planning permission will be granted for residential outbuildings to be used for purposes incidental to the enjoyment of the dwelling where they are: (i) within the curtilage of the dwelling; (ii) proportionate in size and scale and ancillary in appearance to the dwelling; and (iii) in keeping with their context and surroundings and do not result in any other harm.
33. However, I have no hesitation in describing the garden room and storage shed as entirely appropriate and sympathetic to the character and appearance of the area in terms of their size, design, appearance, location and use. This was abundantly

clear from my site visits, where views of them amongst planting are limited and against the close backdrop of residential development. None of the submissions suggesting otherwise lead me to a different view, even if the floor area of the garden room does exceed the minimum size for a garden serving a three-bedroom house.

34. Considering the use, size and layout of the site and Highfields Farm Barn and other nearby buildings, the garden room and storage shed are commensurate to their surroundings and have the appearance of typical domestic structures within an established extended garden area, even though they are outside the curtilage and even if a residential use of the site is not lawful. Considering the size of Highfields Farm Barn and other nearby buildings, they are not unduly large. Furthermore, this is not the type of location where such buildings are alien, unexpected or harmful to the overriding rural character and appearance of the area on account of their proximity to dwellings.
35. Put simply, the garden room and the storage shed are in no way harmful to the intrinsic character or beauty of the countryside, given their context. Moreover, the use of the garden room and storage shed by Mr Low for domestic storage purposes and family/religious activities are the type of uses which could sometimes be incidental to the enjoyment of a dwelling. However, the evidence suggests they are used as often by people staying at Highwater Farm as they are by people staying at Highfields Farm Barn, and their use is not incidental to the enjoyment of Highfields Farm Barn. That is not to say their use is inappropriate in this location.
36. The fact that a garage building also serves Highfields Farm Barn, that Mr Low has a large family, and that prayers and religious teachings form an intrinsic part of their lifestyle do not lead me to find that these buildings are excessive, not reasonably necessary, or used for inappropriate or commercial purposes.
37. I also do not recognise the high levels of harm claimed to have been caused to the character and appearance of the area by the other development mentioned in the notice. The stone-finished path with timber borders has a roughly straight layout and provides a formalised route between Highfields Farm Barn and Highwater Farm, but paths of such construction are not entirely out of place in a rural setting. The same can be said for the concrete platform which is functional in appearance and typical for the movement/parking of heavy machinery used to maintain large areas of land.
38. The lighting columns which line the path are domestic in style and are therefore unconventional features in this somewhat exposed rural location, but they are unremarkable during daytime hours amongst the backdrop of the residential activities taking place on the land and other lawful development. They are seen close to at least three tall lawful lampposts around the ponds.
39. The path and concrete platform are difficult to see in full from public vantage points on account of the intervening distances and vegetation. That said, some of this development can clearly be seen in views from the closest point of the PROW to the path and from within the site itself, but its effect on the character and appearance of the area is so low-scale that it is inconsequential between the residential development to the south and agricultural development to the north. People will walk between Highfields Farm Barn and Highwater Farm regardless of

the path. I therefore find that these aspects of the development do not harm the character and appearance of the area either.

40. I should also add that I see no merit in unsubstantiated claims that the concrete platform may be intended as a base for future building operations. The explanation given, that it allows maintenance equipment to cross the path rather than create hazardous ruts, is consistent with a range of photographs and what I saw during my site visit. If a building is to be erected on the concrete platform in the future, it would require planning permission, which should be considered on its merits.
41. Mr Low has advised that the lights are switched on until at least 0100 at night. Although the lighting columns themselves do not harm the character and appearance of the area during the day, the light emitted during hours of darkness has the potential to cause harm. The harm caused by the light emissions could be limited to some extent by planning conditions controlling luminance and hours of operation and requiring planting, but that would be insufficient in respect of the lighting columns north of the mikvah. Fundamental changes to the design of those lighting columns to substantially reduce their height would be more likely to address the harm, but that would be beyond the power of a reasonable planning condition.
42. Notwithstanding the visual effect of lawful lampposts and lighting columns within the site and at Highwater Farm, the formal rows of lights along the path to the north of the mikvah will be a conspicuous and incongruous formal feature when switched on at night, stretching out into largely undeveloped land. The area north of the mikvah would otherwise be a tranquil and undisturbed part of the countryside during hours of darkness. That is quite different to the area south of the mikvah which is closer to neighbouring residential buildings and gardens, where at least three lawful lampposts and a parking area exist, and where a residential use of the land has been obvious for a significant period. The area south of the mikvah is a specific area where residential activity and lights would not be out of the ordinary, and where those lighting columns are already somewhat separated from the site boundaries by planting.
43. I therefore find a difference between the effect on the character and appearance of the area of the lighting columns north of the mikvah, compared to those south of the northern extent of the mikvah. Those to the south cause no harm to the character and appearance of the area, while those to the north do cause such harm during hours of darkness. The level of that harm is modest.
44. Moving on to the mikvah, this is a starker and more obvious feature within the site on account of its exposed position away from planting and other buildings, in a similar location to that previously occupied by a large polytunnel for some years. It is a modestly sized building which can be seen more clearly than the other development referred to by the notice in views from the PROW to the east and north. In those views it is seen as a building of unconventional design for this location, with a projecting CCTV camera attached to one corner, and vents which are said to emit steam. It has been finished in dark grey weatherboard composite cladding, with doors on the southwest elevation providing access to a plant room and the ritual bathing area with changing/washing space, and small obscure glazed windows on its northeast and northwest elevations.
45. The mikvah is an uncharacteristic form of development for the area, yet it remains modest in size and distant from the site's boundaries such that it is seen and

experienced in the context of the wider use of the site and the other sporadic low-scale development within and around the site. Only partial glimpses of the mikvah were seen from the PROW to the east during my site visit, at the end of spring, due to intervening trees being in leaf. I note photographs taken when those trees were not in leaf showing the building is more clearly seen from that part of the PROW at those times. There is no such cover in longer views from the PROW to the north. It is therefore harmful to the overriding rural character and appearance of the area, but the level of harm is modest.

46. The use of the mikvah is not incidental to the enjoyment of Highfields Farm Barn even though most, if not all of the people who use it are from Mr Low's immediate family. It is used regularly by people who are not staying within Highfields Farm Barn, as people staying at Highwater Farm also regularly rely on it. However, that does not mean its use is inappropriate for the location, considering the use of the site and its proximity to lawful residential/domestic development.
47. A landscaping scheme could address harm caused to the character and appearance of the area, as trees and/or shrubs could be planted close to the development or along boundaries. The Council contends that planting should only be used to soften the visual effect of development and help it assimilate into its surroundings, rather than to stop views of uncharacteristic development. This is a good point, but if the development cannot be seen from outside the site, and it is only seen in the context of lawful domestic items and a residential use from within the site itself, there would not be any harm to the character and appearance of the area. Despite third parties referring to development within Highwater Farm, for example, I was unable to see much of that from the PROW due to tall fencing erected along the boundary. In this case, landscaping would be far preferable and could achieve a better result in respect of the mikvah.
48. There is ample space to provide comprehensive landscaping to effectively shield views of the mikvah from outside the site throughout the year. Specifically, appropriately designed and maintained planting to the north and the east of the mikvah would soften its appearance to such an extent that it would be largely imperceptible to people walking the PROW, unless they were intent on seeing it. It must be remembered that other lawful buildings can also be seen close to the PROW in this edge of village location, within the countryside. It would take time for landscaping to establish, but the effect of the mikvah in the meantime is not so adverse that this would be unacceptable.
49. However, it would be much more difficult to address the adverse effect of the lights at night time beyond the northern end of the mikvah because of how close they are to the PROW and the lack of space for planting between. Moreover, when switched on, the lights north of the mikvah will form distinctly odd and uncharacteristic rows of light away from the other nearby sources of light. Planning permission has been granted for taller lighting columns at Highwater Farm, but those line the access road to an agricultural unit where vehicle movements would be expected. In comparison, the low-level lighting columns between Highwater Farm and the mikvah fill a gap largely free from potential sources of light during hours of darkness, close to a countryside PROW.
50. I am therefore satisfied that an appropriate landscaping scheme would likely be achievable to mitigate the harm caused by the mikvah, but not that caused by the lighting columns north of the mikvah during hours of darkness.

51. In summary, the garden room, storage shed, path, concrete platform, and lighting columns to the south of the northwestern elevation of the mikvah do not harm the character and appearance of the area individually or cumulatively, whereas the mikvah and the lighting columns north of the mikvah cause modest levels of harm. With regard to the context of the site and its use, the development does not urbanise or erode the overriding rural character of the area, and the cumulative level of harm caused is modest. The harm caused by the mikvah could be addressed by a landscaping scheme.
52. As set out above, notwithstanding the lack of harm caused by most of the development to the character and appearance of the area, none of the development is supported by Policy DM8 of the CLP as it is outside the curtilage of a dwelling and the buildings are not incidental to the enjoyment of a dwelling. The general thrust of the policy is to prevent harm to the intrinsic character and beauty of the countryside and I am satisfied that the storage shed, the garden room, the path, the concrete platform, the mikvah, and the lighting columns south of the mikvah can achieve this, subject to conditions.
53. Paragraph 8.64 of the supporting text to Policy DM8 states it cannot be automatically assumed that a site is suitable for development if it would not harm the intrinsic character and beauty of the countryside. However, considering the use of the site and its context, I do not see any good spatial planning reasons in this instance to refuse planning permission for the development which does not cause such harm. Therefore, although the development is within the Rural Area and is not in accordance with Policy DM8 of the CLP, there is no conflict with the purposes of that policy, other than in respect of the lighting columns north of the mikvah.
54. The garden room, storage shed, path, concrete platform, mikvah, and lighting columns south of the northern end of the mikvah are not in conflict with Policies S1, S11, DM10 and DM23 of the CLP, subject to conditions. These require, amongst other things, development to respect and not adversely affect the identified intrinsic character, appearance and beauty of the Rural Area. The lighting columns north of the mikvah conflict with these policies on account of the harm they cause to the character and appearance of the area.

Personal circumstances

55. Mr Low and his family are part of the strictly orthodox Jewish community and live primarily in London. He has a large family, including 15 children, in excess of 50 grandchildren and great-grandchildren, and his eight siblings have families of similar sizes. His extended family therefore exceeds 100 people, and family members of different ages regularly visit Highfields Farm Barn/Highwater Farm when he is staying there to experience the countryside and farm life, congregate as a family, and to form a quorum for religious purposes.
56. Together, the enclosed boundaries of the site, Highfields Farm Barn and Highwater Farm form an eruv. When staying across these sites over weekends, Mr Low and his family cannot travel more than approximately 960 metres beyond the eruv after dusk on a Friday, until the sabbath has passed. During the sabbath, they will not carry out specific types of work, including cooking and the operation of machinery and electrical appliances, such as driving motor vehicles or using electrical switches. As a large strictly orthodox Jewish family, activities across the site, Highfields Farm Barn and Highwater Farm include breaking into different groups

based on age and gender for prayers, religious studying/teaching, play, and arts and crafts activities from the morning through to the night.

57. The mikvah allows Mr Low and his family to stay at Highfields Farm Barn or Highwater Farm over weekends, as being part of a quorum (established by the presence of at least 10 men) is important to them over the sabbath. The mikvah is used by men and women at different times, including during hours of darkness. The absence of a mikvah within the eruv would prevent them from being able to achieve spiritual purity before engaging in prayers, so Mr Low and his family would have no interest in celebrating the sabbath without being able to access a mikvah and form a quorum. The nearest mikvah outside the eruv is a 20-minute drive away, travel to which would be prohibited by religious law for a member of the strictly orthodox Jewish community staying at Highfields Farm Barn or Highwater Farm.
58. Mr Low has explained how the use of the mikvah dictates that it must be positioned in a location which is not too close to living accommodation or a place of worship, so that men and women can use it at different times, with its use by women needing to be discreet, such that it is not talked about. It relies on collected rainwater which needs to have a direct physical connection with the land. The location of the mikvah is therefore specific to its purpose, and Mr Low explained that the lawned garden area of Highfields Farm Barn, for example, would be inappropriate for a mikvah used by men and women, but a suitable alternative location within Highwater Farm may be possible.
59. Prior to the erection of the mikvah, an ad-hoc alternative was used within the eruv. Mr Low explained that a plastic tank with a hole in it and concreted in place can be sufficient for welcoming the sabbath, and that rivers and lakes have been used when on summer camps in locations which do not have a mikvah, but that such arrangements are not comfortable in cold weather. This explains why he and his family previously visited the properties less during the winter, as the ad-hoc mikvah was not ideal and made it difficult to establish a quorum. Mr Low made it clear that their faith meant that without a suitable mikvah within/around the eruv and enough people to establish a quorum, he and his family would not be able to spend sabbaths at Highfields Farm Barn or Highwater Farm.
60. Ms Weiss, Mr Low's daughter, spoke to the Inquiry about her reliance on a mobility scooter which often leaves her housebound over the sabbath in London. The site and its facilities, including the path and lighting, allow her to socialise with family more freely when staying in East Hanningfield. Prior to the path being installed, she would have been less able to join in family activities. Mr Low explained that the battery for Ms Weiss' scooter can be disconnected before the sabbath, with the path allowing her to join other family members when unable to use the PROW.
61. Race, religion, and disability are protected characteristics under the Equality Act 2010 (EA), and I must have regard to the Public Sector Equality Duty (PSED). This requires me to consider the need to eliminate unlawful discrimination, to advance equality of opportunity and to foster good relations between people who share a protected characteristic and people who do not share it.
62. Article 8 of the Human Rights Act 1998 (HRA) affords the right to respect for private and family life, home and correspondence, and Article 1 of the First Protocol states that every person is entitled to the peaceful enjoyment of their possessions, and no one shall be deprived of their possessions except in the public interest and subject

to the conditions provided for by law and by the general principles of international law. In addition, Article 14 requires the enjoyment of the rights and freedoms to be secured without discrimination on any ground, including race or religion. These are all qualified rights, and interference may be justified where it is in the public interest.

Other matters

63. I have read reports of noise and activities associated with the use of the development by large numbers of people late into the evenings. On the evidence, I am satisfied that the development is primarily used by Mr Low and his extended family, and as set out above, there is very little to suggest its use may be in breach of planning control, although the development makes it easier for large groups to congregate. There is little to substantiate claims of any unauthorised material change in the use of the land or how the development may facilitate unacceptable noise or disturbance.
64. The CCTV camera affixed to the mikvah is visible from the PROW, but it is not intimidating or intrusive on account of its distance from the PROW. I am aware that the distance does not prevent it from recording images of people using that route, but cameras are commonly placed for security purposes on land in settings such as this and it is not an obvious feature of the building. The presence of the CCTV camera and how its images may be stored do not weigh against the development.
65. Allegations of widespread unauthorised development across land owned by Mr Low have not been substantiated. Letters of objection refer to concerns over how the site and adjacent land is used, but it has not been shown how there may have been any breach of planning control in this regard. The garage to Highfields Farm Barn is often used as a synagogue by Mr Low, and he clarified in oral evidence that as a non-designated place of worship it is also occasionally used for other purposes, such as a 'get-together space' by him and his family. On the evidence, I do not see how this or the religious studies and teachings form part of any unauthorised business or school use, but even if they do, this would be a separate matter which the Council may be able to enforce against.
66. I also note undetailed claims that the PROW has been diverted by the laying of the path. The Council has not supported these, and on the available evidence I do not see anything in this regard which would weigh against any of the development.

Whether IUD

67. The Council has referred to planning enforcement investigations, including those on other land owned by Mr Low, but there is no evidence that any of these have resulted in formal enforcement action or confirmed breaches of planning control, other than where planning permission was sought retrospectively for the resurfacing of a farm track and installation of lighting at Highwater Farm. The Council's Statement of Case refers to '*enforcement investigations concerning multiple breaches of planning control*', but there is nothing to show that those investigations relate to anything more than alleged breaches. I do not therefore take these as evidence that Mr Low knowingly carries out unauthorised development as a matter of practice.
68. Mr Low is not a planning expert, although by his own admission he has experience implementing planning permissions granted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

He confirmed in oral evidence that he had relied on his understanding that the site was within the residential curtilage of Highfields Farm Barn when he undertook the development the subject of the notice, and was unaware of condition 6 of planning permission 05/01795/FUL. He did not obtain professional advice in advance of undertaking this development, which is reflected in the initial submissions in respect of an appeal under ground (c), as they did not mention condition 6. Mr Low also clarified that he applied for planning permission for the two-storey side extension to Highfields Farm Barn because he knew such an extension would not benefit from planning permission granted by the GPDO on account of the limitations set out therein, rather than because he knew of condition 3 of planning permission 05/01795/FUL.

69. Identification of the extent of residential curtilage where there are large areas of land attached to a dwelling, such as in this case, is rarely straightforward. This is demonstrated by the extensive case law. Moreover, differentiation between uses which are or are not incidental to the enjoyment of a dwellinghouse is another area frequently misunderstood and disputed.
70. I therefore have little doubt that Mr Low erected the outbuildings and constructed the hard surfaces with the reasonable expectation that express planning permission was not required. He mentioned in his Planning Contravention Notice (PCN) response that he considered the land to be within the curtilage of Highfields Farm Barn. Moreover, there was no mention of the development potentially being in breach of a planning condition in the PCN or the enforcement notice report, which suggests the Council may not have initially been aware of this condition either. It is therefore unsurprising that Mr Low initially pursued an appeal under ground (c), given he was satisfied that the outbuildings and hard surfaces had been constructed to meet the limitations and conditions specified in the GPDO⁸, even though he was wrong. The buildings and hard surfaces are not therefore IUD.
71. No detailed claims were made as part of the initial appeal on ground (c) that the lighting columns are not in breach of planning control. The suggestion that he may have thought they comprised part of the path as permitted development is not realistic. In his PCN response, Mr Low accepted that they were 'an outstanding matter' which he proposed to deal with after the appeal in respect of lighting columns at Highwater Farm had been determined. Considering Mr Low's basic level of expertise in planning matters, I find it likely that he would have been aware the lighting columns probably required planning permission. He was careful to make sure that the other development within the site accorded with the limitations set out in the GPDO, so it would have been odd for him to have not given thought to whether the lighting columns could also be erected without express planning permission. I find his actions in this respect were careless rather than a wilful attempt to 'play the system', but there is little to convince me the lighting columns should not be treated as IUD.
72. With regard to the planning policy statement referred to at footnote 1 of this decision, this weighs against granting planning permission for that development, even though I have found the lighting columns south of the mikvah do not cause any harm. Policy DM8 in a draft revised version of the National Planning Policy Framework (the Framework) sets out the Government's proposal to ensure that substantial weight is assigned to IUD as a consideration in enforcement appeals.

⁸ Classes E and F of Part 1, Schedule 2

The Government is yet to publish a revised version of the Framework, following consultation, and it remains to be seen whether Policy DM8 of the draft will be taken forward. It is entirely possible that the revised version of the Framework may not mention the weight which should be assigned to IUD. I therefore reach the view that only moderate weight should be assigned in this case to the lighting columns being IUD on account of the nature of that development, the level of harm caused, the careless rather than reckless manner in which it was carried out, and the relative ease with which that part of the breach can be remedied.

Planning balance

73. I have found that the mikvah and lighting columns north of the mikvah cause modest levels of harm to the character and appearance of the area individually, contrary to the development plan as a whole. The harm caused by the mikvah can be mitigated by a landscaping scheme, but this might not be necessary if other considerations indicate planning permission should be granted in the absence of a landscaping scheme. I therefore need to consider whether a landscaping scheme is necessary to make that part of the development acceptable.
74. I assign significant weight to the harm caused in each case on account of it being contrary to the development plan, in a location sensitive to development, and it not respecting the intrinsic character and beauty of the countryside.
75. The mikvah and the lighting columns north of the mikvah are not associated with any measurable benefits to the economy, agriculture, or the allotments provided for local use. The employment of local people at Highwater Farm does not rely on these aspects of the development and neither does the goodwill of Mr Low to allow local residents to use the allotments. On account of the people employed at the farm, two of whom live there, there are minimal private benefits associated with Mr Low being able to walk directly between Highfields Farm Barn and Highwater Farm on account of the mikvah and the lighting columns for the purposes of overseeing agricultural activities.
76. I note that the mikvah is particularly important to Mr Low and his family when staying at Highfields Farm Barn and Highwater Farm, and especially over the sabbath. The effect of upholding the notice would significantly restrict their ability to stay at Highfields Farm Barn and Highwater Farm at any times, but particularly over the sabbath in the absence of another mikvah within/around the eruv. I am aware of how important this is to him and his extended family who primarily live in London, without access to such open space and the recreational and learning experiences stays in East Hanningfield provide.
77. The lighting columns north of the mikvah ensure people with protected characteristics can move safely between Highwater Farm and the mikvah and Highfields Farm Barn during hours of darkness. Their use of the garden room and the mikvah in particular are important to their faith and facilitate their stays, and the lights enable them to move easily between these buildings and Highwater Farm and Highfields Farm Barn, including Ms Weiss who relies on a mobility scooter. Furthermore, during the sabbath, they will be unable to operate electrical switches to turn lighting on or off or carry items outside the house.
78. The harm caused by the mikvah (in the absence of a landscaping scheme) and the lighting columns north of the mikvah is contrary to the development plan and even though the level of that harm is modest, protecting the intrinsic character and

beauty of the countryside is a fundamental aim of the development plan and the Framework. There is a well-established and legitimate public interest in meeting this policy aim and I have assigned significant weight to that harm individually.

79. There is little to convince me that moving between Highwater Farm and the mikvah would be difficult or dangerous in the absence of the lighting columns along that section of the path. Even if the absence of lighting along that section of the path would prevent such movements, it is likely there would be more appropriate alternative solutions, such as lower-level light fittings.
80. There are possible alternative and more appropriate locations for a mikvah within the eruv and the harm caused can be mitigated by a landscaping scheme. Moreover, spending time at Highfields Farm Barn and Highwater Farm is a personal choice of Mr Low and his family, understandably, to spend time outside of London and to benefit from the opportunities provided by this countryside location. Stays were previously made before the mikvah building was constructed, although the previous ad-hoc mikvah was less comfortable during cold weather. The personal circumstances of Mr Low and his family, including Ms Weiss are therefore compelling, but they are not unique or so exceptional as to justify the harm caused by the mikvah in the absence of a landscaping scheme.
81. For the above reasons I assign significant weight to the importance of the mikvah and the lighting columns to the religious practices and family life of Mr Low and his family, but alongside any other benefits of that development, this does not outweigh the harm identified. Refusing planning permission for the mikvah (as an alternative to granting planning permission subject to a landscaping condition) and the lighting columns north of the mikvah would not prevent Mr Low and his family from practising their religion, nor from staying at Highfields Farm Barn or Highwater Farm or using the site for other purposes, but it would limit the manner in which they are able to do so.
82. I therefore find that refusing planning permission for the mikvah and the lighting columns north of the mikvah would be proportionate and would not unacceptably violate the rights of Mr Low and his family under Articles 8, 14 or Article 1 of the First Protocol. The protection of the public interest in the case of the mikvah or the lighting columns north of the mikvah, individually, cannot be achieved by means that are less interfering with their rights, other than by insisting that an appropriate landscaping scheme is implemented in respect of the mikvah.
83. I have had due regard to the PSED, but the harm caused by the mikvah in the absence of an appropriate landscaping scheme and the lighting columns north of the mikvah individually outweigh their benefits in terms of eliminating discrimination against persons with the protected characteristics mentioned, advancing equality of opportunity for those persons and fostering good relations between them and others. The benefits of the lighting columns north of the mikvah do not therefore outweigh the harm they cause. This part of the development is in conflict with the development plan taken as a whole and no other considerations indicate planning permission should be granted for them.
84. I have found that the storage shed, the garden room, the path, the concrete platform, and the lighting columns south of the northern extent of the mikvah do not harm the character and appearance of the area, and that while they do not accord with Policy DM8 of the CLP, they do not conflict with the development plan as a

whole. The same can be said for the mikvah, subject to an appropriate landscaping scheme which can be required by a planning condition.

85. The moderate weight I assign against the lighting columns on account of them being IUD does not indicate to me that planning permission should not be granted for those located south of the northern extent of the mikvah due to their broad accordance with the development plan and the other matters weighing in favour of that part of the development.

Conditions

86. I have already explained why a condition requiring the submission of a landscaping scheme is necessary to make the mikvah acceptable. As that development has already been carried out, the condition needs to require the submission and approval of such details, any approved scheme to be undertaken, and any scheme which is not approved to be appealed. To be enforceable, timescales need to be specified and the condition needs to require the demolition of the mikvah if any of those parts of the condition are not complied with. As discussed at the Inquiry, a period of 3 months is reasonable for the submission of the necessary details, as is a period of 11 months for them to be assessed and any appeal to be lodged. Considering the extent of works required to demolish the mikvah, which has a substantial concrete pool below ground level, and its importance to Mr Low and his family, a period of 6 months would be reasonable for its demolition if the condition is not complied with.
87. As the mikvah is only acceptable subject to an approved landscaping scheme, it is reasonable to require the planting to be maintained and retained for the lifetime of that building. This would not be unreasonably onerous on the appellant or any future owner on account of the amount of planting needed and the harm otherwise caused. This is necessary to make the mikvah acceptable in planning terms.
88. It is necessary and reasonable to control the use of the buildings in the interests of the character and appearance of the area and the living conditions of nearby residents. Conditions 1 to 3 therefore restrict their uses to how they are currently being used, ancillary to the use of Highfields Farm Barn as a dwelling, and expressly state they should not be used for overnight sleeping. This is reasonable on account of the large numbers of people staying at Highfields Farm Barn and Highwater Farm who use the buildings, and the potential harm that such use of the buildings could cause to the character and appearance of the area and living conditions of nearby residents.
89. The lighting columns are needed during the sabbath when Mr Low and his family will be unable to operate switches. It would therefore be reasonable to require the approval of details of their luminance and a timer switch to be implemented to control the hours during which those lights are on. Mr Low explained that they are often needed up until 0100 and that although they have sensors and timers fitted, he intends to fit a more sophisticated timer.
90. The lighting condition formally requires an appropriate mechanism to be fitted to prevent the lights being left on throughout the night, and their luminance to be specified, in the interests of the character and appearance of the area. I see no issues with the lights being switched on before sunrise and being left on until 0100 each night without motion sensors, but the times they should be switched off and whether any motion sensors are necessary are matters which should be agreed

between the parties. To be enforceable, for the same reasons set out above, this condition also needs to follow the wording used for the landscaping scheme condition.

91. The buildings are acceptable in their current finishes, but alternative finishes may increase their visibility and have a harmful effect on the character and appearance of the area. It is therefore necessary and reasonable to attach a condition preventing changes to the external appearances of the buildings without approval.
92. It is not necessary to require the demolition and removal of the development in the event that ownership of the site changes as I have not found the personal circumstances of Mr Low and his family to be determinative in this appeal. The development which I have found to be acceptable would remain acceptable if there is any change in ownership, subject to the conditions outlined above.

Conclusion on ground (a) and the deemed application for planning permission

93. For the reasons outlined above planning permission should be granted for the storage shed, the garden room, the mikvah, the path, the concrete platform and the lighting columns located to the south of the northwest elevation of the mikvah. The appeal on ground (a) therefore succeeds in part and the deemed application for planning permission is allowed in respect of that development, subject to conditions.
94. Planning permission should be refused for the lighting columns located to the north of the northwest elevation of the mikvah. The appeal on ground (a) fails and the deemed application for planning permission is refused in respect of that part of the development.

Ground (g)

95. To succeed under this ground of appeal the appellant needs to show that 3 months falls short of what should reasonably be allowed for the notice to be complied with.
96. The appellant's case in respect of this ground of appeal was based on the removal of all development specified in the notice. As planning permission is being granted for most of the development, the notice will only require the removal of the lighting columns north of the mikvah within 3 months on account of section 180 of the Act. This would be a reasonable period to arrange what would be straightforward works, even if the appellant wants to seek planning permission for their replacement with lights of an alternative design. The benefits of these lights and the personal circumstances of Mr Low and his family, as addressed above, do not indicate to me that 3 months falls short of what should reasonably be allowed for the notice to be complied with.
97. The appeal on ground (g) therefore fails.

Overall conclusion

98. For the reasons given above, I conclude that the appeal should succeed in part only. I will grant planning permission for the storage shed, the garden room, the mikvah, the path, the concrete platform, and the lighting columns south of the northwestern elevation of the mikvah, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the lighting columns north of the northwestern elevation of the mikvah. By virtue of section 180(1) of the Act, the

requirements of the notice will cease to have effect so far as they are inconsistent with the planning permission hereby granted.

Formal decision

99. The appeal is allowed insofar as it relates to the storage shed, the garden room, the mikvah, the path, the concrete platform, and the lighting columns south of the northwest elevation of the mikvah and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the storage shed, the garden room, the mikvah, the path, the concrete platform, and the lighting columns south of the northwest elevation of the mikvah at Land north of Highfields Farm Barn, Highfields Mead, East Hanningfield, Chelmsford CM3 8AW subject to the attached Schedule of Conditions. The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the lighting columns north of the northwestern elevation of the mikvah and planning permission is refused in respect of the lighting columns north of the northwest elevation of the mikvah at Land north of Highfields Farm Barn, Highfields Mead, East Hanningfield, Chelmsford CM3 8AW on the application deemed to have been made under section 177(5) of the Act.

L Douglas

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The storage shed hereby permitted (shown edged in green on the plan attached to the enforcement notice) shall not be used other than as a storage shed for the storage of items ancillary to the residential use of the dwelling known as Highfields Farm Barn and shall not be used for overnight sleeping accommodation.
- 2) The garden room hereby permitted (shown edged in blue on the plan attached to the enforcement notice) shall not be used other than as a garden room for activities ancillary to the residential use of the dwelling known as Highfields Farm Barn and shall not be used for overnight sleeping accommodation.
- 3) The mikvah hereby permitted (shown edged in orange on the plan attached to the enforcement notice) shall not be used other than as a mikvah ancillary to the residential use of the dwelling known as Highfields Farm Barn and shall not be used for overnight sleeping accommodation.
- 4) The external materials and finishes of the buildings hereby permitted shall be retained as existing unless otherwise approved in writing by the local planning authority.
- 5) The mikvah hereby permitted (shown edged in orange on the plan attached to the enforcement notice) shall be demolished, all materials resulting from the demolition shall be removed from the land, and that part of the land affected shall be restored to its condition before the mikvah was constructed within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 3 months of the date of this decision a landscaping scheme shall have been submitted for the written approval of the local planning authority. The landscaping scheme shall include: a) planting to the east and the north of the mikvah; b) details of how the planting will be maintained for the lifetime of the mikvah; and c) a timetable for the implementation and completion of the approved scheme.
- ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained unless and until the mikvah is demolished.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 6) The lighting columns hereby permitted (south of the northwestern elevation of the mikvah) shall be removed and all equipment and materials associated with them shall be removed from the land within 3 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision, details of the lighting columns and a scheme for the control of the hours of operation of the lighting columns shall have been submitted to the local planning authority for its written approval. The details and scheme shall include: a) details of the luminance of the lighting columns and the means by which the hours of operation of the lighting columns shall be controlled, which may include timer controls and/or motion sensors; b) details of the hours between which the lighting columns shall be switched off and not emit any light; and c) a timetable for the implementation and completion of the approved scheme.
 - ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved scheme, the lighting columns shall not be switched on or illuminated outside the approved hours, the luminance of the lighting columns shall not exceed that approved, and the approved control mechanism(s) shall thereafter be retained and maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

APPEARANCES

FOR THE APPELLANT:

Scott Stemp	Counsel, instructed by Roger Hepher, HGH Consulting
He called	
Eli Low	The appellant
Roger Hepher	Planning Consultant, HGH Consulting

FOR THE LOCAL PLANNING AUTHORITY:

Lois Lane	Counsel, instructed by Chelmsford City Council
She called	
Matthew Leigh	Planning Consultant, Essex Planning Services

INTERESTED PARTIES:

Chayarivka Weiss	The appellant's daughter
Malcolm Thomas	Chairman, East Hanningfield Parish Council