



Appeal Decisions

Hearing held and site visit made on 2 September 2026

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 October 2026

Appeal A Ref: APP/L1765/C/26/3378042

Cupressus, Durley Brook Road, Durley, Hampshire, SO32 2AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Mark Hepburn against an enforcement notice issued by Winchester City Council.
- The notice was issued on 22 January 2026.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land to a mixed use of residential and agricultural; together with any operational development associated with the material change of use of the Land.
- The requirements of the notice are to:
 - 1) Cease the use of the Land for residential purposes.
 - 2) Break up and remove the tennis court as shown in the approximate position hatched in blue on the attached plan (including any fencing, hardstanding, steps, retaining walls, tennis nets, netball hoops, lighting) from the Land.
 - 3) Demolish and remove buildings as shown in the approximate positions hatched purple on the attached plan (including any decking) from the Land.
 - 4) Remove the railway carriage in the approximate position hatched green on the attached plan from the Land.
 - 5) Remove children's play equipment from the Land.
 - 6) Break up and remove any hardstanding shown in the approximate positions hatched orange on the attached plan from the Land.
 - 7) Break up and remove low level walls/edging (wooden sleeper style) from the Land.
 - 8) Remove any artificial turf from the Land.
 - 9) Disconnect and remove any services (water, gas, electric, drainage etc.) used in connection with the residential use of the land from the Land.
 - 10) Remove any resultant waste from the Land.
 - 11) Restore the Land to its condition before the breach of planning control took place (grassed field).
- The period for compliance with the requirements is: 6 months after this Notice takes effect.
- The appeal was made 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 Decision: Appeal A is dismissed and the enforcement notice is upheld with a correction and variations as set out below in the Formal Decision.

Appeal B Ref: 6012051

Cupressus, Durley Brook Road, Durley, Hampshire, SO32 2AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Hepburn Homes Ltd against the decision of Winchester City Council.
- The application Ref 25/02357/FUL.
- The development proposed is a change of use from agriculture to mixed use for agricultural and residential use at Cupressus, Durley Brook Road, Durley, SO32 2AR.

Summary Decision: Appeal B is dismissed.

Matters Concerning the Enforcement Notice

1. Before considering the grounds of appeal, I have a duty to put the Enforcement Notice (Notice) in order, if necessary. The powers transferred to Inspectors under section 176(1)(a) of the Town and Country Planning Act 1990, as amended (the 1990 Act), include correcting any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would cause any injustice to the appellant or the local planning authority.
2. The allegation refers to a “material change of use of the Land to a mixed use of residential and agricultural; together with any operational development associated with the material change of use of the land.” The Council confirmed in its statement that the allegation was intended to encompass the material change of use and any works facilitating it. However, the references to “together with” and “operational development” created uncertainty. They suggested that operational development was being alleged in addition to, rather than as part of, the material change of use. As drafted, the allegation therefore read as a dual allegation of a material change of use and operational development.
3. Before the Hearing, I considered whether the allegation could be corrected by listing the operational development considered to be part of the material change of use allegation. This would identify the relevant operational development as works forming part of the alleged material change of use and identify what matters would be considered as part of the ground (a). I invited the parties’ written views on that approach. The Council responded and did not object, identifying the relevant operational development by reference to those set out in the requirements of the Notice. The appellant did not respond in writing before the Hearing. However, my approach changed when considering the consequences of Appeal B, which was linked to the enforcement appeal part-way through the proceedings.
4. Appeal B seeks permission solely for the change of use of the land from agriculture to a mixed agricultural and residential use; it does not seek permission for the retention of any operational development. This raised uncertainty as to the effect of allowing Appeal B where the operational development was identified in the Notice only as works associated with the material change of use. In particular, allowing Appeal B would, by virtue of section 180 of the 1990 Act, affect the continuing operation of the Notice insofar as it related to that use. However, it was uncertain whether, and to what extent, the Notice would continue to have effect in relation to the operational development if that development had not been separately alleged.
5. To avoid the uncertainty identified I considered that the allegation should identify the operational development as a separate component of the breach, rather than merely as works facilitating the material change of use. I invited the parties’ observations on this approach at the Hearing. Neither party objected to the proposed correction, and both confirmed that it would not cause injustice to their respective cases.
6. Although I had reservations about expanding the allegation in this manner, in this instance, I consider that correcting the allegation in this way would not cause injustice. The operational development to be specified in the corrected allegation is already identified within the Notice requirements and has formed part of the appeal proceedings throughout the process. The appellant also advanced substantive cases in relation to those matters, including a ground (d) case concerning the railway

carriage and a ground (a) case seeking planning permission for the mixed use and operational development. Likewise, the Council's evidence addressed the appellant's claims on the railway carriage and the planning merits of both the use and the operational development.

7. As such, the parties have had the opportunity to address the matters that would be expressly identified by the correction to the allegation, and neither would be prejudiced by it. Furthermore, third parties have also made specific representations regarding the use and operational development in their appeal submissions. As such, I do not consider that there would be any procedural injustice to any third party who has made representations on the appellant's grounds of appeal. Accordingly, I am satisfied that correcting the allegation would not cause injustice. It would provide clarity as to the matters alleged in the Notice and avoid uncertainty arising from the interaction between the linked appeals.
8. At the Hearing, the parties agreed that the allegation could be corrected expressly to identify the material change of use and operational development listed in the current requirements. However, as the appeal on ground (d) may affect the revised wording of the allegation and whether the railway carriage is included in the allegation. The precise wording of any correction will depend on my findings on that ground in respect of the railway carriage. I therefore set out the final correction to the allegation in the Formal Decision.
9. Prior to the Hearing, I also asked the parties to consider varying step (1) of the requirements. It was proposed to vary the wording to the following: '(1) Cease the mixed use of the Land, by discontinuing the residential activities.'
10. This variation aims to ensure that the requirement accurately reflects the breach alleged in the Notice, which is one of a mixed use rather than a residential use. Although it is appreciated that the residential element is the aspect the Council is targeting, as a mixed use has been alleged, it is appropriate to require it to cease.
11. Neither party objected to this variation nor considered it to cause injustice to their case. I am satisfied that this is a variation that can be carried out without causing injustice to either party. It is no more of an onerous requirement on the appellant and ensures that the mixed use is required to cease, remedying the breach of planning control.

Preliminary Matters

12. At the Hearing, the appellant confirmed that the grounds (f) and (g) made on Appeal A were withdrawn. The appellant's agent confirmed this in writing on 7 September 2026. Appeal A has therefore been determined on grounds (a) and (d) only.
13. At the Hearing, it was agreed that Appeal B concerns only the mixed use of the land, with no operational development. No definitive landscaping scheme or detailed layout has been provided with the application or appeal. The key distinction from the deemed planning application is that it does not include the operational development and structures identified in the corrected allegation and Notice requirements.
14. There are two Landscape and Visual Impact Statements (LVIS) before me. A November 2025 assessment was submitted in support of Appeal B (LVIS 2025), and a revised assessment dated 3 June 2026 was submitted in support of Appeal A (LVIS 2026). Unlike LVIS 2025, LVIS 2026 has regard to the operational

development and other structures on the site. However, no further site visit was undertaken and both LVIS documents rely on the site visits carried out for LVIS 2025.

15. It is also worth noting that the site has a recent planning history of relevance, which has been highlighted by both parties in their submissions. This includes Council reference 23/01081/LDC for use of land as residential curtilage, which was dismissed at appeal on 21 February 2025¹(2023 LDC Refusal). Council reference 25/00876/LDC was approved on 7 July 2025, confirming lawful garden use for part of the land associated with Cupressus (2025 LDC Approval). It is understood that the Notice, which is the subject of this appeal, has excluded the area approved as lawful in the 2025 LDC Approval. As Appeal B was submitted before the determination of the 2025 LDC Approval, it includes this land as part of the proposed mixed use scheme.
16. Since the decision to serve the Notice, Winchester District Local Plan 2026-2040 was adopted by the Council in March 2026 (Local Plan). This replaces the Winchester District Local Plan Part 1 and Part 2, such that the policies cited on the Notice in respect of the old plan are no longer part of the development plan and have no weight. From the Statements of Case, both parties were aware of this change and have set out cases in respect of the new Local Plan and policies. As such, I can have regard to the new policies without any prejudice to either party.
17. The National Planning Policy Framework 2026 (the Framework) has also been published during the appeal. I invited the parties to comment on the changes and any policies relevant to the determination of the appeals. The Council provided a written response setting out the policies it considered relevant to the appeals. Although the appellant did not respond, at the event it was agreed that those policies listed by the Council were relevant. He also made detailed submissions regarding Policy DM8 of the Framework and the issue raised regarding intentional unauthorised development. I have considered the submissions made on this and the changes to the Framework when making my decision.

Appeal A on Ground (d)

18. An appeal on this ground is that, at the date on which the Notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters alleged in the Notice.
19. The ground (d) appeal concerns the operational development comprising the railway carriage. The appellant considers the railway carriage to be a building as defined in the 1990 Act², and it has been in situ since at least 2017, when he purchased the land. However, it is also said that the evidence demonstrates that it had been on the land for some time during the previous owner's occupation. At the Hearing, it was confirmed that the appellant's case is that the railway carriage is lawful as a building and not the alleged mixed use of the land.
20. If successful on ground (d), it was the appellant's case that the requirements should be varied to require the residential activities in the railway carriage to cease but delete the requirement for its removal from the land. Although no ground (d) case is

¹ Appeal Reference: APP/L1765/X/24/3336411- Cupressus, Durley Brook Road, Durley, SO32 2AR- As 'curtilage' is not a use of land, the appeal was determined on the basis of the use being described as residential garden to the dwellinghouse known as Cupressus.

² Section 336 of 1990 Act- Building- any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building.

advanced in respect of the mixed use, it is also necessary to consider whether removal of the railway carriage may be required as a means of remedying the breach of planning control concerning the mixed use of the land.

21. To support his case, the appellant has submitted an image said to be of the railway carriage and two statutory declarations. Both statutory declarations have been signed by the author and co-signed by a Commissioner for Oaths or a solicitor in accordance with the Statutory Declarations Act 1835.
 - Statutory Declaration 1 (SD1): By the appellant, dated 24 April 2023.
 - Statutory Declaration 2 (SD2): By the previous owner, dated 21 November 2017.
 - Photograph: An image said to be of the railway carriage in 2017 submitted with Final Comments.
22. According to SD1, the appellant purchased the land (shown on the attached plan to SD1) in December 2017, which largely correlates with that land being targeted by the Notice. It states that the railway carriage has been on the land since that time and was placed there by the previous owners. In SD2, the previous owner refers to the same land as a 'paddock'. The previous owner indicates that she owned the land from 1988. It indicates that the land 'at times, had a static caravan parked on the land and also a railway carriage, both of which have contained garden implements and leisure sundries.'
23. The photograph provided with the appellant's Final Comments is said to have been taken by the appellant when he viewed the property in 2017, before its purchase. The photograph is not dated electronically or otherwise, and it is not confirmed as being taken on that date in SD1.

Is it a building

24. The Council contends that the evidence does not establish that the railway carriage is in fact a building, and therefore, the 10 year rule is the relevant timeframe for immunity. It is also indicated by the Council that the image of the railway carriage produced with the Final Comments is undated and does not provide sufficient context to establish that it depicts the same railway carriage currently on the site. In any event, the Council contends that the condition of the railway carriage has changed to such an extent that there is insufficient evidence to demonstrate that the structure shown in the 2017 photograph is the same structure that now exists on the land.
25. Whilst the Council disputes that the railway carriage is a building, it has not identified any alternative characterisation. Having regard to the evidence before me, I am satisfied that the railway carriage is a structure or erection falling within the definition of a building³. The submitted plans and my visit indicate that the railway carriage is of an appreciable scale, height and size comparable to a modest garden shed. Although it has no foundations and I have no evidence it was constructed on site, it rests on the land by virtue of its own substantial weight and is not readily movable. Whilst railway carriages are designed to be moved, this carriage has been stationed on the land for a prolonged period and would require specialist lifting equipment to relocate.
26. Having regard to its size, permanence, weight and degree of physical attachment, I am satisfied, as a matter of fact and degree, that the railway carriage is a building. Furthermore, my site inspection indicated a structure displaying characteristics

³ As defined in section 336 of the 1990 Act.

consistent with a long-standing presence on the land and with the poorly maintained carriage present in the appellant's photograph said to be dated from 2017. Although alterations and maintenance works have occurred, they did not appear so significant to indicate that the carriage has been removed and replaced by a new structure, or that a materially different structure exists through significant alterations.

Substantial Completion

27. Section 171B of the 1990 Act provides a 10-year time limit for enforcement action in respect of operational development, but transitional arrangements preserve the former four-year period where the operations were substantially completed before 25 April 2024. The appellant's case is that the railway carriage had been erected and present on the land by at least 2017. Therefore, I have considered whether the evidence demonstrates, on the balance of probabilities, that the railway carriage was substantially completed more than four years before the Notice was issued. The relevant date in this regard would be 22 January 2022.
28. Although I accept that the appellant's photograph is undated and provides little context, the SDs alone are sufficiently precise and unambiguous to demonstrate, on a balance of probabilities, that the railway carriage has been on the land and substantially completed for a period in excess of 4 years before the Notice was issued. I attach significant weight to the SDs of the appellant and the previous owner, which are broadly consistent regarding the railway carriage being on the land for a period for more than 4 years before the Notice was issued.
29. The Council has produced aerial images available to them, which they indicate shows the railway carriage has not been present on the land for over 10 years. It is indicated that a white, movable structure—likely a static caravan—appears in the aerial images, but the railway carriage currently on site has a dark roof and does not match the visible structure on the land. Therefore, the Council concludes there is insufficient evidence to support the railway carriage's claimed immunity.
30. I accept that the aerial photographs do not clearly identify the railway carriage. However, neither do they positively demonstrate its absence. Given the railway carriage's position close to the tree cover along the boundary and the limitations of the aerial images to determine matters on site, I attach greater weight to the sworn evidence concerning its presence on the land for more than four years. I therefore conclude that the operations comprising the siting of the railway carriage were substantially completed more than four years before the Notice was issued.

Is Removal of the Railway Carriage Required

31. Although I have determined that the railway carriage is immune from enforcement as operational development, the appellant does not argue that the mixed use mentioned in the Notice is lawful. It is therefore necessary to assess whether the removal of the carriage may still be required, using the principles outlined in the cases of *Murfitt*, *Somak Travel*, *Kestrel Hydro*⁴ and *Caldwell*⁵, as a measure to address the material change of use.
32. This caselaw establishes that, in certain circumstances, an enforcement notice addressing an unauthorised material change of use may require the removal of

⁴ *Murfitt v SSE* [1980] JPL 598, *Somak Travel v SSE* [1987] JPL 630, *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784

⁵ *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

development that is otherwise immune. Often referred to as the *Murfitt principle*. However, the *Murfitt principle* is narrow and does not override the statutory distinction between operational development and a material change of use. It may apply to works that are subordinate or secondary to the change of use and are ancillary, associated with or merely facilitative of it. It does not apply to operational development that constitutes separate development in its own right or was fundamental to, or causative of, the material change of use.

33. The evidence satisfies me that the railway carriage was already present on the land before the mixed use alleged in the Notice arose. Although its precise use before that time is unclear, the evidence suggests that it had been on the land for a considerable period, including during the previous owner's occupation. Importantly, there is no evidence that it was brought onto the land or erected in order to facilitate the mixed use. Rather, it was an existing feature of the land that subsequently became subsumed within the mixed use. Its later use in connection with the residential activities does not alter the fact that it was a separate piece of operational development already present before the breach occurred.
34. Based on the evidence before me, the railway carriage was not introduced onto the land to support or facilitate the material change of use. Rather, it formed part of the physical condition of the land before that breach occurred. Ceasing the mixed use, including the residential use of the carriage, and removing the other development introduced in connection with that use would remedy the breach. Removal of the carriage itself would not restore the land to its condition before the breach occurred.
35. I therefore conclude that the appellant has demonstrated that the railway carriage is immune from enforcement action as operational development and that its removal cannot be required under the *Murfitt principle* as a means of remedying the material change of use alleged and restoring the land to its previous condition.
36. Consequently, the ground (d) appeal succeeds to that extent, and I will vary the Notice accordingly. Whilst the railway carriage is immune from enforcement action as operational development, this does not render the residential activities taking place within the carriage itself lawful. Those activities form part of the unauthorised mixed use of the land which the Notice requires to cease. Accordingly, whilst I shall vary the Notice to delete the requirement for removal of the railway carriage, compliance with the Notice will nevertheless require the cessation of any residential use of the railway carriage insofar as that use forms part of the alleged mixed use of the land.
37. I will also vary requirement step (11) to delete the words "(grassed field)". The requirement to restore the land to its condition before the breach of planning control took place is sufficiently clear without those words. Retaining them may create uncertainty, particularly in light of my findings regarding the retention of the railway carriage. This variation would not cause injustice to either party. These variations will be detailed formally in the Formal Decision section below.

Appeal A: the Ground (a) Appeal, the Deemed Planning Application, and Appeal B

38. The **main issues** in these appeals are
 - Whether the appeal site is a suitable location for the development, having regard to the local development strategy; and
 - The effect of the development on the character and appearance of the area.

Reasons

Suitable Location

39. Policies SP1 and SP2 of the Local Plan are strategic policies setting out the Council's support of the delivery of housing, economic growth and diversification for three spatial areas of Winchester Town, South Hampshire Urban Areas, Market Towns as well as larger and intermediate rural settlements. Cupressus and the appeal site are within the village of Durley. However, Durley is not among any of the settlement areas identified in Policy SP2 of the Local Plan.
40. Policy SP3 of the Local Plan is therefore relevant, which refers to development in the countryside. It states that development in the countryside will only be permitted in specified circumstances, which include allocated sites, development with an operational need for a countryside location, the reuse of rural buildings, business expansion, small-scale tourism, residential development where an exceptional need is demonstrated, and infilling in accordance with Policy H3 of the Local Plan. It is also indicated that as well as being compliant with one of the listed criteria, the development should also not increase flood risk, cause unacceptable harm to biodiversity and the water environment, the character of the area or neighbouring uses, or create unacceptable noise, light and traffic generation.
41. At the Hearing, the appellant accepted that the developments did not align with the criteria set out in Policy SP3 and H3 of the Local Plan. However, he maintained that it was not harmful to flood risk, it did not cause unacceptable harm to biodiversity and water environment, the character of the area or neighbouring uses as well as noise, light and traffic. As such, the developments were not contrary to the aims and objectives of the strategic development policies.
42. However, Policy SP3 of the Local Plan is not only concerned with avoiding the harms associated with development. It clearly identifies the forms of development that would be appropriate in these locations and separately requires such justified development to not cause unacceptable effects. Consequently, the absence of harm does not mean that development would accord with the policy where none of the specified circumstances apply. In this circumstance, I find that the developments are not infill development as defined in Policy H3 of the Local Plan nor do they fall within any of the categories of development supported by Policy SP3 of the Local Plan.
43. Furthermore, I have had regard to the appellant's position that despite the developments being contrary to the criteria, they are not at odds with the aims and objectives of the spatial strategy. However, in my judgement, collectively, Policies SP1, SP2, SP3 and H3 of the Local Plan seek to direct development towards the district's most sustainable settlements, whilst limiting countryside development to circumstances in which there is a recognised justification, such as an operational or local need, support for the rural economy, tourism, employment, infrastructure or identified housing needs. I have identified no comparable justification for the developments subject of both appeals. Therefore, they conflict with the wording of Policies SP3 and H3 as well as the wider aims and objectives of the spatial strategy.
44. Policy S5 of the Framework is also relevant to the principle of development outside settlements. It identifies certain forms of development that may be appropriate outside settlements, including development on previously developed land, development meeting an unmet need, and development justified by exceptional circumstances where the benefits would substantially outweigh any adverse effects.

However, I have not been provided with evidence to demonstrate that the appeal site comprises previously developed land, that the developments would meet an identified unmet need, or that any exceptional circumstances exist. Nor have I identified any other basis on which the developments would gain support from Policy S5 of the Framework.

45. Accordingly, on this basis, the appeal site would not be a suitable location for the development subject of the appeals, having regard to the local development strategy. The developments subject to the appeals would, therefore, be contrary to Policies SP1, SP2, SP3 and H3 of the Winchester Local Plan as well as Policy S5 of the Framework, which is broadly consistent with the Local Plan.

Character and Appearance

46. The appeal site lies to the rear of Cupressus on Durley Brook Road, within Durley. They lie within Landscape Character Area 23, Durley Claylands, as identified in Winchester City Council's Landscape Character Assessment Supplementary Planning Document 2022 (LCA SPD). The LCA SPD sets out the key characteristics of the Durley Claylands as including small irregular fields, strong hedgerow/woodland networks, winding lanes, scattered settlement and tranquillity⁶ away from urban influences.
47. The LCA SPD places Durley within the Scattered Clay Lowland settlement type. This settlement type is characterised by a dispersed pattern of loosely connected dwellings and farms across a relatively wide area. The settlements are closely integrated with the surrounding countryside where woodland, hedgerows and patterns of small to medium sized enclosed fields form an important part of their setting and contribute to their rural character.
48. I recognise that the landscape is not located within a nationally designated landscape, nor does the evidence indicate that the Durley Claylands is a separate local non statutory landscape designation. However, Policy NE9 of the Local Plan does not restrict landscape protection to designated areas but seeks to protect and enhance the district's distinctive landscape character as defined in the LCA SPD. Amongst other matters, development should also respond positively to its landscape type and local distinctiveness, including landscape features, tranquillity, sense of place and setting. It should not undermine the established settlement pattern, settlement identity or the integrity of predominantly open and undeveloped land.
49. Policy NE14 of the Local Plan requires development outside settlement boundaries not to have an unacceptable effect on the rural character through, amongst other things, visual intrusion, incongruous features, the loss of locally characteristic rural assets or effects on tranquillity. The LCA SPD seeks to conserve the scattered pattern of rural settlements and retain existing landscape patterns. It identifies suburbanisation and urban-fringe encroachment, intrusive buildings and structures, the erosion of tranquillity and the loss of hedgerows and woodland as pressures on the Durley Claylands.
50. Along this part of Durley Brook Road, detached dwellings generally front the road behind large setbacks with generous rear gardens. Although they form an established row of dwellings within the area, they sit in a broader rural landscape of

⁶ 'tranquillity' is defined in the Glossary of the Guidelines for Landscape and Visual Impact Assessment, third Edition (GLVIA3) as 'A state of clam and quietude associated with peace, considered to be a significant asset of landscape'

fields, hedgerows and woodland rather than a continuous suburban environment. The character of the area is therefore derived from the relationship between the dwellings and the surrounding landscape. Whilst Durley Brook Road introduces activity and movement into the area, the rear parts of the residential plots and adjoining countryside contribute to a relatively tranquil rural setting. This sense of tranquillity arises from the enclosed pattern of fields, hedgerows and woodland and the site's relationship with the wider countryside.

51. In both appeals, the LVIS 2025 and 2026 conclude that the development would have negligible effects on the wider Durley Claylands landscape and the character of the site itself, as well as negligible visual effects on public and private receptors. The appellant's contention, supported by the LVIS, written submissions and evidence at the Hearing, is also that several neighbouring properties have substantial rear gardens extending towards the same field boundary. It is contended that the mixed use affects only a limited part of the land and follows the varied pattern of residential garden development to the rear of Durley Brook Road.
52. I accept that the appeal development is relatively well contained; it is not visible from public vantage points, and the development is not highly prominent from neighbouring private viewpoints, limiting its visual effect on the wider landscape. Nevertheless, the effect of the development is not solely visual. Before the development occurred, the appeal site would have formed a medium sized field parcel that contributed to the rural setting and landscape pattern identified above. Whilst part of the land remains in agricultural use, a substantial proportion now functions as an extended residential garden containing a tennis court, outbuildings, play equipment, hard standing, artificial grass, domesticated landscaping, lighting and the activities ordinarily associated with a residential use.
53. The character of the land has therefore changed from that of a largely undeveloped medium sized field parcel to one where a residential use forms a significant component. In my judgement, that change erodes the rural character of the predominantly undeveloped field and diminishes the relationship between the surrounding countryside and the established residential development. It also introduces a greater degree of domestic activity, lighting and residential paraphernalia into an area which presently contributes to the relatively tranquil rural setting identified within the LCA SPD. This change to the character and appearance of the site gives rise to an unacceptable effect on the rural character of the area, conflicting with the prevailing landscape character and causing the identified harm.
54. It is recognised that garden depths vary along Durley Brook Road, and that some neighbouring properties have generous rear gardens that adjoin the appeal site. However, none appear to extend as far into the countryside as the area subject to the mixed use. Nor did I observe or receive evidence of associated residential operational development and paraphernalia occupying the rearmost parts of the neighbouring garden plots to a comparable degree. Whilst the difference in the garden sizes is not determinative on their own, they indicate that the mixed use extends further into the landscape than is evident elsewhere in the immediate area. As such, the existence of other large garden plots does not overcome the identified concern. Rather, the scale of the mixed use results in a greater encroachment into the field parcel, thereby exacerbating the extent of the harm identified above.
55. Accordingly, the development neither protects nor enhances the district's distinctive landscape character as identified in the LCA SPD. Instead, it changes a substantial

proportion of the undeveloped field parcel that contributes to the rural setting and landscape pattern in the area into land that is at odds with those characteristics. This in turn erodes the distinction between the established residential gardens and the surrounding countryside, amounting to the type of suburbanisation and urban fringe encroachment identified as a pressure in the LCA SPD.

56. Appeal B is concerned with the same mixed use but excludes the operational development included in Appeal A. The absence of the operational development would reduce the physical effects of the residential component. However, the identified concern is not limited solely to the operational development in the form of buildings and structures but also extends to the mixed use and to the expansion of the associated residential activities and paraphernalia beyond the established gardens.
57. I acknowledge that the extent of the domestication and physical change to the land would be less pronounced than in Appeal A. However, I have not been provided with details of how the residential component of the mixed use, including the activities, landscaping and incidental features ordinarily associated with it, would be arranged. Consequently, there is insufficient evidence before me to demonstrate that similar effects to those evident in Appeal A would be avoided. Appeal B would authorise a mixed residential and agricultural use on land that previously formed part of a largely undeveloped field parcel. Consequently, the land would no longer function solely as part of the surrounding agricultural landscape but would acquire a notable residential component. In my judgement, that change would still erode the rural and tranquil character of the land and diminish the distinction between the established residential development and the surrounding countryside.
58. The Council did suggest a landscaping condition if I was minded to allow the appeal. The appellant also indicated that he would be willing to accept such a condition. However, the Council did not consider that landscaping would mitigate the identified harm, and neither party was able to identify the extent or type of landscaping that would be necessary to address that harm. Consequently, no landscaping scheme was before me, and there is insufficient evidence to demonstrate that a landscaping condition would overcome the harm identified and make either development acceptable.
59. At the Hearing, the appellant did contend that the land could revert to an agricultural use and that such a use may itself generate activity and noise and potentially involve agricultural buildings, which could affect the character and tranquillity of the area. I have had regard to that submission. However, the fallback put forward is largely theoretical, and I have not been provided with details of any agricultural development that is likely to occur. Any agricultural buildings would be subject to separate planning controls, and no evidence has been provided of any approved scheme or proposal for such development. Consequently, there is insufficient evidence to demonstrate that the fallback would be likely to occur, and if it did, it would be as harmful as the development before me. As such, I have afforded it limited weight.
60. The developments in both appeals would harm the character and appearance of the area and would neither protect nor enhance the district's distinctive landscape character as defined in the LCA SPD. In each case, the mixed use fails to respond positively to the site's rural setting and would diminish the landscape character and local distinctiveness of the Durley Claylands. The developments would therefore conflict with Policies SP3, D1, NE9 and NE14 of the Local Plan, which indicate that

development should respond to its context, so that it integrates with and enhances its surroundings. Those policies are largely consistent with Policy DP3 (1) of the Framework.

Other Matters

61. I have had regard to the concerns raised regarding biodiversity, ecology, tree loss and drainage. However, I have not been provided with substantive evidence that the development has caused, or would cause, unacceptable harm in respect of biodiversity, ecology and tree loss. Furthermore, based on the Council's position, I am satisfied that any necessary drainage details could be secured by condition. Accordingly, these matters do not weigh against the grant of planning permission.
62. The Council highlighted Policy DM8 of the Framework. Policy DM8 states that in cases of unauthorised development where consideration is being given to an application for retrospective planning permission (or through an enforcement appeal, whether to grant planning permission in respect of a breach of planning control), if it is concluded based on evidence that the unauthorised development was intentional, that fact should be given substantial weight in considering whether to grant planning permission. This would, therefore, be relevant in both appeals.
63. The Council set out that the appellant was asked to stop works during the earlier 2023 LDC Refusal but requests were ignored. A copy of an email from the Council to the appellant's previous agent, dated 17 May 2024, was provided. The email indicated that the Council had received a report of works that were unauthorised and the appellant should stop. The Council indicates that this correspondence demonstrates the appellant's intention to carry out unauthorised development. As such, this should be given significant weight in the planning balance against the grant of permission, in line with Policy DM8 of the Framework.
64. I have had regard to this issue, but in my judgement, a finding of intentional unauthorised development must be supported by something more, to demonstrate that the appellant intended the development to be unauthorised. I accept that the appellant carried out further works after contact with the Council. However, the email evidence was not unequivocal in concluding that what was being carried out on site was a breach of planning control. The email warns of the consequences of a breach, but the Council had not made a judgement on whether the works highlighted to them were in fact a breach of planning control and it was expedient to take action.
65. In my judgement, the issue is whether the evidence shows that the appellant knowingly sought to circumvent or disregard the planning process, rather than genuinely disputing whether planning permission was required. On the evidence before me, the appellant held a different view, informed by advice he was receiving at that time. He has also engaged with the Council to attempt to remedy the breach by seeking to regularise the development via applications. Based on the evidence before me, I do not regard the appellant's actions as those of someone who intended the development to be unauthorised, and I have not attributed substantial weight against the grant of planning permission on this basis.
66. I acknowledge the appellant's concern that the Council did not undertake a site visit before determining the section 78 application considered in respect of Appeal B. However, there is no statutory requirement for it to have done so. In any event, I have undertaken my own site visit and have determined the appeals having regard to the evidence before me, the parties' submissions and what I observed on site.

Accordingly, the Council's approach in this respect does not alter my conclusions on the main issues or weigh in favour of the grant of planning permission.

Planning Balance

67. For the reasons given above, I find that the development subject of both appeals would be contrary to Policies SP1, SP2, SP3, H3, D1, NE9 and NE14 of the Winchester Local Plan. Together, these policies seek to ensure that developments outside recognised settlements are limited to justified exceptions that, amongst other things, do not result in harm to the character and appearance of the area. Having regard to the above main issues, I therefore conclude that the developments conflict with the development plan as a whole. Furthermore, these policies are broadly consistent with Policies S5 and DP3 of the Framework.
68. The development alleged and that proposed as part of Appeal B would provide a mixed use, together with additional residential garden space and recreational facilities to the host dwelling. Although principally a private benefit to the appellant, it would also be a benefit to any occupier of the host property in the future. I attach limited weight to this as a public benefit. Although I found no harm in regard to trees, biodiversity, ecology and drainage, these are neutral matters rather than benefits. No evidence of any wider public benefits arising from the development has been put before me and there is no policy support for the development found in Policy S5 of the Framework. As such, when considering the harm identified, the adverse impacts of the developments would substantially outweigh the benefits.
69. I recognise that upholding the requirements of the Notice will prevent the appellant and his family from continuing to use the land for a mixed use comprising residential and agricultural activities. It also places a financial burden upon him to undertake the work required to comply with the Notice. In this regard, I have considered Article 8(1) of the European Convention on Human Rights, as incorporated into the Human Rights Act (1998), which guarantees the right to respect for private and family life, home, and correspondence. Dismissing the appeal and upholding the requirements of the Notice would, therefore, interfere with the appellant and his family's rights under Article 8.
70. I am satisfied that such an interference with the appellant's rights would be justified and proportionate in the public interest, having regard to the importance of maintaining effective planning control and remediating a breach where harm has been identified. The objective of ensuring that development outside settlements is limited to justified exceptions and safeguards the character and appearance of the area is a legitimate and important planning policy goal. Based on the evidence before me, the interference with the appellant and his family's rights under Article 8 through the enforcement action could not be achieved by less intrusive means. Furthermore, the personal circumstances advanced do not outweigh that public interest or justify a different outcome in this case.
71. Accordingly, the developments subject of the appeals conflict with the development plan as a whole and do not gain support from the national decision-making policies in the Framework. While the developments would provide limited benefits and upholding the requirements of the Notice would affect the appellant's human rights, those other matters do not outweigh the conflict with the development plan. As such, material considerations do not indicate that planning permission should be granted otherwise than in accordance with the development plan.

Conclusions on Ground (a) and the Deemed Planning Application and Appeal B

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

73. For the reasons given above, Appeal B should be dismissed.

Formal Decisions

Appeal A Ref: APP/L1765/C/26/3378042

74. It is directed that the Notice is corrected by:

In paragraph 3, delete the words of the allegation and substitute the words 'Without planning permission, the material change of use of the Land to a mixed use of residential and agricultural; and operational development consisting of:

- A tennis court, shown in the approximate position hatched blue on the attached plan;*
- Buildings shown in the approximate positions hatched purple on the attached plan;*
- A hardstanding shown in the approximate positions hatched orange on the attached plan.'*

75. It is directed that the Notice is varied by:

In paragraph 5, step 1, delete the words and substitute the words 'Cease the mixed use of the Land by discontinuing the residential activities.'

In paragraph 5, step 11, delete the words '(grassed field)'

In paragraph 5, delete step 4 in its entirety and renumber steps 5 to 11 as steps 4 to 10.

76. Subject to the correction and variations, the appeal is dismissed, the 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 B Ref: 6012051

77. The appeal is dismissed.

M. P. Howell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mark Hepburn	Appellant
Michael Conroy	Appellant's Planning Agent
Daniel Haigh	Landscape Consultant- Tyler Grange

FOR THE LOCAL PLANNING AUTHORITY:

Rose Chapman	Principal Planning Officer, Winchester City Council
Madelaine Clavey	Enforcement Team Leader, Winchester City Council
Stuart Dunbar-Dempsey	Landscape Officer, Winchester City Council

LATE EVIDENCE

- LE1- Email from Winchester City Council to previous planning agent dated 17 May 2024.
- LE2- Extracts from Guidelines for Landscape and Visual Impact Assessment, third Edition (GLVIA3)- Pages 80, 85, 106-109, 110 and 158.
- LE3- Landscape Institute Technical Guidance Not3 2/10- Residential Visual Amenity Assessment (RVAA).