

**To: The Deputy Leader and Members of the
Planning and Development Board**

For the information of other Members of the Council

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For enquiries about specific reports please contact the officer named in the reports

PLANNING AND DEVELOPMENT BOARD AGENDA

15 MAY 2017

The Planning and Development Board will meet in The Council Chamber, The Council House, South Street, Atherstone, Warwickshire CV9 1DE on Monday 15 May 2017 at 6.30 pm.

AGENDA

- 1 Evacuation Procedure.**
- 2 Apologies for Absence / Members away on official Council business.**
- 3 Disclosable Pecuniary and Non-Pecuniary Interests**

ITEMS FOR DISCUSSION AND DECISION (WHITE PAPERS)

- 4 **Planning Applications** – Report of the Head of Development Control.

Summary

Town and Country Planning Act 1990 – applications presented for determination

The Contact Officer for this report is Jeff Brown (719310).

- 5 **The Lake House, Bakehouse Lane, Whitacre Heath** – Report of the Head of Development Control.

Summary

Following receipt of an appeal decision in respect of this property, the report seeks a way forward with regard to the outstanding enforcement proceedings.

The Contact Officer for this report is Jeff Brown (719310).

- 6 **Progress Report on Achievement of Corporate Plan and Performance Indicator Targets April 2016 – March 2017**- Report of the Chief Executive and the Deputy Chief Executive

Summary

This report informs Members of the progress with the achievement of the Corporate Plan and Performance Indicator targets relevant to the Planning and Development Board for April 2016 to March 2017.

The Contact Officer for this report is Robert Beggs (719238).

- 7 **Corporate Plan Targets 2016/17**- Report of the Head of Development Control.

Summary

This report describes the action taken on a number of targets as set out in the 2016/17 Corporate Plan.

The Contact Officer for this report is Jeff Brown (719310).

- 8 **Tree Preservation Order, Herring Road, Atherstone** - Report of the Head of Development Control.

Summary

This report considers representations submitted in response to an Emergency Tree Preservation Order made on this land and recommends that the Order is confirmed.

The Contact Officer for this report is Jeff Brown (719310).

- 9 **Tree Preservation Order, Birchmoor Road, Polesworth** - Report of the Head of Development Control.

Summary

This report seeks confirmation from the Board of actions taken to make an Emergency Tree Preservation Order at this address.

The Contact Officer for this report is Jeff Brown (719310).

- 10 **Annual Performance Report** - Report of the Head of Development Control.

Summary

The annual performance report outlines how the service has managed both planning applications and breaches of planning control during 2016/17 enabling comparisons with previous years.

The Contact Officer for this report is Jeff Brown (719310).

JERRY HUTCHINSON
Chief Executive

Agenda Item No 5

Planning and Development Board

15 May 2017

**Report of the
Head of Development Control**

**The Lake House
Bakehouse Lane
Whitacre Heath**

1 Summary

- 1.1 Following receipt of an appeal decision in respect of this property, the report seeks a way forward with regard to the outstanding enforcement proceedings.

Recommendation to the Board

That the decision of the Assistant of Chief Executive and Solicitor to the Council, in consultation with Chairman, to withdraw the Enforcement Notice relating to this case be confirmed.

2 Background

- 2.1 Members will recall that the Board dealt with an application for a Certificate of Lawful Development in respect of the use of a building as a residential dwelling at this address in Nether Whitacre. That Certificate was not granted as the Board considered that on the balance of probability given the evidence submitted, that the building had not been so used over the requisite time period. An appeal was lodged and Counsel's advice taken. The appeal was heard by way of a Public Inquiry in January this year referring to both the four and ten year time periods. The appeal has recently been allowed and a Certificate granted. The decision letter is attached at Appendix A.

- 2.2 In the interim, in order to protect the Council's position, an Enforcement Notice was also issued requiring the removal of the building. This Notice was also appealed and an Inquiry date of mid-September has been set by the Planning Inspectorate. The respective Statements of Case for this appeal had to be with the Inspectorate in early May, prior to the date of this meeting. This report brings Members up to date by outlining the consequence of the decision to grant the Certificate, on the outstanding enforcement appeal.

3 Observations

- 3.1 An Enforcement Notice is issued in respect of an alleged breach of planning control. In this respect here that is the erection and use of the building as a residential dwelling. The Council resolved too that had an application been submitted, it would have been refused planning permission thus resulting in

the expediency for the issue of the Notice. There are several grounds of appeal against the issue of such a Notice. However the critical one in respect of this case is that the development against which the Notice is focussed is in fact lawful and does not constitute a breach of planning control as alleged by the Notice. The grant of the Certificate confirms that this is the case. In other words the building and use which the Council is alleging is in breach of planning control, is in fact lawful. As such it has a deemed planning permission. In this respect there would be no point in pursuing the Notice.

3.2 As a consequence and after taking legal advice, the Notice should be withdrawn. If this happens then the appeal would have no standing. The Notice should be withdrawn as soon as is possible because if allowed to run, the appellant would have a clear case for an award of costs against the Council because of him undertaking work to prepare for the appeal – particularly as Statements of Case had to be submitted in early May. The Board Chairman has therefore been consulted on this matter together with the Opposition Planning Spokesperson and they have agreed that in the circumstances, the Notice should be withdrawn and the appellant has been notified to this effect.

4 **Report Implications**

4.1 **Financial and Value for Money Implications**

4.1.1 Costs were not awarded against the Council in respect of the Certificate appeal, but it would be highly likely that a claim would be made by the appellant should the Notice not be withdrawn and that appeal continues. The sooner this is done then there is less likelihood of this happening.

4.2 **Human Rights and Legal Implications**

4.2.1 Legal advice has been taken on this matter as included in the report.

The Contact Officer for this report is Jeff Brown (719310).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
1	Planning Inspectorate	Appeal Decision Letter	11/4/17

Appeal Decision

Inquiry held on 24, 25 and 26 January 2017

Site visit made on 26 January 2017

by **Wendy McKay LLB Solicitor (Non-practising)**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 April 2017

Appeal Ref: APP/R3705/X/16/3147355

**Lake House, Bakehouse Lane, Whitacre Heath, Nether Whitacre,
Warwickshire, B46 2EB**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Nicholas Horton against the decision of the North Warwickshire Borough Council.
- The application Ref PAP/2015/0307, dated 21 May 2015, was refused by notice dated 2 October 2015.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the use of the Lake House, Bakehouse Lane, Nether Whitacre as a single dwelling house.

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

Main Issue

1. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development (LDC) was well-founded. In reaching a conclusion on that issue, it is necessary to consider first, whether the 4 year or 10 year rule under s.171B of the 1990 Act is applicable in terms of assessing the relevant immunity period and, secondly, whether the development is immune from enforcement action though the passage of time and thereby lawful by virtue of s.191(2)(a) of the 1990 Act.

Background matters

2. At the Inquiry, the evidence was taken on oath.
3. Neither the identity of the Appellants, nor the planning merits of the operation, use or activity is relevant to the purely legal issues which are involved in determining an LDC appeal. The onus of proof in an LDC appeal is on the appellant and the relevant test is "*the balance of probability*".
4. The Appellants' own evidence does not need to be corroborated by "*independent*" evidence in order to be accepted (*FW Gabbitas v SSE and Newham LBC [1985] JPL 630*). If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellants' version of events less than probable, there is no good reason to refuse the

appeal, provided the Appellants' evidence alone is sufficiently precise and unambiguous to justify the grant of an LDC "on the balance of probability".

The Statement of Common Ground

5. The Statement of Common Ground (SCG) dated 23 January 2017 sets out the matters upon which there is common ground between the Council and the Appellants and identifies those areas where disagreement lies. It includes the following matters:

The Planning History

6. Planning permission¹ was granted by the Council on 11 March 1998 to "enlarge existing fishing pool" at the site. Condition 7 of that permission required details of the design and materials of a shelter to be erected on the land to be approved in writing by the Council prior to its construction. The details of the shelter were discharged on 24 September 1998. The approved details were for a Curdale type wooden structure 5.5m wide, 4.2m deep and 2.7m high to the ridge.
7. The parties agree that the existing dwelling house measures 3.6m to the ridge but the Council accepts that it has no evidence of its own to contradict the Appellants' claim that, in extending the building, they did not increase its height.
8. The Council's Committee Report for the LDC application was written by a professional planning officer who assessed it against the 4 year rule under s.171B(2). The report recommended approval of the application and the grant of an LDC on the basis of satisfying the 4 year immunity period. However, the application was refused by the Council on the ground that: "*The applicant has not discharged the burden of proof that, on the balance of probabilities, the Lake House has been used continuously as a residence for a period of 4 years prior to the application date*".

The Appeal Site

9. The appeal site forms a roughly rectangular parcel of land located towards the end of an informal access track off Bakehouse Lane. It predominantly comprises a fishing lake. The remainder consists of the appeal building, patio area, paved pathway and storage shed. The appeal building measures 8m wide, 7m deep and 3.6m high.

The Absence of Concealment

10. The parties agree that there have been no attempts made by the Appellants to conceal the appeal building since the purchase of the site in 2009.

Building works

11. It is agreed that the appeal building has been capable of permanent residential use from 2009 and for at least 4 years prior to the date of the LDC application.

Matters in dispute

12. The matters in dispute are:

¹ Ref: 0123/98/FAP

- Whether, on the balance of probabilities, the Lake House has been used continuously as a residence for a period of 4 years prior to the application date.
- Whether the appeal building, itself, is a different building to that approved under Condition 7 of planning permission 0123/98/FAP in 1998 and whether the 4 year or 10 year period provided for under s.171B applies.

Reasons

Whether the 4 year or 10 year period provided for under s.171B is applicable in terms of assessing the relevant immunity period

13. The Council submits that the building the subject of this appeal has not been converted into a dwelling. It contends that the extent and circumstances of the relocation and works carried out to the original shed instead created a new building. That new structure was used from the outset as a dwellinghouse so that there was no change of use to use as a dwellinghouse and the breach of planning control is subject to the 10 year immunity period in s.171(B)(3), rather than the 4 year period in s.171(B)(2).
14. The Council draws support for this proposition from the case of *Welwyn Hatfield Borough Council v SSCLG [2011] UKSC 15*. That case is referred to in the 2013 edition of 'Planning Enforcement' by Richard Harwood QC which states, in relation to s.171B(2), that: "*Subsection (2) relates solely to the change of use of a building and so the building must have been in a non-dwelling house use prior to the change. Consequently, if a building is constructed as a dwelling house and put to that use there is no change of use of a building to use as a dwelling house. The four-year time period in subsection (2) does not apply and the use of the building is subject to the ten-year period in subsection (3)*".
15. The Appellants recognise that this book might provide a helpful guide but do not accept that Mr Harwood is the leading authority upon planning enforcement or that his succinct and summary observations could alter the purport of the *Welwyn Hatfield* judgment.
16. It is, of course, that judgment, itself, that must be interpreted and upon which I rely in reaching my conclusions. Turning to that case, Lord Mance, at paragraph 17, states: "*Protection from enforcement of a building and its use are thus potentially very different matters....The building attracts a four year period for enforcement under sub-s (1), while its use attracts, at any rate in theory, a ten-year period for enforcement under sub-s (3)*." Lord Brown, at paragraph 68, agrees that: "*s.171B(2) is simply not apt to encompass the use of a newly built house as a dwelling house and the nil use concept provides no coherent escape from this conclusion*." In my view, Mr Harwood's summary represents a fair reflection of the principle that can be derived from these obiter comments made in the *Welwyn Hatfield* case.
17. It is therefore necessary to consider whether the package of measures involved in the relocation and extension of the structure amounted to the creation of an entirely new building. For the Council, the proof of evidence of its senior enforcement planner, Mr Gittins, puts forward four points in support of the contention that the appeal building is a different one to that approved in 1998, namely, (1) it has been relocated; (2) it is larger in footprint from that approved; (3) it is of a different construction and (4) the motive of the Appellants.

18. On the first point, the Appellants do not deny that the building was relocated before it was extended or any other works were undertaken to it. There is a degree of uncertainty as to the precise extent of that relocation. Mr Horton, in his statutory declaration, stated that he moved it about 1.8m closer to the lake. In cross-examination, he explained that he had arrived at such a precise estimate as he had measured it with a tape measure after the LDC application was submitted. However, in examination-in-chief he stated that it was moved "*a couple of metres, perhaps a little more*". There were also varying distances given by other persons providing evidence on his behalf in their statutory declarations. It was apparent at the site visit, when comparing the position of the new structure with the old hardstanding on which it had been sited, that it had, indeed, been moved somewhat further than Mr Horton had stated in his evidence, certainly more than a couple of metres.
19. At the Inquiry, Mr Horton confirmed that it was moved by means of a digger and skate rollers which had been hired for that purpose. The work involved in relocating the structure required more than one person. To prepare the new location, the loose soil and mounds were cleared with a digger before slabs were laid down upon which the structure was placed.
20. It is clear that the process of relocating the structure was extensive, skilled and intricate. The works involved in re-siting the building cannot be regarded as de minimis. The old structure had been in place for over a decade before it was moved in 2009. The Council does not seek to suggest that it should not be regarded as a building for planning purposes, even though it was physically capable of being moved. Although the relocation process involved an engineering operation which would have required planning permission, no enforcement action was taken by the Council at that time, or since, in relation to those works which are now immune from enforcement action.
21. On the second point, the Appellants accept that the footprint has been enlarged in that an extension has been added to the rear of the building. However, there was no alteration to the footprint of the original structure; there was only an, albeit substantial, addition to the rear. The SCG confirms that the Council now accepts that there has been no change to the height of the structure.
22. On the third point, the Council draws support from the other changes which have taken place to the original shed. It refers to the installation of cavity wall insulation; additional windows; service connections and internal residential accommodation including a loft/attic together with the transformation of the internal layout.
23. The Appellants acknowledge that certain works by way of extension and modification of the shelter occurred including the introduction of additional windows, cavity insulation, the wiring of the property, and the introduction of a bathroom, kitchen, lounge, attic bedroom and master bedroom which were completed in late July/early August 2009. Nevertheless, Mr Horton gave clear evidence to the effect that the attic was an original feature and the changes to the fenestration were limited. Apart from the rear extension and fenestration, the works carried out were for the most part internal and the timber sides and roof of the original structure by and large remained in situ.
24. On the fourth point, Mr Gittins confirmed in his evidence that the question of motive on the part of the Appellants was strictly irrelevant to the questions before this Inquiry. The Council did not identify any statutory law, policy or

authority that indicated that there was any relevance to the issue of intention in the context of this appeal. The SCG confirms that the Council does not pursue its case on the basis that the Appellants attempted at any point to conceal the appeal building.

25. Turning to the various steps involved in the 'package of measures' as a whole, the position is that the shelter that existed at the time the Appellants acquired the site was first moved closer to the lake and placed upon slabs. The structure was emptied pre-location and following its relocation, the works to extend it began as soon as it was moved or very shortly thereafter. Whether or not it was ever actually used as a shelter once it had been moved, the available evidence indicates that it was capable of being physically accessed by anyone who sought to use it for that purpose and it was not prevented from being so used either by the extension or other works that were being undertaken by the builders.
26. The 1998 planning permission did not impose any planning condition restricting the siting of the shelter within the plot. I do not consider that the engineering operation involved in relocating the building resulted in the loss of its extant lawful use as a shelter associated with the fishing lake. The building did not undergo any change of use simply due to its change of position within the same planning unit and its placement upon a slab/concrete base. The works subsequently undertaken either in their own right or in combination with the relocation did not, as a matter of fact and degree, result in the creation of an entirely new building. In my opinion, they amounted to no more than the alteration and extension of the original structure. There was a change of use of that building from its lawful purpose when the dwellinghouse use began after those works were completed. This is a different situation from that which pertained in the *Welwyn Hatfield* case which can be distinguished on its facts.
27. I conclude, as a matter of fact and degree, that the 'package of measures' did not result in the creation of an entirely new structure. The old shed has been altered and extended and undergone a change of use to use as a single dwellinghouse. Since there has been a breach of planning control consisting of the change of use of that building to use as a single dwellinghouse the 4 year period provided for under s.171B(2) is applicable in terms of assessing the relevant immunity period.

Whether the development is immune from enforcement action though passage of time and thereby lawful

28. It is therefore for the Appellants to demonstrate that, on the balance of probability, the change of use of the building to use as a single dwellinghouse has existed for a period in excess of 4 years prior to the date of the LDC application and continued actively throughout the following 4 year period. There can be no 'dormant' periods in the 4 year period. The Appellants must show when the change of use first occurred and demonstrate that it had continued actively throughout the relevant period, to the extent that enforcement action could have been taken against it at any time.
29. The change of use of the building to use as a Class C3 dwellinghouse would only have arisen at the time when the works were substantially complete so as to make it a structure capable of providing the facilities required for day-to-day private domestic existence and it was so used for that purpose.

30. There is no dispute that the appeal building has been capable of permanent residential use since the works were carried out in 2009. Mr Horton gave evidence as to his involvement in the external and internal works carried out to the shed. This was supported by statutory declarations and evidence from tradesmen who provided detailed accounts and invoices for work undertaken at the site. There is also photographic evidence to show the interior and exterior of the structure at that time. There is clear and cogent evidence to the effect that, after the carrying out of the works to the shed in 2009, it was capable of providing the necessary facilities required for day to day private domestic existence.
31. The Council still expresses doubt that the single dwellinghouse use actually commenced prior to May 2011. It draws support from the fact that the building was not connected to conventional services from the outset. The structure was not connected to the water supply until December 2011 or to the mains electricity and telephone until 2012. The gas connection was not provided until summer 2013. The Appellants did not register the property for a TV licence until November 2012, or as a postal address until November 2013. The registration for Council Tax did not take place until July 2015, albeit that it has been backdated and paid as from 2009/2010.
32. The Council suggests that this pattern of connection to, and registration for, services is more consistent with a gradual escalation of the use rather than a "clean start". It also points to the absence of contemporaneous documentary evidence such as receipts for the furniture which the Appellants claim was installed in 2009. It submits that the Appellants may have "camped out" in the cabin on occasion, rather than the dwelling having been created and lived in before the relevant date in May 2011.
33. The Appellants have provided evidence to the effect that, prior to the installation of mains electricity and Calor gas tank, the property was served by a generator which is presently stored in a shed on the site. Mr Horton asserts that, at the outset, this level of provision was sufficient for his needs. The e-mail from Gas Centre Ltd confirms that in 2009 Bayliss Ltd (now Gas Centre Ltd) assisted him with the fittings for the filtration system to serve the property. They also state that once the works were complete in 2009, they started to provide Mr Horton with about ten 47kg propane gas cylinders per year at the lake up until about 2013 to provide fuel for heating the property. The use of cylinders ceased when he had a more permanent Calor gas tank installed outside the building.
34. The drinking water was initially pumped from the lake and was filtered using a system purchased from East Midlands Water Company. Pumped water was also used for flushing the toilet prior to the mains water being connected. The Appellants have provided a copy of the order for the water filtration unit from East Midlands Water dated 8 July 2009.
35. At the Inquiry, Mr Horton also explained that he used bottled water for drinking prior to the installation of the mains water. He stated that the reason for delaying the installation of the main electricity was due to the cost and his available funds at that time. He informed the Inquiry that an operation to his lower back meant that he was absent from the site for a few months and that the use of the building fell significantly in 2015 and 2016 in response to the unwelcome attention sparked by the LDC application. The Council complains

that this new oral evidence had not appeared in his proof of evidence and that these new points have the effect of seeking to '*explain away*' shortcomings in his evidence. Whilst this new evidence may indeed have that effect, it was given on oath and I find no reason to doubt the truthfulness and honesty of what was said by Mr Horton on these matters.

36. Even though mains services were not connected at the start of the period of occupation claimed by Mr Horton, the use of a generator, gas cylinders, water bottles and water filtration system would have enabled the residential use to take place. I consider that the Appellants have provided a reasonable and plausible explanation for the delay in the connection of the property to the mains services. The same applies to the reasons given for the delay in registering the property for a TV licence, Council Tax and as a postal address. It is clear that the actual use could have commenced at an earlier time and the delay in connection provides little basis for the supposition that the Appellants were only "*camping out*" in the building prior to the relevant date.
37. Turning now to the question of the extent of the actual use made of the building as a dwellinghouse and the continuous nature of its occupation, the Council, in its closing submissions, acknowledges that its professional witness, Mr Gittins, agreed in cross-examination that, should the 4 year immunity period be found to be applicable, there were no breaks in that immunity period so as to defeat the continuous use as a single dwellinghouse. Nonetheless, the Council still puts the Appellants to proof in respect of whether they have discharged the legal burden of proof that is upon them in that respect.
38. Mr Horton's evidence is that when he first purchased the site, it was his intention to use the dwelling for occasional breaks. Due to security concerns at the site, there was a need for him to stay at the premises overnight on a more regular basis. He submits that once the dwelling became habitable in 2009, he began to stay on a regular basis predominantly from Wednesdays to Sundays. He spent the rest of the time at his property in Sutton Coldfield with his wife and children. The pattern of Mr Horton's residence was initially varied with some stays being shorter and some longer. He owns four businesses in the Midlands and has meetings that require him to be in a variety of locations. This has sometimes meant him residing at the Lake House outside his '*regular pattern*'; on the other hand he has sometimes needed to stay with his wife in Sutton Coldfield. The arrangements were not always fixed and varied according to the weather and work patterns. However, he confirmed that, on the whole, he would stay at the Lake House three or four times a week, for most weeks of the year.
39. Mr Horton's residency at the Lake House has been corroborated by his wife, friends, family and tradesmen with varying levels of supporting evidence including, in some cases, evidence on oath, statutory declarations, receipts and photographs.
40. The evidence of Mrs Horton both in her statutory declaration and in oral evidence to the Inquiry, confirms the security issues at the lake which she claims led to her husband residing at the Lake House. Mrs Horton also describes the pattern of her husband's living arrangements at the Lake House and that she considers this to be his main residence. Mrs Horton kept a diary in 2013, 2014 and 2015 which provides a record of events, notes and appointments. Her diary entries evidence some of the sustained periods of

time that Mr Horton has spent at the lake and the frequency of the visits/overnight stays by Mrs Horton and the children over a two year period. Mrs Horton has also submitted a series of photographs taken at the Lake House between May 2011 and August 2014 which provide evidence of time spent at the property over that period.

41. The Council acknowledges that Mrs Horton's diary entries provide contemporaneous evidence as to the extent of the use of the building. However, it points out that this only began in 2013 and the entries lend no support to the period before then. That is, indeed, a clear shortcoming of the diary entries but they still provide a consistent record of a pattern of residency that corresponds with and supports her oral evidence of the usage made in the unrecorded earlier period.
42. The evidence of Neil Spittle, the gardener, in his statutory declaration and as confirmed by his oral evidence to the Inquiry, is that he first visited the site in the summer of 2009. During the summer months since then he has visited the site every two weeks to undertake gardening work. His visits varied between mornings, afternoons or a full day. He stated that Mr Horton was usually there when he carried out the gardening and he advised him on what work needed to be done. Mr Horton was there to let him in about 80% of the time but otherwise he entered the grounds with a key that he has been provided with. Mr Horton supplied him with tea and coffee and sometimes a bacon sandwich when he was around.
43. In cross-examination, he confirmed that his view that Mr Horton was living at the Lake House was based upon what Mr Horton had led him to believe rather than his own personal knowledge. There are obvious limitations to that which can be attributed to his own personal knowledge of the precise nature of Mr Horton's occupation. Nonetheless, what he observed and experienced during his frequent and regular visits to the site is consistent with the Appellants' version of events.
44. Mr Tom Badger, a former police officer, is a friend of the family. Mr Badger gave oral evidence to the Inquiry to the effect that he had made social visits to the property and had stayed overnight in the cabin once in either 2011 or 2012. He slept in the attic space which was in existence but contained no beds at that time.
45. The statutory declaration and oral evidence of Janet Turner, Mr Horton's sister-in-law, also confirms the Appellants' initial security concerns in relation to the lake. She stated that it was some time in 2009 when Mr Horton decided to live there. Since 2009, she has visited the lake on special occasions such as birthdays and also on the odd Sunday. In total, she has visited about six times a year and for the majority of her visits she did not stay over. She visited most frequently between 2009 and 2010 before she moved to Shropshire. She has provided photographic evidence in the form of some 26 photographs taken on 3 July 2011 and 18 February 2013.
46. The Appellants have submitted statutory declarations of friends and family to show that the dwellinghouse and its immediate setting have been used for social activities associated with the domestic use of the building during the relevant period. They also draw support from the statutory declarations and oral evidence of Mr Spittle, the gardener, and the statutory declarations of Mr Turvey, the electrician, together the evidence of Mr Hollins and Mr Williams,

tradesmen of Sparta Construction, that the dwelling and its immediate surroundings have been continuously maintained and/or improved since 2009.

47. All in all, there are a number of statutory declarations made by various individuals submitted in support of the Appellants' case. This evidence does not attract the same weight as the oral evidence given by witnesses to the Inquiry, as it has not been tested by cross-examination. Whilst recognising the limitations of evidence given in this form, it must be given due weight as a solemn declaration under the Statutory Declarations Act 1835 with all that that implies. These statutory declarations provide some, albeit modest, support for the Appellants' case.
48. The Council submits that none of the witnesses called to give oral evidence to the Inquiry on behalf of the Appellants could be characterised as independent witnesses since they are either family members or friends or had an ongoing business relationship with Mr Horton, as in the case of Mr Spittle. However, the Appellants' witnesses gave evidence on oath that was tested by cross-examination. In the absence of contradictory evidence, there is no reason to suppose that their evidence was given other than in an impartial and conscientious manner, or that their recollections should be disbelieved.
49. I shall now consider the scope and value of any such contradictory evidence before the Inquiry. The Council called three local residents, namely, Mrs Debra Starkey, Mrs Beverley Woollaston, and Mr Steve Young, in addition to Mr Peter Gittins, to provide evidence contrary to the Appellants' case. The local residents did not seek to suggest that Mr Horton was never present at the site but their recollection of the frequency of his visits was not in-keeping with his stated case that he spent most of the week living there.
50. Mrs Woollaston lives about two miles from the site in Lea Marston but she owns stables and land in Bakehouse Lane. The only access to Lake House is off Bakehouse Lane and onto the farm track which is adjacent to her stables. She is very aware of any vehicles driving down the track and is suspicious of vehicles that she does not know. She is at the yard every morning arriving anytime from 6am to 8.30am depending on her plan for the day. She is often at the yard all day maintaining the land, fencing and buildings. She goes "poo-picking" in the paddocks in the evenings, even when it was dark with the use of a head torch. In so doing, she would have had a clear line of sight towards the Lake House. She is sure that, if it had been illuminated, she would have noticed it but she had never seen any lights on.
51. She first spoke to Mr Horton in 2012, when the works to the access track were carried out in order to connect the water supply to the Lake House. On that occasion, he told her that the Lake House was a retirement project; a place where he could look forward to spending time relaxing and fishing the lake. Mrs Horton told her that she liked to occasionally stop there overnight with her sister to paint and enjoy a bottle of wine.
52. Although she has seen Mr Horton arrive on the odd occasion and walking his dogs, she has never had any reason to think that he was living at the Lake House. She had always assumed that he was just enjoying spending time maintaining and fishing the lake. She walks past the Lake House most days as, when she finishes the stables, she takes her dog for a walk before going home. She maintained that had Mr Horton been living there then she would have witnessed it.

53. However, in cross-examination, she acknowledged that the land and buildings of Mr Duffy, who has provided a written statement to the effect that he had seen Mr Horton at the fishery a few times a week from 2009, was closer to the Lake House than her own property. She did not recall the building works being carried out to the shelter in 2009 and she agreed that she could not see into that building from her stables.
54. Mrs Starkey has lived at Bakehouse Barn, Dingle Lane, Nether Whitacre since January 2001. Her property lies within a few hundred metres of the appeal site. There is a public footpath which runs between her garden and paddocks and links up to another footpath which runs close by the fishery. Her initial contact with Mr Horton was in 2009 but her sightings of him since then have been limited. Since 2011, when walking past the fishery, she has observed that the main metal farm gate with razor wire has always been locked and it appeared to her to have been locked from the outside. When walking past the property she has only seen Mr Horton once in that period, in August or September 2015, when he was returning from walking his two husky dogs. On all other occasions, the main gate has been padlocked from the outside.
55. During her walks nearby and along the lanes she has not seen Mr Horton on the local footpaths since 2011 and she has only seen him at most on five occasions in the adjacent lanes. Three of those sightings were in the summer of 2015. She has also not seen Mr Horton on Dingle Lane, except for one occasion. She produced photographic evidence to show that she could see into the site from the footpath which runs near to the eastern boundary.
56. She also gave evidence in relation to Mr Horton's visit to her house when it was up for sale in September 2012. He explained that the reason he was interested in buying her house was because of its proximity to the fishery. She understood from what he said that, if he lived in her house, it would enable him to maintain the fishery and monitor its security. At no point did he say or suggest that he already occupied the fishery permanently or occasionally. Either Mr Horton or his wife told her that they lived in Sutton Coldfield and that they did not need to sell their house in Sutton Coldfield in order to buy her house as they had funds from elsewhere. She was later advised by the estate agents that the Hortons did not intend to pursue the purchase. She does not accept that Mr Horton has lived continuously at Lake House and finds it most surprising that she has seen him so infrequently, if he is living there.
57. In cross-examination, Mrs Starkey conceded that she had no recollection of the building works being carried out to the structure in 2009 and that there was no direct line of sight from her dwelling. Although she told the Inquiry that she had not seen Mr Horton's motorcycle, she subsequently recalled that the presence of motorbikes on the land had caused her to visit the site one evening after the hours of darkness. She also recognised that her contention that she would be aware of traffic passing her property going to the Lake House would not arise, if that traffic proceeded from the north via Bakehouse Lane and entered the track that way. That was her explanation for not having noticed the other motor bikes until they were on the site and, as the Appellants point out, the same approach must apply in respect of other vehicular traffic.
58. As regards the occasion in 2012 when Mr Horton came to her property, that conversation took place some four and a half years ago and there is no contemporaneous note or other documentary record which she made at the

time to recall its contents. In cross-examination, she very fairly accepted that the conversation simply did not extend to whether Mr Horton did or did not live at the appeal property or cover similar ground. I do not find her recollection of that meeting to be of much assistance in this case. The same applies to Mrs Woollaston's recollection of her first meeting with Mr Horton in 2012, and the fact that he did not convey to her the information relating to his residency at the Lake House.

59. Mr Steve Young has lived at Pear Tree Cottage, Bakehouse Lane since December 2011. His property is located about 50m from the entrance to the track which leads to the Lake House. He walks his dog past the Lake House most mornings and evenings. His evidence is that from December 2011 to October 2015, there have been no vehicles present, apart from a few occasions. He and his wife have kept a note for the three month period from 13 April 2015 to 7 June 2015. During that period, either himself, or his wife, walked their dog past the Lake House each morning and evening. He states that there were no vehicles and the timber gates to the Lake House were always locked with a hasp and staple and the padlock was in the locked position. The metal gates were locked with the chain and padlock facing outwards. He submits that no-one could have been living there at that time unless they were able to climb back over the gate to lock or unlock the padlock.
60. In addition, for the seven weeks from 3 June until 25 July 2016 between 7am and 10pm he has taken a photograph each time he has walked past with his dog and there has been no sign of anyone living there. From 24 July until 9 December 2016 he has placed a small twig resting on the metal gates to indicate if anyone has entered. As well as the photographic evidence, he has kept a daily walk log. He contends that, apart from the gardener working there most Mondays, the only other visits have been about twice a month from which he concludes that no-one is living at the Lake House.
61. In cross-examination, he confirmed that he did not keep any notes or other record of his walks past the site for the period from December 2011 until 12 April 2015. The relevant immunity period for the purposes of this appeal is the period prior to the date of the application, namely, the 21 May 2015. Mr Horton acknowledges that the use of the Lake House fell significantly in 2015 and 2016 following the submission of the LDC application. The Council does not, as part of its case, assert abandonment of a lawful use once that status had been achieved. The Appellants seek to explain Mr Young's twig observations by suggesting that it was placed on the side of the metal gate that remains shut whilst vehicles, other than large delivery vehicles, are going in and out. This is disputed by Mr Young. However, given the dates when this exercise was undertaken, whatever can be deduced from the placing of the twig on the metal gates does not have a direct bearing upon the lawfulness of the single dwellinghouse use.
62. There is also a letter from Stephanie Dunbar who has a smallholding adjacent to the access track which leads to the appeal site. Like Mrs Woollaston, she is at the smallholding on a daily basis and concludes that Mr Horton has not been living at the premises during the relevant period given the lack of activity that she has observed. There are letters from other local residents which pursue a similar theme. However, neither they, nor Stephanie Dunbar, attended the Inquiry to give evidence on oath and what is said in these letters has not been

tested by cross-examination. As such, only limited weight can be attributed to them and the oral evidence of others which has been given on oath must be strongly preferred.

63. The Council's witnesses were unable, as a matter of fact, to assert from their own personal knowledge that Mr Horton had not been in occupation during the relevant period. The basis for their opposition to the LDC application is that they have seen little or no evidence of residential occupation during that time. However, it seems to me that Mr Horton has provided reasonable and plausible explanations for the lack of obvious manifestations of his physical presence and residential occupation of Lake House. For example, the relatively secluded nature of the dwelling and the fairly low-key and inconspicuous nature of his occupation. Although witnesses had not seen any lights on at the property, there are factors such as its orientation and the existence of internal blinds and roller shutters that can reasonably account for this. Mr Horton explained that the property has both blinds and exterior shutters which would preclude any light being emitted so as to indicate any activity within. Those blinds were installed at a relatively early stage with that in the main bedroom at the rear of the property that is orientated towards the nearby public footpath being installed almost immediately.
64. In relation to the absence of sightings of Mr Horton when dog walking, he explained at the Inquiry that he does not always take the dogs with him to the Lake House. When he does take them with him, the large grounds of the property are usually sufficient to allow him to let them run round without the need to take them for a walk. When they are occasionally taken for a walk outside the fishery that is generally on the fields that are located to the west and north of the site. In the light of his explanation as to the presence and manner in which the dogs are kept and exercised when on the site, I do not find that this aspect of the Council's evidence materially undermines the Appellants' case.
65. The Council's lay witnesses conceded in cross-examination that they could not categorically rule out the Appellants' case. They also agreed that their interest in the site effectively arose in response to the LDC application. There was no reliable evidence that they had paid any real attention to the lake, the fishing shelter or the converted building, until 2015/16. For example, Mr Young's notes, log and photographic evidence arises during the period after 12 April 2015, and no such formal records are available for the period from when the Appellants' claim the use commenced in 2009 until that date. There is also a remarkable lack of notice and knowledge on the part of Mrs Woollaston and Mrs Starkey of the building works that were carried out in 2009.
66. The Council draws support from Mr Horton's evidence, and that of its own witnesses, in relation to the locking of the gates. During cross-examination, Mr Horton indicated that, if the gates were padlocked then he was not present. However, confusion has arisen in relation to the correct interpretation of that response, largely as a result of there being two sets of gates at the entrance to Lake House. Although I appreciate how a misunderstanding on the part of the Council could easily have arisen, from my own notes and recollection of what was said I am satisfied that that particular statement was made in respect of the inner wooden gates and not the outer metal gates.

67. The Council also queries Mr Horton's stated practice of locking the metal gates and leaving the padlock on the outside, even if he was still on the site. It submits that it would be surprising if the gates were to be locked in that way giving the impression to people that no-one was there and that a more straightforward inference from the fact that the main metal gates were locked on the outside is that, at those times, no-one was present on the site. However, it seems to me that Mr Horton provided a plausible explanation for adopting this practice, namely, for security reasons and to avoid being unnecessarily disturbed whilst in residence, for example, by those seeking to fish. This action is consistent with his acknowledgement that it was the locking of the inner gates that signalled his absence from the site.
68. The Appellants also place reliance upon the available records showing usage of utilities. They have submitted numerous npower electricity bills dating back to May 2013 and the evidence of their planning consultant, Joanne Russell, includes a table which provides a summary of the electricity bills and the dates of electricity usage. The evidence also includes a utility bill from Severn Trent Water Ltd to show usage of water between 15 October 2014 and 1 April 2015.
69. The Council is critical of the low level of electricity usage that is revealed, given that Mr Horton's evidence is that he lived at the cabin most of the week, almost every week of the year. The Council contends that having regard to the array of electrical goods on display in some of the photographs, one would expect the electricity usage to be higher than is presented in the bills. Although the usage of utilities does indeed appear small, this has to be considered in the light of the fact that the Lake House building is a small structure, which has been inhabited by just one person for most of the time, and that gas has been used as an alternative energy source. I do not consider that the level of electricity usage casts doubt upon the credibility of the Appellants' evidence of residential occupation.
70. In conclusion, the Appellants have provided cogent and consistent evidence setting out the timing and nature of the works carried out in 2009; the commencement of the use in 2009 and the continuation of that use thereafter for a period well in excess of four years. This evidence is precise, robust, and comprehensive and has not been materially undermined, or contradicted by the Council's evidence. Whilst the evidence of the Council's lay witnesses has been given honestly and fairly, the limitations of their recollections was exposed during cross-examination. Their evidence taken either individually or cumulatively does not render the Appellants' version of events less than probable.
71. Since the carrying out of the works in 2009, the building has provided all the necessary facilities required for day-to-day private domestic existence. The residential use of that structure from September 2009 following the carrying out of those works amounted to a material change of use of the building to use as a single dwellinghouse. The frequency and character of Mr Horton's occupation has been sufficient to establish the continuous nature of that residential use, even though his general pattern of occupation was to live there for only part of the week and he has also been absent at times due to taking holidays elsewhere and to recuperate following back surgery. Those periods of absence were insufficient to break the continuity of the use. I find, on the balance of probabilities, that the single dwellinghouse use continued actively throughout the relevant period, to the extent that enforcement action could

have been taken against it at any time. The development is immune from enforcement action through the passage of time and thereby lawful.

Formal Conclusion

72. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the Lake House, Bakehouse Lane, Nether Whitacre as a single dwelling house was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s.195(2) of the 1990 Act as amended.

Formal Decision

73. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr Peter Goatley of Counsel

He called:
Mr Nicholas Horton
Mrs Christine Horton
Ms Janet Turner
Mr Neil Spittle
Mr Tom Badger
Mrs Joanna Russell BA
DipTP MRTPI

FOR THE LOCAL PLANNING AUTHORITY: Mr Jack Smyth of Counsel

He called:
Mrs Debra Starkey BA
DipTP
Mrs Beverley Woollaston
Mr Steve Young
Mr Peter Gittins MRTPI

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Attendance lists
- 2 Statement of Common Ground
- 3 Outline Opening Submissions on behalf of the Appellants
- 4 Opening Submissions on behalf of the Council
- 5 Closing Submissions on behalf of the Council
- 6 Outline Closing Submissions on behalf of the Appellants
- 7 Bundle of case law transcripts submitted in support of the Appellants' Closing Submissions

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

- 1 Bundle of agreed dated photographs submitted by the Appellants
- 2 Bundle of thumbprint photographs of the site taken by Mr Young and submitted by the Council
- 3 Two of Mr Young's photographs at A4 size submitted by the Appellants.
- 4 Mr Young's photographs in electronic form



Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 21 May 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured and edged black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Since there has been a change of use of a building to use as a single dwellinghouse, the relevant immunity period in this case is the period of four years prescribed by section 171B(2) of the 1990 Act. As the building has been used continuously as a single dwellinghouse for a period in excess of four years prior to the application date, the development is immune from enforcement action through the passage of time and thereby lawful.

Signed

Wendy McKay

Inspector

Date: 11 April 2017

Reference: APP/R3705/X/16/3147355

First Schedule

The use of a building as a single dwellinghouse within Class C3 of the Use Classes Order 1987, as amended.

Second Schedule

The Lake House, Bakehouse Lane, Nether Whitacre, Warwickshire, B46 2EB shown coloured black within the area edged black on the attached plan.

NOTES

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

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

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

Plan

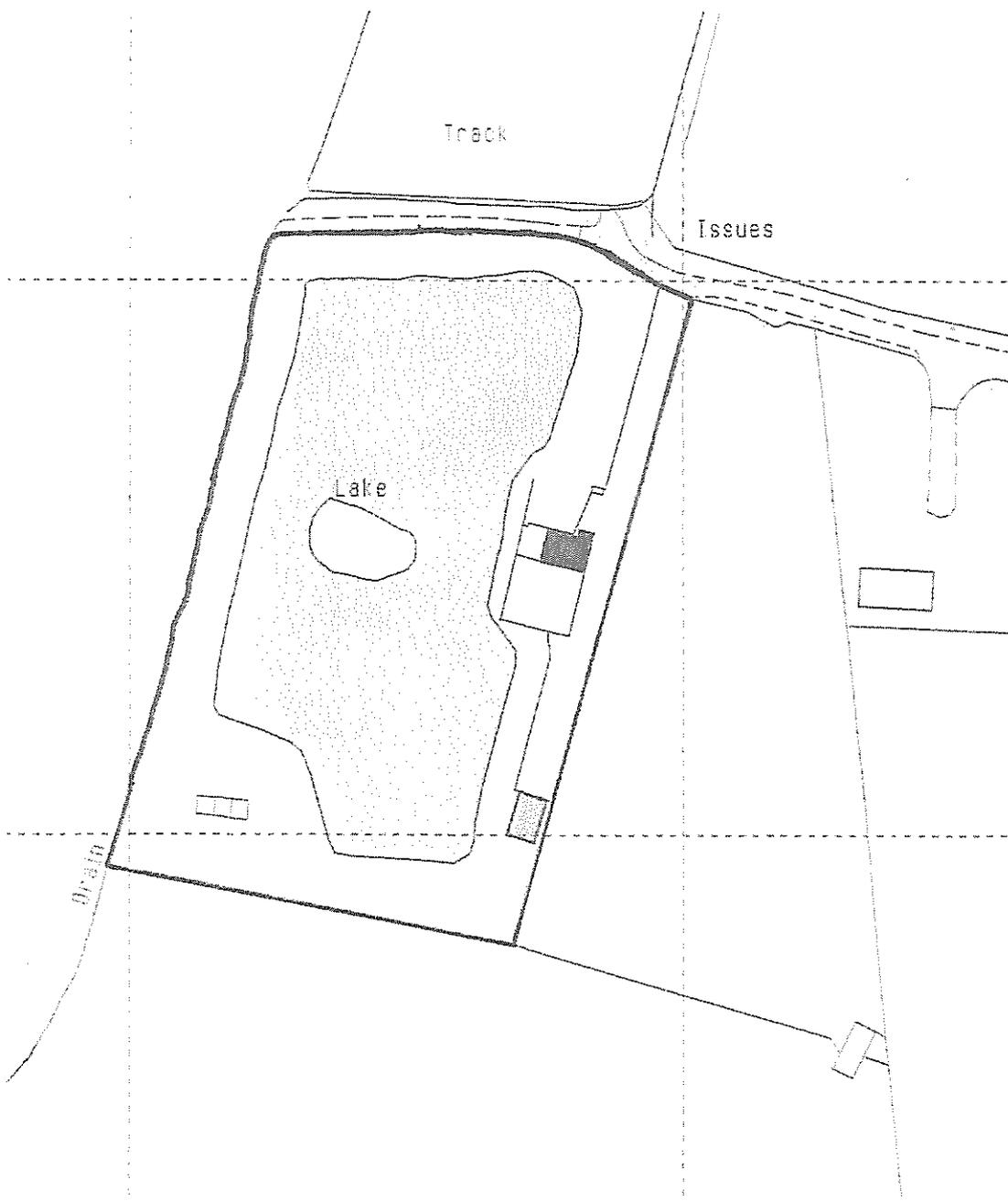
This is the plan referred to in the Lawful Development Certificate dated: 11 April 2017

by Wendy McKay

Land at: The Lake House, Bakehouse Lane, Nether Whitacre, Warwickshire, B46 2EB

Reference: APP/R3705/X/16/3147355

Scale: 1:1250



Agenda Item No 6

Planning and Development Board

15 May 2017

Report of the Chief Executive and the Deputy Chief Executive

Progress Report on Achievement of Corporate Plan and Performance Indicator Targets April 2016 – March 2017

1 Summary

- 1.1 This report informs Members of the progress with the achievement of the Corporate Plan and Performance Indicator targets relevant to the Planning and Development Board for April 2016 to March 2017.

Recommendation to the Board

That Members consider the performance achieved and highlight any areas for further investigation.

2 Consultation

- 2.1 Consultation has taken place with the relevant Members and any comments received will be reported at the meeting.

3 Background

- 3.1 This report shows the year end position with the achievement of the Corporate Plan and Performance Indicator targets for 2016/17. This is the fourth report showing the progress achieved during this year.

4 Progress achieved during 2016/17

- 4.1 Attached at Appendices A and B are reports outlining the progress achieved for all the Corporate Plan targets and the agreed local performance indicators during April to March 2016/17 for the Planning and Development Board.

- 4.2 Members will recall the use of a traffic light indicator for the monitoring of the performance achieved.

Red – target not achieved (shown as a red triangle)

Green – target achieved (shown as a green star)

5 Performance Indicators

- 5.1 The year end returns are subject to review by Internal Audit and therefore maybe subject to changes. Any amendments to the returns will be reported to a future meeting of the board.

6 Overall Performance

- 6.1 The Corporate Plan performance report shows that 100% of the Corporate Plan targets and 67% of the performance indicator targets have been achieved. The report shows the individual targets that have been classified as red or green. Individual comments from the relevant division have been included where appropriate. The target for the indicator for processing other applications has not been achieved due to increased workloads. The table below shows the following status in terms of the traffic light indicator status:

Corporate Plan

Status	Number	Percentage
Green	6	100%
Red	0	0%
Total	6	100%

Performance Indicators

Status	Number	Percentage
Green	2	67%
Red	1	33%
Total	3	100%

7 Summary

- 7.1 Members may wish to identify any areas that require further consideration where targets are not currently being achieved.

8 Report Implications

8.1 Safer Communities Implications

- 8.1.1 Major applications are considered by the Police Architectural Liaison Officer who is looking to ensure that Secure by Design principles are applied for new developments.

8.2 Legal and Human Rights Implications

8.2.1 The national indicators were specified by the Secretary of State for Communities and Local Government. They were replaced by a single list of data returns to Central Government from April 2011.

8.3 Environment and Sustainability Implications

8.3.1 Improvements in the performance and quality of services will contribute to improving the quality of life within the community. The actions to improve apprenticeships, training and employment opportunities and transport links for local residents is contributing towards the raising aspirations, educational attainment and skills priority of the North Warwickshire Sustainable Community Strategy 2009 – 2026.

8.4 Risk Management Implications

8.4.1 Effective performance monitoring will enable the Council to minimise associated risks with the failure to achieve targets and deliver services at the required performance level.

8.5 Equality Implications

8.5.1 The action to improve employment opportunities for local residents is contributing to equality objectives and is a positive impact in terms of the protected characteristics for age through the young people employment programme.

8.6 Links to Council's Priorities

8.6.1 There are a number of targets and performance indicators included relating to supporting employment and business, protecting countryside and heritage, and promoting sustainable and vibrant communities.

The Contact Officer for this report is Robert Beggs (719238).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

NWCP Planning and Development Board 16/17

	Action	Priority	Reporting Officer	Year End	Status	Direction
NWCP 012	Manage development so as to deliver the priorities on the Council's Corporate Plan and in the Sustainable Community Strategy and report by March 2017	Protecting our Countryside & Heritage	Jeff Brown	Report to go to May 2017 P& D Board	 Green	
NWCP 013	To report on Growth pressures on the Borough and how to protect the Green Belt as far as possible by February 2017 and at least annually thereafter	Protecting our Countryside & Heritage	Jeff Brown	Report to go to May 2017 P& D Board	 Green	
NWCP 014	Use the Design Champions to ensure the best achievable designs are implemented and developed and report by March 2017	Protecting our Countryside & Heritage	Jeff Brown	Report to go to May 2017 P& D Board	 Green	
NWCP 111	To seek to secure the protection of the best of the Borough's built and rural heritage	Protecting our Countryside & Heritage	Jeff Brown	Report to go to May 2017 P& D Board	 Green	
NWCP 051	a) Work with the County Council, Job CentrePlus and other partners to provide apprenticeships/training, including reporting by December 2016 on the feasibility and cost of directly employing more apprentices; and b) administer funding provided by the developers and through other funding sources to maximise opportunities for employment of local people including employment engagement activity, development of work clubs and bespoke training	Supporting Employment & Business	Steve Maxey/Bob Trahern	The remaining balance of s.106 funding is being held pending a County wide bid for European funding for increasing employment prospects. Further s.106 funding is anticipated in the short term. The potential for apprentices was highlighted at the jobs fair held in October as well as an event for employers to promote them becoming disability confident. Access to work and opportunities was also a key focus of the December edition of North Talk. Locally the Council continues to take on additional work placements from the Jobcentre that has seen them and previous apprentices obtain employment with the Council featured along with other work provider opportunities in the March edition of North Talk.	 Green	
NWCP 070	Looking to improve transport links to the local employment and report on progress by March 2017	Supporting Employment & Business	Jeff Brown	We are always looking to do this with all large scale commercial development	 Green	

NWPI Planning Board 16/17

Ref	Description	Section	Priority	Year End Target 2016/17	Outturn 2015/16	April - Mar Performance	Traffic Light	Direction of Travel	Comments
@NW:NI157a	Processing of planning applications in 13 weeks for major application types	Development Control	Countryside and Heritage	60%	96.00%	95.00%	 Green		Concentration by all staff on strengthening procedures.
@NW:NI157b	Processing of planning applications in 8 weeks for minor application types	Development Control	Countryside and Heritage	80%	95.00%	87.00%	 Green		Procedures introduced as part of a review are continuing to have an impact.
@NW:NI157c	Processing of planning applications in 8 weeks for other application types	Development Control	Countryside and Heritage	90%	98.00%	86.00%	 Red		Slight reduction due to increased workload, but procedures are still working.

Agenda Item No 7

Planning and Development Board

15 May 2017

**Report of the
Head of Development Control**

Corporate Plan Targets 2016/17

1 Summary

- 1.1 This report describes the action taken on a number of targets as set out in the 2016/17 Corporate Plan.

Recommendation to the Board

That the Board notes the report and be invited to make any observations.

2 Background

- 2.1 There are a number of on-going targets set out in the Corporate Plan which require annual reporting to the Board at the end of March 2017.
- 2.2 Members will be aware of the substantial change in the planning environment in recent years within which the Board is now determining planning applications. The impact has been seen this year in particular with two substantial appeal decisions affecting how subsequent applications are being considered and the introduction of significant performance measures increasing the likelihood of Local Planning Authorities being “designated” as poorly performing. It is against this changing background that performance against the Corporate Plan targets needs to be considered.

3 Development Management

- 3.1 Under the Plan’s priority to protect the Borough’s countryside and heritage in times of growth, there are several targets. The first is to manage development so as to deliver the priorities of the Corporate Plan and Sustainable Community Strategy. This is a target that seeks to add value to development proposals such that they are better placed to achieve the Plan’s objectives. This is achieved in various ways – pre-application discussions; early presentations and engagement with Members and the local community, resolving technical matters prior to submission, seeking amendments to plans and the imposition of planning conditions and the use of Section 106 Agreements. Members are familiar with all of these activities. That being said Members should always continue to decide to refuse planning permission where there is clear significant and demonstrable harm, or in the final

planning balance they do not accord with the Development Plan when taken as a whole.

- 3.2 Members have regularly received presentations during the year – e.g. land off Robey's Lane; at Hartshill, the Belfry, Coleshill and Curdworth. There have also been a number of local exhibitions such that local communities can become involved at an early stage - Hartshill; Robey's Lane and St Andrews House. Members also undertake a number of site visits whereby development proposals are amended as a consequence. With larger applications now coming forward there is greater opportunity to look at Section 106 Agreements in order to achieve objectives where they are directly related to the development proposals. There have thus been education and health contributions associated with new housing developments; open space contributions towards enhancing existing amenity areas, the continuation of affordable housing provision and the transfer of land to a Parish Council. There are continuing contributions towards sustainable transport provision and the opening up of opportunities for job creation to local communities through employment generating proposals.

4 Design Champions

- 4.1 The second target is to use the role of the Design Champions in achieving the best design and appearance for new development. This is now an active and on-going engagement either directly with officers at an informal level but also critically with developers themselves. There have been notable cases during the year – the former Coleshill Police Station; the Angel Public House in Atherstone, St Andrews House in Coleshill and house types in Ansley and in Ansley Common. With the scale of new development now anticipated, this role will continue to set high standards.

5 Rural and Built Heritage

- 5.1 The third target is to secure the protection of the Borough's built and rural heritage. In respect of the built heritage then active Member involvement has had an impact here too – most notably in the phasing detail for the Beech House proposals and in the Britannia Mill redevelopment scheme both in Atherstone. The heritage role within the Division is now growing with an officer undertaking professional training so as to develop into this role so as to provide advice and guidance in-house whilst still falling back on outside advice where substantial issues are involved. In terms of protecting the rural heritage, then Members will understand that this is increasingly becoming an issue because of the growth that has to be accommodated. Whilst this target is clearly a factor in the preparation of the new draft Local Plan, Members have to deal with the issue at application stage. In this regard we have not been helped with recent appeal decisions and regrettably this does point to increasingly difficult times. Members have recently refused housing applications in Polesworth and Wood End on such grounds and appeal decisions here will be anticipated. It is becoming clear that protection of the rural appearance of the Borough and its rurality is going to become increasingly difficult. Active involvement in managing new development

proposals through layout design; appearance of buildings, retention of important views, hedgerows, trees and the better use of sustainable drainage measures as active nature assets will increasingly become significant here. Members will also recognise the significance of Neighbourhood Planning in this role. We have two adopted Plans as part of the Development Plan and one – Arley – has already had a significant impact in that it was widely debated in the Daw Mill Public Inquiry in respect of its “rural” policies in protecting open countryside.

- 5.2 The Council also can use its enforcement powers to achieve a better outcome in respect of protecting the rural appearance of the area. A note-able case this year has been the appeal decision at Corley Moor in respect of a large building. Other enforcement actions are underway – at Lea Marston, Nether Whitacre and Mancetter. The Board too has confirmed more Tree Preservation Orders and Emergency Tree Preservation Orders this year than is usual.

6 Green Belt

- 6.1 The Government is continually stressing the significance of the Green Belt and that its boundaries should only be altered through a Green Belt review within the Local Plan process. That is happening presently in the Borough. This therefore provides the strongest position in which to protect the Borough’s Green Belt. However this Board has to handle applications within the Green Belt on a regular basis. This is difficult because as Members are aware, the fact that a site is in the Green Belt is not a sufficient reason for refusal – there is no automatic refusal. The Board will always have to approach these proposals by undertaking the sequential approach now fully developed in Board reports. The “very special circumstances” test is thus addressed through this sequence. Recent appeal decisions have shown that this is a tough test and Members can take comfort from that in that their decisions were found to be sound. However there will be occasions when decisions may go the other way, if not taken by the Council then by the Secretary of State at appeal. The situation overall remains challenging.

7 Report Implications

7.1 Financial and Value for Money Implications

- 7.1.1 These actions are all undertaken within existing budgets and the outcomes are very often the consequence of developer contributions as highlighted in the report.

7.2 Legal and Human Rights Implications

- 7.2.1 The decisions on planning applications and an assessment of the weights to be given to competing policies are made explicit in Board reports such that these decisions are transparent and proportionate making legal challenge less likely. Refusals of permission can be appealed.

7.3 Environment and Sustainability Implications

7.3.1 The Board works with applicants to secure developments that improve the social, economic and environmental conditions of the Borough as defined in the Development Plan.

7.4 Links to Council Priorities

7.4.1 These actions all help to deliver the Council's policies relating to protecting the environment as well as delivering both housing and economic growth in a co-ordinated and managed way.

The Contact Officer for this report is Jeff Brown (719310).

Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

Agenda Item No 8

Planning and Development Board

15 May 2017

**Report of the
Head of Development Control**

**Tree Preservation Order
Herring Road, Atherstone**

1 Summary

- 1.1 This report considers representations submitted in response to an Emergency Tree Preservation Order made on this land and recommends that the Order is confirmed.

Recommendation to the Board

That the Emergency Tree Preservation Order made on 17 March 2017 in respect of land off Herring Road, Atherstone be confirmed.

2 Background

- 2.1 A report was brought to the Board in April requesting confirmation of action taken to make an Emergency Tree Preservation Order on land off Herring Road in Atherstone following the removal of trees. The Board confirmed that action and sought a further report once the period allowed for representations to be made has expired. The Order was made on 17 March and representations had to be submitted before 21 April. A copy of the Order is at Appendix A.

- 2.2 One representation has been received in the time period and this is from the owner, Mr Bailey, and it is attached at Appendix B. He has been notified that this matter is on the agenda and has been given the opportunity to speak to the Board.

3 Observations

- 3.1 The representation covers a number of points.

Firstly, the former state of the site is described and the reasons for its clearance are explained. In response Members are advised that the Council's reasons for making any Tree Preservation Order do not prevent or interfere with the general maintenance of or the good stewardship of land. The Order itself does not prevent such actions from continuing here.

- 3.2 Secondly, the point is made that the site is not considered to be well used by the public. This is disputed. Whilst the path across the site is not shown on the designated footpath map, it is well used as is evidenced on site with a

well-worn path connecting Westwood Road with the canal footpath. Local Members and a local resident testified to its regular use when the Board considered the matter of the Emergency Order.

3.3 Thirdly, the point is made that the trees do not provide a public amenity. This again is disputed due to the location on the edge of the town; its connectivity with the countryside beyond, its accessible location and its public visibility as a backdrop to the town from a variety of public viewpoints.

3.4 Fourthly, it is claimed that the trees are not significant to warrant being protected. Prior to the Order being made the Council's Tree Officer visited the site and inspected the trees. His conclusions are recorded and these are attached at Appendix C. The record follows a recognised methodology and was undertaken by a qualified officer. It thus carries significant weight.

...

3.5 Fifthly, there is reference as to how the Order was made. Members should be aware that there was more than one request for intervention at this site. This was not confined to one source. Additionally the matter would have been unlikely to be progressed had the Tree Officer's report concluded differently and finally the Board took the decision to confirm the action taken to make an Emergency Order and it was thus not made by any individual. It could have concluded differently.

3.6 Finally, there is reference to compensation and to liability. Members are aware that the Tree Regulations enable an Order only to be made if it is "expedient in the interests of amenity to make provision for the preservation of trees and woodlands". This is the determining criterion in the making of any Order. That was satisfied here. The report to the April Board made it clear that compensation may be payable in certain circumstances should an Order be confirmed. The decision to make an Order is thus not the basis for such a claim. This implication of making an Order is repeated here and the Board may have to consider this eventuality at some point if the Order is confirmed.

3.7 In conclusion, it is not considered that the Board should re-consider this Order.

4 **Report Implications**

4.1 **Financial and Value for Money Implications**

4.1.1 There will be no cost to the Council in confirming the Order. In certain circumstances there may be claims for compensation for loss or damage caused or incurred as a result of a refusal to consent works to a protected tree or as a consequence of conditions attached to the grant of a permission to undertake tree works.

4.2 **Environment and Sustainability Implications**

4.2.1 The trees are mature and have longevity such that they can continue to provide a public amenity in an area of the town that is well used for its recreational value.

The Contact Officer for this report is Jeff Brown (719310).

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

I certify that this is a true copy
of the original which has been seen
by me.



Town and Country Planning Act 1990

North Warwickshire Borough Council

(Land to the rear of Herring Road, Atherstone)

Tree Preservation Order, 2017

Anne Kejar
Principal Solicitor
North Warwickshire
Borough Council
The Council House
South Street
Atherstone
CV9 1DE

The North Warwickshire Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as the North Warwickshire Borough Council (Father Hudson's, Coventry Road, Coleshill) Tree Preservation Order, 2016.

Interpretation

2.—(1) In this Order "the authority" means the North Warwickshire Borough Council.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2011.

Effect

3.—(1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

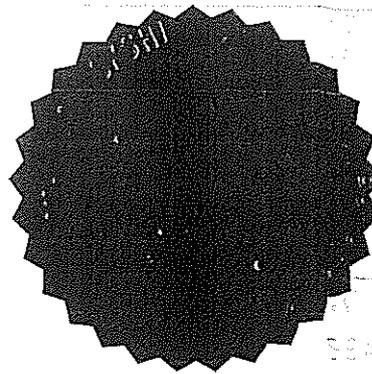
any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 17th day of March 2017

The Common Seal of the North Warwickshire Borough Council
was affixed to this deed in the presence of -



Steve Maxey

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

CONFIRMATION OF ORDER

This Order was confirmed by the North Warwickshire Borough Council without modification on
the day of
OR

This Order was confirmed by the North Warwickshire Borough Council, subject to the modifications
indicated by , on the day of

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by North Warwickshire Borough Council on
the day of

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

VARIATION OF ORDER

This Order was varied by the North Warwickshire Borough Council on
the day of
by a variation order under the reference number
a copy of which is attached

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

REVOCATION OF ORDER

This Order was revoked by the North Warwickshire Borough Council on
the day of

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

Schedule 1, Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
NONE		

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
A1	Alder, Hawthorn, Ash and Oak trees within the area marked A1 on the map	On land to the rear of Herring Road, Atherstone and adjacent to the railway line.

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
NONE		

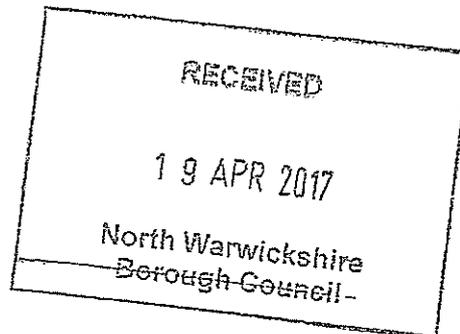
Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
NONE		

36, Century Court
Douglas
Isle of Man
IM2 4N

18th April 2017



North Warwickshire Borough Council
The Council House
South Street
Atherstone
North Warwickshire
CV9 1DE

Dear Sirs

I refer to the recent Tree Preservation Order 2017 (TPO) placed on 2 acres of land situate at the rear of Herring Close, Atherstone and advise that it has been in my ownership for over 20 years.

The land is triangular in shape, bounded by the main London railway to the North and Coventry Canal to the South and is crossed by Mancetter Brook and a footpath, both running in a more or less North/South direction.

Over many years the site had become completely over grown with impenetrable undergrowth and self seeded trees/saplings (mainly Alders) and therefore could never, (as claimed in the TPO) ,be considered well used by the public, or of any importance in terms of public amenity or the setting in the town in general. The site has also become prone to fly tipping, including items related to drug/solvent abuse.

Prior to undertaking any work on the site we commissioned both Ecological and Arbortorial surveys, neither of which showed any trees, forna, or wild life of any significance. In fact I understand that even the NWBC Green Space Officer (GSO) considers that as most of the trees on the site follow the course of the Mancetter Brook, that the roots would more than likely be compromised, which has already affected the health and growth of the trees.

Our main reasons for clearing the site was to locate and avoid any future access problems, of a sewage drain (as yet un-adopted), which we believe crosses the site from the recent Herring Rd development, to a culvert where the Mancetter Brook crosses the railway line. We also understand that various works are currently being undertaken further upstream of Manchester Brook, which in turn will increase the flow of water across our site with the possible risk of flooding an area of land which adjoins the main London main railway line.

Therefore, as a responsible owner, it was decided to clear the whole site, in the hope of avoiding the possibility of drainage and flooding problems in the future.

I understand that the TPO was instigated by 2 local Borough Councillors, who chose to ignore NWBC GSOs opinion and to claim that my action to clear the site was unauthorized and destructive. The Councillors have made no effort to contact me to ascertain my reasons for clearing the site, but instead further claim in the local press, that their intervention has saved the trees as a local amenity.

The implementation of the temporary TPO has already incurred me and the contractors in considerable lost time and cost, which I trust will be fully compensated by NWBC, and that I will also be fully indemnified against any personal liability whilst the Order remains in force.

Under the circumstance we request that The TPO be lifted immediately.

Yours sincerely

A handwritten signature in black ink, appearing to read 'MJ Bailey', with a stylized flourish at the end.

Michael J Bailey

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

SURVEY DATA SHEET & DECISION GUIDE

Date: 14/03/17.	Surveyor: ANDREW HATLINS
Tree details	ALDER, HAWTHORN, ASH, OAK.
TPO Ref (if applicable):	Tree/Group No:
Owner (if known):	Species:
	Location: LAND NR WESTWOOD ROAD, ATHERSTONE.

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- | | |
|---------------------|-------------------------|
| 5) Good | Highly suitable |
| ③) Fair | Suitable |
| 1) Poor | Unlikely to be suitable |
| 0) Dead | Unsuitable |
| 0) Dying/dangerous* | Unsuitable |

Score & Notes ③
TREES TO THE EDGE OF THE SITE ARE IN A FAIR CONDITION.
TREES TO THE CENTRE OF SITE ARE IN POOR CONDITION DUE
TO POTENTIAL FOOTFALE FAILURE.

* Relates to existing context and is intended to apply to severe irremediable defects only

b) Retention span (in years) & suitability for TPO

- | | |
|-----------|-----------------|
| 5) 100+ | Highly suitable |
| 4) 40-100 | Very suitable |
| ②) 20-40 | Suitable |
| 1) 10-20 | Just suitable |
| 0) <10* | Unsuitable |

Score & Notes ②
TREES TO THE EDGE OF SITE HAVE THE ABILITY TO REMAIN
IN POSITION FOR THE TERM SPECIFIED.
TREES TO THE CENTRE OF THE SITE DO NOT JUSTIFY PROTECTION.

* Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- | | |
|---|---------------------|
| 5) Very large trees with some visibility, or prominent large trees | Highly suitable |
| 4) Large trees, or medium trees clearly visible to the public | Suitable |
| ③) Medium trees, or large trees with limited view only | Suitable |
| 2) Young, small, or medium/large trees visible only with difficulty | Barely suitable |
| 1) Trees not visible to the public, regardless of size | Probably unsuitable |

- | |
|---------------------|
| Highly suitable |
| Suitable |
| Suitable |
| Barely suitable |
| Probably unsuitable |

Score & Notes ③
MEDIUM FOOTFALE IN
THIS LOCATION.

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- | |
|--|
| 5) Principal components of arboricultural features, or veteran trees |
| 4) Tree groups, or members of groups important for their cohesion |
| ③) Trees with identifiable historic, commemorative or habitat importance |
| 2) Trees of particularly good form, especially if rare or unusual |
| 1) Trees with none of the above additional redeeming features |

Score & Notes ③
NATURAL HABITAT THAT REQUIRES
PROTECTION GIVE CANAL AND RAILWAY
IN THIS LOCATION.

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- | |
|-------------------------------|
| ⑤) Immediate threat to tree |
| 3) Foreseeable threat to tree |
| 2) Perceived threat to tree |
| 1) Precautionary only |

Score & Notes ⑤
CONTRACTOR HAS ALREADY FELLED NUMEROUS
TREES ON SITE THAT WERE OF HIGH AMENITY VALUE.

Part 3: Decision guide

- | | |
|-------|-----------------------|
| Any 0 | Do not apply TPO |
| 1-6 | TPO indefensible |
| 7-10 | Does not merit TPO |
| 11-14 | TPO defensible |
| ①5+ | Definitely merits TPO |

Add Scores for Total:
16

Decision:
PROTECT.

Agenda Item No 9

Planning and Development Board

15 May 2017

**Report of the
Head of Development Control**

**Tree Preservation Order
Birchmoor Road, Polesworth**

1 Summary

- 1.1 This report seeks confirmation from the Board of actions taken to make an Emergency Tree Preservation Order at this address.

Recommendation to the Board

That the action taken by the Assistant Chief Executive and Solicitor to the Council, in consultation with the Chairman of the Board, to make an Emergency Tree Preservation Order in respect of trees at this address as outlined in this report be confirmed and that subsequent representations received be reported to the Board in due course.

2 Background

- 2.1 Attention was drawn to works being undertaken in respect of trees being removed from the north side of the Birchmoor Road in Polesworth. Officers established that the line of trees involved was not in the ownership of the Warwickshire County Council but that it was in private ownership. The trees were inspected and the name of the owner was established. Work ceased but there was an indication given that it would continue quite soon. As a consequence an assessment was made as to whether the trees should be the subject of an Emergency Order. Members are aware that such an Order should only be made when it is "expedient in the interests of amenity to make provision for the preservation of trees or woodlands in their area".
- 2.2 The trees here provide a frontage alongside the northern edge of the Birchmoor Road close to the built up area of Polesworth. The remaining trees are a mix of oak, damson and ash with a predominance of lime trees. The Tree Officer's assessment is that they are in good health and that they score highly on the standard methodology used in these cases. The trees are clearly "under threat". They provide an important amenity role on the edge of the built-up area of Polesworth marking a transition from the open countryside around. They are visible to the general public both to residents and to passing drivers.
- 2.3 In these circumstances the view was taken that the criteria for making an Order were met and thus the Chairman's agreement was sought for the making of an Emergency Order given the immediate threat of further felling.

That agreement was forthcoming and the Order was made on the 27th April. Site Notices have been displayed and the owner notified by recorded delivery.

- 2.4 The owner will have until 8 June 2017 to make any representations. Following this date Members will be asked to consider whether or not the Order should be made permanent, and part of that consideration will be taking into account all representations received.
A copy of the Order Plan is attached at Appendix A with a copy of the Assessment at Appendix B.

3 Report Implications

3.1 Financial and Value for Money Implications

- 3.1.1 There is no additional cost in making the Order. Members will be aware that in certain circumstances compensation may be payable in respect of subsequent decisions that are taken on applications for works to protected trees.

3.2 Legal and Human Rights Implications

- 3.2.1 The owner of the land is able to respond to the making of the Emergency Order and these will be considered as part of the assessment as to whether to make the Order permanent or not.

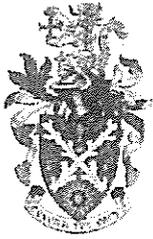
3.3 Sustainability and Environmental Implications

- 3.3.1 The protection of trees is enabled through legislation and accords with the Council's priorities of retaining and protecting the Borough's rural heritage.

The Contact Officer for this report is Jeff Brown (719310).

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date



Town and Country Planning Act 1990

North Warwickshire Borough Council

(Birchmoor Road, Polesworth)

Tree Preservation Order, 2017

The North Warwickshire Borough Council, in exercise of the powers conferred on them by section 198 of the Town and Country Planning Act 1990 make the following Order—

Citation

1. This Order may be cited as the North Warwickshire Borough Council (Birchmoor Road, Polesworth) Tree Preservation Order, 2017.

Interpretation

2.—(1) In this Order "the authority" means the North Warwickshire Borough Council.

(2) In this Order any reference to a numbered section is a reference to the section so numbered in the Town and Country Planning Act 1990 and any reference to a numbered regulation is a reference to the regulation so numbered in the Town and Country Planning (Tree Preservation)(England) Regulations 2011.

Effect

3.—(1) Subject to article 4, this Order takes effect provisionally on the date on which it is made.

(2) Without prejudice to subsection (7) of section 198 (power to make tree preservation orders) or subsection (1) of section 200 (tree preservation orders: Forestry Commissioners) and, subject to the exceptions in regulation 14, no person shall—

(a) cut down, top, lop, uproot, wilfully damage, or wilfully destroy; or

(b) cause or permit the cutting down, topping, lopping, wilful damage or wilful destruction of,

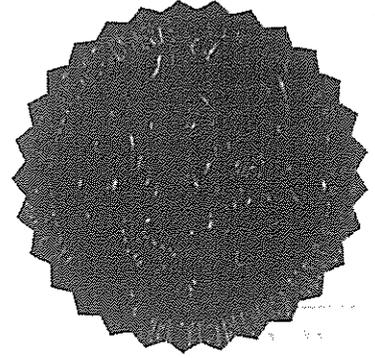
any tree specified in the Schedule to this Order except with the written consent of the authority in accordance with regulations 16 and 17, or of the Secretary of State in accordance with regulation 23, and, where such consent is given subject to conditions, in accordance with those conditions.

Application to trees to be planted pursuant to a condition

4. In relation to any tree identified in the first column of the Schedule by the letter "C", being a tree to be planted pursuant to a condition imposed under paragraph (a) of section 197 (planning permission to include appropriate provision for preservation and planting of trees), this Order takes effect as from the time when the tree is planted.

Dated this 27th day of April 2017

The Common Seal of the North Warwickshire Borough Council
was affixed to this deed in the presence of -



.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

CONFIRMATION OF ORDER

5481

This Order was confirmed by the North Warwickshire Borough Council without modification on
the day of
OR

This Order was confirmed by the North Warwickshire Borough Council, subject to the modifications
indicated by , on the day of

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

DECISION NOT TO CONFIRM ORDER

A decision not to confirm this Order was taken by North Warwickshire Borough Council on
the day of

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

VARIATION OF ORDER

This Order was varied by the North Warwickshire Borough Council on
the day of
by a variation order under the reference number
a copy of which is attached

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

REVOCATION OF ORDER

This Order was revoked by the North Warwickshire Borough Council on
the day of

.....
The Designated Officer
Signed on behalf of the North Warwickshire Borough Council

Schedule 1, Specification of trees

Trees specified individually

(encircled in black on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
T1	Oak	All the trees T1 to T15 are located on land adjacent to the highway known as Birchmoor Road, Polesworth as indicated on the attached map.
T2 and T3	Ash	
T4, T5, T6, T7, T8, T9, T10, T11, T12 T13, T14	Lime (T4 to T14 inclusive)	
T15	Damson	

Trees specified by reference to an area

(within a dotted black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
NONE		

Groups of trees

(within a broken black line on the map)

<i>Reference on map</i>	<i>Description (including number of trees of each species in the group)</i>	<i>Situation</i>
NONE		

Woodlands

(within a continuous black line on the map)

<i>Reference on map</i>	<i>Description</i>	<i>Situation</i>
NONE		

TREE EVALUATION METHOD FOR PRESERVATION ORDERS (TEMPO)

SURVEY DATA SHEET & DECISION GUIDE

Date: 24/04/2017 Surveyor: ANDREW WATKINS.

Tree details
 TPO Ref (if applicable): Tree/Group No: Species: OAK, LIME
 Owner (if known): Location: BIRCHMOOR ROAD, POLESWORTH, B78 1AB.

REFER TO GUIDANCE NOTE FOR ALL DEFINITIONS

Part 1: Amenity assessment

a) Condition & suitability for TPO

- 5) Good Highly suitable
- 3) Fair Suitable
- 1) Poor Unlikely to be suitable
- 0) Dead Unsuitable
- 0) Dying/dangerous* Unsuitable

Score & Notes 5
 GOOD CONDITION SPECIMENS

* Relates to existing context and is intended to apply to severe irremediable defects only

b) Retention span (in years) & suitability for TPO

- 5) 100+ Highly suitable
- 4) 40-100 Very suitable
- 2) 20-40 Suitable
- 1) 10-20 Just suitable
- 0) <10* Unsuitable

Score & Notes 2
 POTENTIAL ROOT COMPACTION NOTED DUE TO THE LOCATION OF THE TREES AND ASSOCIATED VEHICLES.

*Includes trees which are an existing or near future nuisance, including those clearly outgrowing their context, or which are significantly negating the potential of other trees of better quality

c) Relative public visibility & suitability for TPO

Consider realistic potential for future visibility with changed land use

- 5) Very large trees with some visibility, or prominent large trees Highly suitable
- 4) Large trees, or medium trees clearly visible to the public Suitable
- 3) Medium trees, or large trees with limited view only Suitable
- 2) Young, small, or medium/large trees visible only with difficulty Barely suitable
- 1) Trees not visible to the public, regardless of size Probably unsuitable

Score & Notes 4
 HIGHLY VISIBLE POSITIONINGS.

d) Other factors

Trees must have accrued 7 or more points (with no zero score) to qualify

- 5) Principal components of arboricultural features, or veteran trees
- 4) Tree groups, or members of groups important for their cohesion
- 3) Trees with identifiable historic, commemorative or habitat importance
- 2) Trees of particularly good form, especially if rare or unusual
- 1) Trees with none of the above additional redeeming features

Score & Notes 4
 GROUP FORMS A TREE LINE THAT PROVIDES A NATURAL WILDLIFE CORRIDOR IN THIS LOCATION.

Part 2: Expediency assessment

Trees must have accrued 9 or more points to qualify

- 5) Immediate threat to tree
- 3) Foreseeable threat to tree
- 2) Perceived threat to tree
- 1) Precautionary only

Score & Notes 3
 NEW LANDOWNER HAS STATED PLANNED REMOVAL OF THE TREES, WORKS TO BE INSTRUCTED IMMINENTLY.

Part 3: Decision guide

- Any 0 Do not apply TPO
- 1-6 TPO indefensible
- 7-10 Does not merit TPO
- 11-14 TPO defensible
- 15+ Definitely merits TPO

Add Scores for Total:
 18

Decision:
 PROTECT.

Agenda Item No 10

Planning and Development Board

15 May 2017

**Report of the
Head of Development Control**

Annual Performance Report

1 Summary

- 1.1 The annual performance report outlines how the service has managed both planning applications and breaches of planning control during 2016/17 enabling comparisons with previous years.

Recommendation to the Board

That the report be noted.

2 Observations

- 2.1 As in previous years this report is divided into two sections – the first dealing with planning and related applications and the second with the handling of alleged breaches of planning control.

a) Applications

... Table One is attached to this report shows the sustained increase in applications which are being submitted over the past few years. The overall range of applications received remains very similar but the introduction of Discharge of Conditions (DOC's) applications; Non-material amendments (MIA's) and Prior Approvals is noticeable. The approval rate is broadly similar, as is the level of delegation. What is noticeable is that the performance against indicators – the speed of decision making – is high notwithstanding the increased workload. This is due to more streamlined procedures, the use of time extensions where they can be agreed and the dedication of officers in responding to the workload. Appeal numbers show an increase but this is understandable given the situation where the Council is - in that period between the adoption of a Core Strategy and the introduction of a replacement Local Plan based on new evidence. Fee income remains high and is anticipated to rise as larger applications are submitted.

b) Breaches

... These are dealt with in Table Two. Again the pattern set out here follows the general picture from previous years. The time taken to investigate cases is as last year, which is longer than in previous years due to the existing vacant

post within the Division. Reliance on voluntary remedial action or through the submission of retrospective applications once again comes through strongly.

c) Appeals - General

The Board has received reports on the criteria for designating under-performing Authorities with the outcome of appeals being one such factor. The calculation for the criterion is over a two year period. So in order to advise Members of our position, an initial and informal calculation has been attempted. In respect of major applications and using the period 1 April 2015 to 31 March 2017, we received some 95 major applications. Of these less than 3% were allowed at appeal following refusals. This is well below the 10% criterion for possible designation.

d) Appeals Update

There have been five appeal decisions since the last appeals update to the March Board.

i) Harefield, Dog Lane, Nether Whitacre

... This decision is significant as it shows that a conversion of a stable to a residential unit in the Green Belt can be considered not to be appropriate development and that an isolated location can also be considered to result in unsustainable development. (Appendix A)

ii) Eastlang Road, Fillongley

... Members are familiar with the history of this site. The substantial harm to the Green Belt was the key determining factor here. (Appendix B)

iii) The Lakehouse, Nether Whitacre

... Members will recall that this case involved a Certificate application not a planning application. Members themselves took time to become acquainted with the full evidence submitted. The decision clearly shows that to refuse a Certificate application, the Council has to have reliable and robust relevant evidence – see para 70 of the decision letter at Appendix C.

iv) The Mancetter Broiler Unit

... Similarly in this case, the Inspector points throughout the decision letter to the lack of technical evidence to support the Council's case – see paragraphs 23, 30, 31 and 36 of Appendix D.

v) Signs at the Heart of England premises, Fillongley

... This dismissal is important as the Inspector recognised the setting of the site and its lack of existing lighting and the overall impact on the visual amenity of the area. Appendix E refers.

The Contact Officer for this report is Jeff Brown (719310).

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date

PLANNING CONTROL SERVICE IMPROVEMENT PLAN – MONITORING REPORT

TABLE ONE: HANDLING APPLICATIONS

Measure	Year 2012/2013	Year 2013/2014	Year 2014/2015	Year 2015/2016	Year 2016/2017
Processing Applications					
A) Total number of applications received divided as follows:	756	741	870	908	891
• Change of use	6%	6%	4.48%	5.4%	4.6%
• Householder	27%	27%	27.70%	25.10%	26.71%
• Major developments	5%	5%	6.32%	5.51%	5.16%
• Minor developments	26%	24%	23.56%	24.78%	23.23%
• Others	20%	20%	16.44%	16.30%	15.71%
• Docs	12%	12%	9.54%	11.34%	13.13%
• MIAS	3%	6%	5.75%	4.63%	4.94%
• Prior Approval			6.21%	6.94%	6.51%
B) Total number of Decisions	727	753	839	888	845
C) % of all applications granted permission	86.2%	70%	85%	83%	86%
D) % of all applications determined in eight weeks (BVPI)	73%	68%	73%	96%	86%
• majors in 13 weeks	46%	61%	94.11%	96%	95%
• minors in 8 weeks	75%	56%	55.37%	95%	87%
• others in 8 weeks	63%	66%	84.26%	98%	86%
E) % of all householder applications determined in eight weeks	86.43%	85%	89.50%	92%	85%
F) % of all applications determined in under delegated powers (BVPI)	89%	91%	93%	90%	91%

PLANNING CONTROL SERVICE IMPROVEMENT PLAN – MONITORING REPORT

TABLE ONE: HANDLING APPLICATIONS (Cont'd)

Measure	Year 2012/2013	Year 2013/2014	Year 2014/2015	Year 2015/2016	Year 2016/2017
Appeals					
G) Number of Appeals lodged	22	15	16	15	24
H) % of Appeals allowed	25%	47%	20%	28%	35%
Fees and Costs					
I) Fee income from all applications	£481,984	£514,098	£824,051	£501,045	£542,117
J) % of all applications that are non-fee earning.	11.77%	9.58%	13.06%	13.57%	13.53%
K) % of fees that come from householder applications.	8.89%	9.63%	4.87%	7.29%	7.01%

PLANNING CONTROL SERVICE IMPROVEMENT PLAN – MONITORING REPORT

TABLE TWO: BREACHES OF PLANNING AND ENFORCEMENT

Measure	Year 2012/2013	Year 2013/2014	Year 2014/2015	Year 2015/2016	Year 2016/2017
Reports of Alleged Breaches					
A) Number of notifications	173	185	220	169	154
B) %Where a breach identified	57%	64%	60%	67%	54%
C) Average working days from notification to site visit	7	4	7	15	18
D) Average working days from notification to assessment	10	5	8	17	19
E) % of assessments in 21 days	71	70	75	57	43
F) Once a breach is established – mode of resolution (%)					
• Retrospective planning application or certificate application	42	34	37	35	54
• Voluntarily removed	49	56	42	31	30
• Not expedient to take action	1	3	3	4	1
• Enforcement action authorised	7	7	9	5	6
• Other action, e.g. injunctions	0	0	4	2	1
• outstanding	1	1	5	23	8

PLANNING CONTROL SERVICE IMPROVEMENT PLAN – MONITORING REPORT

TABLE TWO: BREACHES OF PLANNING AND ENFORCEMENT (Cont'd)

Measure	Year 2012/2013	Year 2013/14	Year 2014/15	Year 2015/16	Year 2016/17
Reports of Alleged Breaches					
G) %of notifications resolved, or where no breach identified in twelve weeks	66%	65%	77%	56%	57%
H) Fee income from retrospective applications	£ 11895	£ 7926	£ 12061	£ 15828	£ 10366
I) Number of Enforcement Notice Appeals lodged (not necessarily relating to Notices served this year).	4	4	5	4	5
J) Number of cases where Court Action authorised (not necessarily relating to cases reported this year).	4	4	4	2	1



Appeal Decision

Site visit made on 22 February 2017

by **Jane Miles BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14 March 2017

Appeal Ref: APP/R3705/W/16/3159146

Hare Field, Dog Lane, Nether Whitacre, Warwickshire B46 2DT

- 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 Mr Jonathan Rimmer against the decision of North Warwickshire Borough Council.
 - The application ref: PAP/2016/0098, dated 15 February 2016, was refused by notice dated 11 July 2016.
 - The development proposed is a change of use from stable block to residential plus alterations to building.
-

Decision

1. The appeal is dismissed.

Reasons

2. The appeal site, together with associated paddocks/fields, is located to the north-east of the small settlement of Nether Whitacre and is in the West Midlands Green Belt. Thus the **first main issue** in this appeal is whether or not the proposed development would be inappropriate development in the Green Belt, for the purposes of development plan policy and the *National Planning Policy Framework*. The proposal's effects on the Green Belt's openness and in relation to the purposes of including land in Green Belts are relevant in considering this issue in this particular case.
3. The **second main issue** is whether or not a residential unit on the appeal site would accord with development plan and *Framework* policy relating to the location of housing in rural areas. If the appeal proposals are inappropriate development in the Green Belt then there is a **third main issue**. That is whether the harm arising from inappropriate development and any other harm is clearly outweighed by other considerations, so as to amount to the very special circumstances needed to justify the development.

Whether or not inappropriate development

4. The development plan is normally the starting point for assessing a development proposal. In relation to Green Belt however, and as noted in the appellant's statement, CS¹ Policy NW3 (Green Belt) does not specifically address the assessment of proposals for development in the Green Belt. However paragraph 7.1 of the supporting text records that national Green Belt

¹ In full, the North Warwickshire Local Plan Core Strategy (2014)

policy (in the *Framework*) operates over those parts of the Borough in the Green Belt. I shall therefore assess the appeal proposals against Section 9 of the *Framework* (Protecting Green Belt land) as did the Council.

5. As acknowledged by the Council at the application stage, development in the Green Belt will be inappropriate unless it accords with the exceptions listed in *Framework* paragraphs 89 and 90. Several of those exceptions could be relevant in this case. The first is the extension and alteration of a building provided it does not result in disproportionate additions over and above the size of the original building. Given the size of the proposed extension relative to the sizes of the original building, the attached store to be removed and an adjacent detached store², I concur with the Council's assessment that the proposed extension would not be disproportionate.
6. At the application stage the Council also considered the proposal in relation to the exception which allows for redevelopment of previously developed land. Insofar as the existing development was permitted for equestrian and not agricultural uses, it would seem reasonable to treat the appeal site as previously developed land. However, largely due to the relatively small scale of the proposed addition, it is less obvious whether the proposals amount to 'redevelopment'. In any event I find the more appropriate exception category to be the re-use of buildings. Such re-use will not be inappropriate provided: the buildings are of permanent and substantial construction; they preserve the openness of the Green Belt; they do not conflict with the purposes of including land in Green Belt.
7. It is common ground that the existing stable block is of permanent and substantial construction. Moreover in terms of size and volume (and subject to removal of the existing storage buildings) the effect of the proposed built form on the Green Belt's openness would not differ significantly from that of the existing buildings. In terms of use however the proposed residential use could potentially result in the introduction of domestic structures and/or features which would diminish openness, notwithstanding the scope to restrict permitted development rights by condition.
8. Similarly, and more significantly, use of the extended building as a dwelling together with associated domestic activity would change the site's character. At present the small functional building in a generally open field setting accords with the prevailing rural character of the fields and hedging around it and the wider countryside. Residential use would have an adverse urbanising effect whether by creation of a garden or sitting out area, by vehicles parked for long periods or simply by the general activities and lighting associated with residential occupation. I find that to be the case despite the small scale of the proposed dwelling and the screening effects of boundary hedging, and not all such adverse effects could reasonably be precluded by condition. I note the appellant's views that vehicle movements and parking would be less, compared with the existing use, but that is not something which could be guaranteed and future occupants may have different requirements.
9. I find that the adverse impacts of introducing a residential use, in a location physically and visually well separated from any existing dwellings, would amount to a harmful encroachment of residential development into the countryside, to the detriment of its character. Thus the proposal would conflict

² Which, according to the appellant's statement, could also be removed if necessary

with one of the five purposes of including land in Green Belts. It follows that the proposed development would not accord with all three elements of *Framework* paragraph 90 relating to the re-use of buildings (described in my paragraph 6). I conclude therefore that it would be inappropriate development in the Green Belt. Such development is by definition harmful to the Green Belt and should not be approved except in very special circumstances.

Location of housing in rural areas

10. The Council's refusal reason cites paragraph 55 of the *Framework*, which post-dates saved LP³ Policy ECON9 relating to the re-use of rural buildings. As not every element of the LP policy is consistent with the *Framework* I concur that greater weight should be given to the *Framework* and especially paragraph 55 in relation to this matter. That paragraph begins "To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities". However I have found nothing of substance to demonstrate that the proposed dwelling, in a location physically and visually separate from Nether Whitacre, would enhance or maintain the vitality of that small settlement or any larger grouping of villages.
11. Paragraph 55 also establishes that new isolated homes in the countryside should be avoided unless there are special circumstances. In a 2013 appeal decision⁴ submitted by the appellant the Inspector relied on the 'everyday definition' of 'isolated' as meaning lonely or remote. In my experience however 'isolated' in a planning policy context is commonly applied to dwellings proposed, as here, beyond the built-up areas of settlements and contrary to hierarchical spatial strategies in development plans.
12. Those strategies generally seek to concentrate most new housing in towns and villages with good access to services and facilities, and to restrict it in largely undeveloped countryside. Such an approach accords with sustainable development principles and reflects several core planning principles in the *Framework*, including that of recognising the intrinsic character and beauty of the countryside. As CS Policy NW2 follows a similar hierarchical approach, I give greater weight to 'isolated' in this context than to the definition in the 2013 Inspector's decision (relating to a site in a different area at a time when its development plan was found to be "largely absent and wholly silent"). Thus, in the particular circumstances of this case, I find the proposed dwelling would be a new isolated home in the countryside.
13. With regard to the various examples of special circumstances mentioned in paragraph 55, the appellant cites the one relating to a development that would re-use redundant or disused buildings and also lead to an enhancement to the immediate setting. He maintains the stables are no longer necessary for the hardy breeds of horse currently kept at the site, and are therefore redundant, and that the proposals would amount to enhancement.
14. At my visit however not only did it appear that the stables are still in use but also that the buildings and immediate surroundings are well maintained and in reasonably good order. Moreover, whilst the rural character of the appeal site in its existing use is wholly in accord with that of its countryside surroundings, I have already found that the proposed use would have a harmful effect in terms

³ In full, the North Warwickshire Local Plan (2006)

⁴ Appeal ref: APP/P3040/A/13/2191142, decision dated 17 May 2013

of the encroachment of residential development into the countryside, to the detriment of its character. Thus I find the proposal would not lead to any enhancement of the immediate setting and, in the absence of any other special circumstances, it would not accord with *Framework* paragraph 55. Nor would it accord with saved LP Policy ECON9 (insofar as the policy is consistent with the *Framework*) or with CS Policy NW13 relating to the protection of the natural environment's quality, character, diversity and local distinctiveness.

Other considerations, very special circumstances and overall conclusion

15. I note references to two other appeal decisions⁵. However the matter at issue in the 2003 appeal is of little relevance in this case and it is apparent from the 2016 Inspector's decision that the nature of that proposal for eleven new dwellings on a nearby site in the Green Belt raised some materially different questions from those to be addressed in this case. Thus neither decision appeal alters my findings in the particular circumstances of this case.
16. I have already found the proposed dwelling's location outside any settlement to be a negative feature of the proposal, and the building's small size limits scope for design improvements. Thus, notwithstanding details of accessibility to facilities and public transport (in the appellant's statement) I give very little weight to his case that the proposal would have benefits in replacing poor design with better design; in improving conditions in which people live, work, travel and take leisure; in widening the choice of high quality homes.
17. Any economic benefit from the extension and alteration works would be limited due to their small scale. The social and economic benefits of creating one additional small dwelling would, at best, be modest. I therefore give those benefits only modest weight. I note also some local support for the proposal but that adds relatively little to the considerations weighing in its favour.
18. On the other side of the balance the *Framework* establishes that substantial weight is to be given to any harm to the Green Belt. Harm would result in this case because the proposal would be inappropriate development in the Green Belt and because it would conflict with the Green Belt purpose of safeguarding the countryside from encroachment. The proposal would conflict with development plan and *Framework* policy in these respects and also in relation to the location of housing in rural areas.
19. Having had regard to all other matters raised I conclude that the modest weight attributable to the proposal's benefits is insufficient to clearly outweigh the substantial weight to be given to the harm arising from inappropriateness and the other harm I have identified. Thus the very special circumstances needed to justify the proposed development do not exist and, in conflicting with the development plan and with the *Framework*, the appeal proposal would not constitute sustainable development. It follows that the appeal must fail.

Jane Miles

INSPECTOR

⁵ Appeal refs: APP/R3705/A/03/1116218, decision dated 1 September 2003; APP/R3705/W/16/3144450, decision dated 10 May 2016

Appeal Decision

Site visit made on 7 February 2017

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

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 14th Mar 17

Appeal Ref: APP/R3705/W/16/3157967

Eastlang Road, Fillongley CV7 8EQ

- 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 Mr James Cassidy of Cassidy Group UK against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2015/0253, dated 1 December 2015, was refused by notice dated 9 August 2016.
 - The development proposed is 27 No. affordable 2, 3 and 4 bedroom houses and 2 bedroom bungalows including associated highways, external works, landscaping and boundary treatments.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:-
 - Whether the proposal would constitute inappropriate development in the Green Belt and the effects on openness and the purposes of including land within the Green Belt having regard to the development plan and national planning policy;
 - If the proposal is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

3. The appeal site comprises a grassed paddock that is irregular in shape and is around 1.3 hectares in area. On the northern and eastern boundaries of the site there are established hedgerows and landscaping and there is also a brook adjacent to the northern boundary. There is a recreation ground and children's play area on the opposite side of the brook and a public footpath runs through the site. To the east there are agricultural fields and to the south and west there is residential development. I noted at my site visit that there is a dilapidated building that has the appearance of a stable block adjacent to the northern boundary of the site.
4. Planning permission¹ was refused in 2015 on the appeal site for 27 dwellings which comprised 21 affordable homes and 6 market homes. A subsequent

¹ PAP/2014/0520 – 14 April 2015

appeal² against that refusal was dismissed. The scheme before me would involve the construction of 27 affordable homes.

Whether the proposal would be inappropriate development in the Green Belt and openness and purpose

5. Apart from certain clearly defined exceptions set out in paragraph 89 of the National Planning Policy Framework (the Framework) the construction of new buildings in the Green Belt is to be regarded as inappropriate development. Such development is harmful by definition and should not be approved except in very special circumstances. An exception defined within paragraph 89 of the Framework is the limited infilling in villages, and limited affordable housing for local community needs under policies set out in the Local Plan.
6. Policy NW2 of the North Warwickshire Core Strategy (CS) relates to the settlement hierarchy for the Borough. Fillongley is identified as a category 4 settlement with a development boundary. The appeal site is outside but adjoins the development boundary. Within this policy it states that affordable housing outside of development boundaries will only be permitted where there is a proven local need; it is small in scale and is located adjacent to a village.
7. CS Policy NW3 states that infill boundaries in the Green Belt will be brought forward to indicate where limited infill and redevelopment would be permitted. However, I have no evidence before me to indicate that this applies to Fillongley.
8. CS Policy NW5 relates to the split of housing numbers and it states that only affordable housing where there is a proven local need and it is small in scale and does not compromise important environmental assets will be permitted outside of settlements.
9. In the 2015 appeal decision the Inspector stated that "*Having regard to the above, the relationship of the site to existing residential development and the size of the appeal site relative to neighbouring development, I do not concur with the appellant that the scheme would result in limited infilling in the village.*" These findings are persuasive in this case.
10. In establishing whether or not the proposal would be limited affordable housing for local community needs under policies set out in the Local Plan it is necessary to consider whether the proposal would be 'limited'; whether there is a proven local need; whether it would be small in scale; whether it would be located adjacent to a village and whether it would compromise important environmental assets.
11. There is no dispute between the 2 main parties that there is a proven local need and that the site is located adjacent to the village. However, I acknowledge that concerns have been raised in relation to the local need aspect. The Inspector in the 2015 appeal decision found that there was a proven local need for affordable housing. Furthermore, the Council have stated that its Officer's Report to the Planning Board contains a lengthy résumé of the situation and that its own officers consider that 'need' has increased since that decision and not decreased. I have no reason to dispute the findings of the Inspector in the 2015 appeal decision or the Council's Officer Report. Consequently, I consider that there is a proven local need for affordable housing.

² APP/R3705/W/15/3087232 – 15 October 2015

12. There are no definitions of what constitutes 'limited' in the Framework or small in scale in the CS. As the 2015 scheme included an element of market housing the Inspector in the 2015 appeal decision stated that "*Given my findings and the nature of the proposal it is not necessary for me to establish whether the scheme would be 'small in scale' or result in 'limited affordable housing'.*"
13. The Council have drawn my attention to an appeal decision³ in Nether Whitacre (the 2016 case). Whilst, I do not have the full details of the case and therefore cannot be certain the circumstances are directly comparable to the scheme before me, the appeal did involve a proposal for affordable housing in the Green Belt in North Warwickshire. I acknowledge that the settlement was not Fillongley and that whether there was a proven local need was in dispute in that case but there appear to be many parallels between this case and that one. As such I give it moderate weight.
14. The Inspector in the 2016 case considered that 'limited' "*could mean either a small area in terms of land take, or delivery of only the amount of units required*". He also stated "*I am mindful of the appellant's suggestion that the parish as a whole rather than the settlement of Nether Whitacre should be the relevant geographical unit for the consideration of whether the proposal is limited in scale. However, the parish comprises distinct settlements, and furthermore the settlement hierarchy of the Core Strategy identifies settlements rather than parishes. For these reasons, I am persuaded that the relevant geographical scale for this assessment is the settlement rather than the parish.*" I consider that these findings are reasonable and persuasive.
15. I noted at my site visit that Fillongley is a small settlement and this finding is supported by its allocation as category 4 settlement in CS Policy NW2. The land take of around 1.3 hectares would not be limited relative to the size of the settlement that it would be adjacent to. However, as stated above, since the 2015 appeal decision the Council consider that the proven local need has risen above 27 and in this respect the proposal would be limited.
16. The Council have stated that the proposal would increase the amount of new dwellings in the adjoining part of the village by 18%. I note that the site is within close proximity to the centre of Fillongley and that the site is relatively well contained in visual terms. However, the village is a small settlement and the addition of 27 dwellings and the development of 1.3ha would significantly increase its overall size in terms of area and number of dwellings. Consequently, I do not consider that the proposal would be small in scale.
17. Furthermore, I also note that CS Policy NW5 states that in the case of category 4 settlements the housing requirement within the development boundary would usually be on sites of no more than 10 units and at any one time depending on viability. I acknowledge that this does not relate to development outside of the settlement. However, it is reasonable to consider that a proposal that would be substantially above the size of development that would usually be expected within the village cannot be regarded as small in scale.
18. The Council consider that the Green Belt is an environmental asset. I note that the Inspector in the 2015 decision on this site considered that the harm to the openness of the Green Belt brought that proposal into conflict with the environmental asset objective of CS Policy NW5. The appellant has

³ APP/R3705/W/16/3144450 - 10 May 2016

highlighted that the Inspector in the 2016 decision found that the environmental harm in that case would not be so severe to compromise an important environmental asset given the wording of CS Policy NW5.

19. I consider that it is reasonable that, taking into the account the fundamental aim and the 5 purposes of the Green Belt as indicated at paragraphs 79 and 80 of the Framework, the Green Belt be treated as an important environmental asset.
20. Paragraph 79 of the Framework indicates that openness is an essential characteristic of the Green Belt. The proposal would involve the development of a large paddock and the introduction of a significant amount of built form onto this generally open site where there is currently only a dilapidated stable block. Consequently, the footprints of the dwellings, their bulk and accompanying domestic accoutrements, would lead to a significant loss of openness both in terms of its visual and spatial aspects.
21. The development would substantially extend the built form of the village into the surrounding countryside and it would conflict with a purpose of including land in the Green Belt that is to assist in safeguarding the countryside from encroachment. I note that the established hedgerows and landscaping on the northern and eastern boundaries would assist in visually containing the development from the surrounding countryside. However, this would not mitigate the harm I have identified.
22. In my reading of CS Policy NW5 I rely on the everyday definition of the word 'compromise' as cause to become vulnerable or function less effectively. I have found that the development would lead to a significant loss of openness and would substantially extend the built form of the village into the countryside. Consequently, I consider that the important environmental asset would function less effectively in this location and would be compromised.
23. Taking into account all of the above, the proposal cannot be considered to be limited infilling. Whilst it would deliver fewer units than the proven local need and it would be adjacent to a village it would not be limited in size nor small in scale and it would compromise an important environmental asset. As such, the proposal would constitute inappropriate development within the Green Belt. The proposal would be harmful to the openness of the Green Belt and would conflict with the purpose of including land within it. This harm would be in addition to that arising from the inappropriate nature of the development.

Other considerations

24. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations. This is a high hurdle to overcome.
25. In relation to the 2015 case the main difference of this proposal is the alteration of the tenure of 6 market homes. As a result the proposal would provide a total of 27 affordable homes in a Borough that has identified the provision of affordable homes as one of the main priorities for the future. This would undoubtedly deliver substantial social benefits. The appellant has

stated that the scheme is deliverable and I have no reason to dispute this. These matters attract considerable weight in favour of the proposal.

26. The edge of settlement location would provide relatively good access to the facilities and services in the locality and this attracts moderate weight.
27. The development would result in economic benefits through the activity associated with its construction and occupation. However, these benefits would arise regardless of where the houses were built and as such they attract limited weight.
28. I note that there were no highway or drainage objections to the scheme and that the Council considered that the design and appearance of the scheme was acceptable and that it would not harm the amenity of neighbouring occupiers. I acknowledge that the proposal would not harm the existing public footpath and that the established boundary landscaping would be retained. However, a lack of harm in these respects is a neutral consideration and does not weigh for or against the scheme.
29. Landscaping and other measures could contribute to the bio-diversity of the site but this has to be balanced against the undeveloped nature of the existing site. As such, it is likely that this would have a negligible or no impact and as such is a neutral factor.
30. The Council have stated that they can demonstrate a 9 year supply of housing land and this is not disputed by the appellant. Consequently, I consider that the Council's relevant policies for the supply of housing are up-to-date. I acknowledge that the Council's Officer Report recommended the scheme for approval but this is a neutral factor in my consideration of this case.

Conclusion

31. I find that the totality of the other considerations does not clearly outweigh the Green Belt harm. I acknowledge that I have given less weight to the lack of highway or drainage objections than the Inspector in the 2015 case. However, even if I had attributed the same weight to that matter as the previous Inspector it would not have altered the overall balance of my findings. Consequently, the very special circumstances necessary to justify the development do not exist. As a result there is conflict with CS Policies NW2 and NW5 and the Framework as a whole.
32. Having had regard to all other matters raised, it is concluded that the appeal should be dismissed.

D. Boffin

INSPECTOR



Appeal Decision

Inquiry held on 24, 25 and 26 January 2017

Site visit made on 26 January 2017

by Wendy McKay LLB Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 April 2017

Appeal Ref: APP/R3705/X/16/3147355

**Lake House, Bakehouse Lane, Whitacre Heath, Nether Whitacre,
Warwickshire, B46 2EB**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Nicholas Horton against the decision of the North Warwickshire Borough Council.
- The application Ref PAP/2015/0307, dated 21 May 2015, was refused by notice dated 2 October 2015.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the use of the Lake House, Bakehouse Lane, Nether Whitacre as a single dwelling house.

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

Main Issue

1. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development (LDC) was well-founded. In reaching a conclusion on that issue, it is necessary to consider first, whether the 4 year or 10 year rule under s.171B of the 1990 Act is applicable in terms of assessing the relevant immunity period and, secondly, whether the development is immune from enforcement action though the passage of time and thereby lawful by virtue of s.191(2)(a) of the 1990 Act.

Background matters

2. At the Inquiry, the evidence was taken on oath.
3. Neither the identity of the Appellants, nor the planning merits of the operation, use or activity is relevant to the purely legal issues which are involved in determining an LDC appeal. The onus of proof in an LDC appeal is on the appellant and the relevant test is "*the balance of probability*".
4. The Appellants' own evidence does not need to be corroborated by "*independent*" evidence in order to be accepted (*FW Gabbitas v SSE and Newham LBC [1985] JPL 630*). If the local planning authority has no evidence of its own, or from others, to contradict or otherwise make the Appellants' version of events less than probable, there is no good reason to refuse the

appeal, provided the Appellants' evidence alone is sufficiently precise and unambiguous to justify the grant of an LDC "on the balance of probability".

The Statement of Common Ground

5. The Statement of Common Ground (SCG) dated 23 January 2017 sets out the matters upon which there is common ground between the Council and the Appellants and identifies those areas where disagreement lies. It includes the following matters:

The Planning History

6. Planning permission¹ was granted by the Council on 11 March 1998 to "enlarge existing fishing pool" at the site. Condition 7 of that permission required details of the design and materials of a shelter to be erected on the land to be approved in writing by the Council prior to its construction. The details of the shelter were discharged on 24 September 1998. The approved details were for a Curdale type wooden structure 5.5m wide, 4.2m deep and 2.7m high to the ridge.
7. The parties agree that the existing dwelling house measures 3.6m to the ridge but the Council accepts that it has no evidence of its own to contradict the Appellants' claim that, in extending the building, they did not increase its height.
8. The Council's Committee Report for the LDC application was written by a professional planning officer who assessed it against the 4 year rule under s.171B(2). The report recommended approval of the application and the grant of an LDC on the basis of satisfying the 4 year immunity period. However, the application was refused by the Council on the ground that: "*The applicant has not discharged the burden of proof that, on the balance of probabilities, the Lake House has been used continuously as a residence for a period of 4 years prior to the application date*".

The Appeal Site

9. The appeal site forms a roughly rectangular parcel of land located towards the end of an informal access track off Bakehouse Lane. It predominantly comprises a fishing lake. The remainder consists of the appeal building, patio area, paved pathway and storage shed. The appeal building measures 8m wide, 7m deep and 3.6m high.

The Absence of Concealment

10. The parties agree that there have been no attempts made by the Appellants to conceal the appeal building since the purchase of the site in 2009.

Building works

11. It is agreed that the appeal building has been capable of permanent residential use from 2009 and for at least 4 years prior to the date of the LDC application.

Matters in dispute

12. The matters in dispute are:

¹ Ref: 0123/98/FAP

- Whether, on the balance of probabilities, the Lake House has been used continuously as a residence for a period of 4 years prior to the application date.
- Whether the appeal building, itself, is a different building to that approved under Condition 7 of planning permission 0123/98/FAP in 1998 and whether the 4 year or 10 year period provided for under s.171B applies.

Reasons

Whether the 4 year or 10 year period provided for under s.171B is applicable in terms of assessing the relevant immunity period

13. The Council submits that the building the subject of this appeal has not been converted into a dwelling. It contends that the extent and circumstances of the relocation and works carried out to the original shed instead created a new building. That new structure was used from the outset as a dwellinghouse so that there was no change of use to use as a dwellinghouse and the breach of planning control is subject to the 10 year immunity period in s.171(B)(3), rather than the 4 year period in s.171(B)(2).
14. The Council draws support for this proposition from the case of *Welwyn Hatfield Borough Council v SSCLG [2011] UKSC 15*. That case is referred to in the 2013 edition of 'Planning Enforcement' by Richard Harwood QC which states, in relation to s.171B(2), that: "*Subsection (2) relates solely to the change of use of a building and so the building must have been in a non-dwelling house use prior to the change. Consequently, if a building is constructed as a dwelling house and put to that use there is no change of use of a building to use as a dwelling house. The four-year time period in subsection (2) does not apply and the use of the building is subject to the ten-year period in subsection (3)*".
15. The Appellants recognise that this book might provide a helpful guide but do not accept that Mr Harwood is the leading authority upon planning enforcement or that his succinct and summary observations could alter the purport of the *Welwyn Hatfield* judgment.
16. It is, of course, that judgment, itself, that must be interpreted and upon which I rely in reaching my conclusions. Turning to that case, Lord Mance, at paragraph 17, states: "*Protection from enforcement of a building and its use are thus potentially very different matters....The building attracts a four year period for enforcement under sub-s (1), while its use attracts, at any rate in theory, a ten-year period for enforcement under sub-s (3)*". Lord Brown, at paragraph 68, agrees that: "*s.171B(2) is simply not apt to encompass the use of a newly built house as a dwelling house and the nil use concept provides no coherent escape from this conclusion*". In my view, Mr Harwood's summary represents a fair reflection of the principle that can be derived from these obiter comments made in the *Welwyn Hatfield* case.
17. It is therefore necessary to consider whether the package of measures involved in the relocation and extension of the structure amounted to the creation of an entirely new building. For the Council, the proof of evidence of its senior enforcement planner, Mr Gittins, puts forward four points in support of the contention that the appeal building is a different one to that approved in 1998, namely, (1) it has been relocated; (2) it is larger in footprint from that approved; (3) it is of a different construction and (4) the motive of the Appellants.

18. On the first point, the Appellants do not deny that the building was relocated before it was extended or any other works were undertaken to it. There is a degree of uncertainty as to the precise extent of that relocation. Mr Horton, in his statutory declaration, stated that he moved it about 1.8m closer to the lake. In cross-examination, he explained that he had arrived at such a precise estimate as he had measured it with a tape measure after the LDC application was submitted. However, in examination-in-chief he stated that it was moved "*a couple of metres, perhaps a little more*". There were also varying distances given by other persons providing evidence on his behalf in their statutory declarations. It was apparent at the site visit, when comparing the position of the new structure with the old hardstanding on which it had been sited, that it had, indeed, been moved somewhat further than Mr Horton had stated in his evidence, certainly more than a couple of metres.
19. At the Inquiry, Mr Horton confirmed that it was moved by means of a digger and skate rollers which had been hired for that purpose. The work involved in relocating the structure required more than one person. To prepare the new location, the loose soil and mounds were cleared with a digger before slabs were laid down upon which the structure was placed.
20. It is clear that the process of relocating the structure was extensive, skilled and intricate. The works involved in re-siting the building cannot be regarded as de minimis. The old structure had been in place for over a decade before it was moved in 2009. The Council does not seek to suggest that it should not be regarded as a building for planning purposes, even though it was physically capable of being moved. Although the relocation process involved an engineering operation which would have required planning permission, no enforcement action was taken by the Council at that time, or since, in relation to those works which are now immune from enforcement action.
21. On the second point, the Appellants accept that the footprint has been enlarged in that an extension has been added to the rear of the building. However, there was no alteration to the footprint of the original structure; there was only an, albeit substantial, addition to the rear. The SCG confirms that the Council now accepts that there has been no change to the height of the structure.
22. On the third point, the Council draws support from the other changes which have taken place to the original shed. It refers to the installation of cavity wall insulation; additional windows; service connections and internal residential accommodation including a loft/attic together with the transformation of the internal layout.
23. The Appellants acknowledge that certain works by way of extension and modification of the shelter occurred including the introduction of additional windows, cavity insulation, the wiring of the property, and the introduction of a bathroom, kitchen, lounge, attic bedroom and master bedroom which were completed in late July/early August 2009. Nevertheless, Mr Horton gave clear evidence to the effect that the attic was an original feature and the changes to the fenestration were limited. Apart from the rear extension and fenestration, the works carried out were for the most part internal and the timber sides and roof of the original structure by and large remained in situ.
24. On the fourth point, Mr Gittins confirmed in his evidence that the question of motive on the part of the Appellants was strictly irrelevant to the questions before this Inquiry. The Council did not identify any statutory law, policy or

authority that indicated that there was any relevance to the issue of intention in the context of this appeal. The SCG confirms that the Council does not pursue its case on the basis that the Appellants attempted at any point to conceal the appeal building.

25. Turning to the various steps involved in the 'package of measures' as a whole, the position is that the shelter that existed at the time the Appellants acquired the site was first moved closer to the lake and placed upon slabs. The structure was emptied pre-location and following its relocation, the works to extend it began as soon as it was moved or very shortly thereafter. Whether or not it was ever actually used as a shelter once it had been moved, the available evidence indicates that it was capable of being physically accessed by anyone who sought to use it for that purpose and it was not prevented from being so used either by the extension or other works that were being undertaken by the builders.
26. The 1998 planning permission did not impose any planning condition restricting the siting of the shelter within the plot. I do not consider that the engineering operation involved in relocating the building resulted in the loss of its extant lawful use as a shelter associated with the fishing lake. The building did not undergo any change of use simply due to its change of position within the same planning unit and its placement upon a slab/concrete base. The works subsequently undertaken either in their own right or in combination with the relocation did not, as a matter of fact and degree, result in the creation of an entirely new building. In my opinion, they amounted to no more than the alteration and extension of the original structure. There was a change of use of that building from its lawful purpose when the dwellinghouse use began after those works were completed. This is a different situation from that which pertained in the *Welwyn Hatfield* case which can be distinguished on its facts.
27. I conclude, as a matter of fact and degree, that the 'package of measures' did not result in the creation of an entirely new structure. The old shed has been altered and extended and undergone a change of use to use as a single dwellinghouse. Since there has been a breach of planning control consisting of the change of use of that building to use as a single dwellinghouse the 4 year period provided for under s.171B(2) is applicable in terms of assessing the relevant immunity period.

Whether the development is immune from enforcement action though passage of time and thereby lawful

28. It is therefore for the Appellants to demonstrate that, on the balance of probability, the change of use of the building to use as a single dwellinghouse has existed for a period in excess of 4 years prior to the date of the LDC application and continued actively throughout the following 4 year period. There can be no 'dormant' periods in the 4 year period. The Appellants must show when the change of use first occurred and demonstrate that it had continued actively throughout the relevant period, to the extent that enforcement action could have been taken against it at any time.
29. The change of use of the building to use as a Class C3 dwellinghouse would only have arisen at the time when the works were substantially complete so as to make it a structure capable of providing the facilities required for day-to-day private domestic existence and it was so used for that purpose.

30. There is no dispute that the appeal building has been capable of permanent residential use since the works were carried out in 2009. Mr Horton gave evidence as to his involvement in the external and internal works carried out to the shed. This was supported by statutory declarations and evidence from tradesmen who provided detailed accounts and invoices for work undertaken at the site. There is also photographic evidence to show the interior and exterior of the structure at that time. There is clear and cogent evidence to the effect that, after the carrying out of the works to the shed in 2009, it was capable of providing the necessary facilities required for day to day private domestic existence.
31. The Council still expresses doubt that the single dwellinghouse use actually commenced prior to May 2011. It draws support from the fact that the building was not connected to conventional services from the outset. The structure was not connected to the water supply until December 2011 or to the mains electricity and telephone until 2012. The gas connection was not provided until summer 2013. The Appellants did not register the property for a TV licence until November 2012, or as a postal address until November 2013. The registration for Council Tax did not take place until July 2015, albeit that it has been backdated and paid as from 2009/2010.
32. The Council suggests that this pattern of connection to, and registration for, services is more consistent with a gradual escalation of the use rather than a "clean start". It also points to the absence of contemporaneous documentary evidence such as receipts for the furniture which the Appellants claim was installed in 2009. It submits that the Appellants may have "camped out" in the cabin on occasion, rather than the dwelling having been created and lived in before the relevant date in May 2011.
33. The Appellants have provided evidence to the effect that, prior to the installation of mains electricity and Calor gas tank, the property was served by a generator which is presently stored in a shed on the site. Mr Horton asserts that, at the outset, this level of provision was sufficient for his needs. The e-mail from Gas Centre Ltd confirms that in 2009 Bayliss Ltd (now Gas Centre Ltd) assisted him with the fittings for the filtration system to serve the property. They also state that once the works were complete in 2009, they started to provide Mr Horton with about ten 47kg propane gas cylinders per year at the lake up until about 2013 to provide fuel for heating the property. The use of cylinders ceased when he had a more permanent Calor gas tank installed outside the building.
34. The drinking water was initially pumped from the lake and was filtered using a system purchased from East Midlands Water Company. Pumped water was also used for flushing the toilet prior to the mains water being connected. The Appellants have provided a copy of the order for the water filtration unit from East Midlands Water dated 8 July 2009.
35. At the Inquiry, Mr Horton also explained that he used bottled water for drinking prior to the installation of the mains water. He stated that the reason for delaying the installation of the main electricity was due to the cost and his available funds at that time. He informed the Inquiry that an operation to his lower back meant that he was absent from the site for a few months and that the use of the building fell significantly in 2015 and 2016 in response to the unwelcome attention sparked by the LDC application. The Council complains

that this new oral evidence had not appeared in his proof of evidence and that these new points have the effect of seeking to 'explain away' shortcomings in his evidence. Whilst this new evidence may indeed have that effect, it was given on oath and I find no reason to doubt the truthfulness and honesty of what was said by Mr Horton on these matters.

36. Even though mains services were not connected at the start of the period of occupation claimed by Mr Horton, the use of a generator, gas cylinders, water bottles and water filtration system would have enabled the residential use to take place. I consider that the Appellants have provided a reasonable and plausible explanation for the delay in the connection of the property to the mains services. The same applies to the reasons given for the delay in registering the property for a TV licence, Council Tax and as a postal address. It is clear that the actual use could have commenced at an earlier time and the delay in connection provides little basis for the supposition that the Appellants were only "camping out" in the building prior to the relevant date.
37. Turning now to the question of the extent of the actual use made of the building as a dwellinghouse and the continuous nature of its occupation, the Council, in its closing submissions, acknowledges that its professional witness, Mr Gittins, agreed in cross-examination that, should the 4 year immunity period be found to be applicable, there were no breaks in that immunity period so as to defeat the continuous use as a single dwellinghouse. Nonetheless, the Council still puts the Appellants to proof in respect of whether they have discharged the legal burden of proof that is upon them in that respect.
38. Mr Horton's evidence is that when he first purchased the site, it was his intention to use the dwelling for occasional breaks. Due to security concerns at the site, there was a need for him to stay at the premises overnight on a more regular basis. He submits that once the dwelling became habitable in 2009, he began to stay on a regular basis predominantly from Wednesdays to Sundays. He spent the rest of the time at his property in Sutton Coldfield with his wife and children. The pattern of Mr Horton's residence was initially varied with some stays being shorter and some longer. He owns four businesses in the Midlands and has meetings that require him to be in a variety of locations. This has sometimes meant him residing at the Lake House outside his 'regular pattern'; on the other hand he has sometimes needed to stay with his wife in Sutton Coldfield. The arrangements were not always fixed and varied according to the weather and work patterns. However, he confirmed that, on the whole, he would stay at the Lake House three or four times a week, for most weeks of the year.
39. Mr Horton's residency at the Lake House has been corroborated by his wife, friends, family and tradesmen with varying levels of supporting evidence including, in some cases, evidence on oath, statutory declarations, receipts and photographs.
40. The evidence of Mrs Horton both in her statutory declaration and in oral evidence to the Inquiry, confirms the security issues at the lake which she claims led to her husband residing at the Lake House. Mrs Horton also describes the pattern of her husband's living arrangements at the Lake House and that she considers this to be his main residence. Mrs Horton kept a diary in 2013, 2014 and 2015 which provides a record of events, notes and appointments. Her diary entries evidence some of the sustained periods of

time that Mr Horton has spent at the lake and the frequency of the visits/overnight stays by Mrs Horton and the children over a two year period. Mrs Horton has also submitted a series of photographs taken at the Lake House between May 2011 and August 2014 which provide evidence of time spent at the property over that period.

41. The Council acknowledges that Mrs Horton's diary entries provide contemporaneous evidence as to the extent of the use of the building. However, it points out that this only began in 2013 and the entries lend no support to the period before then. That is, indeed, a clear shortcoming of the diary entries but they still provide a consistent record of a pattern of residency that corresponds with and supports her oral evidence of the usage made in the unrecorded earlier period.
42. The evidence of Neil Spittle, the gardener, in his statutory declaration and as confirmed by his oral evidence to the Inquiry, is that he first visited the site in the summer of 2009. During the summer months since then he has visited the site every two weeks to undertake gardening work. His visits varied between mornings, afternoons or a full day. He stated that Mr Horton was usually there when he carried out the gardening and he advised him on what work needed to be done. Mr Horton was there to let him in about 80% of the time but otherwise he entered the grounds with a key that he has been provided with. Mr Horton supplied him with tea and coffee and sometimes a bacon sandwich when he was around.
43. In cross-examination, he confirmed that his view that Mr Horton was living at the Lake House was based upon what Mr Horton had led him to believe rather than his own personal knowledge. There are obvious limitations to that which can be attributed to his own personal knowledge of the precise nature of Mr Horton's occupation. Nonetheless, what he observed and experienced during his frequent and regular visits to the site is consistent with the Appellants' version of events.
44. Mr Tom Badger, a former police officer, is a friend of the family. Mr Badger gave oral evidence to the Inquiry to the effect that he had made social visits to the property and had stayed overnight in the cabin once in either 2011 or 2012. He slept in the attic space which was in existence but contained no beds at that time.
45. The statutory declaration and oral evidence of Janet Turner, Mr Horton's sister-in-law, also confirms the Appellants' initial security concerns in relation to the lake. She stated that it was some time in 2009 when Mr Horton decided to live there. Since 2009, she has visited the lake on special occasions such as birthdays and also on the odd Sunday. In total, she has visited about six times a year and for the majority of her visits she did not stay over. She visited most frequently between 2009 and 2010 before she moved to Shropshire. She has provided photographic evidence in the form of some 26 photographs taken on 3 July 2011 and 18 February 2013.
46. The Appellants have submitted statutory declarations of friends and family to show that the dwellinghouse and its immediate setting have been used for social activities associated with the domestic use of the building during the relevant period. They also draw support from the statutory declarations and oral evidence of Mr Spittle, the gardener, and the statutory declarations of Mr Turvey, the electrician, together the evidence of Mr Hollins and Mr Williams,

tradesmen of Sparta Construction, that the dwelling and its immediate surroundings have been continuously maintained and/or improved since 2009.

47. All in all, there are a number of statutory declarations made by various individuals submitted in support of the Appellants' case. This evidence does not attract the same weight as the oral evidence given by witnesses to the Inquiry, as it has not been tested by cross-examination. Whilst recognising the limitations of evidence given in this form, it must be given due weight as a solemn declaration under the Statutory Declarations Act 1835 with all that that implies. These statutory declarations provide some, albeit modest, support for the Appellants' case.
48. The Council submits that none of the witnesses called to give oral evidence to the Inquiry on behalf of the Appellants could be characterised as independent witnesses since they are either family members or friends or had an ongoing business relationship with Mr Horton, as in the case of Mr Spittle. However, the Appellants' witnesses gave evidence on oath that was tested by cross-examination. In the absence of contradictory evidence, there is no reason to suppose that their evidence was given other than in an impartial and conscientious manner, or that their recollections should be disbelieved.
49. I shall now consider the scope and value of any such contradictory evidence before the Inquiry. The Council called three local residents, namely, Mrs Debra Starkey, Mrs Beverley Woollaston, and Mr Steve Young, in addition to Mr Peter Gittins, to provide evidence contrary to the Appellants' case. The local residents did not seek to suggest that Mr Horton was never present at the site but their recollection of the frequency of his visits was not in-keeping with his stated case that he spent most of the week living there.
50. Mrs Woollaston lives about two miles from the site in Lea Marston but she owns stables and land in Bakehouse Lane. The only access to Lake House is off Bakehouse Lane and onto the farm track which is adjacent to her stables. She is very aware of any vehicles driving down the track and is suspicious of vehicles that she does not know. She is at the yard every morning arriving anytime from 6am to 8.30am depending on her plan for the day. She is often at the yard all day maintaining the land, fencing and buildings. She goes "poo-picking" in the paddocks in the evenings, even when it was dark with the use of a head torch. In so doing, she would have had a clear line of sight towards the Lake House. She is sure that, if it had been illuminated, she would have noticed it but she had never seen any lights on.
51. She first spoke to Mr Horton in 2012, when the works to the access track were carried out in order to connect the water supply to the Lake House. On that occasion, he told her that the Lake House was a retirement project; a place where he could look forward to spending time relaxing and fishing the lake. Mrs Horton told her that she liked to occasionally stop there overnight with her sister to paint and enjoy a bottle of wine.
52. Although she has seen Mr Horton arrive on the odd occasion and walking his dogs, she has never had any reason to think that he was living at the Lake House. She had always assumed that he was just enjoying spending time maintaining and fishing the lake. She walks past the Lake House most days as, when she finishes the stables, she takes her dog for a walk before going home. She maintained that had Mr Horton been living there then she would have witnessed it.

53. However, in cross-examination, she acknowledged that the land and buildings of Mr Duffy, who has provided a written statement to the effect that he had seen Mr Horton at the fishery a few times a week from 2009, was closer to the Lake House than her own property. She did not recall the building works being carried out to the shelter in 2009 and she agreed that she could not see into that building from her stables.
54. Mrs Starkey has lived at Bakehouse Barn, Dingle Lane, Nether Whitacre since January 2001. Her property lies within a few hundred metres of the appeal site. There is a public footpath which runs between her garden and paddocks and links up to another footpath which runs close by the fishery. Her initial contact with Mr Horton was in 2009 but her sightings of him since then have been limited. Since 2011, when walking past the fishery, she has observed that the main metal farm gate with razor wire has always been locked and it appeared to her to have been locked from the outside. When walking past the property she has only seen Mr Horton once in that period, in August or September 2015, when he was returning from walking his two husky dogs. On all other occasions, the main gate has been padlocked from the outside.
55. During her walks nearby and along the lanes she has not seen Mr Horton on the local footpaths since 2011 and she has only seen him at most on five occasions in the adjacent lanes. Three of those sightings were in the summer of 2015. She has also not seen Mr Horton on Dingle Lane, except for one occasion. She produced photographic evidence to show that she could see into the site from the footpath which runs near to the eastern boundary.
56. She also gave evidence in relation to Mr Horton's visit to her house when it was up for sale in September 2012. He explained that the reason he was interested in buying her house was because of its proximity to the fishery. She understood from what he said that, if he lived in her house, it would enable him to maintain the fishery and monitor its security. At no point did he say or suggest that he already occupied the fishery permanently or occasionally. Either Mr Horton or his wife told her that they lived in Sutton Coldfield and that they did not need to sell their house in Sutton Coldfield in order to buy her house as they had funds from elsewhere. She was later advised by the estate agents that the Hortons did not intend to pursue the purchase. She does not accept that Mr Horton has lived continuously at Lake House and finds it most surprising that she has seen him so infrequently, if he is living there.
57. In cross-examination, Mrs Starkey conceded that she had no recollection of the building works being carried out to the structure in 2009 and that there was no direct line of sight from her dwelling. Although she told the Inquiry that she had not seen Mr Horton's motorcycle, she subsequently recalled that the presence of motorbikes on the land had caused her to visit the site one evening after the hours of darkness. She also recognised that her contention that she would be aware of traffic passing her property going to the Lake House would not arise, if that traffic proceeded from the north via Bakehouse Lane and entered the track that way. That was her explanation for not having noticed the other motor bikes until they were on the site and, as the Appellants point out, the same approach must apply in respect of other vehicular traffic.
58. As regards the occasion in 2012 when Mr Horton came to her property, that conversation took place some four and a half years ago and there is no contemporaneous note or other documentary record which she made at the

time to recall its contents. In cross-examination, she very fairly accepted that the conversation simply did not extend to whether Mr Horton did or did not live at the appeal property or cover similar ground. I do not find her recollection of that meeting to be of much assistance in this case. The same applies to Mrs Woollaston's recollection of her first meeting with Mr Horton in 2012, and the fact that he did not convey to her the information relating to his residency at the Lake House.

59. Mr Steve Young has lived at Pear Tree Cottage, Bakehouse Lane since December 2011. His property is located about 50m from the entrance to the track which leads to the Lake House. He walks his dog past the Lake House most mornings and evenings. His evidence is that from December 2011 to October 2015, there have been no vehicles present, apart from a few occasions. He and his wife have kept a note for the three month period from 13 April 2015 to 7 June 2015. During that period, either himself, or his wife, walked their dog past the Lake House each morning and evening. He states that there were no vehicles and the timber gates to the Lake House were always locked with a hasp and staple and the padlock was in the locked position. The metal gates were locked with the chain and padlock facing outwards. He submits that no-one could have been living there at that time unless they were able to climb back over the gate to lock or unlock the padlock.
60. In addition, for the seven weeks from 3 June until 25 July 2016 between 7am and 10pm he has taken a photograph each time he has walked past with his dog and there has been no sign of anyone living there. From 24 July until 9 December 2016 he has placed a small twig resting on the metal gates to indicate if anyone has entered. As well as the photographic evidence, he has kept a daily walk log. He contends that, apart from the gardener working there most Mondays, the only other visits have been about twice a month from which he concludes that no-one is living at the Lake House.
61. In cross-examination, he confirmed that he did not keep any notes or other record of his walks past the site for the period from December 2011 until 12 April 2015. The relevant immunity period for the purposes of this appeal is the period prior to the date of the application, namely, the 21 May 2015. Mr Horton acknowledges that the use of the Lake House fell significantly in 2015 and 2016 following the submission of the LDC application. The Council does not, as part of its case, assert abandonment of a lawful use once that status had been achieved. The Appellants seek to explain Mr Young's twig observations by suggesting that it was placed on the side of the metal gate that remains shut whilst vehicles, other than large delivery vehicles, are going in and out. This is disputed by Mr Young. However, given the dates when this exercise was undertaken, whatever can be deduced from the placing of the twig on the metal gates does not have a direct bearing upon the lawfulness of the single dwellinghouse use.
62. There is also a letter from Stephanie Dunbar who has a smallholding adjacent to the access track which leads to the appeal site. Like Mrs Woollaston, she is at the smallholding on a daily basis and concludes that Mr Horton has not been living at the premises during the relevant period given the lack of activity that she has observed. There are letters from other local residents which pursue a similar theme. However, neither they, nor Stephanie Dunbar, attended the Inquiry to give evidence on oath and what is said in these letters has not been

tested by cross-examination. As such, only limited weight can be attributed to them and the oral evidence of others which has been given on oath must be strongly preferred.

63. The Council's witnesses were unable, as a matter of fact, to assert from their own personal knowledge that Mr Horton had not been in occupation during the relevant period. The basis for their opposition to the LDC application is that they have seen little or no evidence of residential occupation during that time. However, it seems to me that Mr Horton has provided reasonable and plausible explanations for the lack of obvious manifestations of his physical presence and residential occupation of Lake House. For example, the relatively secluded nature of the dwelling and the fairly low-key and inconspicuous nature of his occupation. Although witnesses had not seen any lights on at the property, there are factors such as its orientation and the existence of internal blinds and roller shutters that can reasonably account for this. Mr Horton explained that the property has both blinds and exterior shutters which would preclude any light being emitted so as to indicate any activity within. Those blinds were installed at a relatively early stage with that in the main bedroom at the rear of the property that is orientated towards the nearby public footpath being installed almost immediately.
64. In relation to the absence of sightings of Mr Horton when dog walking, he explained at the Inquiry that he does not always take the dogs with him to the Lake House. When he does take them with him, the large grounds of the property are usually sufficient to allow him to let them run round without the need to take them for a walk. When they are occasionally taken for a walk outside the fishery that is generally on the fields that are located to the west and north of the site. In the light of his explanation as to the presence and manner in which the dogs are kept and exercised when on the site, I do not find that this aspect of the Council's evidence materially undermines the Appellants' case.
65. The Council's lay witnesses conceded in cross-examination that they could not categorically rule out the Appellants' case. They also agreed that their interest in the site effectively arose in response to the LDC application. There was no reliable evidence that they had paid any real attention to the lake, the fishing shelter or the converted building, until 2015/16. For example, Mr Young's notes, log and photographic evidence arises during the period after 12 April 2015, and no such formal records are available for the period from when the Appellants' claim the use commenced in 2009 until that date. There is also a remarkable lack of notice and knowledge on the part of Mrs Woollaston and Mrs Starkey of the building works that were carried out in 2009.
66. The Council draws support from Mr Horton's evidence, and that of its own witnesses, in relation to the locking of the gates. During cross-examination, Mr Horton indicated that, if the gates were padlocked then he was not present. However, confusion has arisen in relation to the correct interpretation of that response, largely as a result of there being two sets of gates at the entrance to Lake House. Although I appreciate how a misunderstanding on the part of the Council could easily have arisen, from my own notes and recollection of what was said I am satisfied that that particular statement was made in respect of the inner wooden gates and not the outer metal gates.

67. The Council also queries Mr Horton's stated practice of locking the metal gates and leaving the padlock on the outside, even if he was still on the site. It submits that it would be surprising if the gates were to be locked in that way giving the impression to people that no-one was there and that a more straightforward inference from the fact that the main metal gates were locked on the outside is that, at those times, no-one was present on the site. However, it seems to me that Mr Horton provided a plausible explanation for adopting this practice, namely, for security reasons and to avoid being unnecessarily disturbed whilst in residence, for example, by those seeking to fish. This action is consistent with his acknowledgement that it was the locking of the inner gates that signalled his absence from the site.
68. The Appellants also place reliance upon the available records showing usage of utilities. They have submitted numerous npower electricity bills dating back to May 2013 and the evidence of their planning consultant, Joanne Russell, includes a table which provides a summary of the electricity bills and the dates of electricity usage. The evidence also includes a utility bill from Severn Trent Water Ltd to show usage of water between 15 October 2014 and 1 April 2015.
69. The Council is critical of the low level of electricity usage that is revealed, given that Mr Horton's evidence is that he lived at the cabin most of the week, almost every week of the year. The Council contends that having regard to the array of electrical goods on display in some of the photographs, one would expect the electricity usage to be higher than is presented in the bills. Although the usage of utilities does indeed appear small, this has to be considered in the light of the fact that the Lake House building is a small structure, which has been inhabited by just one person for most of the time, and that gas has been used as an alternative energy source. I do not consider that the level of electricity usage casts doubt upon the credibility of the Appellants' evidence of residential occupation.
70. In conclusion, the Appellants have provided cogent and consistent evidence setting out the timing and nature of the works carried out in 2009; the commencement of the use in 2009 and the continuation of that use thereafter for a period well in excess of four years. This evidence is precise, robust, and comprehensive and has not been materially undermined, or contradicted by the Council's evidence. Whilst the evidence of the Council's lay witnesses has been given honestly and fairly, the limitations of their recollections was exposed during cross-examination. Their evidence taken either individually or cumulatively does not render the Appellants' version of events less than probable.
71. Since the carrying out of the works in 2009, the building has provided all the necessary facilities required for day-to-day private domestic existence. The residential use of that structure from September 2009 following the carrying out of those works amounted to a material change of use of the building to use as a single dwellinghouse. The frequency and character of Mr Horton's occupation has been sufficient to establish the continuous nature of that residential use, even though his general pattern of occupation was to live there for only part of the week and he has also been absent at times due to taking holidays elsewhere and to recuperate following back surgery. Those periods of absence were insufficient to break the continuity of the use. I find, on the balance of probabilities, that the single dwellinghouse use continued actively throughout the relevant period, to the extent that enforcement action could

have been taken against it at any time. The development is immune from enforcement action through the passage of time and thereby lawful.

Formal Conclusion

72. For the reasons given above, I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the Lake House, Bakehouse Lane, Nether Whitacre as a single dwelling house was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under s.195(2) of the 1990 Act as amended.

Formal Decision

73. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the extent of the existing use which is considered to be lawful.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Mr Peter Goatley of Counsel

He called:
Mr Nicholas Horton
Mrs Christine Horton
Ms Janet Turner
Mr Neil Spittle
Mr Tom Badger
Mrs Joanna Russell BA
DipTP MRTPI

FOR THE LOCAL PLANNING AUTHORITY: Mr Jack Smyth of Counsel

He called:
Mrs Debra Starkey BA
DipTP
Mrs Beverley Woollaston
Mr Steve Young
Mr Peter Gittins MRTPI

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Attendance lists
- 2 Statement of Common Ground
- 3 Outline Opening Submissions on behalf of the Appellants
- 4 Opening Submissions on behalf of the Council
- 5 Closing Submissions on behalf of the Council
- 6 Outline Closing Submissions on behalf of the Appellants
- 7 Bundle of case law transcripts submitted in support of the Appellants' Closing Submissions

PHOTOGRAPHS SUBMITTED AT THE INQUIRY

- 1 Bundle of agreed dated photographs submitted by the Appellants
- 2 Bundle of thumbprint photographs of the site taken by Mr Young and submitted by the Council
- 3 Two of Mr Young's photographs at A4 size submitted by the Appellants.
- 4 Mr Young's photographs in electronic form

Lawful Development Certificate

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

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

IT IS HEREBY CERTIFIED that on 21 May 2015 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and coloured and edged black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Since there has been a change of use of a building to use as a single dwellinghouse, the relevant immunity period in this case is the period of four years prescribed by section 171B(2) of the 1990 Act. As the building has been used continuously as a single dwellinghouse for a period in excess of four years prior to the application date, the development is immune from enforcement action through the passage of time and thereby lawful.

Signed

Wendy McKay

Inspector

Date: 11 April 2017

Reference: APP/R3705/X/16/3147355

First Schedule

The use of a building as a single dwellinghouse within Class C3 of the Use Classes Order 1987, as amended.

Second Schedule

The Lake House, Bakehouse Lane, Nether Whitacre, Warwickshire, B46 2EB shown coloured black within the area edged black on the attached plan.

NOTES

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

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

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



Plan

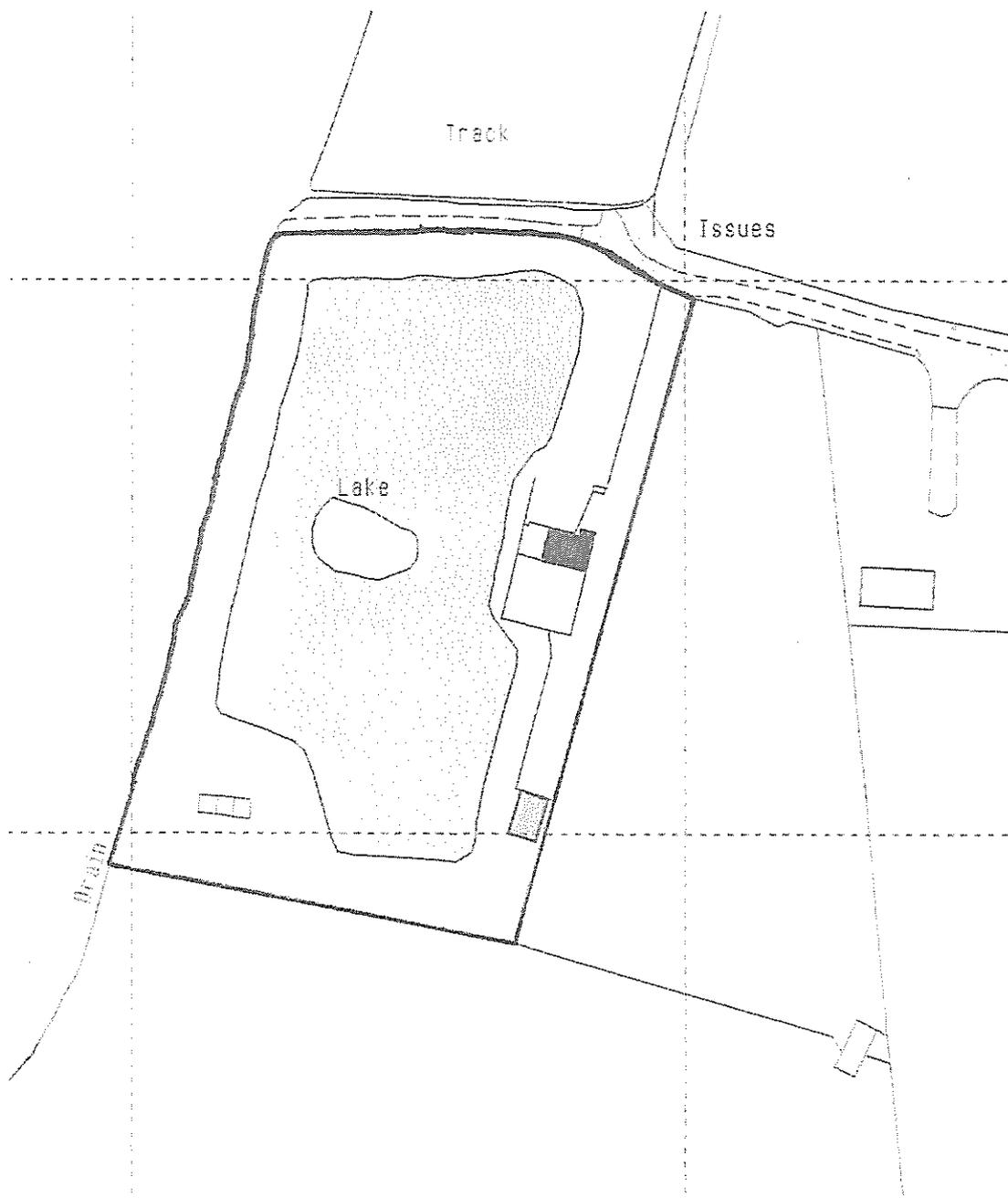
This is the plan referred to in the Lawful Development Certificate dated: 11 April 2017

by Wendy McKay

Land at: The Lake House, Bakehouse Lane, Nether Whitacre, Warwickshire, B46 2EB

Reference: APP/R3705/X/16/3147355

Scale: 1:1250





Appeal Decision

Hearing held on 15-16 February 2017

Site visit made on 16 February 2017

by **Roger Catchpole DipHort BSc(hons) PhD MCIEEM**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 April 2017

Appeal Ref: APP/R3705/W/16/3158147

Land at Crown Stables, Nuneaton Road, Mancetter, North Warwickshire CV9 1RF

- 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 Crown Waste Management Ltd against the decision of North Warwickshire Borough Council.
 - The application Ref: PAP/2015/0348, dated 4 June 2015, was refused by notice dated 8 March 2016.
 - The development proposed is the erection of a 40,001 bird broiler building and associated control room, feed silos, LPG tank, heat exchanger, hard standing and attenuation pond.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a 40,001 bird broiler building and associated control room, feed silos, LPG tank, heat exchanger, hard standing and attenuation pond on land at Crown Stables, Nuneaton Road, Mancetter, North Warwickshire CV9 1RF in accordance with the terms of the application, Ref: PAP/2015/0348, dated 4 June 2015, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The Council has modified the description of development in its decision notice and this is also the one used by the appellant on the appeal form. As it was agreed at the Hearing that this is the one that most accurately reflects the proposal, I have used it for the purposes of this appeal.
3. Mancetter has an emerging Neighbourhood Plan that is yet to be adopted. Consequently, this appeal will be determined in accordance with North Warwickshire Local Plan Core Strategy 2014 (CS) having regard to the emerging policies, insofar as they may be relevant, and the National Planning Policy Framework 2012 (the Framework).
4. I have considered the Written Ministerial Statement of 12 December 2016¹, wherein the Minister of State for Housing and Planning set out changes to government policy with regard to the circumstances under which relevant policies for the supply of housing within Neighbourhood Plans should be considered up-to-date. The relevant content of this policy has been considered but, given the facts of this case, it does not alter my conclusions.

¹ Neighbourhood Planning: Written Statement HCWS346

5. The validity of an Environmental Permit (Ref: EPR/TP3035EW) for the proposed development has been called into question. However, the control of processes or emissions that are subject to approval under pollution control regimes are not a planning matter. Consequently, whether or not one should have been issued is beyond the scope of an appeal under section 78 of the Town and Country Planning Act 1990 (as amended). This is the basis upon which this appeal has been determined.

Application for Costs

6. At the Hearing an application for costs was made by Crown Waste Management Ltd against North Warwickshire Borough Council. An application for costs was also made by North Warwickshire Borough Council against Crown Waste Management Ltd. These applications are the subject of separate decisions.

Main Issue

7. As the Council withdrew its second reason for refusal prior to the Hearing, the main issue of this appeal is the effect of the proposal on the living conditions of the existing and future occupants of nearby dwellings with respect to odour.

Reasons

8. The appeal site is situated in open countryside to the south east of the village of Mancetter. It is on the southern side of the B4111 from which the vehicular access to the site is gained. The site itself comprises a corridor from the road and a broadly rectangular area of land that abuts the curtilage of a high railway embankment serving the West Coast Mainline. The appeal site is part of a larger pasture which has a number of outbuildings in its south-eastern corner. The land falls to the southeast towards a small stream, flanked by woody vegetation, which forms the easternmost boundary of the appeal site.
9. The proposal would lead to the erection of a large rectangular agricultural building and ancillary structures in close proximity to the railway embankment. The main building would be orientated parallel to the embankment and have a ridge height of approximately 5.9 m. High-velocity exhaust fans would extend above the ridge at regular intervals and rise to a height of approximately 7.1 m. The north-western end of the building would be cut into the rising ground to give a consistent, finished floor level.
10. The building would be used to rear chickens associated with a short cycle, broiler regime which typically comprises a growth cycle of 37-38 days with 7-11 days allowed for cleaning and restocking. The chickens would be reared on wood shavings which would be supplemented with new shavings on a regular basis. At the end of each cycle, the soiled shavings would be removed to another location, either for use in a biomass energy plant or for composting. Foul water would drain into an enclosed reception pit and this would also be emptied at the same time.
11. A single, full time worker would be employed who would visit the site twice daily during each growth cycle. This individual would be responsible for stock husbandry and the control of any pests or diseases. A specialist catching and cleaning crew would also be present on site between each cycle. This would comprise approximately six people over 2-3 days. Heavy Goods Vehicles would access the site to deliver chicken feed on a weekly basis and occasionally to remove the chickens and soiled shavings at the end of each growth cycle.

Overall, it is estimated that there would be approximately 1,000 vehicular movements per year at the site.

12. The Council refused permission for the development, against the recommendation of its officer, on the basis that there would be a risk of unacceptable odour emissions that would have a detrimental impact on the occupants of a nearby residential property, Brooklands Cottage. This dwelling is situated approximately 110 m to the north east of the proposed building. It was accepted at the Hearing that a number of additional sensitive receptors are present. The nearest residential receptors being Brooklands Farm, which lies approximately 120 m to the north and Mancetter Spring Farm, which lies approximately 110 m to the south west, on the other side of the railway embankment. The nearest, albeit less sensitive, recreational receptors comprise two footpaths, one of which lies along the River Anker to the north east of the appeal site and the A100 which lies in closer proximity to the east. The Council has suggested that a 400 m buffer indicates the presence of a greater number of receptors. However, this carries no weight because it is based on outdated, generic guidance associated with a different local planning authority.
13. The measurement of odour is standardised² and quantified as the number of Standard European Odour Units in a cubic metre of air (ou_E/m^3). Potential impacts are evaluated at a given location in terms of 98th percentile of a 1-hour mean ($C_{98, 1hour}$) which represents an hourly, average odour concentration. In practical terms this means that individuals would not experience an odour concentration in excess of a specified level for 98% of the time. However, it does mean that the specified level could be exceeded for 2% of the time. Assuming that emissions are continuous and occur over 365 days, this would equate to approximately 175 hours per annum. Whilst I accept that predictive modelling based on $C_{98, 1hour}$ does not guarantee an odour-free environment, it nevertheless indicates that odour concentrations from a particular source would not exceed a given threshold for the majority of the time.
14. Environment Agency (EA) guidance³ defines an appropriate benchmark threshold of $C_{98, 1hour} 3.0 ou_E/m^3$ for moderately offensive odours typically associated with intensive livestock rearing. Evidence submitted by the appellant on a study relating to nine water treatment works suggests that complaints relating to offensive odours may be relatively rare at thresholds below $C_{98, 1hour} 5.0 ou_E/m^3$. Nonetheless, the EA guidance goes on to suggest that the benchmark threshold should be further reduced to $C_{98, 1hour} 2.5 ou_E/m^3$ where a local population has become sensitised to odour. In this instance I am satisfied that this more stringent threshold is justified given the presence of existing odour sources that have been drawn to my attention, namely the Sarval animal rendering plant on Mancetter Road, the Severn Trent Water treatment works on Woodford Lane and the Tarmac stone quarry on Quarry Lane.
15. The appellant has relied upon a predictive odour dispersion model that has quantified the $C_{98, 1hour}$ odour concentrations at 23 discrete receptors across a wide geographic area. This includes the sensitive receptors and footpaths that I have already identified as well as part of Mancetter village and residential properties to the southeast of the appeal site, in close proximity to Dobbies

² BS EN 13725 Air Quality - Determination of Odour (2003) British Standards Institute

³ Additional Guidance for H4 Odour Management (2011) Environment Agency

Garden Centre. Consequently, I am satisfied that the geographic scope of the model is sufficient and encompasses all the locations likely to experience negative impacts.

16. The results clearly show that the more stringent $C_{98, 1\text{hour}} 2.5 \text{ ouE/m}^3$ would not be exceeded for 98% of the time and that this would remain the case for 99.5% of the time at all but the three closest receptors, namely Brooklands Cottage, Brooklands Farm and Mancetter Spring Farm. Assuming the stated crop cycle of 38 days and a total of 8 crops, the potential exceedance at the majority of receptors would be no more than around 36 hours per annum. I accept that it would be higher at the three closest receptors, with an exceedance of around 146 hours per annum, however, I do not find this unreasonable in a rural area where some degree of tolerance of agricultural odour is to be expected.
17. Given the above, I find that the model clearly indicates that there would be no significant loss of amenity despite the presence of existing background odours and a sensitised local population. Moreover, I have no quantitative evidence before me to suggest that the proposal would lead to cumulative odour impacts above the established benchmark threshold for the majority of the time.
18. The Council has questioned the values that were used to parameterise the appellant's predictive model and have drawn my attention to a number of studies⁴. Whilst one of them has been used to derive odour concentration and ventilation rates for the model, the other two are clearly only of limited relevance. This is because the buildings were either not of modern construction, had underfloor heating, higher initial stock densities or differed significantly in the type of ventilation system. I am therefore satisfied that the use of odour concentration and ventilation rates from the Robertson study is justified given that this is the most similar comparator to the proposal. Whilst a single documentary source, it is nevertheless a peer-reviewed paper and I therefore consider it to represent a robust assessment. Furthermore, the use of alternative variables from considerably more divergent studies lacks any sound, scientific justification.
19. The Council has also questioned the justification for the reduced night time emission rates and whether or not peak emissions have been adequately considered. I note that ventilation rates were varied in the model according to crop age with a higher daytime emission rate assumed from the empirical observation of established units. Whilst not derived from peer-reviewed evidence it nevertheless has an empirical basis and one that the Council were unable to counter with any substantiated evidence to the contrary. Moreover, I find a lower night time emission rate entirely plausible given diurnal temperature differences and the greater activity of birds during the day that would result from a worker moving through the flock, as well as the increased activity arising from their own, innate circadian rhythms.
20. Turning to peak emissions, it is clear that this has been included in the model at the end of each growth cycle from Figure 2 of the appellant's dispersion modelling report. This shows emissions likely to peak at three times the

⁴ Hayes, E.T. *et al.* (2006) Odour and ammonia emissions from intensive poultry units in Ireland. *Bioresource Technology*, 97(7): 933-939. Pullen, J. & Sparks, A. (2012) Odour Assessment of an Intensive Livestock Facility. Environment Agency Report. Robertson, A.P. *et al.* (2002) Commercial-scale studies of the effect of broiler-protein intake on aerial pollutant emissions. *Biosystems Engineering*, 82(2): 217-225.

standard emission rate of a mature crop when the shed is being cleaned. As I have no substantiated, empirical evidence before me to the contrary, I am satisfied that the predicted $C_{98, 1\text{hour}}$ odour concentrations consequently reflect a realistic emission scenario when peaks of this magnitude are included. I also accept that these values were not significantly altered when the model was run with different restocking rates of 7 and 11 days.

21. The Council has suggested that localised downwash from the railway embankment was not considered and that plume grounding may occur under unstable weather conditions. However, it was established that a 'roughness length' parameter was used to account for any turbulent flow that might result from this feature and that the high fan speed would ensure a 30 m plume under stable conditions. Whilst this would be reduced under unstable weather conditions I am satisfied that the greater mixing of air caused by the turbulence would, if anything, lead to more rapid dilution and the consequent dispersion of odour. I also note that the prevailing wind direction is such that any potential downwash effect would be to the southwest of the proposed building. Mancetter Spring Farm would therefore not be directly in its path given that the prevailing wind passes to the south of this property. I accept that plume grounding would be a possibility but note that this would be a transient phenomenon and unlikely to lead to any complaints given that the model indicates that this would not exceed $C_{98, 1\text{hour}} 3.0 \text{ ou}_E/\text{m}^3$.
22. Although the Council did not attempt to quantify any odour impact, the results of an alternative predictive model (SCAIL) were submitted by an interested person which indicated higher odour concentrations at key receptors. However, it became clear during the course of the Hearing that this model lacks sophistication and can only be used as scoping tool to indicate when a more detailed, robust, site specific model is necessary. This is because it relies upon the use of meteorological data from remote sites and assumes an undifferentiated modelling surface. Consequently, it not only fails to use weather data that is representative of a given site but also fails to account for topography. Both of these factors will have a profound effect on the realism of the model and thus its predictive value. Furthermore, it was established that the context of the weather station at Coleshill differed from the appeal site. The more sheltered nature of this site and its consequently unrepresentative weather data is further compounded by the fact that such stations typically over-estimate calm periods because low wind speeds are not recorded. Overall, I am not satisfied that the use of such a model is fit for purpose in this particular instance either for the quantification of odour or ammonia. Given the above, the results from the SCAIL model carry little weight in the balance of this appeal.
23. I acknowledge the significant concerns expressed by interested parties with regard to the potential impact of the proposal on health outcomes and the above average incidence of respiratory disease in the Hartshill Ward. These relate to the emission of particulate matter of a diameter of $10 \mu\text{m}$ (PM_{10}) and ammonia. As was the case for odour, I have no robust empirical evidence before me to suggest that the proposal would lead to any significant, cumulative impact that would endanger public health nor do I have any epidemiological evidence linking broiler units with respiratory disease clusters in the Hartshill Ward. Furthermore, I find a potential increase in PM_{10} particles

highly unlikely given a study⁵ that indicates that most particles outside intensive livestock units, including chicken broiler units, are less than 1.0 µm (PM₁) in size. I acknowledge the selective document extracts concerning ammonia emissions but note that these are of a generalised nature and that no attempt has been made to establish their relevance to the proposed development in terms of the design of the building, husbandry system, number of chickens, growth cycle or ventilation system.

24. In the absence of any robust evidence to the contrary and bearing in mind the predictive model results and unproven health impacts, I am satisfied that the proposed development would meet acceptable emission standards appropriate to its rural location and that the use of the land for the stated purpose is therefore appropriate. Given the above, I conclude that the proposal would not cause significant harm to the living conditions of existing and future occupants of nearby dwellings with respect to odour thus satisfying the requirements of paragraphs 17, 109, 120 and 122 of the Framework and policy NW10 of the CS. They seek, among other things, to ensure a good standard of amenity, prevent adverse impacts on air or unacceptable risks from pollution, ensure an acceptable use of land and avoid unacceptable impacts on neighbouring amenities through fumes or other pollution. Consequently, the proposal would be in accordance with the development plan.

Other Matters

25. Even though the Council withdrew its second reason for refusal, several concerns were nevertheless raised regarding potential heritage impacts. In particular harm to the setting of two Scheduled Ancient Monuments (SAMs) to the north of the appeal site as well as archaeological remains within the site itself. It was also suggested that the proposal would be detrimental to non-designated heritage assets that are deemed to be of national importance. These comprise an alleged final battlefield of Boudicca on the site itself and a wider Romano-British industrial area associated with the Mancetter/Hartshill kiln complex. Additionally, it was also suggested that the proposal would adversely affect the development of Mancetter's archaeological tourism potential.
26. Paragraph 132 of the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. It goes on to advise that significance can be harmed or lost through the alteration or destruction of those assets or development within their setting. The Planning Practice Guidance 2014 (as amended) advises that non-designated heritage assets that are demonstrably of equivalent significance to scheduled monuments should be considered subject to the same policies as those for designated heritage assets. It goes on to advise that this includes those that are yet to be formally assessed for designation.
27. The largest of the two monuments is the Manduessedum Roman Villa and Settlement with Associated Industrial Complex. It is located some 500 m to the north of the appeal site. It comprises buried and projecting earthwork remains associated with a Roman villa, settlement and industrial complex on the eastern valley side of the River Anker. The archaeology is characterised by

⁵ Lai, H.T.L. *et al.* (2014) Size distribution of airborne particles in animal houses. *Agricultural Engineering International: CIGR Journal*, 16(3):28-42.

a large number of Roman features that include, among other things, a defended settlement, pottery kilns, drying sheds, a number of Roman roads, a port or ferry settlement, early field systems and human burials. It not only preserves evidence of a specialised regional industry but also the daily lives of its inhabitants and their relationship with the occupants of the villa and nearby fortresses immediately to the west.

28. The monument to the west is the Roman Camp and comprises three distinct areas that include a succession of Roman vexillation fortresses and other camps. It is located a greater distance away from the appeal site, to the northwest, on the western valley side of the River Anker. The fortresses and camps survive as entirely buried structures. The archaeology is characterised by a number of remains that include, among other things, timber barrack blocks and granaries along with a kiln or furnace and latrines. Some of the military areas have subsequently been incorporated into a medieval manorial complex which adds to its historical layering.
29. Given the above, I find that the setting of these two monuments is characterised by their intervisibility and functional relationship with the river valley. This is related to the military control of the valley as well as the need for water for industrial and domestic purposes. Whilst Manduessedum retains a rural context, this has been significantly eroded around the fortresses which are now set against a modern, urban backdrop. This has also reduced the intervisibility of the two monuments within a wider landscape context. However, as both monuments are represented by buried remains with limited earthworks, the wider experience of these assets is clearly limited. Bearing this in mind, as well as the separation distances from the proposed development, limited topographic relief of the river valley and the extensive rural views to the east of Manduessedum, I am satisfied that the proposal would not cause significant harm to the setting of these heritage assets.
30. I accept that documentary evidence suggests that at least one of the fortresses may have been connected with Boudicca's last battle in 60 AD. However, whether or not the appeal site was the specific location of any such battle is highly speculative and lacking any robust, substantiated evidence. I also note that even the placement of the battlefield in the Mancetter area is one of only a number of 'reasonable guesses' according to at least one authority⁶. I accept that there is a significant body of work that establishes the importance of the Mancetter/Hartshill Roman kilns. However, the archeologically significant extent of this industrial feature is yet to be determined. Consequently, there is no substantiated evidence before me to suggest that the proposal would be detrimental to any clearly defined, cohesive site. Given the above, I find the potential harm to these non-designated heritage assets and their settings to be equivocal and lacking evidential weight.
31. Turning to potential archaeological remains on the site itself, I note that direct investigation failed to reveal deposits or finds of any archaeological interest in the nine trenches that were dug on the appeal site. I am satisfied that the siting of the trenches provided comprehensive coverage of the ground that would be disturbed by the proposal. Furthermore, it was established at the Hearing that none of the pottery shards in the local museum were attributable to the appeal site. Consequently, I am satisfied that there is no substantiated

⁶ Frere, S. (1987) *Britannia: A History of Roman Britain*. 3rd Edition, pp 73. London: Routledge & Kegan Paul.

evidence to suggest any direct archaeological impact would arise from the proposal or that a condition to catalogue and protect co-incident finds would be ineffectual.

32. Turning to future tourism potential, I acknowledge the genuine desire to develop the archaeological resources of the local area. However, the likelihood of a visitor centre being constructed and the specific ways in which the proposal would undermine such a proposal were not substantiated in the evidence before me or at the Hearing. Furthermore, I note that the development of the site for residential housing was considered acceptable in the emerging Mancetter Neighbourhood Plan. Whilst subject to a number of criteria, this nevertheless suggests that the site can accommodate prominent development without significantly harming future archaeological tourism potential.
33. A landscape character assessment⁷ places the appeal site in the Anker Valley Character Area. The assessment stresses the need to retain the scattered properties and farmsteads of the valley and to locate new agricultural buildings in appropriate locations where they blend with the surrounding landscape. It has been suggested that the massing of the proposed building would lead to a dominant feature in the landscape and disrupt views from an adjoining character area. I observe from the plans and my site visit, which included distant views from the ridge to the southwest of the site, that the railway embankment would provide significant mitigation of any such visual impact.
34. This is because only the upper part of the roof and projecting ridge vents would be visible from the southern side of the railway line. When viewed from the northern side, the building would largely be set against the industrialised backdrop of the railway embankment. Its industrial character arises from the palisade steel fencing at the bottom of the embankment and prominent electrification gantries at the top. This is further reinforced by the regular and highly conspicuous transit of the high-speed trains of the West Coast Mainline. Additionally, a number of modern steel portal frame agricultural buildings were clearly visible in the wider landscape. Whilst not of the same scale and of no architectural merit, I nevertheless find such buildings intrinsic to the agricultural character of a modern, working landscape and established features in this instance.
35. I acknowledge the concerns that were raised over the control of flies and the expert evidence that has been submitted in relation to the fly management plan. However, condition 3.6.1 of the Environmental Permit clearly states that the activities shall not give rise to pests that are likely to cause annoyance outside the boundary of the site. Whilst condition 3.6.2 requires the submission of a management plan, a mechanism is clearly present that would trigger remedial, regulatory action if the submitted measures were ineffective. I accept that it would also be in the operator's best interest to avoid any such regulatory action and adapt any failing management measures given the economic uncertainty that this would introduce to the production cycle. The concerns raised over the potential release of pesticides into the food chain and the wider environment resulting from the treatment of fly infestations is controlled by other legislation and are not planning matters.

⁷ North Warwickshire Landscape Character Assessment Final Report, August 2010.

36. I acknowledge the considerable local interest shown in the proposal and have had full regard to the representations made at the application and appeal stages. The level of local opposition is not, in itself, a reasonable ground for resisting development. To carry significant weight, opposition should be founded on valid planning reasons, which are supported by substantiated evidence. Having taken account of all the evidence before me, I am not persuaded that any of the objections raised, taken individually or together, outweigh my findings in relation to the main issue or any of the other matters that were raised.

Conclusion and Conditions

37. For the above reasons and having regard to all other matters raised I conclude that, subject to appropriate conditions, the appeal should be allowed.
38. I have considered both the wording and grounds for the conditions suggested by the Council in accordance with the tests set out in paragraph 206 of the Framework.
39. In addition to the standard time limit condition, a condition requiring the development to be carried out in accordance with the plans is necessary to ensure that it is implemented as approved [1-2].
40. A number of conditions are necessary to ensure that any visual impact of the development is minimised in the interests of maintaining the character and appearance of the open countryside [3-8].
41. Two conditions are necessary to ensure that any changes to the way in which the site is used are subject to appropriate scrutiny in the interests of protecting the living conditions of nearby residents [9-10].
42. A condition requiring an exclusion area along the nearby railway embankment is necessary in the interests of preserving the safe operation and maintenance of the rail network [11].
43. Two conditions requiring the construction of a floodplain compensation area and the approval of a surface water drainage scheme are necessary to control the risk of flooding, protect the aquatic environment, enhance biodiversity and ensure the creation of sustainable drainage structures [12-13].
44. Two conditions to control the movement of vehicles likely to cause disturbance, as well as a further condition to control any tannoy system, are necessary in the interests of protecting the living conditions of nearby residents [5, 14-15].
45. Three conditions are necessary to ensure that the access, manoeuvring and parking areas are suitably constructed and established before the building is brought into use in order to ensure the safe and efficient operation of the highway [16-18].
46. A condition requiring the preservation and recording of any archaeological deposits or finds is necessary in order to preserve non-designated heritage assets [19].
47. A final condition is necessary to ensure that any Great Crested Newts are excluded from the site in the interests of preserving biodiversity [20].

48. I find a condition requiring the drainage of contaminated water unnecessary because it duplicates a control that is already set out in Schedule 1 of the Environmental Permit (Ref: PO1).

CONDITIONS

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: RAC/6004/2 Rev C; RAC/6004/3 Rev B and Site Drainage Plan Rev B received by the local planning authority on 5 November 2015 and the Location Plan and Broiler Unit Elevation Plan received by the local planning authority on 4 June 2015.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions or alterations to the unit, including the fixing of solar panels, shall be permitted at any time.
- 4) No development shall commence until details of the materials to be used in the construction of the external surfaces of the all of the buildings and structures hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) Details of any floodlighting or tannoy systems shall be submitted to and approved in writing by the local planning authority before the use hereby permitted first takes place. Development shall be carried out in accordance with the approved details.
- 6) No development shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows, identify those to be retained and set out measures for their protection throughout the course of development. Protection measures shall be in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837:2012 and shall be retained until the construction phase of the development is complete. The scheme shall be carried out as approved and all planting shall occur within six calendar months of when the use hereby permitted first takes place.
- 7) If within a period of five years from the date of the planting of any tree or shrub, that plant or any replacement, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same species and size, as originally planted, shall be planted in the same place, unless the local planning authority gives written approval for any variation.
- 8) Before the use hereby permitted first takes place, an existing stable block shown on the site drainage plan (Ref: RAC/6004/7 Rev B) shall be removed along with any associated hard standing and all associated foundations. The final, consolidated ground level shall match that of the adjacent land.
- 9) Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987 and the Town and Country Planning (General Permitted Development) Order 2015 as amended or in any statutory instrument revoking and re-enacting those Orders with or without modification, the development hereby permitted shall only be used as a

facility for the rearing of chickens for meat. No chickens over the age of 40 days shall be permitted on the site unless their removal is legally prohibited.

- 10) The development hereby permitted shall not be operated other than in accordance with the Environmental Permit (Ref: EPR/TP3035EW) issued under the Environmental Permitting (England and Wales) Regulations 2010 and shall not exceed a capacity of 40,001 chickens at any time.
- 11) No part of the development hereby approved shall be situated within 4 m of the boundary of the railway embankment.
- 12) A 250 m³ floodplain compensation area shall be provided in accordance with the site drainage plan (Ref: RAC/6004/7 Rev B) prior to excavation of any foundations of the development hereby permitted. This area shall be maintained for this purpose thereafter for the lifetime of the development.
- 13) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority in consultation with the LLFA. The scheme shall be implemented in accordance with the approved details before the use hereby permitted first takes place. The scheme to be submitted shall:
 - Undertake infiltration testing in accordance with the BRE 365 guidance to clarify whether or not an infiltration type drainage strategy is an appropriate means of managing the surface water runoff from the site;
 - Demonstrate that the surface water drainage system is designed in accordance with 'The SuDS Manual,' CIRIA Report C753 as well as CIRIA C697, C687 and the National SuDS Standards;
 - Limit the discharge rate generated by all rainfall events up to and including the 100 year plus an appropriate allowance for climate change critical rain storms to the equivalent 'greenfield' runoff rates for the site;
 - Demonstrate the provisions of surface water run-off attenuation storage in accordance with the requirements specified in 'Science Report SC030219 Rainfall Management for Developments';
 - Demonstrate detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details of any attenuation system and outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods; and
 - Confirm how the on-site surface water drainage systems will be adopted and maintained in perpetuity to ensure its long term operation at the designed parameters.
- 14) Heavy Goods Vehicles (HGVs) shall only access or egress the site between 0900 and 1900 Mondays to Fridays and 0900 and 1200 on Saturdays. There shall be no HGV movements outside of these hours

and no movements on Sundays or on Bank or Public Holidays. A scheme to control the movement of HGVs during deliveries shall be submitted to and approved in writing by the local planning authority. This scheme shall be implemented before the use hereby permitted first takes place and retained thereafter for the lifetime of the development.

- 15) Chickens shall not be caught for removal between 0900 and 1900 Mondays to Fridays and 0900 and 1300 on Saturdays. No chickens shall be caught on Sundays or on Bank or Public Holidays.
- 16) Access to the site for vehicles shall only be from the position shown on the approved drawing (Ref: RAC/6004/8). This shall provide a bell-mouth with radii of 6 m and an access width of not less than 6 m for a distance of 20 m. This shall be measured from the near edge of the carriageway of the public highway. The gates hung within this access shall not open within 20 m of the near edge of the carriageway of the public highway. This access shall not be constructed in such a manner as to reduce the effective capacity of any drain or ditch within the limits of the public highway.
- 17) Notwithstanding the plans submitted, the access to the site for vehicles shall not be used unless it has been laid out and constructed within the public highway in accordance with the standard specification of the Highway Authority and surfaced with a bound material for a distance of 20 m, as measured from the near edge of the carriageway of the public highway.
- 18) No development shall commence until full details of the provision of the access, car parking, manoeuvring and service areas, including surfacing, drainage and levels have been submitted to and approved in writing by the local planning authority. The areas shall be laid out in accordance with the approved details before the use hereby permitted first takes place. Such areas shall be permanently retained thereafter for the purpose of parking and the manoeuvring of vehicles.
- 19) Any historic or archaeological features not previously identified which are revealed when carrying out the development hereby permitted shall be retained in-situ and reported to the local planning authority in writing within 5 working days of their being revealed. Works shall be immediately halted in the area/part of the building affected until provision shall have been made for the retention and/or recording in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
- 20) Before development commences the area of the site identified as containing Great Crested Newts in the Great Crested Newt Survey Report June 2015 shall be fenced off and the great crested newts shall be captured and relocated by an appropriately licensed individual to a habitat created, enhanced and set aside for their long term protection and management in accordance with the 2001 Natural England Great Crested Newt Mitigation Guidelines.

APPEARANCES

For the Council

Ms D Sharples	Solicitor
Mr S Pierson	Agricultural Consultant

For the Appellant

Mr A Madden	Solicitor
Mr J Corbet Burcher	Barrister
Mr A Smith	Data Modelling Consultant
Mr A Lawrence	Agricultural Consultant

Interested Persons

Dr I Holdaway	Resident
Cllr M Bell	Hartshill
Cllr D Clews	Athestone South and Mancetter
Rt Hon C Tracey MP	North Warwickshire and Bedford
Cllr BA Henney	Hartshill
Mr T Hopkins	Mancetter Parish Council
Ms J Vero	Athestone Civic Society
Ms M Hughes	Athestone Civic Society
Mr J Arrowsmith	Resident
Ms D Arp	Resident
Mr S Law	Resident
Rev S Tooby	St Peter's Church, Mancetter
Ms E Higgins	Mancetter Parish Council
Mr S Davy	Resident
Mr K Irons	Resident

Documents Received

S1	Costs Application Rebuttal Statement (Appellant)
S2	Costs Application (Council)
S3	Planning Appeal Decision (APP/D2510/A/06/2016169) (Council)

- S4 Heyes, E.T. et al. (2005) Odour and ammonia emissions from intensive poultry units in Ireland. *Bioresource Technology*, 97(7): 933-939. (Council)
- S5 Pullen, J. & Spinks, A. (2012) Odour Assessment of an Intensive Livestock Facility. Environment Agency, Bristol. (Council)
- S6 Robertson, A.P. et al. (2002) Commercial-scale studies of the effect of broiler-protein intake on aerial pollutant emissions. *Biosystems Engineering*, 82(2): 217-225. (Council)
- S7 Revised deposition model receptor location map. (Appellant)
- S8 Gateshead Metropolitan Borough Council v SoS for the Environment and Northumbrian Water Group Plc [1994] Env LR 11 (QB). (Council)
- S9 Costs Application Rebuttal Statement (Council)



Appeal Decision

Site visit made on 11 April 2017

by **Martin H Seddon BSc DipTP MPhil MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 03rd May 2017

Appeal Ref: APP/R3705/Z/17/3168258

**Heart of England Conference Centre, Meriden Road, Chapel Green,
Fillongley, Coventry, Warwickshire, CV7 8DX**

- The appeal is made under section 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Heart of England Promotions against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2016/0462 dated 10 August 2016 was refused by notice dated 12 January 2017.
 - The advertisements erected are two post-mounted banner signs on the site boundary, facing Meriden Road and Wall Hill Road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The advertising units were erected prior to the application to the Council.
3. The Council has referred to policies NW10 and NW12 of the North Warwickshire Core Strategy, which generally concern development considerations and the quality of development. Development plan policies cannot be decisive because the regulations to control advertisements and the National Planning Policy Framework (the Framework) indicate that decisions should be made only in the interests of amenity and public safety, taking account of cumulative impacts. However, these policies have been taken into account as a material consideration in this appeal.
4. The sign which fronts Meriden Road lies within an area of land designated as Common Land. Whether the signs need Section 38 Consent of the Commons Act 2006 is not a matter before me in this appeal.

Main issue

5. The site is located within the Green Belt. Paragraph 81 of the Framework indicates, amongst other things, that once Green Belts have been defined, local planning authorities should plan positively to enhance the beneficial use of the Green Belt, such as looking for opportunities to retain and enhance visual amenity. The Council raises no issues of public safety, subject to conditions. Although the site is in a prominent location next to Meriden Road there is no evidential basis to form a contrary view. The main issue is therefore the effect of the advertisements on visual amenity.
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Reasons

6. The two banner signs are located at the boundary of the site with Meriden Road and Wall Hill Road at the Heart of England Conference and Events Centre. Each sign is double sided, trapezoidal in shape, around 5.3 m high and approximately 3.7 m² in area, consisting of Perspex panels mounted in a steel frame and internally illuminated by LED lighting.
7. The appeal site is located within a rolling landscape in the open countryside. The area is sparsely developed. The nearest dwelling to the appeal site is Moor House Bungalow. There is a small cluster of dwellings beyond the bungalow and at Chapel Green. The immediate area around the site has no street lights.
8. The sign company supplying the signs has advised that the output of a sign is 200 candelas and because the sign has only the letters illuminated it would be "a lot less at approximately 25 candelas". However, no technical documentation has been submitted to substantiate the 'output' of the signage. In addition, the application form indicates an illuminance level of '350 cd/m'.
9. The appellant refers to the Institute of Lighting Engineers' *Guidance Notes for the Reduction of Obtrusive Light GN01:2011* and considers that the application site falls into Zone E2 being rural, with low district brightness and "village or relatively dark outer suburban". This covers all poorly lit and unlit areas where there is no street lighting or street lighting is negligible. However, the up-to-date applicable guidance is the Institute of Lighting Engineers' *Professional Lighting Guide 05 (PLG 05) Brightness of Illuminated Advertisements 2015*. The appellant has mentioned this guidance but has not submitted documentation to support the contention that "for illuminated signs with an area of 2-5 m², 600 candelas is permitted".
10. I visited the site during daylight and the hours of darkness. Despite the submissions by the appellant regarding the limited 'output', I found the signs to be unduly prominent when illuminated. This is because the white and red illuminated lettering contrasts with the black background of the signs. The signs appear visually intrusive and add to the level and clutter of illumination at the site in this sensitive Green Belt location. This is within the context of the lack of street lighting and dark surroundings. Paragraph 125 of the Framework indicates that planning policies and decisions should limit the impact of light pollution from artificial light on local amenity, intrinsically dark landscapes and nature conservation.
11. I find that the two banner signs conflict with the Framework and do not constitute sustainable development. This is because they have an appreciable detrimental impact on their surroundings and a harmful effect on the visual amenity of this Green Belt location, through their height, scale and illumination in the hours of darkness.

Other Considerations

12. The appellant considers that the location and number of the signs is established in principle by the approved site plan for the planning permission for a hotel at the site (ref: PAP/2013/0391). However, although the approved plans show locations for the signage, no evidence has been submitted of any approved details of the proposed signs.

13. The appellant advises that before the signs were erected, taxis coming to the site after dark to pick people up often had difficulty finding their way. This resulted in taxis driving past the site and turning around, sometimes in private driveways. Now that the signs are in place, the appellant submits that this problem does not occur and the signage has therefore reduced road disruption at night.
14. The main entrance to the site from Meriden Road is a wide gateway bounded by two substantial high spot lit walls either side and with a flag pole and two lanterns on the top of each wall. Each wall has signage on its front elevation indicating 'Heart of England Events and Conference Centre'. In my opinion, it is likely that local taxi operators would become aware of the location of the site from their visits to drop off and pick up customers. Moreover, the other illumination at the site through the coloured lights on the buildings and lit main entrance would make it visible from Meriden Road for passing traffic in the evenings.

Conclusion

15. All other matters raised have been taken into account. For the reasons given above the appeal is dismissed.

Martin H Seddon

INSPECTOR

