



NORTH
NORFOLK
DISTRICT
COUNCIL

Development Committee

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TO REGISTER TO SPEAK PLEASE CALL 01263 516150

20 February 2019

A meeting of the **Development Committee** will be held in the **Council Chamber** at the Council Offices, Holt Road, Cromer on **Thursday 28 February 2019 at 9.30am.**

Coffee will be available for Members at 9.00am and 11.00am when there will be a short break in the meeting. A break of at least 30 minutes will be taken at 1.00pm if the meeting is still in session.

Any site inspections will take place on **Thursday 21 March 2019.**

PUBLIC SPEAKING – TELEPHONE REGISTRATION REQUIRED

Members of the public who wish to speak on applications are required to register by **9 am on Tuesday 26 February 2019** by telephoning **Customer Services on 01263 516150**. Please read the information on the procedure for public speaking on our website [here](#) or request a copy of "Have Your Say" from Customer Services.

Anyone may take photographs, film or audio-record the proceedings and report on the meeting. You must inform the Chairman if you wish to do so and must not disrupt the meeting. If you are a member of the public and you wish to speak, please be aware that you may be filmed or photographed.

Emma Denny
Democratic Services Manager

To: Mrs S Arnold, Mrs A Claussen-Reynolds, Mrs A Fitch-Tillett, Mrs A Green, Mrs P Grove-Jones, Mr B Hannah, Mr N Lloyd, Mrs B McGoun, Mr N Pearce, Ms M Prior, Mr R Reynolds, Mr R Shepherd, Mr B Smith, Mrs V Uprichard

Substitutes: Mr D Baker, Dr P Bütikofer, Mrs S Bütikofer, Mr N Coppack, Mrs J English, Mr T FitzPatrick, Mr V FitzPatrick, Mr S Hester, Mr M Knowles, Mrs J Oliver, Miss B Palmer, Mr J Punchard, Mr J Rest, Mr P Rice, Mr E Seward, Mr S Shaw, Mr D Smith, Mr N Smith, Mrs L Walker, Ms K Ward, Mr A Yiasimi

All other Members of the Council for information.

Members of the Management Team, appropriate Officers, Press and Public



**If you have any special requirements in order
to attend this meeting, please let us know in advance**

If you would like any document in large print, audio, Braille, alternative format or in a different language please contact us

Heads of Paid Service: Nick Baker and Steve Blatch

Tel 01263 513811 **Fax** 01263 515042 **Minicom** 01263 516005

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AGENDA

PLEASE NOTE: THE ORDER OF BUSINESS MAY BE CHANGED AT THE DISCRETION OF THE CHAIRMAN

PUBLIC BUSINESS

1. CHAIRMAN'S INTRODUCTIONS
2. TO RECEIVE APOLOGIES FOR ABSENCE AND DETAILS OF ANY SUBSTITUTE MEMBER(S)
3. MINUTES

To approve as a correct record the Minutes of a meeting of the Committee held on 4 January, 17 January and 31 January 2019.
4. ITEMS OF URGENT BUSINESS (to be taken under items 8 or 10 below)
 - (a) To determine any other items of business which the Chairman decides should be considered as a matter of urgency pursuant to Section 100B(4)(b) of the Local Government Act 1972.
 - (b) To consider any objections received to applications which the Head of Planning was authorised to determine at a previous meeting.
5. ORDER OF BUSINESS
 - (a) To consider any requests to defer determination of an application included in this agenda, so as to save any unnecessary waiting by members of the public attending for such applications.
 - (b) To determine the order of business for the meeting.
6. DECLARATIONS OF INTEREST

Members are asked at this stage to declare any interests that they may have in any of the following items on the agenda. The Code of Conduct for Members requires that declarations include the nature of the interest and whether it is a disclosable pecuniary interest.
7. OFFICERS' REPORT

ITEMS FOR DECISION

PLANNING APPLICATIONS

- (1) **CROMER - PF/18/2142 - Pitched/hipped roof to replace existing flat roof to two-storey side extension, erection of single-storey rear extension and porch to front elevation; 7 Howards Hill, Cromer, NR27 9BL for Mr & Mrs Bumphrey** Page 4
- (2) **TRUNCH - PO/18/2135 - Erection of three dwellings with associated parking (outline - details of access only); Land North of Chapel Road, Trunch, NR28 0QG for Mr & Mrs Hicks** Page 7

- (3) **APPLICATIONS RECOMMENDED FOR A SITE INSPECTION** Page 11
- (4) **NEW APPEALS** Page 12
- (5) **INQUIRIES AND HEARINGS - PROGRESS** Page 12
- (6) **WRITTEN REPRESENTATIONS APPEALS - IN HAND** Page 12
- (7) **APPEAL DECISIONS – RESULTS AND SUMMARIES** Page 13
(Appendix 1 – page 15)
- (8) **COURT CASES – PROGRESS AND RESULTS** Page 14
- 8. **ANY OTHER URGENT BUSINESS AT THE DISCRETION OF THE CHAIRMAN AND AS PREVIOUSLY DETERMINED UNDER ITEM 4 ABOVE**
- 9. **EXCLUSION OF PRESS AND PUBLIC**

To pass the following resolution, if necessary:-

“That under Section 100A(4) of the Local Government Act 1972 the press and public be excluded from the meeting for the following items of business on the grounds that they involve the likely disclosure of exempt information as defined in Part I of Schedule 12A (as amended) to the Act.”

PRIVATE BUSINESS

- 10. **ANY OTHER URGENT EXEMPT BUSINESS AT THE DISCRETION OF THE CHAIRMAN AND AS PREVIOUSLY DETERMINED UNDER ITEM 4 ABOVE**
- 11. **TO CONSIDER ANY EXEMPT MATTERS ARISING FROM CONSIDERATION OF THE PUBLIC BUSINESS OF THE AGENDA**

**OFFICERS' REPORTS TO
DEVELOPMENT COMMITTEE - 28 FEBRUARY 2019**

Each report for decision on this Agenda shows the Officer responsible, the recommendation of the Head of Planning and in the case of private business the paragraph(s) of Schedule 12A to the Local Government Act 1972 under which it is considered exempt. None of the reports have financial, legal or policy implications save where indicated.

PUBLIC BUSINESS - ITEM FOR DECISION

PLANNING APPLICATIONS

Note :- Recommendations for approval include a standard time limit condition as Condition No.1, unless otherwise stated.

- (1) **CROMER - PF/18/2142** - Pitched/hipped roof to replace existing flat roof to two-storey side extension, erection of single-storey rear extension and porch to front elevation; 7 Howards Hill, Cromer, NR27 9BL for Mr & Mrs Bumphrey

Target Date: 15 January 2019

Case Officer: Phillip Rowson

Householder application

CONSTRAINTS

SFRA - Areas Susceptible to Groundwater Flooding

Mineral Safeguard Area

Settlement Boundary

Residential Area

Unclassified Road

RELEVANT PLANNING HISTORY for 7 Howard's Hill, Cromer, NR27 9BL

PF/18/2142 HOU

7 Howards Hill, Cromer, NR27 9BL

Pitched/hipped roof to replace existing flat roof to two-storey side extension, erection of single-storey rear extension and porch to front elevation

THE APPLICATION

The proposals are threefold:

- 1 Mono pitched roof to existing bay window on front elevation
- 2 Hipped and Pitched roof profile added to existing flat roof side extension
- 3 Demolition of existing single storey rear extensions, erection of single flat roofed extension to rear measuring 5.30m deep, 7.25m wide and 2.90m tall.

7 Howard's Hill sits as one half of a pair of semi-detached dwellings, the neighbour to the immediate west is also one half of a pair of semi-detached dwellings. Land levels rise on a gentle gradient from east to west. The house is red brick clad at ground floor level, a "tile crease" band then borders the first floor pebble dash render. Roofing is in a terracotta pantile with more recent extensions being flat roofed and housing a ground floor garage and additional first floor bedroom. To the rear are later subordinate single storey additions in matching materials to the main dwelling.

REASONS FOR REFERRAL TO COMMITTEE

Applicant is a member of staff at NNDC.

PARISH/TOWN COUNCIL

Cromer Town Council: No objections

REPRESENTATIONS

None received.

HUMAN RIGHTS IMPLICATIONS

It is considered that the proposed development may raise issues relevant to

Article 8: The Right to respect for private and family life.

Article 1 of the First Protocol: The right to peaceful enjoyment of possessions.

Having considered the likely impact on an individual's Human Rights, and the general interest of the public, approval of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

CRIME AND DISORDER ACT 1998 - SECTION 17

The application raises no significant crime and disorder issues.

POLICIES

North Norfolk Core Strategy (Adopted September 2008):

Policy SS1: Spatial Strategy for North Norfolk

Policy SS7: Cromer

Policy EN4: Design

Policy EN10: Development and Flood Risk

North Norfolk Design Guide

NATIONAL PLANNING POLICY FRAMEWORK

Section 7 - Requiring Good Design

Area susceptible to groundwater flooding

MAIN ISSUES FOR CONSIDERATION

- 1) Principle of Development
- 2) Design and Appearance
- 3) Impact on Residential Amenity

APPRAISAL

1) Principle of Development:

The proposed development is considered to be acceptable and in compliance with the aims of Policy SS1 of the adopted Core Strategy which allows extensions and alterations to existing dwellings in the primary settlements, subject to compliance with other policies in the North Norfolk Core Strategy. The proposed extensions are a reworking of the existing extensions to this dwelling. It is noted that the constraints mapping shows that the area is susceptible to surface water flooding. The proposals will be suitably served by surface water soakaways. The extensions are considered subordinate to the original house, they will not materially increase its impact in the locality or pose any additional threat to surface water flooding, the proposals are considered compliant with policy SS1.

2) Design and Appearance:

The proposed mono pitched roof over the bay window will depart from the symmetry of the neighbouring semi-detached property. It is noted that the symmetry of this pair has already been reduced by previous alterations. The addition of this small element to the front façade is not considered to otherwise unreasonably detrimentally impact on the street scene.

The scheme consists of a proposed hipped and pitched roof over the existing flat roofed two storey extension and removal of the existing rear pitched gable roofed extension to replace with a single flat roofed single storey extension to the rear. In addition, a mono pitched roof is added to the existing flat roof bay window on the front elevation. All extensions will be clad and roofed in materials matching the existing dwelling and sympathetic to the local area.

As a matter of design principle the addition of pitched roofs to existing flat roof extensions is considered to be a significant betterment, the additions will create a front elevation which is sympathetic to the local street scene.

The proposed flat roofed single storey rear extension is somewhat perfunctory; it will undoubtedly improve the rather complicated internal layout of the existing dwelling. However, the extension is proposed to be flat roofed and would normally be resisted in design terms, a preference on matters of design would be a traditional pitched / hipped gable roof. However, the extension sits to the rear of the property and is of limited local impact being overlooked by 2 neighbouring dwellings and an employment use.

On balance the extensions are considered acceptable; the benefits of the proposed improvements to the local street scene from the front elevation are weighed against the limited negative impacts of the flat roof rear single storey extension. It is considered that the scheme complies with core strategy policy EN4 of the North Norfolk Core Strategy.

3) Impact on Residential Amenity:

The proposed alterations to the bay window have no impact on residential amenity.

The proposed hipped and pitched roof profile to the existing two storey extension will create a negligible loss of light and massing impact on the near neighbouring dwelling to the west. A carport with lean to roof exists on the neighbour's side elevation, with a single window to first floor serving as a secondary light source to a none habitable room. Limited to nil impact is created by virtue of scale, mass and overlooking on the neighbour.

The more significant impacts are created to the rear where a single storey extension is proposed to run adjacent to the neighbour's boundary and 5 metres deep from the rear elevation. The extension will match exactly the width of the existing rear extensions. Impacts are mitigated by its flat roof profile, and limited height 2.9M. A revised plan has been provided to show a timber boarded fence to 1.8m height as the new boundary between 5 & 7 Howard's Hill, this will replace the existing confer hedge that separates the two properties. The depth of the proposed extension is mitigated by the removal of existing rear extensions (2.5m deep) and replacement with a deeper extension (5.30m) but with a lesser 2.90m height. In addition allowances exist for householders to extended and altered dwellings and to erect boundary fences / walls without planning permission. The incremental detriment arising above that permitted allowance from these proposals is considered to be negligible.

Therefore the proposals will comply with core strategy policy EN4 of the North Norfolk Core Strategy.

RECOMMENDATION: The development is considered to be in accordance with the requirements of the Development Plan. There are no material considerations that indicate the application should be determined otherwise. Approval is therefore recommended subject to conditions relating to:

- 1 Time limit for implementation
- 2 Development in accordance with the submitted plans
- 3 All external facing and roofing materials to match the existing dwelling.

- (2) **TRUNCH - PO/18/2135 - Erection of three dwellings with associated parking (outline - details of access only); Land North of Chapel Road, Trunch, NR28 0QG for Mr & Mrs Hicks**

Minor Development

- Target Date: 10 January 2019

Case Officer: Mrs S Ashurst

Outline Planning Permission

CONSTRAINTS

EA Risk of Flooding from Surface Water 1 in 1000

EA Risk of Flooding from Surface Water 1 in 100

Countryside

RELEVANT PLANNING HISTORY for Land North of Chapel Road, Trunch, NR28 0QG

None

THE APPLICATION

The application seeks the erection of three dwellings. The application is in outline with only matters of access for consideration.

REASONS FOR REFERRAL TO COMMITTEE

At the request of the Head of Planning given the material consideration of paragraph 78 of the National Planning Policy Framework in the determination of this application.

PARISH/TOWN COUNCIL

Trunch Parish Council – no objection

REPRESENTATIONS

1 letter of representation has been received raising the following points:

- There is a vehicular right of way to the rear of their property that utilises the access, which would need to be maintained throughout the development.

CONSULTATIONS

Council County Council (Highway) – Broadland – No objection subject to the imposition of appropriate conditions

Landscape Officer – No objection subject to the imposition of a condition requiring the submission of an Arboricultural Method Statement

Planning Policy Manager – Considers that although the site is contrary to development plan policy the site is situated in a semi-sustainable location and is most probably accepted under the National Planning Policy Framework - paragraph 78 as it will enhance or maintain the vitality of rural communities.

HUMAN RIGHTS IMPLICATIONS

It is considered that the proposed development may raise issues relevant to

Article 8: The Right to respect for private and family life.

Article 1 of the First Protocol: The right to peaceful enjoyment of possessions.

Having considered the likely impact on an individual's Human Rights, and the general interest of the public, approval of this application as recommended is considered to be justified, proportionate and in accordance with planning law.

CRIME AND DISORDER ACT 1998 - SECTION 17

The application raises no significant crime and disorder issues.

POLICIES

North Norfolk Local Development Framework Core Strategy Policies

Policy SS2: Development in the Countryside

Policy HO 1: Dwelling mix and type

Policy HO 3: Affordable housing in the Countryside

Policy EN 2: Protection and enhancement of landscape and settlement character

Policy CT 5: The transport impact on new development

Policy CT 6: Parking provision

National Planning Policy Framework sections

02: Achieving sustainable development

04: Decision-making

05: Delivering a sufficient supply of homes

06: Building a strong, competitive economy

08: Promoting healthy and safe communities

09: Promoting sustainable transport

11: Making effective use of land

12: Achieving well-designed places

MAIN ISSUES FOR CONSIDERATION

1. Principle
2. Design
3. Amenity
4. Highways
5. Landscape

APPRAISAL

1. Principle

The site is situated in the Countryside policy area as defined by policy SS2 of the North Norfolk Core Strategy where there is an in principle objection to the erection of market housing.

However since the publication of the Core Strategy in September 2008 the National Planning Policy Framework (NPPF) 2018 and National Planning Practice Guidance have been published both of which are material planning considerations. The NPPF sets out the Government's planning policies for England and how these are expected to be applied while the NPPG sets out Government guidance in relation to planning related issues in England.

Paragraph 78 of the NPPF (2018) states that in order to promote sustainable development in rural locations housing should be sited where it enhances or maintains the vitality of rural communities. Paragraph 79 requires development to avoid isolated homes in the countryside. The Court of Appeal, upholding the decision of the High Court, has clarified in

the Braintree judgement that 'isolated' means "*a dwelling that is physically separate or remote from a settlement*"; it is not related to 'access to services' but proximity to other dwellings. It also confirmed that access to services by sustainable means is to be taken in the context of other policy considerations such as supporting the rural economy.

Firstly, in consideration of the physical isolation of the application site, it is surrounded by development of a residential nature on all sides so cannot be considered to be physically isolated. As such, paragraph 79 of the Framework does not apply.

In consideration of whether the application site is remote from services, Trunch has a number of services and facilities including a village hall and church, convenience store and post office, public house and social club. In addition there are a variety of clubs including an art group and gardening society, and there are also a range of businesses in the Trunch area. The nearest schools are at North Walsham 3.5 miles away and Mundesley 2.3 miles. Mundesley also has a petrol station and a number of other services and facilities. In terms of transport links Trunch is served by a regular hourly bus service that links to Mundesley and local villages calling at North Walsham and Cromer, from where further services to most market towns between Hunstanton, Fakenham, Norwich and Great Yarmouth can be readily reached. In addition the village is served by a number of Quite Lanes which are suitable for cycling and walking.

It is therefore considered that the site also cannot be considered as remote from day to day services. Although not all services are provided within the village, the NPPF and NPPG, as supported by a number of appeal decisions, indicates that short car journeys are acceptable in rural settings in order to access services.

In addition, the existing site is not vacant or un-used, and the current use is somewhat unneighbourly. This being the case the benefits of redevelopment of the site to the wider area are considered to be material.

As such, and in accordance with paragraph 78 of the NPPF which is a material consideration, despite the departure from Policy SS2 of the North Norfolk Core Strategy, this particular application, considered on its own merits, is considered to be appropriate for residential development to support the rural community of Trunch.

2. Design

The application is in outline form with only the principle of development and access under consideration at this stage. However an indicative layout submitted as part of the application indicates that the large modern arcon building on the site would be demolished and replaced with three two storey detached dwellings each with a linked double garage. Access to the site would be via the existing driveway off Chapel Road, which would be upgraded to serve the development. This access also currently provides rear access to No 3 Landers Mews to the south.

Overall the indicative layout demonstrates that the site is capable of accommodating three dwellings which although backland development would be in keeping with the development pattern of the area and that the scale and massing of the dwellings themselves would be in keeping with other properties in the surrounding area which consist primarily of a mix of two storey cottages and more modern bungalows. As such the proposal would accord with the requirements of policy EN4 of the North Norfolk Core Strategy.

3. Amenity

The indicative layout indicates that each property would have a private amenity area to the north of the dwellings with plots 2 and 3 having generous plots. Although the garden area to

unit 1 is more restricted it is considered that this would accord with the requirements of Section 3.3.10 of the North Norfolk Design Guide which requires amenity provision to equate to that of the footprint of the dwelling.

In terms of the relationship to neighbouring properties the nearest dwellings to the site are a row of three cottages to the south: Landers Mews, and Acorn Lodge to the north, the south boundary of which is defined by a dense hedgerow. Given the separation distances involved and intervening vegetation, together with other structures it is not considered that the development of the site in the manner proposed would give rise to any significant amenity issues in respect of neighbouring properties and would accord with policy EN4 and the requirements of Section 3.3.10 of the North Norfolk Design Guide.

4. Highways

As discussed above, the site would be served off the existing access from Chapel Road which would be upgraded to serve the development. The Highway Authority has indicated that it has no objection to the proposal subject to the imposition of appropriate conditions including the provision of visibility splays at the entrance.

In terms of on-site car parking provision the indicative layout indicates that each dwelling would have a double garage together with driveways to the front of the properties which would provide more than adequate car parking for two or three vehicles per dwelling which would accord with the standards contained in the Core Strategy.

5. Landscape

The Landscape Officer has indicated that mature trees on the adjacent site have amenity value and are important to the landscape of the area. Although the proposed development will have an impact on the trees it is considered that the scheme as proposed is acceptable however a full Arboricultural Methods Statement will be required at the reserve matters stage to demonstrate how the entrance driveway can be constructed without damaging the trees.

Conclusion and Recommendation

Whilst it is recognised that the site is not within a settlement boundary as defined by policy SS 1 of the North Norfolk Core Strategy, it is considered that material considerations weigh in favour of the application such that approval should be granted:

- Recent guidance contained in the NPPF which is a material consideration indicates that there should be an acceptance of some residential development in rural areas to support the rural community and economy.
- The site is located within and adjacent to other dwellings, and the removal of the current use would be a benefit to the immediate surroundings and adjacent neighbours;
- Trunch has a number of services, facilities and community groups which cater for day to day needs so is neither physically or functionally isolated;
- Although not all services are provided within the village, the NPPF and NPPG, indicates that short car journeys are acceptable in rural settings in order to access services.
- The proposed scale, density and pattern of development would be in keeping with the surrounding area and would not have a visually obtrusive or visually dominant effect on the surrounding area, and;
- Furthermore, based on the proposed indicative layout it is not considered that the proposal would have a significantly detrimental impact on the amenities of the occupiers of nearby properties.

It is therefore considered that the development of the site is acceptable.

RECOMMENDATION:

Approve subject to the conditions as listed below and any others as deemed necessary by the Head of Planning:

1. Application for reserved matters within three years. Implementation within 2 years of final reserved matter being approved.
2. Reserved matters relating to the appearance, landscaping, layout and scale of the proposed development.
3. In accordance with the plans
4. Vehicular access provided before first occupation
5. Provision of visibility splays before first occupation
6. Access, on-site car parking and turning areas laid out before first occupation
7. Submission of Arboricultural Method Statement and Tree Protection Plan prior to commencement.

(3) APPLICATIONS RECOMMENDED FOR A SITE INSPECTION

A site inspection by the Committee is recommended by Officers prior to the consideration of a full report at a future meeting in respect of the following applications. The applications will not be debated at this meeting.

Please note that additional site inspections may be recommended by Officers at the meeting or agreed during consideration of report items on this agenda.

SALTHOUSE - PF/18/1145 – Erection of two storey detached dwelling with detached garage/studio and vehicular and pedestrian access on land at Purdy Street for Mr & Mrs Hudson

REASON FOR REFERRAL TO COMMITTEE:

To expedite the processing of the planning application given the level of public interest in the application and due to the complexities of the site.

BLAKENEY - PF/18/2321 - Erection of Summer house with roof terrace and raising height of existing garden walls; North Granary, The Quay, Blakeney for Mr & Mrs Palmer

REASON FOR REFERRAL TO COMMITTEE:

At the request of Councillor Ms K Ward, the Local Ward Member, to enable Members to assess the impact of the proposed increases in height on the Conservation area.

RECOMMENDATION:-

The Committee is recommended to undertake the above site visits.

APPEALS SECTION

(4) NEW APPEALS

**POTTER HEIGHAM - PF/18/1136 - Re-building and extension of partly demolished former agricultural building to create a dwelling (C3); Land adjacent to junction of Fritton Road & Market Road, Potter Heigham for Mr & Mrs Lawn
WRITTEN REPRESENTATIONS**

**SMALLBURGH - PO/18/1282 - Erection of 3 no. dwellings (outline - details of access only, all other matters reserved); Home Farm, Norwich Road, Smallburgh for Mr Green
WRITTEN REPRESENTATIONS**

**SWAFIELD - PO/18/0662 - Proposed detached chalet bungalow with detached garage (all matters reserved); Plot next to the Kingdom Halls, The Street, Swafield, NORTH WALSHAM, NR28 0RQ for Mr Watts
WRITTEN REPRESENTATIONS**

**WELLS-NEXT-THE-SEA - PF/18/0577 - Variation of condition 2 (approved plans) of planning permission PF/17/1065 to allow for alterations to position and sizes of windows in south and east elevations, additional rooflights including one to provide amended access arrangement to the roof terrace, changes to external materials to parts of front elevation and alterations to internal layout of ground floor storage area and to part of first floor; Land adjacent to Hampden House, East Quay, Wells-next-the-Sea for Mr Chick
WRITTEN REPRESENTATIONS**

**WEYBOURNE - PF/17/1740 - Removal of conditions 3, 4 & 5 of planning permission PF/09/0029 to allow residential occupation as a dwelling; The Roost, Bolding Way, Weybourne, HOLT, NR25 7SW for Mr Harrison
WRITTEN REPRESENTATIONS**

**WIVETON - PF/18/1606 - Removal of conditions 3 & 4 of planning permission PF/98/0065 to allow unrestricted residential occupancy; The Old Exchange, Hall Lane, Wiveton, Holt, NR25 7TG for Ms Harrison
WRITTEN REPRESENTATIONS**

(5) INQUIRIES AND HEARINGS - PROGRESS

No report.

(6) WRITTEN REPRESENTATIONS APPEALS - IN HAND

BINHAM - PF/17/2178 - Erection of single-storey rear extension; The Stewards House, 27 Front Street, Binham, Fakenham, NR21 0AL for Mr Holmes

BINHAM - LA/17/2179 - Internal and external alterations to facilitate erection of single-storey extension; The Stewards House, 27 Front Street, Binham, Fakenham, NR21 0AL for Mr Holmes

BINHAM - PU/18/0398 - Prior approval for proposed conversion of agricultural buildings to two dwellinghouses (Class C3) and associated operational

development; Agricultural Buildings, Westgate Farm, Warham Road, Binham, NR21 0DQ for Norfolk County Council

DUNTON - PF/17/0613 - Equestrian business with stabling and teaching facility including formation of riding arena with floodlighting, new building to provide stabling; Cannister Hall Barns, Swaffham Road, Toftrees, FAKENHAM, NR21 7EA for Mr Donohue

FAKENHAM - PF/17/2015 - Extension to annexe (retrospective); 6 Whitelands, Fakenham, NR21 8EN for Ms Steel
SITE VISIT:- 18 March 2019

HOLT - PO/18/0061 - Erection of single storey dwelling - outline (details of access only); Highgate, Norwich Road, Holt, NR25 6SW for Mr & Mrs Bond

PUDDING NORTON - PF/18/0229 - Erection of three dwellings (affordable housing comprising 1 bungalow & 2 two-storey houses) - part retrospective; Adjacent to, 24 Green Lane Estate, Pudding Norton, Fakenham, NR21 7LT for Mr Tevenan

WELLS-NEXT-THE-SEA - PF/18/0577 - Variation of condition 2 (approved plans) of planning permission PF/17/1065 to allow for alterations to position and sizes of windows in south and east elevations, additional rooflights including one to provide amended access arrangement to the roof terrace, changes to external materials to parts of front elevation and alterations to internal layout of ground floor storage area and to part of first floor; Land adjacent to Hampden House, East Quay, Wells-next-the-Sea for Mr Chick

WEYBOURNE - PF/17/1740 - Removal of conditions 3, 4 & 5 of planning permission PF/09/0029 to allow residential occupation as a dwelling; The Roost, Bolding Way, Weybourne, HOLT, NR25 7SW for Mr Harrison

WIVETON - PF/18/1606 - Removal of conditions 3 & 4 of planning permission PF/98/0065 to allow unrestricted residential occupancy; The Old Exchange, Hall Lane, Wiveton, Holt, NR25 7TG for Ms Harrison

FAKENHAM - ENF/17/0216 - Building works not in accordance of the approved plans- ref PF/16/0858; 6 Whitelands, Fakenham, NR21 8EN

RUNTON - ENF/18/0299 - Unauthorised engineering works; 2 Garden Cottages, Felbrigg Road, East Runton, Cromer, NR27 9PE

(7) **APPEAL DECISIONS - RESULTS AND SUMMARIES**

BODHAM - PO/17/2115 - Erection of detached single story dwelling (outline application with all matters reserved); 15 Hart Lane, Bodham, Holt, NR25 6NT for V Jay

TUNSTEAD - PF/17/0428 - Change of use from Agricultural to General Industrial (Class B2) (retrospective); Unit 13, Beeches Farm, Crowgate Street, Tunstead, NORWICH, NR12 8RF for Mr Platten
PUBLIC INQUIRY 25 September 2018

TUNSTEAD - ENF/15/0067 - Unauthorised commercial uses of former agricultural buildings; Beeches Farm, Crowgate Street, Tunstead, Norwich, NR12 8RF PUBLIC INQUIRY 08 November 2018

Summaries of the above decisions are attached at **Appendix 1**.

(8) **COURT CASES - PROGRESS AND RESULTS**

No change from previous report.

Enforcement Investigation Reference: ENF/15/0067	Appeal References: APP/Y2620/C/17/3175182 APP/Y2620/C/17/3175183 APP/Y2620/C/17/3175184 APP/Y2620/C/17/3174604 APP/Y2620/C/17/3174605 APP/Y2620/C/17/3174396 APP/Y2620/C/17/3174828 APP/Y2620/C/17/3174792 APP/Y2620/C/17/3174978
Location: Land at Beeches Farm, Crowgate Street, Tunstead, Norfolk, NR12 8RF	
Proposal: N/a	
Officer Recommendation: N/a	Member decision (if applicable): N/a
Appeal Decision: APP/Y2620/C/17/3175182 APP/Y2620/C/17/3175183 APP/Y2620/C/17/3175184 Dismissed – Enforcement Notice upheld but amended as set out in the Inspectors decision and the period for compliance extended to 6 months for all units with the exception of units 10, 12, 13 and 14 for which a period of compliance of 12 months is allowed. APP/Y2620/C/17/3174604 APP/Y2620/C/17/3174605 Dismissed and enforcement notice as amended upheld. APP/Y2620/C/17/3174396 Dismissed and enforcement notice as amended upheld. APP/Y2620/C/17/3174828 Dismissed in the main and enforcement notice as amended upheld with the addition of the period for compliance being amended to 12 months. APP/Y2620/C/17/3174792 Dismissed in the main and enforcement notice as amended upheld with the addition of the period for compliance being amended to 12 months. APP/Y2620/C/17/3174978 Planning permission is refused and the appeal dismissed.	Costs: Costs awarded to NNDC on grounds d) and a) (part – fall back)
Summary: Given the complexities of the site and the appeals the decisions are attached in full at Appendix 2 to the agenda.	
Relevant Core Strategy Policies:	

N/a
Relevant NPPF Sections/Paragraphs: N/a
Learning Points/Actions: N/a

Application Number: PO/17/2115	Appeal Reference: APP/Y2620/W/18/3201948
Location: 15 Hart Lane, Bodham, NR25 6NT	
Proposal: Erection of a detached single storey dwelling	
Officer Recommendation: Refuse	Member decision (if applicable): N/a
Appeal Decision: Dismissed	Costs: N/a

Summary:

The main issues the Inspector considered were:

- Whether the proposal would be acceptable in regard to access to services and facilities
- The impact on the character and appearance of the area, and
- The living conditions of future and current occupiers with regard to outlook, light and garden size.

Access to services and facilities:

The Inspector noted the policy conflict with policies SS1 and SS2 of the Core Strategy. He accepted that the policies were in general conformity with the NPPF, particularly paragraph 103 which seeks to actively manage patterns of growth. However he noted that paragraph 103 of the Framework also recognises opportunities to maximise sustainable patterns of growth will differ between urban and rural communities and he took this stance into account in his decision.

The Inspector did not consider that the proposed dwelling would be isolated and as such considered paragraph 79 of the Framework did not apply. However, he noted paragraph 78 which allows for homes in the countryside which enhance or maintain the vitality of rural communities. Indeed, he noted para 78 states policies should identify opportunities for villages to grow where development will support local services and indeed other surrounding villages.

The Inspector noted Bodham has few services beyond a [public house and village hall, however he considered the services in Holt and Sheringham were in close proximity with a good bus service on the A148 which could serve to access such services.

He concluded that, on balancing the locational conflict with the Core Strategy against the terms of the Framework, he did not find the level of accessibility to regularly required services would alone be entirely determinative over the principle of a dwelling in this location.

Character and appearance:

The Inspector considered that the development and associated access and driveways would deprive 15 Hart Lane of all but a small outside area to the rear resulting in an inappropriate density for the character of the area. He felt that, even being inly single storey, the development of the site was too cramped and would therefore be visually incongruous contrary to EN4.

Living conditions:

The confined nature of the plot would involve the new dwelling being sited close to side and rear boundaries where both outlook and daylight would be restricted. The Inspector also considered that the new dwelling would be overbearing in relation to the occupiers of the host property and the new dwelling resulting in unacceptable living conditions contrary to EN4

Relevant Core Strategy Policies:

SS1 – Spatial Strategy
SS2 – Development in the Countryside
EN4 - Design

Relevant NPPF Sections/Paragraphs:

78 and 103

Learning Points/Actions:

Consideration of the less stringent stance on rural dwellings in paragraph 78 of the Framework 2018 needs to be given consideration as this will have implications for how we implement policies SS1 and SS2 of the Core Strategy.

Sources:

Sarah Ashurst – Development Management Manager



Appeal Decision

Site visit made on 17 August 2016

by **I Jenkins BSc CEng MICE MCIWEM**

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

Decision date: 4 November 2016

Appeal Ref: APP/Y2620/W/16/3146446

Beeches Farm, Crowgate Street, Tunstead, Norfolk, NR12 8RF

- 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 J Paterson against the decision of North Norfolk District Council.
 - The application Ref PF/15/1024, dated 7 July 2015, was refused by notice dated 21 January 2016.
 - The development proposed is a change of use of agricultural farm to business uses B1, B2 and B8 (*as described in the Town and Country Planning (Use Classes) Order 1987 (as amended)*).
-

Decision

1. The appeal is dismissed.

Main Issues

2. I consider that the main issues in this case are: the effect of the appeal scheme on the living conditions of neighbouring residents, with particular reference to noise and disturbance; the effect on the safety and convenience of highway users; whether the scheme would make adequate provision for drainage, thereby safeguarding the water environment; and, whether, having regard to local and national policy, the appeal scheme amounts to an appropriate change of use in the countryside.

Reasons

3. Beeches House fronts onto the northwestern side of Crowgate Street. The main section of the appeal site comprises a former agricultural farmyard and associated buildings of Beeches Farm, which are situated immediately to the rear of the garden of Beeches House. An accessway, which also forms part of the site, runs from Crowgate Street alongside the southwestern side of the garden of Beeches House to the former farmyard. A property known as Beeches Farm Bungalow adjoins the western side of the former farmyard.
 4. The appeal scheme involves the change of use of an agricultural farm to business including use classes B1, B2 and B8. *The Town and Country Planning (Use Classes) Order 1987 (as amended)* indicates that Class B1 comprises uses that can be carried out in any residential area without detriment to the amenity of that area by reason of, amongst other things, noise. Class B2 use is defined as use for carrying on of an industrial process other than one falling within class B1. Class B8 relates to use for storage or as a distribution centre.
-

5. The development for which planning permission is sought in this case has commenced and the appellant has confirmed that it started a number of years ago. At the time the appeal was made, the appellant indicated that whilst the majority of the site was occupied by Anglian Plant Hire Ltd (APL), it provides smaller scale facilities for a number of other businesses and private individuals and he has identified that in employment terms the equivalent of 38 full-time employees are associated with the scheme. The Council has confirmed that four small units within the appeal site, nos. 8-11, benefit from an extant consent for use class B8 (commercial storage). The planning application form indicates that the hours of opening are 06:00 to 18:00 hrs Monday to Sunday inclusive. In his supporting statement, the appellant confirms that the most restrictive hours that could be accommodated by APL would be 06:00 to 18:00 Monday to Friday and 06:00 to 16:00 hrs on Saturdays, although some activity would be necessary outside those restrictions from time to time.

Living conditions

6. Concerns raised with respect to noise and disturbance relate to the effect of the appeal scheme on the living conditions of residents of Beeches House. Whilst the appellant has indicated that there have been no complaints about appeal scheme noise from residents of the neighbouring bungalow, this is unsurprising as it is identified as his address on the application form. I give the lack of complaint from residents of the bungalow little weight.
7. By definition, uses falling within class B2 may well include uses that cannot be carried out in a residential area without detriment to the amenity. Furthermore, in its appeal statement the Council has confirmed that noise associated with the activities on site of APL, which appears to centre around on site plant/equipment storage and distribution, has been demonstrated to amount to a statutory nuisance. I understand that an associated abatement notice has been served, which the Council has indicated would be likely to result in that company ceasing to operate from the site after 1 September 2016. Nonetheless, this demonstrates the potential for uses of this type and scale, which would fall within the scope of the planning permission sought, to cause serious noise and disturbance.
8. I acknowledge that views from the main section of the appeal site into the adjacent garden of Beech House are limited by planting along the eastern section of the southern boundary of the former farmyard and by single-storey buildings along the western section, although a relatively open central area allows views between the two properties. The appellant has suggested that acoustic fencing could be erected to fill that central gap. However, whilst literature giving details of the proposed fencing has been submitted, its effectiveness in a particular situation would be dependent on the physical relationship to the noise source and receiver. In this case there is no assessment to show that, contrary to the view of the Council, it would be effective if erected in the location proposed at reducing the noise levels experienced at the neighbouring dwelling. Nor is there evidence to show that the existing boundary planting and low buildings are effective in that regard. I give little weight to the mitigation measure suggested by the appellant.
9. The appellant has identified that Beeches Farm has recently expanded into the pig fattening industry, it operates an existing unit in the local area and is in need of a second unit. He has indicated that in the event of planning

permission being refused in this case, the appeal site may well be used for that purpose. However, I have not been provided with any compelling evidence to show that it would be suitable for that purpose. Furthermore, I consider that the view of another interested party who suggests that many, if not all, of the existing buildings are not suitable for pig rearing, has some merit, given that many of the units are small and unlikely to be accessible by farm machinery. In any event, no formal noise assessment has been submitted comparing the noise impacts likely to be associated with the appeal scheme and claimed fallback uses. In my judgement, it is unlikely that the suggested fallback use would give rise to levels of noise as high as the appeal scheme, which has, I understand, included activity such as tracked plant traversing concrete hardstanding areas. Under these circumstances, I give little weight to the suggested fallback position.

10. I conclude that the appeal scheme would be likely to cause significant harm to the living conditions of neighbouring residents, with particular reference to noise and disturbance. It conflicts with Policy EN 4 of the *North Norfolk Core Strategy 2008* (CS), which states that proposals should not have a significant detrimental effect on the residential amenity of nearby occupiers and is consistent with the aims of the *National Planning Policy Framework* (the Framework) insofar as it seeks to secure a good standard of amenity for existing occupants of land and buildings.

Safety and convenience of highway users

11. Crowgate Street is an unclassified highway with a speed limit of 60 mph, onto which a small number of dwellings front. This highway runs between Market Street, Tunstead and Church Road. Place UK, which I understand employs a large number of people and produces/exports around 3,500 tonnes of fruit each year, is located on Church Road, close to its junction with Crowgate Street.
12. The Highway Authority, who objects to the appeal scheme, has confirmed that Crowgate Street is limited in width to around 3 metres over the majority of its length, insufficient to allow vehicles to pass one another. Furthermore, I saw that opportunities for vehicles to pass by traversing the verges are limited to some extent by roadside hedging, which as a result of variations in alignment of the highway also restricts forward visibility in places. There is no dispute that this street is typical of the local unclassified highway network hereabouts. Whilst acknowledging that the street is deficient in alignment, width, passing provision and visibility, the appellant argues that these characteristics tend to limit vehicle speeds. This is accepted by the Highway Authority.
13. However, even when the likelihood of relatively low speeds is taken into account, the southwestern sightline available to drivers emerging from the appeal site access onto Crowgate Street falls well short of normal standards set out in the *Manual for Streets*. Furthermore, based on the evidence of the Highway Authority and the appellant, it appears likely that a much higher number of vehicle movements is associated with the appeal scheme, than was the case before or would be likely to be the case if it returned to agricultural use. These factors significantly increase the risk of drivers emerging from the site when others approaching along Crowgate Street have insufficient time to avoid a collision. In addition, whether it approaches or leaves the site from the northeast or southwest, the appeal scheme traffic increases the risk of vehicles

approaching in opposite directions on the local highway network coming into conflict with one another and having to reverse to find a suitable passing place, potentially bringing them into conflict with other road users, which also include pedestrians and cyclists.

14. I understand that in the last 5 years, during the period over which the APL business has been growing, there has been 1 personal injury accident recorded in the vicinity of the appeal site on Crowgate Street. There is significant variation in the numbers and types of vehicle movements associated with the enterprises that have occupied the appeal site at over recent years and so, as occupancy changes over time, the overall number of vehicle movements associated with the appeal scheme may increase further. In my view, this is not a matter that could be controlled through the imposition of reasonable conditions, not least as it would require an impractical level of monitoring.
15. I conclude that the appeal scheme would be likely to cause material harm to the safety and convenience of highway users. It would conflict with CS Policy CT5, which seeks to ensure that traffic associated with development would not harm highway safety and is consistent with the aims of the Framework, insofar as it requires account to be taken of whether safe and suitable access to development can be provided.

Drainage

16. The Environment Agency objected to the grant of planning permission on the basis that the appellant had not provided details of an acceptable foul and surface water drainage scheme and the existing arrangement posed an unacceptable risk of pollution to the water environment. However, the EA provided advice on ways in which the matter could be satisfactorily resolved and the appellant, in his appeal statement, has indicated that he would be willing to comply with its requirements. I have no reason to doubt that adequate safeguards could be secured through the imposition of a suitable condition, which requires details to be approved and implemented in a timely manner.
17. I conclude that, subject to condition, the appeal scheme would make adequate provision for drainage, thereby safeguarding the water environment, in keeping with the aims of CS Policy EN 13 and the Framework.

Whether it amounts to an appropriate change of use in the countryside

18. CS Policy SS 1 indicates that the majority of new development in North Norfolk will take place in the towns and designated villages. The rest of North Norfolk, which would include the appeal site, will be designated as countryside and development will be restricted to particular types of development to support the rural economy, meet affordable housing needs and provide renewable energy. CS Policy SS 2 identifies that in areas designated as countryside, development will be limited to that which requires a rural location and is for one of a number of identified purposes. They include the re-use of buildings for appropriate purposes. CS Policy EC 2 indicates that the re-use of buildings in the countryside for non-residential purposes will be permitted providing, amongst other things, that the proposal is in accordance with other policies seeking to protect amenity. It appears to me that these Policies are consistent with the aims of the Framework, which indicates that planning policies should support economic growth in rural areas in order to create jobs and prosperity

- by taking a positive approach to sustainable new development, which may involve conversion of existing buildings.
19. However, I have found that the appeal scheme would conflict with CS Policy EN 4 insofar as it seeks to safeguard residential amenity. It follows that it would conflict with CS Policy EC 2 and SS 2. As to whether the exiting appeal site enterprises need to be situated in this rural location; the appellant has suggested that, in the event of planning permission being refused, those businesses may face a number of difficulties, such as in identifying new premises, incurring relocation costs and they may need to find new staff. However, there is no evidence to show that any of these matters has been formally assessed to support a conclusion that the future viability of any of these businesses and the contribution they make to the rural economy would be seriously threatened.
 20. On the contrary, the Council's business development officer has indicated that there may be suitable alternative sites in the area from which APL could operate. Furthermore, evidence provided by an interested party indicates that, as of June 2016, the appellant was in the process of organising the relocation of APL to another site, a view supported by notices that I saw posted on site indicating that at least part of APL's operation had already moved to another location. In any event, it appears that that particular enterprise would have to cease operating from the appeal site in order to comply with the Council's noise abatement notice, whether planning permission is granted or not. As to the other businesses that currently operate from the appeal site, they occupy relatively small areas, in comparison with APL. I have not been provided with any evidence to show that the units identified as being available elsewhere by the Council's business development officer would not provide a suitable and viable alternative to the appeal site. There is no compelling evidence to show that dismissal of this appeal would seriously threaten either the future of those enterprises or the contribution that they make to the local economy.
 21. I consider overall, it appears that the appeal scheme does not need to be sited in this rural location and under the circumstances, which include a conflict with a Policy that seeks to protect amenity, it would not accord with CS Policy SS 2.
 22. An earth bund has been constructed along the northwestern boundary of the site and subject to landscape planting, which could be secured by condition, it is unlikely that plant and equipment stored in the rear yard area would have a material detrimental effect on the character of the surroundings as appreciated from public vantage points to the north. Views of the storage areas within the site from other directions are restricted for the most part by the existing buildings and intervening planting. Therefore, the appeal scheme would be unlikely to have a material detrimental effect on the surrounding landscape, which comprises of agricultural land for the most part. In this respect the scheme would not conflict with CS Policy EN 2 insofar as it seeks to safeguard landscape character.
 23. Nonetheless, in my judgement, it has not been clearly demonstrated that the appeal scheme would have benefits, whether environmental, social or economic that would outweigh the harm that I have identified in relation to residential amenity. Therefore, the scheme would conflict with CS Policy EN 13 and it would not amount to sustainable development under the terms of the Framework. I conclude on balance, having regard to local and national policy,

that the appeal scheme would not be an appropriate change of use in the countryside.

Conclusion

24. Notwithstanding my finding regarding drainage, I conclude on balance, for the reasons given above, that the appeal should be dismissed.

I Jenkins

INSPECTOR



Appeal Decisions

Inquiry held on 25 to 28 September and 8 November 2018

Site visit made on 26 September 2018

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2019

LAND AT BEECHES FARM, CROWGATE STREET, TUNSTEAD, NORFOLK NR12 8RF

Appeals against an enforcement notice issued by North Norfolk District Council

- The enforcement notice, numbered ENF/15/0067, was issued on 6 April 2017.
- The breach of planning control as alleged in the notice is:
Without planning permission, within the past ten years,
A material change of use of the land to a mixed use comprising:
 - i. Office – B1(a);
 - ii. Industrial – B1(c);
 - iii. General industrial – B2;
 - iv. Vehicle repairs, spray painting, jet washing and valeting;
 - v. Commercial storage – B8;
 - vi. Residential storage – B8;
 - vii. Outside storage – B8;
 - viii. Car parking;
 - ix. Stationing of static caravan, touring caravan, camper van, trailers and disused vehicles;
 - x. Stationing of a container;
 - xi. Erection of a domestic shed; and
 - xii. Use of a caravan for residential occupation.
- The requirements of the notice are:
 - i. Office – B1(a): Cease this use and remove from The Land all items connected with or facilitating the use;
 - ii. Industrial – B1(c): Cease this use and remove from The Land all items connected with or facilitating the use;
 - iii. General industrial – B2: Cease this use and remove from The Land all items connected with or facilitating the use;
 - iv. Vehicle repairs, spray painting, jet washing and valeting: Cease this use and remove from The Land all items connected with or facilitating the use;
 - v. Commercial storage – B8: Cease this use and remove all items from The Land;
 - vi. Residential storage – B8: Cease this use and remove all items from The Land;
 - vii. Outside storage – B8: Cease this use and remove all items from The Land;
 - viii. Car parking: Cease this use and remove from The Land all vehicles unconnected with the lawful uses, as described in the informative;
 - ix. Stationing of static caravan, touring caravan, camper van, trailers and disused vehicles: Cease this use and remove these items from The Land;
 - x. Stationing of container: Cease this use and remove the container from The Land;
 - xi. Demolish the shed and remove the resultant debris;

xii. Use of a caravan for residential purposes: Cease this use.

- The periods for compliance with the requirements are: within 3 months of the date on which the notice takes effect breaches (i) to (xi) must cease; and within 6 months of the date on which the notice takes effect the residential use of the caravan, breach (xii), must cease.

Appeals against the enforcement notice issued on 6 April 2017 heard at a public inquiry

Appeals Refs: APP/Y2620/C/17/3175182, 3175183, 3175184

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Bindwell Limited, Mr Joseph Paterson and Mr Luke Paterson.
- The appeal by Bindwell Limited is proceeding on the grounds set out in section 174(2)(b), (c), (d), (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.
- The appeals by Mr Joseph Paterson and Mr Luke Paterson are proceeding on the grounds set out in section 174(2)(b), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations.

Appeals against the enforcement notice determined by the written representations procedure

Appeals Refs: APP/Y2620/C/17/3174604 and 3174605

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by John Ball and Helen Robson.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeals on ground (a) and the applications for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations.

Appeal Ref: APP/Y2620/C/17/3174396

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Oliver Tappin, Bure Valley Classics.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
- The circumstances were such that under section 174(2A) of the Act as amended the appeal on ground (a) is not permitted.

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

Appeal Ref: APP/Y2620/C/17/3174828

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as

amended by the Planning and Compensation Act 1991 by Mr Christopher Bell.

- The appeal is proceeding on the grounds set out in section 174(2)(c) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

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

Appeal Ref: APP/Y2620/C/17/3174792

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Mark Platten, Ignition Marine.
- The appeal is proceeding on the ground set out in section 174(2)(g) of the Town and Country Planning Act 1990 as amended.
- The circumstances were such that under section 174(2A) of the Act as amended the appeal on ground (a) is not permitted.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out below in the Decision.

Appeal Ref: APP/Y2620/C/17/3174978

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr Tyrone Hood.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: No further action is taken on this appeal.

PRELIMINARY MATTERS

Land at Beeches Farm

1. The Land identified by the enforcement notice covers an area of about 0.98 hectare. A farm operated from the site for at least 200 years. In recent years buildings of varying size and type within the yard area have been converted and occupied by a range of businesses. A residential property known as The Bungalow or Beeches Bungalow is sited in the south western corner of the Land.
2. Plan 2 attached to the enforcement notice identifies buildings by numbers, which are not entirely consistent with unit numbers noted in the Schedule. I will use the building numbers on Plan 2 because this numbering system and plan has been submitted in support of previous planning applications. This approach also follows that adopted by the appellants in their grounds of appeal. Furthermore not all buildings have unit numbers and to use two numbering systems would be confusing for identification purposes.
3. Mr J Paterson was in charge of running operations at Beeches Farm between 2008 and 2016. Mr L Paterson took over in May 2016 and has been principally in charge of Beeches Farm since then.

Procedural matters

The Appeals

4. Appeals against the enforcement notice were made by the landowners, by occupiers of some of the buildings on the site and by a resident of The Bungalow.
5. The three appeals by Bindwell Limited, Mr Joseph Paterson and Mr Luke Paterson have proceeded by way of a public inquiry whilst the remaining appeals are for determination by the written representations procedure. However, because all the appeals are against the same enforcement notice, the reasoning and the decisions are contained in a single document.
6. The appeal against the enforcement notice by Mr M Platten (Ignition Marine) is linked to Mr Platten's appeal under s78 against a refusal of planning permission for the use of building 13/14 as a workshop for marine engineering, including servicing and repair (ref 3179682). The s78 appeal is the subject of a separate Decision.
7. On 26 October 2017 the Secretary of State, using his power under s176(3)(a) of the 1990 Act, dismissed an appeal by Mr P Allsopp against the notice (ref 3173972) because the appellant failed to provide the required information and comply with s174(4) of the 1990 Act within the prescribed time period.
8. The appeal by Mr Kurk Randall against the enforcement notice (ref 3174336) was withdrawn by the appellant on 24 January 2018.
9. Following a letter from the Planning Inspectorate dated 10 November 2017 inviting consideration of the position regarding ground (a), the appellants decided to add a ground (a) to the appeal by Bindwell Ltd. The applicable fee was paid, enabling the deemed planning application to be determined. The statement of case made the point that the submissions in favour of ground (a) were made on behalf of all three appellants. Notwithstanding, the ground (a) appeal is only proceeding in the name of Bindwell Ltd. The position on ground (a) in other appeals, where this ground was included at the time the appeal was submitted, is set out in the case details above.
10. The ground (d) appeals by Bindwell Ltd and Messrs Paterson were withdrawn on the morning of day 3 of the inquiry. I will take no action on them.
11. Through hearing the inquiry appeals potential corrections and variations to the enforcement notice were considered. After the inquiry had closed the appellants pursuing their appeals through the written representations procedure were informed of and were given the opportunity to make representations on the amendments to the notice under consideration.

Appearances at the inquiry

12. Having applied the relevant criteria and considered the representations, the Planning Inspectorate decided that the appeals by the landowners, Bindwell Limited, Mr Joseph Paterson and Mr Luke Paterson, should proceed by way of an inquiry. The remaining appeals, none of which included a ground (d) appeal, continued by way of written representations. The written procedure was the choice of those appellants and the local planning authority.

13. The Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002 SI 2002/2683 lay down the procedure and time limits in connection with appeals against enforcement notices which are to be dealt with on the basis of written representations. Regulation 7 sets out the documents that shall comprise the appellant's representations in relation to an appeal. There is no provision to be heard. The Planning Inspectorate's Procedural Guide explains that under the written representations procedure an inspector will decide the appeal on the basis of the written material provided by all parties.
14. From the bundle of witness statements submitted with the appellants' proofs of evidence it appeared that the appellants' witnesses included Mr Hood, Mr Platten and Mr Bell all of whom have appeals proceeding by written representations. In a Pre-Inquiry Note dated 22 September 2018 I advised that the inquiry should not be used by these witnesses to present evidence in support of their own appeals, a point that I reiterated in my opening comments at the start of the inquiry. On day 3 of the Inquiry the appellants indicated that Mr Bell and Mr Platten would be called to give evidence in support of the appellants' case. However, much of the evidence in their witness statements was concerned with their own businesses. I repeated my views on the matter, drawing attention to the procedure set down in the Regulations and the need to be fair to the Council in ensuring the correct procedures were followed. The witnesses were not called.
15. The appellant's expert landscape evidence was in the form of a written statement and rebuttal.
16. All witnesses who gave evidence as to matters of fact first took a solemn affirmation.
Applications for Costs
17. An application for costs was made by North Norfolk District Council against Bindwell Limited, Mr J Paterson and Mr L Paterson. An application for costs was also made by Bindwell Limited, Mr J Paterson and Mr L Paterson against North Norfolk District Council. These applications are the subject of separate Decisions.

REASONS

Appeals by Bindwell Limited, Mr J Paterson and Mr L Paterson, Appeals Refs: APP/Y2620/C/17/3175182, 3175183, 3175184

Enforcement notice

18. The appellants' case included submissions on nullity, invalidity and expediency. With reference to the *Britannia Assets* judgement¹ I stated in a Pre-Inquiry Note that I would not be considering the expediency of issuing the notice as this matter does not come within my remit. The appellants did not seek to pursue this part of their case further and I do not address the matter in my decision on their appeals.

¹ *Britannia Assets v Secretary of State for Communities and Local Government and Medway Council* [2011] EWHC 1908 Admin

19. As to whether the enforcement notice is a nullity or invalid was the subject of submissions from the appellants and the Council in writing and orally at the inquiry.

Ruling on Nullity

20. In my ruling after the opening session of the inquiry I distinguished two main categories of defects in enforcement notices: those that make it a nullity and those that make it invalid. Relevant principles are set out in the *Oates* judgement². The exercise should be approached in a way that is not unduly technical and restrictive or formalistic. A notice is a nullity if a defect is evident on the face of the document³ and it is missing some vital element, such as requirements. In effect there is no notice at all and therefore nothing that can be corrected or form the basis of an appeal. An often used appropriate test, derived from the *Miller-Mead* judgement, is whether the notice is 'hopelessly ambiguous and uncertain in telling the recipient fairly what he has done wrong and what he must do to remedy it'.⁴
21. The enforcement notice contains all the elements required by section 173 of the 1990 Act: the matters that appear to constitute the breach of planning control, with reference back to paragraph (a) of section 171A(1); the steps to be taken to remedy the breach and the compliance periods for doing so; the date on which the notice is to take effect.
22. In the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, regulation 4 sets out the additional matters to be specified in an enforcement notice as provided for in section 173(10) of the 1990 Act. The Beeches Farm notice states the reasons why the notice has been issued, with reference to policies in the development plan. The contentious element is the plan. The Council accepted that Plan 1 was not attached to notice when it was served. However, the lack of a plan or an incorrect plan does not necessarily make the notice a nullity. The notice describes the Land by its address. Plan 2, which was attached to the notice, not only identifies the approximate locations of buildings and uses on the Land but also outlines the Land in red. I consider that the lack of Plan 1 was not fatal.
23. Regulation 5, in accordance with section 173(10), requires every copy of an enforcement notice to be accompanied by an explanatory note that includes information on the right of appeal and a list of the names and addresses of the persons served with a copy of the notice. In this case an Annex to the notice advises of a right to appeal, with a web link to further information published by the Planning Inspectorate, and the consequences of not doing so⁵. The Annex does not explicitly include information on the grounds on which an appeal may be brought, the fee payable for the deemed planning application or the need to submit a statement specifying the grounds of appeal and supporting facts (regulation 5(a)(iii), (iv) and 5(b)).

² *Oates v Secretary of State for Communities and Local Government and Canterbury City Council* [2017] EWHC 2716 Admin paragraph 63

³ *Sarodia v London Borough of Redbridge* [2017] EWHC 2347 Admin paragraph 17

⁴ *Miller-Mead v Minister of Housing and Local Government and Another* [1963] 2 QB 196

⁵ The wording of the Annex and the link follow the format of the example enforcement notice referred to in Planning Practice Guidance – Ensuring effective enforcement

24. The authorities to which I was referred by the appellants and the Council do not address the consequences of any deficiencies in complying with regulation 5 in full. In my view it is very relevant that *Miller-Mead, Oates and Sarodia* place emphasis on the substance of the matter, the face of the notice and all four corners of the document when addressing nullity. I am not persuaded that any shortcomings in the Annex are sufficient to render the notice a nullity.
25. The enforcement notice has a clear and logical structure. The alleged breach is expressed in a straightforward way. The requirements and compliance periods refer back to the wording and details of the breach. The Schedule forms no part of the description of the allegation but aims to assist clarity and understanding. All matters considered I came to the conclusion that the notice was not 'hopelessly ambiguous and uncertain'. Matters may need to be corrected or varied but they fall within the scope of the invalidity issue. I ruled that the notice was not a nullity.
26. The question of invalidity remained open, in part because the outcome depended on hearing evidence on aspects of the notice that were in dispute.

Validity of the notice

27. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a), or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
28. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
29. The appellants' statement of case identified two failings of the notice, which in their opinion made the notice invalid. The first failing focuses on Plan 2 and the Schedule. By use of an example, the point taken was that the appellants are not being told fairly what they have done wrong. Secondly, the appellants submitted that substantial guesswork was required to determine what use/activities are to cease and which may be continued. In addition, attention was drawn to the fact that Plan 1 was not served on them and that the previous use is not specified within the notice.
30. I considered that attention should focus not on the Schedule and Plan 2 but on section 3 of the notice, the matters which appear to constitute the breach of planning control. Therefore prior to the inquiry I raised a number of matters on the enforcement notice with the appellants and the Council. The main parties addressed these matters in written submissions and at the inquiry. The Council submitted a copy of the notice that incorporated its proposed corrections and that had an amended Schedule attached.
31. The alleged breach of planning control is that within the past ten years a material change of use of the land has occurred. The unauthorised use is described as a mixed use comprising a number of different uses, listed (i) to (xii) in section 3 of the notice. In summary the key matters are firstly the definition of the planning unit, and secondly the description of the mixed use and the correct identification of all the component uses on the site around the time the notice was issued.

Planning Unit

32. The concept of the planning unit is a means of determining the most appropriate physical area against which to assess the materiality of a change of use. The broad tests for determining the appropriate planning unit are set out in the *Burdle* judgement⁶. As a general rule and starting point the planning unit is the area in the same occupation or ownership because that is normally the unit in which a set of functionally and physically interdependent activities are carried out. However, the courts have been prepared to recognise that a smaller or larger area may be taken as the planning unit. The assessment is a matter of fact and degree.
33. A planning unit in a composite or mixed use is described as an entire unit of occupation where the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to the other. A composite use is where the component activities fluctuate in their intensity from time to time but the different activities are not confined within physically and distinct units of land. It also may occur that within the single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose, together with its incidental activities, ought to be considered as a separate planning unit.
34. The Council's case is that the Land is a single planning unit, although accepting that The Bungalow could be excluded from the area being enforced against. The appellants', in response to Pre-Inquiry Note 1, submitted that the Land became and continues to form three separate units of occupation with distinct uses, namely (i) the bungalow and its curtilage/garden (the residential unit), (ii) the lock up units at locations 8, 9, 10 and 11 (the storage unit), and (iii) the remainder (the agricultural unit). The appellants considered that serving a single notice caused confusion, which could not be properly resolved by correction or variation under s176(1) due to the injustice that would result. At the inquiry the appellants confirmed their case based on three separate planning units and did not seek to argue that a building/groups of buildings identified in the Schedule and on the plan were individual planning units. However, I also note that the case on grounds (c) and (d) was related to individual buildings/uses.
35. The Land identified by Plan 1 and Plan 2 has been owned by the appellants since 19 October 2007. Before that date the owner was The J & E CC Paterson 1983 Grandchildrens Settlement Trust. The land parcel is set back from Crowgate Street, to the rear of Beeches House and is accessed from the public highway by a narrow road along the western boundary with Beeches House. This residential property is in different ownership and occupation and is physically separate from and has no functional link to the site.
36. The surrounding land to the west, north and east is in active agricultural use. The fields to the north and west are owned by Bindwell Ltd⁷ and are leased to Place UK. The fields to the east are in different ownership. There was no claim that the agricultural use on the surrounding fields is functionally related to the

⁶ *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240

⁷ Mr Luke Paterson and Mr Joseph Paterson are Directors of the Company.

appeal site. The physical relationship reinforces this functional split in that bunds enclosing the appeal site were formed along the northern and eastern boundaries⁸. I find that the Land is physically distinct from Beeches House and the adjacent fields.

37. Within the boundary of the red line The Bungalow is sited in the south west part of the main body of the Land. The property has its own driveway leading off the access road to Crowgate Street. The dwelling fronts onto a garden. On the eastern boundary two outbuildings, a garage and a shed, are accessed from the garden area. Boundary treatment also includes close boarded fencing and the rear walls of buildings 3, 4 and 5. There is no obvious direct access into the larger land parcel. The Bungalow is and has been leased for occupation as single dwelling for a number of years. The current occupier does not use any of the buildings on the main site. There is no evidence to indicate that there has been any significant change in the physical or functional characteristics over recent time.
38. On the remaining larger area (the main site) are a number of buildings of varying age, size and construction, including a large open sided barn in the centre where new smaller units have been created. The yard around the buildings provides for parking, circulation and servicing. A hard surfaced open area extends across the rear part of the site. Aerial photographs show this rear yard was formed some time between 2010 and 2014 during the period of occupation by Anglian Plant Limited (APL), a plant hire and plant operation business. There has been no internal physical barrier to movement and the yards appear to have functioned as a communal space.
39. The evidence indicates that from around 2001 to 2017 buildings have been tenanted to a varying degree for a range of storage, hobby and industrial type uses. On 31 May 2006 planning permission was granted for a "change of use of agricultural building to B8 (commercial storage)". The development was in respect of the block of units identified as buildings 8, 9, 10 and 11 on Plan 2 (the 2006 permission). After the change in ownership in 2007, APL operated from the site. This company, owned by Mr J Paterson, occupied 12 units as well as utilising the yard and land to the rear. By all accounts this use ceased in August 2016 when APL relocated from the site to alternative premises in Rackheath.
40. The appellants' evidence is that a residential caravan was on site (location 25) between 1981 and 1998 to house agricultural workers and that the caravan returned in 2013. The continuity in use was not supported by the Council's evidence, which also reported that recently occupation was by non-agricultural workers.
41. It appears to be the case that skills and services offered by businesses on site were used by other businesses there to a limited degree. Otherwise there has been no functional relationship between the occupiers of individual buildings and each building can be identified as a distinct physical unit. Each occupant has their own tenancy agreement. These factors suggest there may be a number of individual planning units.

⁸ In 2015 a planning application was made for continued use of agricultural land for B1 (business) B2 (general industry) and B8 (storage or distribution) uses and retention of earth bund (ref PF/15/1024)

42. However, the main site is physically defined as a single entity and identifiable as a small commercial estate. It is served by a single access and all the buildings are served by a communal car parking and circulation area. A pressure washer at location 23 is available for use by different occupiers. Flexibility in occupation has been evidenced in that occasionally businesses have been able to move between units (such as KAR Services now trading as Wroxham Body Shop) and lettable space has expanded or contracted (such as buildings 3, 4 and 5). There has not been a high level of stability in occupation but a reasonable turnover of tenants. I note that in 2015 when Mr J Paterson applied for planning permission for a change of use of agricultural land to uses in Classes B1, B2 and B8 the application site encompassed the whole of the main site. There is no evidence to support the creation of a separate residential caravan site.

Conclusions on the planning unit

43. The fact that The Bungalow is in the same ownership as the rest of the land is the only factor indicating that the residential property forms part of the planning unit. Balanced against this factor, the property is a physically separate and distinct area, functionally unrelated to and occupied for a substantially different purpose to the main site. It is a separate planning unit.
44. Within the main site the block formed by buildings 8, 9, 10 and 11 is not a physically separate and distinct area to the rest of the yard and buildings. I do not regard it as a separate planning unit. As a matter of fact and degree I consider there is a single planning unit in a mixed use where a variety of activities are carried on, albeit by different businesses as well as the owner occupiers. The component activities fluctuate in their intensity from time to time and the different activities are not confined totally within physically and distinct units of land.
45. On the basis of these conclusions the relevant planning unit comprises the Land excluding The Bungalow. Plan 1 would need to be corrected. The Council submitted an amended Plan 1 at the inquiry.

Description of the mixed use

46. The important point is to list all the component uses existing at the time the notice was issued, even if not all uses are unacceptable. Based on the list of uses in section 3 of the notice I put it to the main parties before the inquiry opened that it would be appropriate to simplify the description of the alleged breach to state (subject to the further comments below): *without planning permission a material change in the use of the Land to a mixed use comprising offices; light industrial; general industrial; storage; vehicle repairs, spray painting, jet washing and valeting; vehicle parking; the stationing of caravans and a container; the use of a caravan for residential occupation.* I also pointed out that 'the erection of a domestic shed' was not a use but a building operation.
47. There were several component uses that required clarification, primarily whether:
- a) the caravan and container were stationed on the land for the purposes of storage,

- b) the vehicle parking was a primary use or ancillary to other component uses,
 - c) marine engineering fell within the industrial use or was a sui generis use in its own right, and
 - d) whether the retail sale of cars and the use of land for agricultural purposes should be included as part of the mix of uses.
48. Certain matters (points (a) to (c)) above were relatively quickly clarified and agreed by the Council and the appellants.
49. As to the inclusion of the retail sale of cars, the Council accepted that this activity was being conducted from the site at the time the notice was issued. The Schedule indicated that Bure Valley Classics was operating from buildings 3 and 5, the entry being "car sales not on open land (sui generis) and office B1(a)". The Council's enforcement officer confirmed that the office use listed in the alleged breach was the office to the car sales.
50. My conclusion is that the sale of classic cars should be included in the description of the alleged breach of planning control to accurately describe the mixed use taking place at the time the notice was issued. The trading of vehicles by Bure Valley Classics was a specialist business, appropriately described as office and sale of classic cars, similar to that in the Schedule.
51. The appellants' case, as presented at the inquiry, for the inclusion of an agricultural use rests on the storage of sugar beet cleanings and also storage of bales of straw⁹. They maintained between 5 and 10 January 2017 one thousand tonnes of sugar beet was stored on the premises. The sugar beet was cleaned and collected for transport to British Sugar. The cleanings remained in the area between locations 34 and 36. Mr Abe, for the Council, stated that no agricultural use was taking place on the land in April 2017 and that the mounds on site at the time were building materials and soil and not cleanings from sugar beet.
52. A Notice under section 215 was served at the same time as the enforcement notice. The section 215 notice was directed at mounds of soil and materials and also stacks of straw bales. The series of photographs taken by the Council on 12 January and 8 March 2017 provide strong evidence that the mounds were of building materials and soil, in view of the rubble and other man-made materials that are visible. In view of their general location on the site the probability is that they are the mounds referred to by Mr Paterson. Straw bales were being stored in the open on the boundary with Beeches House (near building 2) and there is little to suggest they are being stored for use as bedding and feeding of animals or other agricultural use. The probability that the land was not being used for agricultural purposes.
53. The appellants also presented the argument¹⁰ that some residual agricultural use has continued. More specifically, a static caravan at location 25 had been used for the occupation of agricultural workers, a static caravan, touring caravans and camper vans at locations 21, 27, 28 and 34 were being stored

⁹ Statutory declaration of Mr L Paterson paragraphs 9-11 and oral evidence.

¹⁰ In their response to Pre-Inquiry Note 1

ancillary to agricultural use, as was a trailer at location 29. No evidence of any detail was presented to support this case. In his oral evidence Mr L Paterson made no mention of an agricultural occupancy of the static caravan at locations 25 or 27 or an agricultural use in respect of the camper vans and trailer (locations 28, 29, 34). The only reference was to an agricultural caravan at location 21. In the statement of case the caravan at location 27 was said to belong to a friend and was being kept on the site on a temporary basis. The Council's understanding as set out in the Schedule was that the vehicles were connected with the occupiers of other units. No agricultural occupancy of caravans was confirmed. Even if one or more caravans were occupied by an agricultural worker, the use is residential taking account of the absence of a primary agricultural use within the planning unit.

54. In the appellants' statement of case observations were made on each building and location. Building 1 was described as a redundant and empty farm building, part of a former dairy and farm offices. In 2015 an engineering firm occupied the building for business purposes, primarily offices. By April 2017 the building was vacant. Similarly building 4 was an unused farm office that was vacant. No evidence has been provided to support the claim that the storage of building materials, piping and scrap metal at locations 32 and 36 was for agricultural purposes. All matters considered there is no justification for including agriculture within the description of the mixed use.
55. The time period for taking enforcement action, a ten year period for a material change of use, is included in the description of the alleged breach of planning control. The general practice is to include this matter within the reasons for issuing the enforcement notice. I will make this additional correction.

Conclusion on description of mixed use

56. My conclusion is that section 3 of the notice, the matters which appear to constitute the breach of planning control, should be corrected to read "*Without planning permission a material change in the use of the Land to a mixed use comprising offices and classic car sales; light industry; general industry; vehicle repairs, spray painting, jet washing and valeting; storage including the storage of caravans and the use of a container for storage purposes; the use of a caravan for residential occupation.*"

Other matters: the shed, the Schedule and the requirements

57. The Council accepted that the erection of a domestic shed should not be included in an allegation alleging a material change of use and proposed deleting this development from the enforcement notice and Schedule. I agree that the notice should be corrected to this effect.
58. Following on from the corrections to the allegation, the requirements would need to be amended accordingly, having regard to whether they would become more onerous and cause injustice. Additionally, as agreed by the Council, a 'saving' will be introduced to recognise that the use of buildings 8, 9, 10 and 11 for commercial storage was authorised by the 2006 planning permission.
59. The periods for compliance are more appropriately considered under the ground (g) appeals.

60. Mr L Paterson in his oral evidence agreed with the content of and the uses listed in The Schedule, apart from noting that a boat was not in unit 19 in 2017. I consider the Schedule is a useful reference point and should be attached to the notice. The reference to the domestic shed would require deletion. Further minor amendments should be made to the amended Schedule submitted by the Council. Unit numbers, whilst familiar to the owners and occupiers of the site, should be deleted to ensure consistency with Plan 2. Also, on reflection, the inclusion of named individuals as occupants is not necessary.
61. A better, clearer copy of Plan 2 was submitted by the Council to assist easier identification. This Plan will be substituted for the original Plan 2 attached to the notice.

Injustice

62. The appellants submitted that the failures in compliance with the statutory requirements cumulatively are such that they render the enforcement notice so defective and so inaccurate that the notice is invalid and should be quashed.
63. The power in section 176(1) to correct an enforcement notice has been interpreted widely by the courts. There is a single test – whether the corrections necessary to get the notice in order would cause injustice either to the appellant or the Council.
64. As I observed in my ruling on nullity, the notice has a logical structure. If read in a straight forward way, and not forensically, the alleged breach is expressed in a manner and form that is understandable. The requirements relate directly back to the component uses of the mixed use and there are periods for compliance. The appellants pursuing their appeals by written representations gave no indication that they do not understand the notice, even taking into account that these appellants focus on their particular interest and use. My conclusion is that the notice tells the recipient fairly what he has done wrong and what he must do to remedy it. Compliance with this test does not rule out the ability to challenge the notice through the grounds available in an appeal and make corrections where they have shown to be justified.
65. The area of land subject to the notice would be reduced, not increased, by the removal of The Bungalow site. Given that the notice as originally drafted did not refer to residential use associated with The Bungalow there would be no change. The removal of the domestic shed is primarily on the basis that it is operational development and not part of a material change of use. The one addition is the inclusion of a classic car sales and office use as a component use, the new element being the car sales. The operator of the business was not deterred from making an appeal (Appeal ref. 3174396), although he has now left the site.
66. The appellants initially considered that to include an additional use would cause injustice, relying on section 173(11) and the potential grant of planning permission in the event all requirements of the notice are complied with. The Council drew attention to the Court of Appeal's judgement in the *Fidler* case¹¹. After due consideration the appellants accepted that the provision of section 173(11) would not apply.

¹¹ *Fidler v Secretary of State and Reigate and Banstead Borough Council* [2004] EWCA Civ 1295

67. However, whilst agreeing the allegation should include the retail sale of cars in order to describe the mix of uses, it was submitted that to do so would cause injustice. The injustice identified primarily related to the ground (a) / deemed planning application in that the technical evidence was prepared on the basis of the matters stated in the enforcement notice as constituting the breach of planning control and therefore did not include a component of car sales. Also the appellants' evidence in respect of grounds (b), (c) and (d) did not address a component use of car sales.
68. The Council submitted that the technical evidence was prepared on the appellants' instruction on the use on the site at the time the expert carried out the site visit. They did not actually assess the mixed use set out in the notice. The car sales business ceased on or before 10 March 2018, long before any of the experts were instructed. No prejudice would be caused by correcting the description.
69. I agree that on the authority of *Fidler*, the inclusion of car sales within the allegation would not have the result of denying the opportunity of a benefit of a planning permission for a car sales use. This is because section 173(11) only applies to works or a use mentioned in the enforcement notice as constituting the breach¹². Furthermore, the additional component use, as existing in April 2017, would not significantly affect technical studies that would be required to address the highway, amenity and drainage reasons for issuing the notice. In any event the appellants chose to base technical assessments on the use being carried out at the time of the preparation of the technical evidence, not on the mixed use described in the notice as issued. No injustice would be caused to the appellants.
70. No injustice was identified by the appellants by reason of the omission of Plan 1 or the omission of an appropriate explanatory note or in relation to their ability to present a case on grounds (b) and (c). The appeals on ground (d) were withdrawn for reasons unrelated to the proposed corrections to the notice.
71. A new point on injustice was raised in the appellants' closing submissions whereby the removal of The Bungalow from the site area would prevent a planning condition confining the location of the residential caravan site to location 37. I do not accept this argument. There is no evidence that the residential caravan was ever related to occupation of The Bungalow. Such a relocation of the caravan would seriously impinge on the privacy of the occupiers of that dwelling.
72. For the reasons given above, I conclude that the enforcement notice is valid and that no injustice would be caused by correcting the errors and misdescriptions in accordance with my powers under section 176(1)(a) of the 1990 Act as amended. No written representations were received from other appellants to justify a different conclusion. The remaining grounds of appeal will be assessed on the basis that the Land, comprising the planning unit, excludes The Bungalow and that the alleged breach of planning control is the mixed use development described as: Without planning permission a material change in the use of the Land to a mixed use comprising offices and classic car sales; light industry; general industry; vehicle repairs, spray painting, jet

¹² See paragraphs 32 to 44 of the judgement

washing and valeting; storage including the storage of caravans and the use of a container for storage purposes; the use of a caravan for residential occupation.

Appeals on ground (b): *that those matters (the matters stated in the notice which may give rise to the breach of planning control) have not occurred*

73. In view of the proposed corrections to the enforcement notice the ground (b) appeals fall away, as accepted by the appellants¹³. Moreover, in oral evidence through re-examination, the appellants agreed that all the component uses were on site at the time the notice was issued.

Appeals on ground (c): *that those matters (if they occurred) do not constitute a breach of planning control*

74. The lawful use of the land was agriculture. The planning history of the land prior to April 2017 includes approval in 1976 for an agricultural building, permission for an extension to a building in 1976, a time limited permission in 1981 for a residential caravan and the 2006 permission. Application was made by Mr J Paterson in July 2015 for a change of use of agricultural farm to business uses B1, B2 and B8. The Council refused planning permission. In the subsequent appeal the Inspector reported that the appellant had confirmed the development had started a number of years ago, at the time the appeal was made the majority of the site was occupied by APL and that the site provided small scale facilities for a number of other businesses and smaller individuals. The appeal was dismissed by decision dated 4 November 2016.
75. The mixed use of the Land is significantly different in character from the agricultural use by reason of the range of activities, the operations and processes carried out, the resultant appearance of the site and the effects on the site and its surroundings. Development requiring planning permission has occurred. No planning permission has been granted for the material change of use in question, whether by development order, the determination of a planning application by the local planning authority, on appeal or by any other provisions in the 1990 Act as amended. A breach of planning control has taken place. The appeals on ground (c) do not succeed.
76. I will consider the ground (c) appeals in the appeals being pursued through written representations in more detail below. Suffice to say at this point, none succeed.

Appeal on ground (a)/deemed planning application

77. The development that forms the deemed planning application is derived directly from the breach of planning control as proposed to be corrected. Therefore the application for planning permission is for a mixed use on the Land (which excludes The Bungalow) comprising all the activities set out above in paragraph 72. A planning permission generally runs with the land and the parties agreed that a time-limited permission would not be appropriate. Consequently the existing level of occupation and balance in the mix of uses are not necessarily representative of future conditions and effects of the mixed

¹³ Appellants' response to Pre-Inquiry Note paragraph 25

use, particularly bearing in mind the number of vacant buildings and the underused land available at the back of the site.

78. The appellant has put forward proposals for off-site highway and surface water drainage works with a view to addressing the Council's concerns on these matters. The engineering works would not be on the land to which the notice relates and would be development additional to that described in the breach of planning control. I asked the main parties whether these factors precluded the works being taken into account. For different reasons the appellant and the Council submitted there were no legal or procedural difficulties in dealing with the proposals and if appropriate attaching planning conditions to secure their implementation. Taking into account the submissions I will consider the proposed off-site works.
79. The development considered at appeal in 2016 was for a change of use to business uses B1, B2 and B8. At the time the application was made APL (which probably was a sui generis use) occupied the majority of the site. Therefore the mixed use at issue in the current appeal is not the same. Having said that, the appeal decision is relevant and I will take the conclusions of the inspector into account.

Planning policy and main issues

80. The development plan for the area includes the North Norfolk Core Strategy adopted in 2008 (the CS). The National Planning Policy Framework (2018) is a material consideration.
81. CS Policy SS 1 provides for the majority of new development to take place in the towns and larger villages, with a small amount of new development focused on a number of designated Service Villages and Coastal Service Villages to support rural sustainability. The appeal site is in the area designated as Countryside, where the CS places emphasis on protecting the quality and character of the area whilst enabling those who earn a living from and maintain and manage the countryside to continue to do so. Policy SS 2 limits development to that which requires a rural location and is for one or more of the uses listed in the policy. One of these categories is the re-use and adaptation of buildings for appropriate purposes.
82. Against this policy background the main issues are:
- 1) The effects of the mixed use on:
 - The living conditions of nearby occupiers, particularly with regard to noise and disturbance;
 - Highway safety, taking account of the characteristics of the local highway network and visibility at the access into the site;
 - The character and appearance of Crowgate Street;
 - The quality of the water environment, with particular regard to on-site foul and surface water provision;
 - The local rural economy and employment.

- 2) Whether any planning objections or identified harm may be overcome by the use of planning conditions.
 - 3) The weight to be attached to the fallback options, taking into account whether there would be a reasonable possibility of the use(s) being carried out and whether such uses(s) would be less desirable than the mixed use.
83. Planning Practice Guidance advises that as a policy requirement planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

Living conditions

84. The nearest noise sensitive residential properties to Beeches Farm are Beeches House immediately to the south and The Bungalow to the west. The Bungalow is occupied by tenants of the appellants but that does not reduce the need to safeguard their amenity or that of future occupiers. By way of illustration, in his statement the occupier referred to the noise from the APL operation being very noticeable and disruptive and the dust and dirt made the outdoor spaces unusable. In addition a residential caravan is included in the unauthorised mix of uses and caravans generally suffer from poor sound attenuation compared to other permanently built dwellings.
85. The appellant's acoustic consultant found that during the day when the site is operating the background sound level was 5dB higher than in the early morning and evening when the site was shut¹⁴. He attributed this increase to be mainly from the fruit processing activities nearby. He considered the main noise sources affecting the site were from the residual noise of agricultural machinery working in the surrounding fields, occasional local traffic on Crowgate Street, light goods vehicles operating in and out of the fruit processing centre on Church Road and regular helicopter over flights to and from Norwich Airport.
86. The ambient sound level measured during daytime periods was 44 dB LAeq, 11 hours, which was stated to be 6 dB below the World Health Organisation Guidelines and BS 8233:2014 recommended level for external amenity areas. Specific sound levels from activity and use of equipment on the site were assessed to result in some adverse impacts during the day.
87. The Council's evidence shows that there has been a history of noise complaints. In December 2015 the intrusive levels of noise identified around that time were from activities such as traffic movements, engines running and idling, angle grinding, metallic banging and crashing, electric door opening, pressure washing, people talking and the movement of plant and equipment. In February 2016 a noise abatement notice in respect of a statutory nuisance was served on APL, a sui generis plant hire use. Complaints were received after APL relocated away from the site and although the investigations did not establish a statutory nuisance the environmental health officer considered the types of noise reported could lead to a loss of amenity if frequently heard. The later car

¹⁴ Background sound level in the morning/evening was 30 dB LAF90,1 hour and in the day 35 dB LAF90,1 hour

- sales operation also led to noise from cars revving and vehicle demonstration, which would be detrimental to amenity and quiet enjoyment of the home.
88. In my view the environment is of a generally quiet countryside location, not a busy, trafficked urban area. Consequently atypical intrusive noise is more likely to cause disturbance and loss of amenity. Experience has shown that noise sources associated with the mix of uses subject to the enforcement notice has led to a loss of amenity to varying degrees. Significantly the survey work carried out by the appellant's noise consultant in August 2018 was at a time when the site was not fully occupied. Even so the assessment was that if the site was to operate outside 0800 to 1900 hours some activities such as pressure washing vehicles or the use of power tools in external areas would have a significant adverse impact upon the occupants of Beeches House and be detrimental to their amenity.
89. As to other points raised by the appellant, I consider that the moderate size of many of the units is not necessarily a decisive factor in noise generation. A single unit operating a small item of equipment could result in disturbing noise. The general character of the noise and tonal qualities are particularly important. The Council's environmental health officer cited noise from vacuum cleaners as being particularly intrusive in close proximity to the neighbouring residential property. General industrial uses by definition do not include uses that can be carried out within any residential area without detriment to amenity. The extent of the yard and the open land at the rear must also be taken into account in terms of vehicle movement and levels of storage.
90. All matters considered I conclude that the mixed use would be likely to cause significant adverse effects on the amenity of nearby residents by reason of noise and disturbance. There is evidence that noise has led to material changes in behaviour. Consequently the quality of life may be expected to diminish due to change in the acoustic character of the area. The development should be avoided.
91. Nonetheless I will consider whether appropriate and adequate mitigation could be achieved by the use of planning conditions. Conditions were put forward to control the use of particular buildings, hours of operation, use of plant and equipment and external storage. There was not full agreement between the Council and the appellant on the scope and content of potential conditions.
92. Conditions were proposed to ensure that the buildings on the southern and western boundary, nearest to the noise sensitive premises would be occupied by business and storage uses and not uses of a general industrial nature. Car sales would be restricted to buildings 3 and 5. Hours of operation and deliveries would be limited to the working day, which I consider should be 0745 to 1800 hours Monday to Friday and 0800 to 1300 hours on a Saturday, rather than the later 1900 hours sought by the appellant for weekdays.
93. Any plant, power tools and machinery would be required to be operated within a building and the Council required all external doors and windows to be kept shut during their operation. The appellant considered the second requirement was not reasonable, necessary or enforceable. However, Ignition Marine and HD Valeting and Detailing stated that they use tools with the doors to their units closed. I consider that a need to exercise such a control is an indicator

that the premises are not appropriately located and for some businesses, such as Wroxham Body Shop, keeping the door closed could result in excessive heat (especially in hot weather) or hazardous conditions.

94. The Council proposed a condition preventing any external storage on the site, whereas the appellant proposed that a scheme should be submitted to identify areas for external storage and that the height of storage should be no more than 2.5 metres. Conditions also were proposed that would require details of mechanical ventilation and similar extract systems and a scheme for the control of noise from the pressure washer. These conditions, especially on storage, introduce an element of uncertainty at this stage of decision making and indicate the issues that arise when the development has occurred. I am not satisfied that the prevention of any external storage would be reasonable bearing in mind the description of the mixed use.
95. Where conditions meet the test of enforceability, in the event a breach occurred there inevitably would be a period of time required for investigation and due process. Consequently mitigation of harms may not be continuous, resulting in loss of amenity to the affected parties.
96. In conclusion, the mixed use should be avoided in this location close to noise sensitive properties. Planning conditions could afford a certain amount of mitigation but adverse noise and disturbance impacts would not be overcome. On this matter the development is not supported by CS Policy EN 13. With reference to the Framework I am not satisfied that conditions would be sufficient to ensure the development would avoid giving rise to significant adverse effects on the quality of life.

Highway safety

97. Crowgate Street is an unclassified rural road linking the C396 Market Street with C397 Church Road and providing access to farm properties and a small number of dwellings. Beeches Farm is approximately 1.1 kilometres (km) from the junction with Market Street and the wider highway network. Over the period 2012 to 2017 no personal injury accidents were recorded on Crowgate Street.
98. The traffic data demonstrates and the highway authority accepts that the capacity on the links between junctions is not an issue. The primary concerns are the suitability of Crowgate Street to support the level of traffic generated by the mixed use and the visibility at the site access.

Crowgate Street

99. Based on recorded traffic data at the site entrance in February 2018 the appellant's case is that traffic flows in and out of the site are modest – a five day 16 hour average two way flow of 29 vehicles, with a peak flow of 11 vehicles in one direction in one hour (1700 to 1800 hours). In the event of full occupancy the appellant calculated no more than an additional 5 trips per 16 hour day.
100. These figures need to be treated with caution because they do not sufficiently take into account the potential trip generation from a storage use of open land at the rear of the site or a residential caravan. The type of vehicles,

whether cars, light goods or heavy goods vehicles is also an important factor. The Council's highways witness aptly described current occupiers as 'incredibly niche' and noted, for example, that a vehicle body repairs specialist could be replaced by a business carrying out more general vehicle body repairs generating breakdown tucks. A planning permission would be permanent and run with the land and therefore consideration of future variation in traffic generation in number and type is very relevant. The probability is that the mixed use would result in an increase in the level of traffic to and from the site and using the lane, even allowing for the storage use of units 8, 9, 10 and 11 and the lawful agricultural use.

101. Manual for Streets indicates that carriageway widths should be appropriate for the particular context and anticipated uses. A minimum width of 4.1 m is required to allow two vehicles to pass, a minimum width of 4.8 m for a light vehicle and a HGV to pass with 5.5 m minimum width for two HGVs to pass. Crowgate Street is single track with passing bays and has a typical carriageway width of 3 m, enclosed on both sides by grass verges of varying width and boundary hedgerows. It is unlit, has no footway and is subject to the national speed limit of 60 mph, although the alignment, width and forward visibility constrain vehicle speed. The highway has the character of a rural lane. The passing bays are of variable standard in terms of spacing, size and condition and the inter-visibility available between them. None of the passing bays cater for two large vehicles passing. They were not formally created and in all probability resulted from verge erosion by constant use of vehicles avoiding conflict. They are an indicator that the lane because of its physical constraints struggles to accommodate existing traffic and that permitting development that would lead to significant additional traffic should be avoided.
102. The appellant's road safety assessment concluded that opposing conflicts remain occasional rather than frequent, even with additional traffic from the change of use. For most users needing to stop entails no more than possible frustration or a small risk of minor damage. It recognised that a meeting of two HGVs might necessitate a lengthy reverse and pose a greater hazard to other road users but observed that the likelihood of this occurring would be very low.
103. Referring to other sources of evidence, one of the business occupiers acknowledged that he occasionally came across refrigerated lorries and tractors using Crowgate Street to access Place UK, which can cause difficulties.
104. The road safety assessment was based on the information, including traffic generation provided by the appellant, whereas I have concluded the mixed use at issue in the deemed planning application probably would generate more traffic, including more HGVs. That being the case there would be a greater risk of vehicle conflict and the necessity of undertaking hazardous reversing movements would increase. This would be especially so in hours of darkness, which would include the evening peak hour during the winter months. Such an outcome would increase the risk of injury to users of the highway and be contrary to the interests of convenience and safety. The inspector in the 2016 appeal came to a similar conclusion.
105. Use of Crowgate Street by pedestrians and cyclists (non-motorised users, NMUs) is likely to be low but should not be overlooked bearing in mind the dwellings near the junction of Market Street and that Place UK may well be

accessed by agricultural workers on foot. Vehicle speeds are constrained and inter-visibility is good in daylight hours. Under such conditions the adverse effect would more likely be intimidation rather than injury. All matters considered, NMUs would experience slightly less pleasant conditions and a slight increase in risk of injury.

Site access

106. At the site entrance the existing visibility is 2.4 m x 23 m or 2.0 m x 33 m to the north east due to the wall fronting Beeches House. Visibility measured 2.4 m x 70 m to the south west, by reason of the cutting back of the roadside hedge. Before the work to the hedge visibility was in the order of 10 m and it is desirable in landscape terms that the hedge should be allowed to regain width and height as an important landscape feature.
107. Guidance on visibility requirements is set out in Manual for Streets. A key component in establishing the stopping sight distance is vehicle speed. The appellant maintained that the 85th percentile speed on Crowgate Street was 30 mph, indicating visibility splays of 2.4 m x 43 m in each direction. However, the automatic traffic counters were not positioned in accordance with national advice in TA 22/81¹⁵. The highway authority initially gave an 85th percentile speed of 30 mph in its statement of case. Following receipt of further evidence 34 mph was considered to be a reasonable assessment of the 85th percentile speed, resulting in a stopping sight distance of 52 m with a 2.4 m setback.
108. It is clear that whatever speed is adopted the visibility at the site access would not ensure adequate visibility between vehicles on the major and minor arm.
109. The appellant proposed three options to improve the site access. A stage 1 road safety audit identified two problems – inadequate visibility and awkward alignment. Only Option 2 met the auditors’ recommendations. I agree that this option alone merits further consideration.
110. The proposal provides for moving the edge of the carriageway towards the southeast at the site entrance and widening of the carriageway to 4.8 m opposite the site entrance¹⁶. Visibility splays of 2.4 m x 43 m and 2.0 m x 51 m are demonstrated to the north east and splays of 2.4 m x 43 m and 2.4 m x 52 m to the south west.
111. The auditors reported only on the road safety of the scheme as presented, using the documents provided by the appellant. They worked on recorded 30 mph speeds, an understanding that the widening of the carriageway would provide a nearside passing bay and an autotrack drawing of a large refuse vehicle entering and exiting the site access. They were not made aware of the difference of opinion on vehicle speed and that the main intention of widening the carriageway would be to allow vehicles to turn into and out of Beeches Farm. Therefore it is not necessarily the case that the option 2 proposal would overcome highway objections.

¹⁵ Design Manual for Road and Bridges Volume 5 Section 1 TA 22/18 Vehicle Speed Measurement on All Purpose Roads

¹⁶ Full details of Option 2 are shown on plan 48867-PP-101 rev B

112. The maximum benefit to visibility from the proposal rests on whether the x distance should be reduced from 2.4 m to 2.0 m. Manual Streets identifies the considerations to be taken into account. Crowgate Street is lightly trafficked and vehicle speed is restrained. However, this lower value would mean that the front of some vehicles would protrude slightly into the running carriageway of the major arm. The need to manoeuvre around a protruding vehicle in a confined width would not be desirable. An x distance of 2.4 m should be used. Accordingly at best the visibility splay to the north east would be 2.4 m x 43 m.
113. In conclusion option 2 would improve visibility, turning and hence safety at the site access. However, without additional evidence on vehicle speed and turning movements of articulated vehicles it is not possible to conclude that the proposal adequately addresses concerns over visibility and turning at the site entrance. An additional consideration is the effect on landscape features.

Conclusion

114. Safe and convenient access and compliance with CS Policy CT 5 has not been demonstrated.

Character and appearance

115. The landscape around Tunstead, a distinctly linear village, has an almost level, plain like topography dominated by an agricultural land use and where settlement is typically dispersed. The hedgerows, hedgerow trees and small copses contribute to the fairly enclosed nature of the landscape and limit views. Hedgerows are found along significant lengths of Crowgate Street and make a very positive contribution to the character and appearance of the rural lane, as well as being of benefit to wildlife. Where the hedges are interrupted a sense of intimacy is eroded. Similarly, the appellant's landscape report stated that Crowgate Street is notable for its hedged boundaries on both sides of the lane to the west of the site, linking to other hedges in the area to the east of the site. Mature larger hedges often containing hedgerow trees are described as a strong characteristic feature in the overall character of this area of the countryside.
116. The hedgerows next to and opposite the site entrance, shown on historic maps and part of the historic field system, are important hedgerows under the Hedgerow Regulations 1997. They are also an important element in maintaining field boundary appearance and structure particularly on the south side of Crowgate Street where fragmentation occurs.
117. The hedgerow on the north side of the lane was felled for a length of some 180 m south west from the site entrance about two years ago. Works to the hedge have been carried out again more recently. The appellant's initial focus was to improve the visibility at the site entrance by establishing a visibility splay of 2.4 m x 43 m. The appellant maintained that with appropriate management the hedge could be allowed to grow with a height of 3 m and a spread of 1.7 m, reducing to a height/spread of about 1.8 m x 1.2 m for the first 15 m from the entrance. The indication from the landscape report is that to achieve and sustain such a hedgerow feature would require very careful management practice. Furthermore a height/spread of more than 1.2 m x 0.6 m for the first 15 m is described as questionable on the submitted plan

4239/02. I consider the lower dimensions to be a poor substitute in terms of amenity.

118. Turning to the subsequent proposal for off-site highway improvements (option 2), the hedgerow opposite the site entrance is a combination of blackthorn and field maple, where some plants have developed to tree size. All trees were assessed to be category B of moderate quality or value. The original assessment was that the works would remove 60% or more of the roots within the root protection areas (RPA) and the canopy of the trees identified as T2, T3 and G4 would have to be cut back. Further appraisal of topographical information and root morphology indicated a greater degree of root removal affecting T2 and T3 and the intervening hedge between them. Even so the appellant's case remained that long term adverse impacts would be surprising and a planning condition to secure new planting as compensation was proposed.
119. The extent of encroachment into the RPA would be substantial. I found the Council's analogy to explain the effect of a reduction in oxygen to be plausible. There would be a greater probability of long term damage to the trees and hedgerow than not as a result of widening the carriageway, even allowing for protective measures secured through a planning condition. The hedgerow next to the entrance would have a better chance of development, the appellant indicating dimensions of 3 m high and a spread of 1.2 m being achievable. However, there is uncertainty over the effect of the most recent flailing of the hedge near the site entrance and the ability of the hedge to recover and develop into a long term viable feature.
120. The two hedgerows in question are important hedgerows in their own right and merit protection. They enhance the appearance of Crowgate Street and are landscape features that contribute positively to local landscape character. The probability is that in order to improve visibility and access into the site the distinctive hedgerow landscape feature would not be protected or conserved, thereby conflicting with CS Policies EN 2 and EN 4.
121. The suggested planning conditions to confirm an arboricultural method statement, a tree protection plan and landscaping would be based on the principles in the option 2 plan. Therefore in view of my misgivings over the scheme, both in terms of the effect on the hedgerows and the adequacy of the visibility, the use of conditions would not be a satisfactory solution.

Water management

122. By the time of the inquiry the appellant had put forward a surface water drainage strategy which proposes two detention basins, swales and /or an additional proprietary product to provide drainage for the run-off from roofs or buildings and hard surfaced yards. In order to address environmental concerns over waste water management, particularly associated with an existing pressure washer, it is proposed to install a secondary underground tank, a screen to capture water spray and improved drainage channels and to resurface the area around the collection tank. The existing septic tank capacity was found to be inadequate and a new sewage treatment plant with appropriate capacity is recommended.

123. The surface water drainage proposals are based on site survey information on ground conditions and infiltration capacities and have taken account of the need to accommodate climate change increases in rainfall intensity. Similarly the proposals for foul water drainage were informed by site assessment of uses, level of occupation and existing facilities. The Environment Agency considered the measures to be satisfactory for existing users of the site and required further proposals to address all elements of the mixed use.
124. I conclude that there is sufficient evidence to demonstrate there are no insuperable drainage problems and that means of mitigation can be accommodated without unacceptable impacts on the environment and amenity. I agree with the Council that the use of planning conditions would be the appropriate mechanism to secure suitable surface and foul water drainage provision. Accordingly, and subject to approval of detailed schemes through consultation with the Environment Agency, the development complies with Policies EN 10 and EN 13 of the Core Strategy as regards managing water flows and safeguarding water quality.

Rural economy

125. The Core Strategy refers to the local economy being dominated by small businesses and the structural changes to agriculture creating new rural employment opportunities. Appropriate re-use of redundant farm buildings is anticipated and encouraged for a variety of other purposes. Farm enterprises are encouraged to diversify into new agricultural and non-agricultural activities to sustain the rural economy and protect the rural character and environmental resources. The Framework states that significant weight should be placed on the need to support economic growth and productivity. Decisions should enable the sustainable growth and expansion of all types of businesses in rural areas through conversion of existing buildings.
126. The site has provided workshops for small businesses that predominantly have been connected with vehicle repair services, as well as units for storage of building materials or personnel goods and vehicles. Existing small businesses on site offer specialist services to the rural community, such as repair and servicing of boats, vehicle cleaning restoration and protection, light accident vehicle bodywork repairs and vehicle paint spraying. The availability of premises has enabled the operators to develop their businesses and secure employment for themselves and their staff. Apprenticeships and work placements through links with education establishments have been encouraged.
127. The appellants and business occupiers have outlined a lack of similar premises in the wider area and the importance of retaining their premises to ensure business viability and survival. Three businesses have been on the site for several years (Ignition Marine, HD Valeting and Wroxham Body Shop) indicating that the location and accommodation are well suited to their operations and customer base. However, the turnover of tenants is a recognisable feature at the site, suggesting the premises are suitable for relatively short term lets to meet individual needs and / or that alternative more suitable premises are to be found elsewhere.

128. The appellants have explained that the majority of units at Beeches Farm are no longer suitable for their original agricultural purpose and that the main farming operations are based at three farmyards at Dilham and Smallborough. The leasing of land or buildings to other non-agricultural uses, as has happened at Beeches Farm, is recognised by the Core Strategy as a type of farm diversification. However, there is no evidence to show that the development would make an on-going contribution to sustaining the agricultural enterprise as a whole. For this reason the development fails to comply with CS Policy EC 1.
129. The development in the main has re-used buildings in the farm yard. However, as explained above, the mixed use development is not in accordance with policies to protect amenity and the character of the area. Consequently there is a failure to comply with CS Policy EC 2 and in turn Policy EC 1.

Residential caravan

130. The appellant has made no case to justify residential caravan accommodation on the site, whether related to housing an agricultural worker or meeting any other rural housing need. Written confirmation was provided to the effect that the caravans have been removed. Accordingly CS Policy HO 5 provides no support for this component of the mixed use.

Use of planning conditions

131. The use of planning conditions has been considered in relation to each of the potential main effects of the mixed use. The various harms could be mitigated to varying degrees but conditions would not change the unacceptable mix of uses on the site. Also the extent of component uses would not be restricted adequately and conditions to secure a safe means of access at the entrance of the site would be at the expense of the rural character of Crowgate Street. It has not been shown that the use of conditions would enable the mixed use development to be authorised by a grant of planning permission.
132. After due consideration this is not a case where it would be possible to grant permission for any part of the land or any part of the matters stated to constitute a breach of planning control because of the physical boundaries, layout of the site and means of access together with the nature of the mixed use development¹⁷. The appellant and the Council did not propose otherwise.

Fallback Options

133. The first matter to consider is whether there is a greater than theoretical possibility that the alternative development might take place. If that test is met the next consideration is to decide on the weight to be attached to that fallback.
134. In August 2018 the appellant identified fallback options for the appeal site, namely pig rearing, agricultural storage in connection with their own wider agricultural enterprise and third party letting.
135. Pig rearing. The appellant accepted that alterations would be required to existing buildings on site and that such work would require planning

¹⁷ See section 177(1) of the 1990 Act

- permission. No application has been made. The appellant's description of pig rearing (which was provided before the acknowledged need for planning permission) referred to holding 1,225 pigs, the movement and disposal of muck involving noisy vehicle movements and a loss of privacy for occupiers of the neighbouring dwellings, operating hours between 0500 to 1700 hours depending on the season, frequent deliveries and collections of pigs and feed.
136. The harmful impacts on nearby residential properties in terms of noise, smell and vehicle movements would be severe, even if the impacts were less than the worst case scenario described. The local planning authority would be unlikely to grant planning permission for the necessary building alterations. That being so the first test is not met and the pig rearing option will not be considered further.
137. Agricultural storage. The appellant's proposal involved the storage of sugar beet between January and March, straw between July and September and maize between October and December. In addition ancillary agricultural storage and use of buildings as workshops were proposed to maximise the use of the site. Mr Paterson's evidence focused on the vehicles and machinery that would be used on site and the vehicle movements to and from the site. Taking account of a simulation of tractors operating in the yard, his acoustics consultant concluded that use of the site for agricultural crop storage would have a significant adverse noise impact. No assessment was carried out of the potential highways impact.
138. However, the appellant has promoted and is seeking planning permission for the mixed use of the site, which indicates that other storage solutions exist and that they probably are operationally preferable. As a matter of fact the appellants' statement of case described the site as being located away from the appellants' main farming operations and no longer essential for use by the appellants for their own farming operations. Furthermore, some of the buildings are no longer fit for their original agricultural purpose. Pig rearing was identified as the preferred option and in the 2016 appeal pig rearing was the only fallback considered.
139. Mr Paterson's credibility as a reliable witness was undermined by evidence he gave to the inquiry. There also is a lack of consistency and a marked difference in the scale and intensity of the alternative agricultural storage uses described at the different stages of the appeal process. A volume of evidence was presented in relation to pig rearing but little in respect of how other proposed uses at the Beeches Farm site would complement the wider farming operation.
140. All matters considered the use of the appeal site for agricultural storage related to the appellants' wider farming operation is a greater than theoretical possibility but at a much reduced scale to that described by Mr Paterson. That being the case the noise and traffic generated would not be of the high order indicated in the appellants' evidence. Furthermore, an agricultural use would be land based and have support from planning policy. The potential harm would be substantially less than the mixed use development even allowing for controls able to be imposed by planning conditions. This fallback has limited weight.

141. **Third Party letting.** The appellant considered Place UK would be the most likely agricultural tenant because of the proximity of their fruit growing operations. The expectation was that Place UK would use the site as a base from which to operate poly tunnel work and fruit picking gangs, including maintenance of machinery and housing of seasonal workers.
142. There was no reliable evidence to support any interest in such activities and use of Beeches Farm. To the contrary, the Council confirmed Place UK operates successfully from the confines of their existing site, where there are purpose built accommodation blocks and on site facilities to meet the needs of their staff. I conclude that use by Place UK is no more than a theoretical possibility and this option will not be considered further.

Conclusions

143. The mixed use does not require a rural location and the reuse and adaptation of buildings is not for an appropriate combination of purposes. It has not been shown that the development would sustain the agricultural enterprise as a whole and therefore is not a type of farm diversification that can be supported. To carry out the necessary improvements to visibility and access into the site the distinctive hedgerow landscape feature would not be protected or conserved. The development is not capable of being served by safe access to the highway network without detriment to the amenity and character of the locality. In addition, the mixed use should be avoided in this location close to noise sensitive properties. Water management and pollution control could be achieved through the installation of new drainage infrastructure, secured by planning condition. However, overall the use of planning conditions does not provide a solution to the range of planning objections and identified harms.
144. The mixed use development does not comply with CS Policies SS 1, SS 2, EC 1, EC 2, CT 5, EN 2, EN 4, EN 13. The development is not in accordance with the development plan when read as a whole.
145. With reference to the Framework the site offers accommodation to meet local business need and the provision of services to the rural community. However, the development is not sufficiently sensitive to its surroundings and would have an unacceptable impact on Crowgate Street. There remain concerns that the development would not function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development.
146. The possible fallback of agricultural storage has limited weight.
147. In accordance with the development plan the deemed planning application should be refused. Other considerations, including the Framework, do not indicate otherwise. The appeal on ground (a) does not succeed.

Appeals on ground (g)

148. The main issue is whether the compliance periods are proportionate or less than reasonably should be allowed.

149. The appellants have requested a compliance period of 12 months, based on the substantial investment made by some of the occupiers in their business and the units occupied and the lack of alternative sites for many of the businesses.
150. The Framework confirms the importance of effective enforcement in maintaining public confidence in the planning system. In this regard Planning Practice Guidance specifically refers to the importance of tackling breaches of planning control that otherwise would have an unacceptable impact on the amenity of the area.
151. Specific to the site, experience has shown that Anglian Plant Limited relocated successfully. No contrary evidence was produced in respect of Bure Valley Classic Cars or other previous occupiers. There are break clauses in the leases that allow for not less than six weeks notice to be given by either party after certain identified dates. In all cases, apart from buildings 3 and 4, six weeks notice can be given now, a period less than the 3 month compliance period. The occupier of buildings 3 and 4 took up a lease after the notice was issued and therefore was aware that occupation could be short term. The occupier confirmed at the inquiry that she was aware of the risk and that, for reasons unrelated to Beeches Farm, her business had stopped trading. The position of this particular occupier is not strong in seeking a longer compliance period. The current occupier of building 7 took up occupation in March 2018 and therefore should have been aware of the enforcement notice and the risk that he may have to leave within a three month period.
152. Moreover, given that buildings were let after the notice was issued, the appellants may use a longer compliance period to let out other vacant units or space thereby increasing the harm. Whilst the appellants drew attention to provisions within the Landlord and Tenant Act 1954, the submissions indicated much uncertainty over their application by references such as 'a potential complication' and 'there may be protection'. The residential caravan is no longer occupied.
153. A further consideration is that during any extended compliance period the mixed use and business activities on the site would not be controlled by planning conditions. The probability is that improvements to the drainage infrastructure would not be carried out and the inadequate access with its implications for highway safety would remain.
154. Balanced against these considerations, the appellants may reasonably expect that they would be successful in their appeals. The length of time between the authorisation of enforcement action in January 2016 and the inquiry/decision has limited weight.
155. Businesses occupying individual units have provided statements describing the expected difficulties in finding suitable relocation premises, lending support to the appellants' submissions on this ground of appeal. The operator of Wroxham Body Shop gave evidence at the inquiry and it was clear on the site visit that significant investment has been made in fitting out and upgrading the unit. Where individual appeals have been made, I consider their specific circumstances in more detail below, with the conclusions informing the outcome on the compliance period.

156. Adopting the Council's approach, extending the compliance period would not make any practical difference to the businesses, simply because their case relied on there being no alternative suitable or affordable premises or that the disruption would be so great the business would not survive. However, the CS refers to the North Norfolk economy being dominated by small businesses and the need to encourage non-agricultural business activities. Mindful of potentially serious implications for business occupiers a reasonable opportunity should be given to consider options, relocate or adapt the business or make other arrangements. Three months is not a reasonable time to do so. Significantly, a compliance period of 12 months was stated in the Committee Report when authorisation for enforcement action was sought in 2016¹⁸. My view is that the compliance period should be extended and should take particular account of the longer established businesses.

157. In conclusion, the mixed use will be required to cease in stages allowing a six month period and a longer twelve month period for buildings 10, 12 and 13/14. Such periods are reasonable and proportionate.

Conclusion on Appeals Refs: APP/Y2620/C/17/3175182, 3175183, 3175184

158. For the reasons given above the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

APPEALS AGAINST THE ENFORCEMENT NOTICE DETERMINED BY THE WRITTEN REPRESENTATIONS PROCEDURE

APPEAL REFS. APP/Y2620/C/17/3174604 and 3174605

159. The appellants use building 9 for the storage of their personal vehicles. Their case is that this use is in accordance with the 2006 permission¹⁹.

160. The Council argued that personal storage, which has to be unrelated to a residential use on site, is a sui generis use whereas the use allowed under the 2006 permission is for commercial storage. There is no permitted development right for a change of use from Class B8 to sui generis.

161. I disagree with the Council that the use of the unit for personal or domestic storage is a sui generis use. The storage of vehicles (as opposed to parking of vehicles) falls within the Class B8 use class. Notwithstanding that the 2006 permission states B8 (commercial storage) in the description of the development granted planning permission, there is no condition preventing a different form of storage use within the same B8 use class. There is no evidence to suggest that the appellants' use of the unit is not for storage purposes.

162. However, the alleged breach of planning control is a material change of use of the Land to a mixed use. The appellants focus on the one building they use and do not seek to argue that the mixed use described in the notice, over a much larger area at Beeches Farm, is either not development or is

¹⁸ Committee report 14.01.16 on planning application ref PF/15/1024 for change of use of agricultural land to B1, B2 and B8 and retention of bund.

¹⁹ Planning permission ref 2006/0603 dated 31 May 2006

development authorised by a planning permission or is permitted development. Viewed in this wider context a breach of planning control occurred and the appeals on ground (c) fail.

163. The authorisation of storage within the block of units, including building 9, by the 2006 permission will be addressed through amendment of the requirements of the enforcement notice.

Conclusion

164. For the reasons given above I conclude that the appeals do not succeed. The enforcement notice will be upheld with corrections and variations resulting from determination of the appeals by Bindwell Ltd and Messrs Paterson.

APPEAL REF. APP/Y2620/C/17/3174828

165. The appellant did not support the rewording of the enforcement notice and the correction to Plan 1, claiming that they would cause him injustice. However, this view was based on what he considered to be unreasonable behaviour by the Council in its investigations in relation to Beeches Farm and his business, rather than focusing on the wording of the alleged breach of planning control, the Land and the requirements. I consider that the appellant failed to explain how the proposed corrections and variations would cause any injustice to him.

Appeal on ground (c)

166. The appellant states that he has occupied building 10 since September 2016. From there he operates his business trading under the name HD Valeting and Detailing, which provides vehicle cleaning, restoration and protection services.
167. The representations in support of the ground (c) appeal were concerned primarily with whether the business is a light industrial (B1) or general industrial (B2) use and whether the business results in noise disturbance to neighbours. However such representations, linked to a single building on the site, do not address the alleged breach of planning control and the mixed use of a larger area of land identified in the enforcement notice. Furthermore the ground (c) appeal does not provide an opportunity to argue the planning merits of the use.
168. Nonetheless to deal with the matters raised, a test for a Class B1 use is whether the use could be carried out in any residential area without detriment to the amenity of that area. The appellant refers to hoovering machinery used to valet vehicles, handheld polishers and the use of a pressure washer. The Council has investigated complaints about noise linked to the valeting use and whilst a statutory nuisance was not established, concerns were raised over a loss of amenity to nearby residential occupiers. On balance I conclude that the valeting and detailing business does not satisfy the test for Class B1, taking account of the equipment used and the processes carried out.
169. Based on that conclusion the use does not benefit from the permitted development rights under article 3 Schedule 2 Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015. More particularly the Order in article 3 grants planning permission for the classes of

development described as permitted development in Schedule 2 to the Order. Part 3 of Schedule 2 deals with changes of use. In summary Class I, industrial and general business conversions, is confined to changes of use of a building to Class B1 business or Class B8 storage and distribution. Class R, agricultural buildings to a flexible commercial use, does not apply.

170. Consequently the 2006 planning permission for B8 storage at units 8, 9, 10 and 11 does not assist in the circumstances. Furthermore the 2006 permission and Class I relate solely to buildings and do not apply to external areas and in this case the storage container which the appellant has used in connection with his business.

171. In conclusion the mixed use alleged in the notice and more specifically the appellant's use of building 10, the storage container and external areas amount to development that has not been authorised by a planning permission. A breach of planning control occurred and the appeal on ground (c) does not succeed.

Appeal on ground (g)

172. The issue is whether the compliance period of 3 months is reasonable.

173. The appellant moved into the premises on 1 September 2016 and says he was unaware of the previous events concerning Anglian Plant Limited. However, some time before on 21 January 2016 planning permission was refused for a material change of use of the wider site to business uses B1, B2 and B8 and enforcement action authorised by the Council.

174. In order to comply with the requirements of the notice the appellant would have to vacate the unit. He would have to relocate to a new affordable unit in order to maintain his business, his livelihood and the service and contribution to the local rural economy. When making his appeal in May 2017 the appellant stated he was in touch with the District Council about alternative premises locally but that he had not heard whether there was a suitable unit available. By the time of the site visit for this appeal, the appellant was still in occupation of the unit and there was no information to suggest that an alternative workshop had been secured.

175. There is balance to be struck between how long should be allowed to find and move to a suitable new unit in the interests of the appellant and bringing to an end the harm from the mixed use of the site in the public interest. The appellant ought to have been aware of the risk of enforcement action when taking up the unit in the first instance. Once the notice was issued the appellant would have been fully aware of the uncertainty over the future of the premises and wider site. Nevertheless, he probably also would have wanted to see if there was a positive outcome for his appeal before making firm plans to vacate the building.

176. A period of three months is not reasonable or proportionate when account is taken of the potential necessary actions such as assessment of options, looking for alternative premises, which is unlikely to be easy, to complete all necessary paperwork and agreements and then to physically move the business or make other arrangements. Having also had regard to the range of factors considered

in the appeals by the land owners, I consider 12 months strikes the right balance.

Conclusion

177. For the reasons given above I conclude that the appeal on ground (c) does not succeed but the ground (g) appeal succeeds in that the compliance period will be extended.

178. The enforcement notice will be upheld not only with a variation to the compliance period but also with the corrections and variations resulting from determination of the appeals by Bindwell Ltd and Messrs Paterson.

APPEAL REF. APP/Y2620/C/17/3174396

179. The only ground of appeal for consideration is ground (g) regarding the length of the compliance period.

180. The appellant maintained that the time scale was not sufficient to find suitable alternative premises, move the stock and get set up without impacting on the business. However, the classic car sales business no longer operates from the site and the evidence indicates that no more than three months was taken to cease the use of the premises.

181. Therefore there is no reason in this case to justify an extension of the compliance period. The appeal on ground (g) fails.

APPEAL REF. APP/Y2620/C/17/3174792

182. I have decided to dismiss the separate appeal seeking planning permission for a general industrial use of the workshop at buildings 13 and 14 (appeal ref 3179682). Therefore the ground (g) appeal raises the issue as to whether a three month compliance period is reasonable and proportionate.

183. The appellant has established a base for his marine engineering business at Beeches Farm. He drew attention to the lost income and relocation cost and the impact on his livelihood, which could result in his business ceasing to trade. He also highlighted the fact that the Council indicated 12 months would be allowed for compliance because of the challenges facing the businesses that would have to relocate.

184. The success and value of the business to the rural community provide strong grounds for maximising the opportunity to find alternative premises and minimising costs. A period of three months is not reasonable to investigate relocation, consider options and put in place measures to enable the business to continue. Having also taken account of the various factors considered in the appeals by the land owners, I consider 12 months strikes the right balance as a compliance period for this business to cease its occupation and use of buildings 13 and 14. The appeal on ground (g) succeeds to this extent.

APPEAL REF. APP/Y2620/C/17/3174978

185. This appeal concerns the erection of the domestic shed only. At the inquiry the Council agreed that the shed be omitted from the alleged breach of planning control.

186. The erection of a domestic shed is a building operation and did not facilitate the material change of use of the land. For the reasons set out in detail in the reasoning on the inquiry appeals I also have concluded that The Bungalow is a separate planning unit and should not form part of the Land to which the notice relates. Therefore I intend to correct the notice by deleting this operational development from the description of the breach of planning control. It follows that the shed will not be included in the corrected enforcement notice and no further action is necessary on the ground (c) appeal.

OVERALL CONCLUSIONS

187. The enforcement notice is not a nullity or invalid. The notice is able to be corrected and varied without injustice to the appellants or the local planning authority.

188. The material change of use of the Land to a mixed use, as described in the original and corrected allegation, is a breach of planning control.

189. The mixed use development is contrary to the development plan, the appeal on ground (a) does not succeed and the deemed planning application should be refused.

190. The ground (g) appeals succeed in so far as the compliance periods will be extended to six months and to twelve months to take particular account of the businesses operating from buildings 10, 12 and 13/14.

FORMAL DECISIONS

LAND AT BEECHES FARM, CROWGATE STREET, TUNSTEAD, NORFOLK NR12 8RF

Appeals References APP/Y2620/C/17/3175182, 3175183, 3175184

191. It is directed that the enforcement notice be corrected by:

- The deletion of the content of section 3 under the heading The Matters which Appear to Constitute the Breach of Planning Control and the substitution of: "Without planning permission a material change in the use of the Land to a mixed use comprising offices and classic car sales; light industry; general industry; vehicle repairs, spray painting, jet washing and valeting; storage including the storage of caravans and the use of a container for storage purposes; the use of a caravan for residential occupation."
- The insertion of a new paragraph, under the heading 4. Reasons for Issuing This Notice, stating "It appears to the Council that the material change of use has occurred within the last ten years."
- The deletion of the content of section 5 under the heading What You Are Required To Do and the substitution of:
 - i. Cease the use of the Land for offices and classic car sales; light industry; general industry; vehicle repairs, spray painting, jet washing and valeting; the use of a caravan for residential occupation; storage, including the storage of caravans and the

use of a container for storage purposes but excluding the use of buildings 8, 9, 10 and 11 for Class B8 storage in accordance with planning permission ref 01 20060603 PF dated 31 May 2006.

ii. Remove from the Land all items connected with or facilitating the mixed use described in section 3 of this Notice, with the exception of the items facilitating the storage use of buildings 8, 9, 10 and 11.

- The attachment of Plan 1 annexed to this decision.
- The substitution of Plan 2 annexed to this decision for Plan 2 attached to the enforcement notice.
- The substitution of the Schedule annexed to this decision for the Schedule attached to the enforcement notice.

192. It is directed that the enforcement notice be varied in section 6 Time for Compliance by the deletion of the content of the paragraph and the substitution of: Six months after this notice takes effect, except in respect of the use of building 10 for a specialist vehicle cleaning, restoration and protection service, the use of building 12 for vehicle bodywork repairs and spray painting, and the use of buildings 13 and 14 for marine engineering where the time for compliance is twelve months after this notice takes effect.

193. Subject to these corrections and variations the appeals are dismissed and the enforcement notice is upheld, and in respect of appeal ref. APP/Y2620/C/17/3175182 planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals References APP/Y2620/C/17/3174604 and 3174605

194. The appeals are dismissed and, subject to the corrections and variations to the enforcement notice in accordance with the decisions on Appeals refs. APP/Y2620/C/17/3175182, 3175183, 3175184, the enforcement notice is upheld.

Appeal Ref. APP/Y2620/C/17/3174396

195. The appeal is dismissed and, subject to the corrections and variations to the enforcement notice in accordance with the decisions on Appeals refs. APP/Y2620/C/17/3175182, 3175183, 3175184, the enforcement notice is upheld.

Appeal Ref. APP/Y2620/C/17/3174828

196. The appeal is allowed on ground (g) only, the enforcement notice is corrected and varied in accordance with the decisions on Appeals refs. APP/Y2620/C/17/3175182, 3175183, 3175184 and subject to these corrections and variations the enforcement notice is upheld.

Appeal Ref. APP/Y2620/C/17/3174792

197. The appeal is allowed on ground (g), the enforcement notice is corrected and varied in accordance with the decisions on Appeals refs.

APP/Y2620/C/17/3175182, 3175183, 3175184 and subject to these corrections and variations the enforcement notice is upheld.

Appeal Ref: APP/Y2620/C/17/3174978

198. I take no further action in respect of this appeal.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Simon Redmayne of Counsel	Instructed by Leathes Prior Solicitors
He called	
Mr Martin Doughty BEng (Hons) C Eng FICE MAPM	Director of Richard Jackson
Mr Michael Cheong MSc	Appointed through Adrian James Acoustics Ltd
Mr Marc Cushing	Former occupier of building at Beeches Farm
Mr David Pratt	Former occupier of building at Beeches Farm
Mr Luke Paterson	The Appellant
Mr Clive Randall	Trading as Wroxham Car Body Shop
Ms Catherine Mace- Nelson	Occupier of buildings at Beeches Farm

FOR THE LOCAL PLANNING AUTHORITY:

Ms Estelle Dehon, of Counsel	Instructed by Mr Noel Doran, Eastlaw
She called	
Mr William Abe	Team Leader Enforcement North Norfolk District Council
Mr Simon Case	Landscape officer North Norfolk District Council
Mr John Shaw BA(Hons)	Senior Engineer Highways Development Management Norfolk County Council
Ms Sarah Ashurst MA	Development Manager, North Norfolk District Council

INTERESTED PERSONS:

Mr Nigel Williams	Deputy Chair Tunstead and Sco-Ruston Parish Council
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DOCUMENTS submitted by the Appellants at the inquiry

A1	Signed statement of common ground
A2	Rebuttal proof of Christopher Yardley
A3	Appellants' submissions on invalidity/nullity
A4	Appellants' response to Pre-Inquiry Note 1
A5	<i>Warnock v Secretary of State for the Environment and Dover District Council</i> [1980]
A6	<i>Miller-Mead v Minister of Housing and Local Government</i> [1963] 2 QB 196
A7	<i>Payne v National Assembly for Wales</i> [2006] EWHC 597
A8	<i>Sarodia v London Borough of Redbridge</i> [2017] EWHC 2347 (Admin)
A9	<i>Thames Heliports Plc v London Borough of Tower Hamlets</i> [1997] 74 P & CR 164
A10	<i>Crawley Borough Council v Hickmet Limited</i> [1998] 75 P & CR 500
A11	Copy of enforcement notice issued by Chichester District Council
A12	The Planning Inspectorate information sheet

- A13 Crowgate Street Road Safety Assessment
- A14 Stage 1 Road Safety Audit
- A15 Rebuttal proof of Mr Luke Paterson and Exhibit LP3
- A16 Appellants' further submissions on invalidity and injustice
- A17 Photographs of Crowgate Street 22 August 2018
- A18 Environment Agency comments 20 September 2018
- A19 Norfolk County Council comment 21 September 2018
- A20 Weather data
- A21 Correspondence with consultants
- A22 Information on tenancies at the site
- A23 Appellants' closing submissions
- A24 *Mansell v Tonbridge and Malling BC* [2017] EWCA Civ 1314
- A25 Appellants' response to the Council's costs application
- A26 Appellants' costs application and Exhibit 1

DOCUMENTS submitted by the Council at the inquiry

- NN1 *Mansi v Elstree Rural District Council* [1965] 16 P & CR 153
- NN2 *Graham Oates v Secretary of State for Communities and Local Government and Canterbury City Council* [2017] EWHC 2716 (Admin)
- NN3 *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196
- NN4 *Hammersmith London Borough Council v Secretary of State for the Environment and Another* [1975]
- NN5 Rebuttal proof of Mr Shaw
- NN6 Amended enforcement notice
- NN7 Council's submissions on nullity
- NN8 List of planning conditions
- NN9 Council's opening statement
- NN10 *Robert Fidler v First Secretary of State and Reigate and Banstead Borough Council* [2004] EWCA Civ 1295
- NN11 Rebuttal proof of Ms Ashurst
- NN12 Summary proof of Mr Shaw
- NN13 Further highway documents
- NN14 Email re Place UK September 2018
- NN15 Email re coppicing December 2017
- NN16 Appeal decision
- NN17 Section 215 notice dated 6 April 2017
- NN18 Plan 2 attached to the enforcement notice (better copy)
- NN19 Timetable form
- NN20 Council's closing statement

DOCUMENT submitted by the Parish Council

- PC1 Statement by the Parish Council

PLANS submitted by the Appellants

- A.1 Access improvement option one 48867-PP-100 A
- A.2 Access improvement option two 48867-PP-101 A
- A.3 Access improvement option two 48867-PP-101 B
- A.4 Access improvement option three 48867-PP-102
- A.5 Autotrack of large refuse vehicle 48867-PP-103



Plan

This is Plan 1 referred to in my decision dated: 18 January 2019

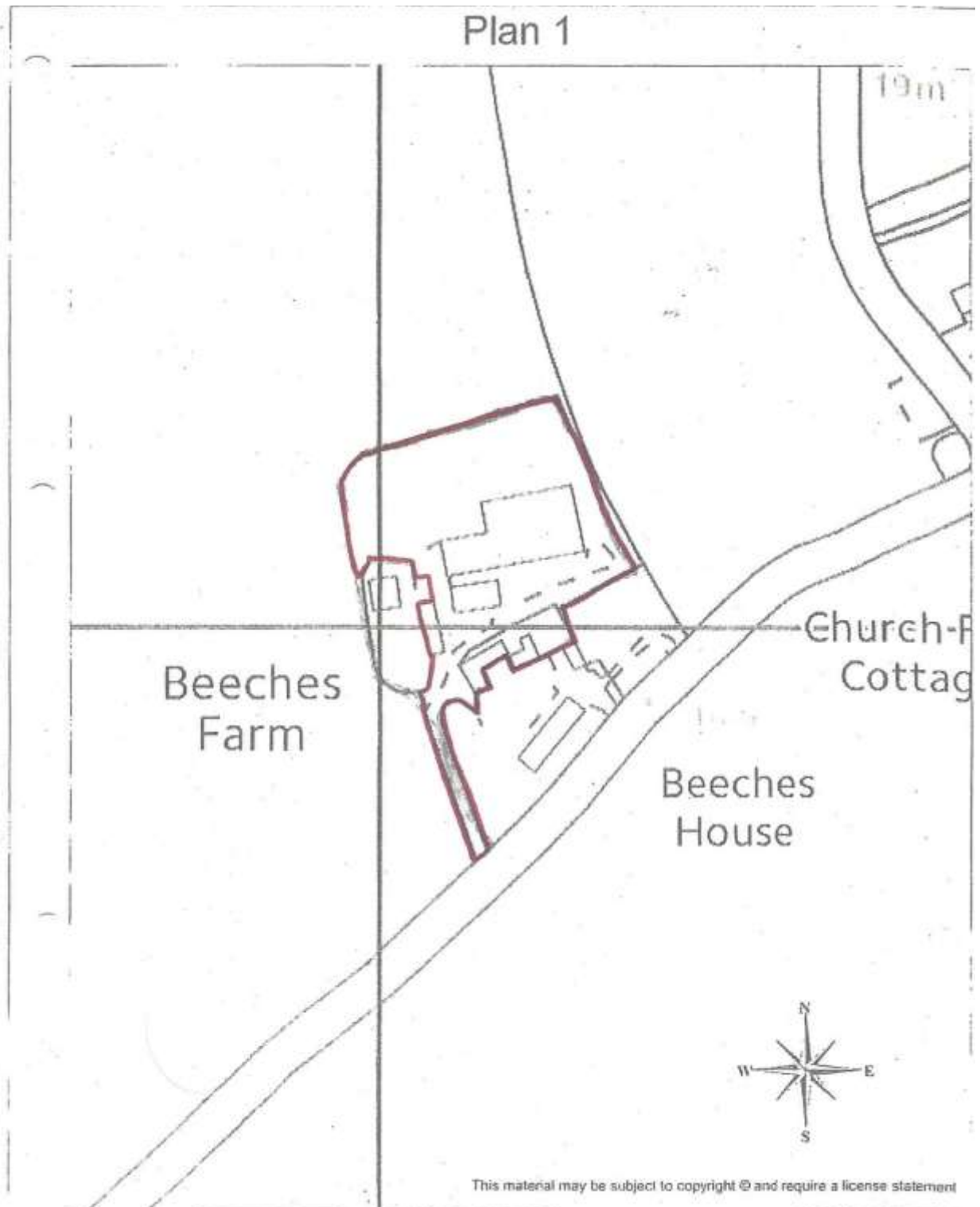
by Diane Lewis BA(Hons) MCD MA LLM MRTPI

Land at: Beeches Farm, Crowgate Street, Tunstead, Norfolk NR12 8RF

**References: APP/Y2620/C/17/3175182, 3175183, 3175184;
APP/Y2620/C/17/3174604, 3174605; APP/Y2620/C/17/3174396;
APP/Y2620/C/17/3174828; APP/Y2620/C/17/3174792;
APP/Y2620/C/17/3174978**

Scale: NTS

Plan 1 is displayed on the following page - the space below is intentionally left blank





Plan and Schedule

This is Plan 2 and The Schedule referred to in my decision dated: 18 January 2019

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

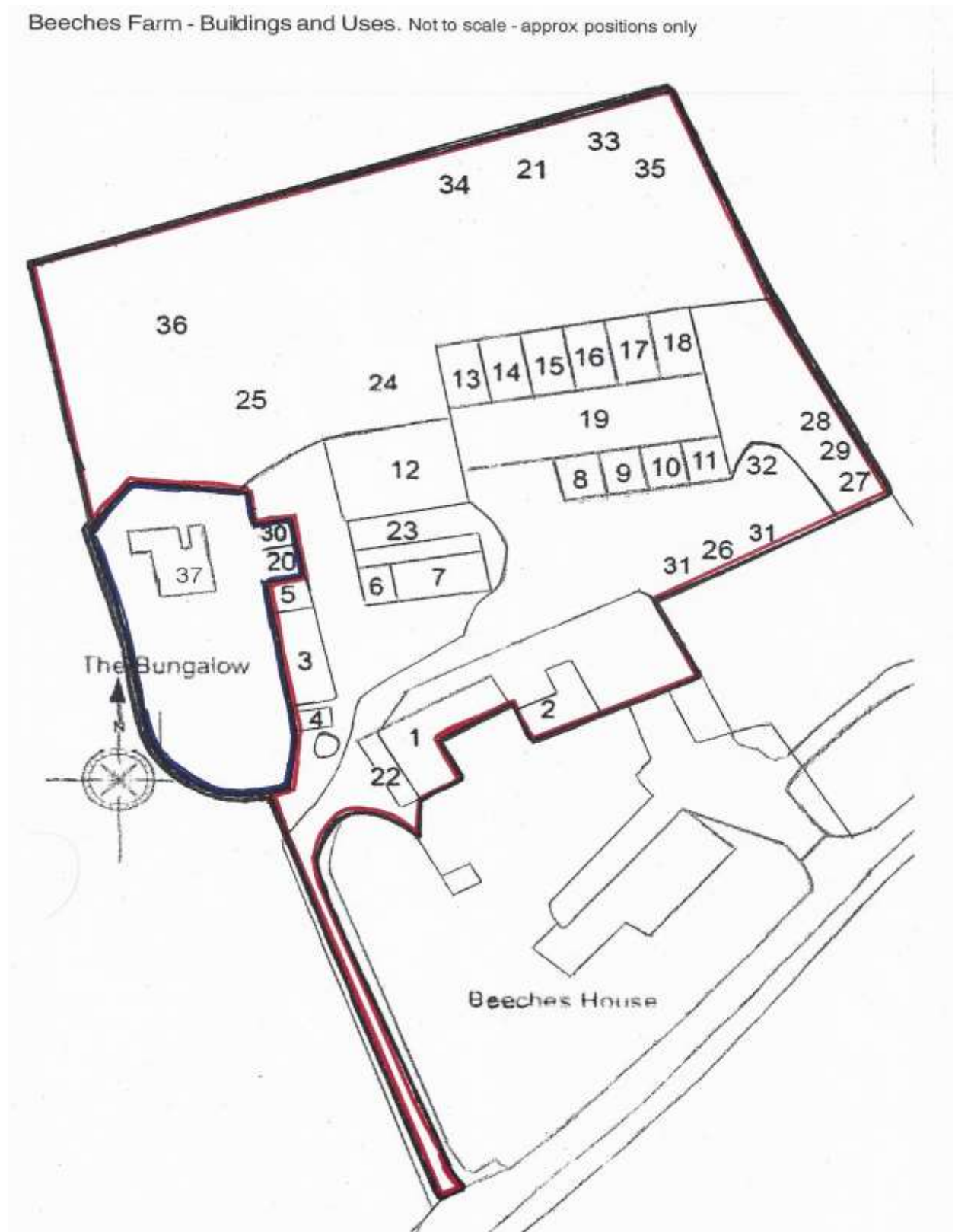
Land at: Beeches Farm, Crowgate Street, Tunstead, Norfolk NR12 8RF

**References: APP/Y2620/C/17/3175182, 3175183, 3175184;
APP/Y2620/C/17/3174604, 3174605; APP/Y2620/C/17/3174396;
APP/Y2620/C/17/3174828; APP/Y2620/C/17/3174792;
APP/Y2620/C/17/3174978**

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Plan 2 is displayed on the next page - the space below is intentionally left blank.

PLAN 2



THE SCHEDULE

This Schedule of Buildings and Uses is to be read in conjunction with Plan 2.

Building	Apparent Uses, including Use Class, if known	Occupation (if known) and Comments
1	Nil	Vacant. Previously used for B1 and B8. Parking in Area 22
2	Workshop B2	Individual occupation. The use could fall within B1(c) or be sui generis
3	Car sales not on open land (sui generis) & office B1(a) – as per Building 5	Occupied by a small business
4	Nil	Vacant. Appearance of office
5	Car sales not on open land (sui generis) & office B1(a) – as per Building 3	See Building 3
6	Domestic Storage B8	Occupied by Landowner. Owner claims for more than 10 years.
7	Nil	Vacant. Previously used for B8
8	Storage B8	Occupied by building firm. Authorised storage B8 planning permission 20060603
9	Storage B8	Occupied by building firm. Authorised storage B8 planning permission 20060603
10	Car valeting Pressure washing	Occupied by a small business. Authorised storage B8 planning permission 20060603. Occasional pressure washing occurs in area between Buildings 12 & 6 & 7
11	Storage B8 and use of compressors and circular saws B2	Occupied by private individual. Authorised storage B8 planning permission 20060603
12	Car repairs, spray painting. Pressure washing in Area 23	Occupied by a small business. Pressure washing between Buildings 12 & 6/7. Previously occupied Building 10. Facebook shows car sales – unsure whether from this site
13/14	Marine engineering B2	Occupied by a small business. The use could be described as sui generis
15/16/17/18	Storage B8 – old vehicles & domestic	Occupied by Landowner. Open sided units
19	Storage B8 – scrap vehicles, tyres, a boat, trailer & other items	Covered area
21	Caravan – residential occupation of caravan by agricultural workers	Unknown whether still occupied. Landowner advised that this caravan would be removed
22	Parking of motor cars ancillary to Building 1	
23	Pressure washing	Outside area
24	Parking of motor cars, vans and skips	For Occupants of Building 13/14
25	Residential occupation of caravan by three persons	One person stated she had been in occupation for one year; her partner

		and his brother for two years
26	Stationing of Container storing chemicals – Storage B8	In relation to use of Building 10
27	Stationing of Caravan East of building 11	Possibly owned by occupier of Building 11
28	Stationing of Camper East of Building 11	Possibly owned by occupier of Building 11
29	Stationing of Trailer East of Building 11	Possibly owned by occupier of Building 3/5
31	Ancillary parking of motor cars and vans	Used by Buildings 10, 11, 12 and 3/5 and possibly by Buildings 8 and 9 when occupiers on site
32	Outside storage B8 – Building materials including bricks, breeze blocks, tiles	
33	Stationing of Boat	
34	Stationing of camper van	
35	Outside storage B8 - Piping	
36	Storage B8 – Scrap metal	

End of The Schedule

Costs Decision

Inquiry held on 25-28 September and 8 November 2018

Site visit made on 26 September 2018

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2019

Costs application in relation to Appeals Refs: APP/Y2620/C/17/3175182, 3175183, 3175184

Beeches Farm, Crowgate Street, Tunstead, Norfolk NR12 8RF

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Bindwell Limited, Mr Joseph Paterson and Mr Luke Paterson for a full award or in the alternative a partial award of costs against North Norfolk District Council.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use to a mixed use.
-

DECISION

1. The application for an award of costs is refused.

SUBMISSIONS AND REASONS

The submissions for Bindwell Limited, Mr J Paterson and Mr L Paterson

2. The costs application was submitted in writing and was made on two alternative bases:
 - i. The Council unreasonably issued an invalid enforcement notice and, having done so, unreasonably continued to pursue enforcement action and oppose the appeal, directly causing unnecessary and/or wasted costs;
 - ii. The Council behaved unreasonably in (a) its issue of an enforcement notice which, albeit valid, required clarification and substantial revision, and (b) its refusal/failure to engage with the appellants on clarifying/revising the notice as a direct result of which unnecessary and/or wasted costs have been incurred.
3. The following final points were made orally. The difference between invalidity and nullity is understood and recognised. The Planning Practice Guidance on appeals plainly states that a lack of co-operation is an example of unreasonableness.

The response by North Norfolk District Council

4. The response was made orally at the inquiry.

5. If it had been held that the enforcement notice is a nullity then the appellants would have been entitled to their costs. The Council's closing submissions (paragraphs 4 to 13) addressed invalidity. There was no credible case by the appellant that the notice is invalid.
6. On the alternative basis, in the context of this inquiry and the appellants' approach throughout, it was entirely reasonable of the Council to draw a line under the correspondence and to request the appellants to make their case on appeal. The appellants were seeking to enter into negotiation on the terms of the notice. The appellants' assertions portrayed a mythical level of confusion and were not justified on facts. Therefore the appellants' alternative is not supported by their own evidence.

Reasons

7. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
8. I have concluded that the enforcement notice is not a nullity and is not invalid. Therefore the first ground on which the application is made fails to demonstrate unreasonable behaviour.
9. As to the alternative, the enforcement notice has required correction. However, the necessary corrections are able to be made without causing injustice, as provided for under provisions in section 176(1) of the Town and Country Planning Act 1990. Accordingly no unreasonable behaviour occurred in issuing the original notice.
10. The submitted correspondence shows that in the early stages of the appeal the appellants' solicitors on more than one occasion asked to meet with the Council's representatives to resolve the matter amicably or at least narrow down the issues in dispute. The Council declined the requests considering that the time for negotiations had passed. The issue is whether the response amounted to an unreasonable lack of co-operation. In general there is no scope to negotiate on an enforcement notice. The probability is that the Council would not have withdrawn the notice for being invalid. However, a meeting or constructive correspondence would have provided an opportunity for clarification of the purpose of the Schedule and explanation of the reference to an informative in the requirements. Such early dialogue or engagement, as encouraged by the Planning Practice Guidance, may have assisted in reducing the differences over the validity of the notice. Unreasonable behaviour occurred.
11. The appellants' claim that unnecessary and wasted costs were incurred (i) in preparation of the grounds of appeal, statement of case and lay proofs of evidence on grounds (b), (c) and (d); and (ii) in time spent at the inquiry attempting to correct the defects and errors in the notice. However, it would be disproportionate to attribute all the claimed time and cost involved to a failure to agree to have a meeting after the appeals had been lodged but before the appeals were accepted as valid in January 2018.
12. The conclusion I reached when considering the invalidity issue was that the appellants decided to take a forensic approach to the notice rather than reading it in a straight forward way. The Council's statement of case was helpful in

addressing matters raised in the appellants' legal grounds of appeal and grounds about the validity of the notice. The Council's proofs of evidence provided further assistance. The appellants' apparent consideration of the planning unit only arose after receipt of Pre-Inquiry Note 1. Much of the first day at the inquiry was spent dealing with nullity rather than invalidity. In determining the Council's costs application I have concluded that the appellants' ground (d) appeals had no prospect of success. All matters considered the lack of early dialogue by the Council did not cause the appellants to incur unnecessary or wasted expense in the appeal process.

13. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Diane Lewis

Inspector



Costs Decision

Inquiry held on 25 to 28 September and 8 November 2018

Site visit made on 26 September 2018

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2019

Costs application in relation to Appeals Refs: APP/Y2620/C/17/3175182, 3175183, 3175184

Land at Beeches Farm, Crowgate Street, Tunstead, Norfolk NR12 8RF

- The application is made under the Town and Country Planning Act 1990, sections 174, 320 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by North Norfolk District Council for a full award of costs against Bindwell Limited, Mr J Paterson and Mr L Paterson.
 - The inquiry was in connection with an appeal against an enforcement notice alleging a material change of use to a mixed use.
-

DECISION

1. The application for an award of costs is allowed in the terms set out below in the Costs Order.

SUBMISSIONS AND REASONS

The submissions for North Norfolk District Council

2. The costs application was submitted in writing and was based on alleged substantive and procedural unreasonable behaviour. An additional point made orally at the inquiry was that the appellants' closing submissions included the beginnings of what a planning proof of evidence may have provided. The analysis of the planning policies was not put to the Council's planning and landscape witnesses.
3. The following final points on the appellants' response were made orally. The Council made a response to the Pre-Inquiry Note, confirming that there was no objection to the alleged breach being amended. Amendments to the Notice were submitted on day 1 of the inquiry. The appellants' response misrepresented what occurred.
4. The Council has no right to object to a ground (a) appeal being made. In respect of ground (a) there was no proper analysis of the relevant policies. The first time a planning balance was presented, through a series of assertions, was in the appellants' closing submissions. To say there was little between the highway experts was unreal. In the Council's view the 2016 appeal decision weighed strongly against planning permission for a mixed use on a greater scale. It was disputed that the appellants' expert witnesses were instructed properly.

5. To suggest that withdrawal of the ground (d) appeal was beneficial ignored the full engagement of the Council's witness in producing evidence, which was a waste in cost and time. As to ground (c), the appellants did not engage in a planning unit argument until late in the day. It remained unclear as to what the appellants' case on ground (c) was. The Council had to prepare and respond to grounds (b), (c) and (d), incurring unnecessary and wasted expense.
6. On a fair reading the correspondence showed a combative and aggressive approach on behalf of the appellants and the reference to an in-house planning consultant was not borne out in the inquiry.
7. The time spent on the enforcement notice at the inquiry was a result of the appellants' misunderstanding of nullity. Even with all that time the inquiry still could have closed in 4 days and the Council was ready to do so. Had the correct witness times been given, time would not have been wasted discussing time estimates. The chronology on the weather in relation to the highways evidence was not a true reflection of events. The Council provided an amended enforcement notice to the appellants on 1 November before the reconvened inquiry.
8. The response regarding the landscape witnesses and evidence was not credible. The appellants showed that they misunderstood the purpose of a statement of common ground by their submissions on a highways statement of common ground. The appellants did not deal with the full implications of the alleged untrue information given to the inquiry.

The response by Bindwell Limited, Mr J Paterson and Mr L Paterson

9. The response was made in writing.

Reasons

10. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

Alleged substantively unreasonable behaviour

Nullity

11. The appellants presented a case on nullity, closely related to the submissions on the alleged invalidity of the notice. Unreasonable behaviour does not necessarily follow from my ruling that the notice was not a nullity. In my view relevant matters were raised by the appellants that required to be addressed, especially in respect of compliance with the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002.

Ground (a) Appeal

12. The Council's submissions on the ground (a) appeal under the substantive heading largely focused on procedural matters. The statement of case identified and addressed relevant development plan policies and the national policy in the Framework. Subsequently the appellant presented expert evidence on highways, noise and drainage, and sought to address the findings of the inspector in the 2016 appeal decision. The closing submissions drew all the evidence together to conclude on the development plan. This is not an instance where the ground (a) appeal had no reasonable prospect of success.