IN THE MATTER OF AN APPEAL UNDER SECTION 174 TOWN AND COUNTRY PLANNING ACT

APPEAL REF: APP/D1265/C/24/3351182 & APP/D1265/C/24/3351183
APP/D1265/C/24/3351184 & APP/D1265/C/24/3351185
APP/D1265/C/24/3351186 & APP/D1265/C/24/3351187

LOCAL PLANNING AUTHORITY REF: ENF/20/0313

LAND at Anchor Paddock, Batchelors Lane, Holtwood, Holt, Dorset, BH21 7DR

PROOF OF EVIDENCE OF Ellie Lee

APPENDIX A

[14 January 2025]

Appendix A:

Extracts from the Maps showing the Green Belt contribution assessment (for each of the Green Belt purposes) for parcel OA1.

The Strategic Green Belt Assessment (Stage 1 Study) carried out by LUC (dated December 2020) was produced to provide a comprehensive assessment of the extent to which the Green Belt meets the purposes set out within the National Planning Policy Framework (NPPF). The extracts below and on the following pages are from the Stage 1 Appendix A (Outer Areas North) which relate to this study.

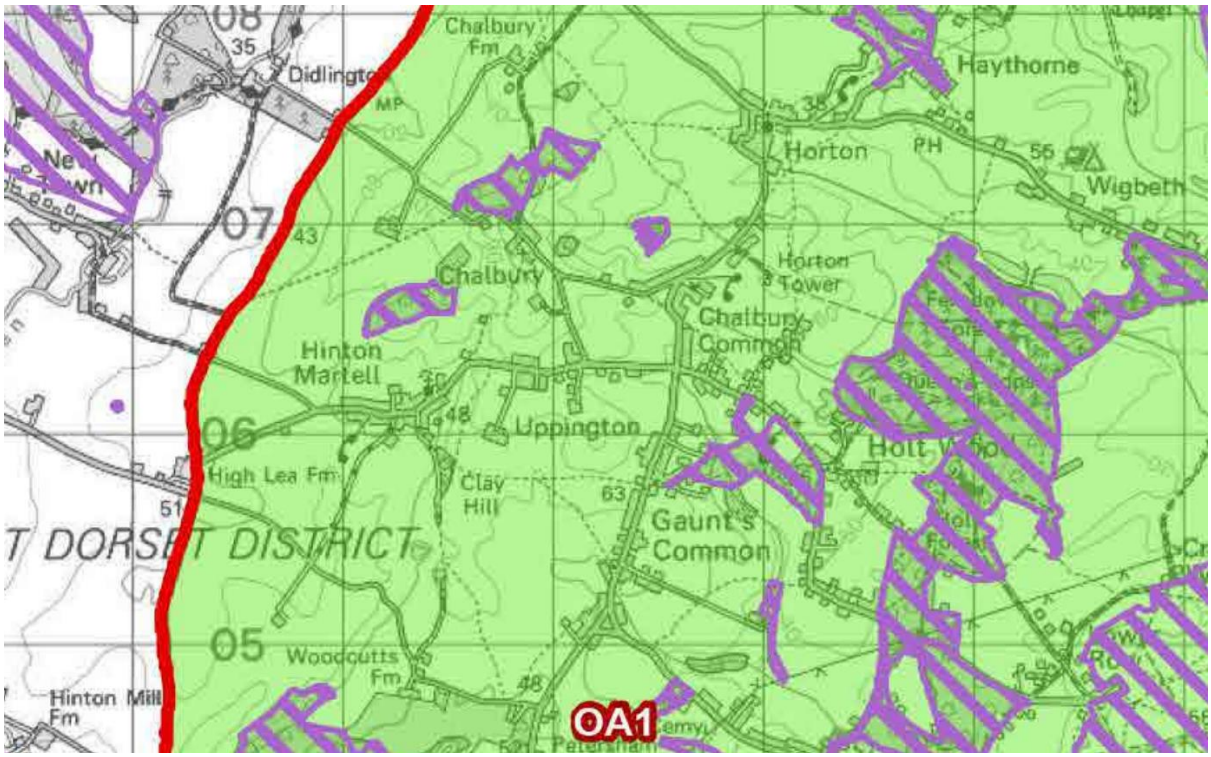

Figure A1.25

Contribution Assessment Parcels: Outer Areas (North)

- Local Authority boundary
- Inset area
- Green Belt
- Outer Area
- Parcel
- No openness
- Absolute constraint(s)

- Figure A1.25 identifies that the appeal site lies within the Green Belt.

Appendix A:

Extracts from the Maps showing the Green Belt contribution assessment (for each of the Green Belt purposes) for parcel OA1.

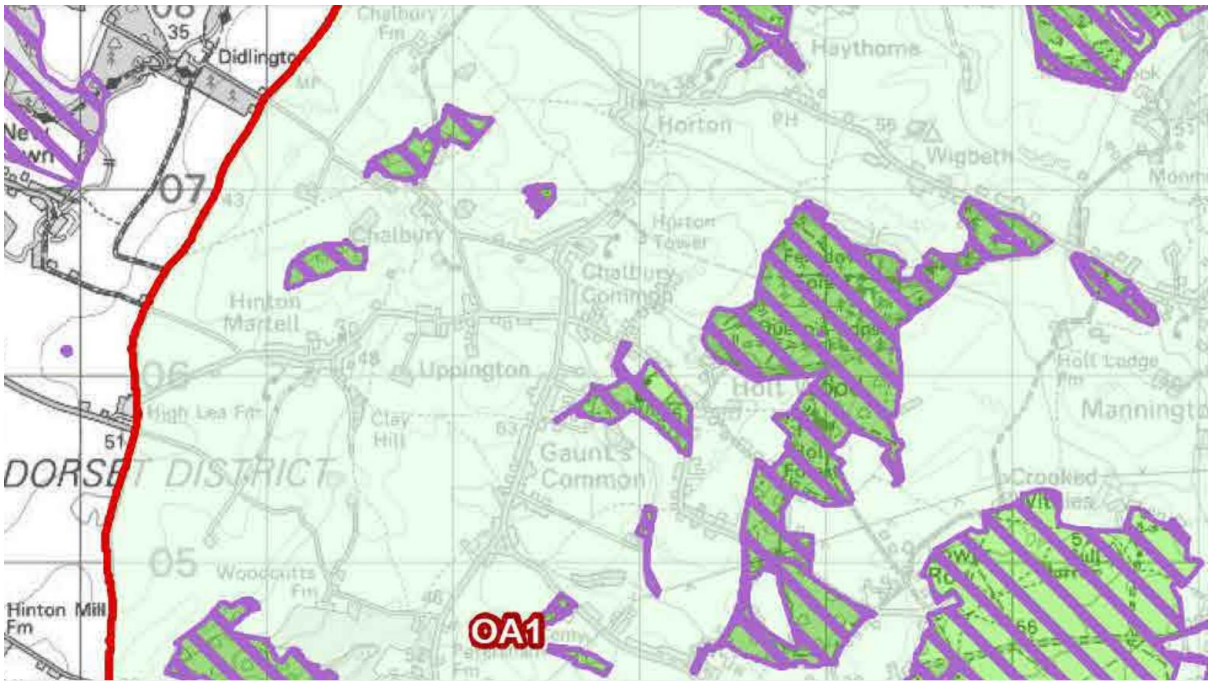

Figure A2.25

Green Belt Purpose 1 Contribution: Outer Areas (North)

- Local Authority boundary
- Inset area
- Green Belt not assessed
- Absolute constraint(s)
- No openness
- Outer Area
- Parcel

Purpose 1 contribution

- Strong
- Relatively strong
- Moderate
- Relatively weak
- Weak/No

- Figure A2.25 identifies that the site is noted as having a **weak or no contribution to Purpose 1** of the Strategic Green Belt Assessment prepared by LUC in December 2020. **Purpose 1 intends to *'check the unrestricted sprawl of large built up areas'.***

Appendix A:

Extracts from the Maps showing the Green Belt contribution assessment (for each of the Green Belt purposes) for parcel OA1.

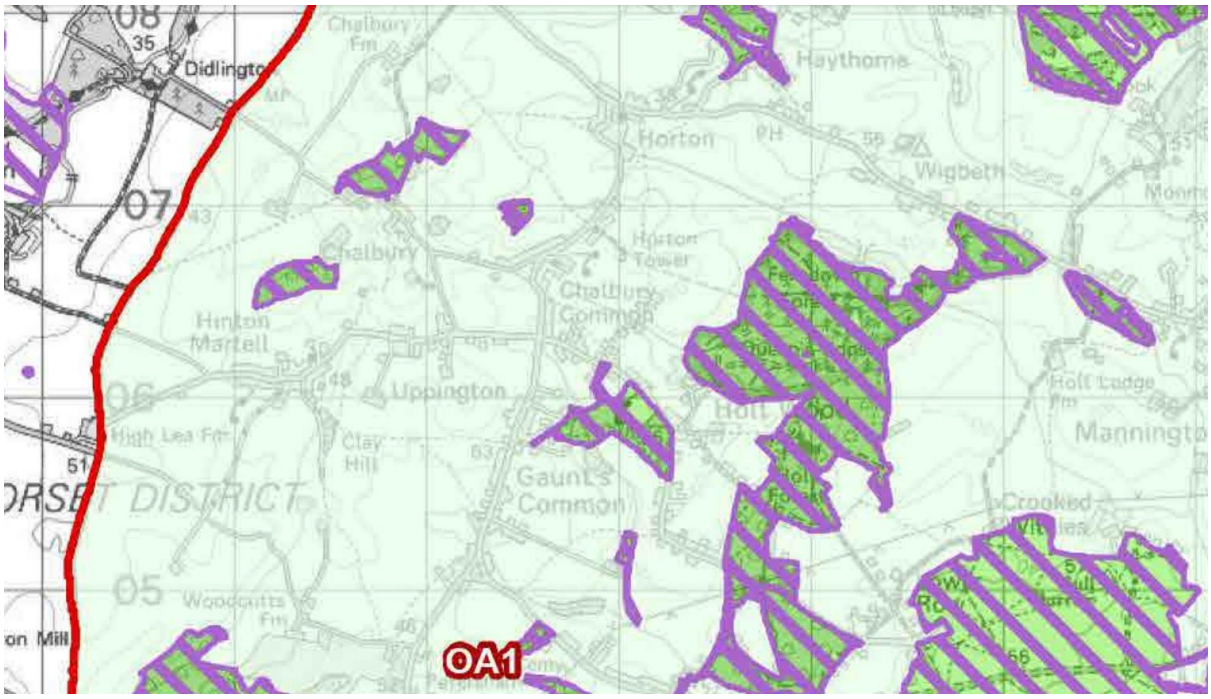

Figure A3.25

Green Belt Purpose 2 Contribution: Outer Areas (North)

- Local Authority boundary
- Inset area
- Green Belt not assessed
- Absolute constraint(s)
- No openness
- Outer Area
- Parcel

Purpose 2 contribution

- Strong
- Relatively strong
- Moderate
- Relatively weak
- Weak/No

- Figure A3.25 identifies that the site is noted as having a **weak or no contribution to Purpose 2** of the Strategic Green Belt Assessment prepared by LUC in December 2020. **Purpose 2 intends to *'prevent neighbouring towns from merging'.***

Appendix A:

Extracts from the Maps showing the Green Belt contribution assessment (for each of the Green Belt purposes) for parcel OA1.

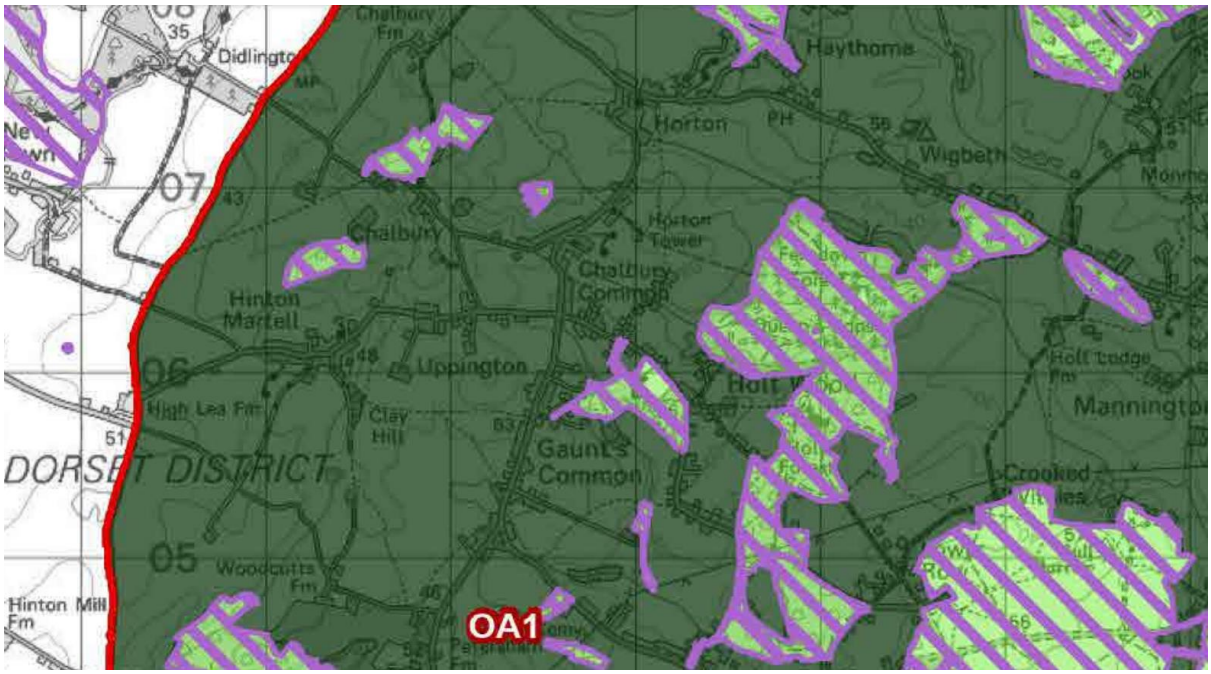

Figure A4.25

Green Belt Purpose 3 Contribution: Outer Areas (North)

- Local Authority boundary
- Inset area
- Green Belt not assessed
- Absolute constraint(s)
- No openness
- Outer Area
- Parcel

Purpose 3 contribution

- Strong
- Relatively strong
- Moderate
- Relatively weak
- Weak/No

Figure A3.25 identifies that the site is noted as having a **strong contribution to Purpose 3** of the Strategic Green Belt Assessment prepared by LUC in December 2020. **Purpose 3 intends to *'assist in safeguarding the countryside from encroachment.'***

- The land falls within the countryside. Therefore, Purpose 3 is the most relevant to the appeal given that the NPPF states that the Green Belt serves five purposes including 143 c (to assist in safeguarding the countryside from encroachment).

Appendix A:

Extracts from the Maps showing the Green Belt contribution assessment (for each of the Green Belt purposes) for parcel OA1.

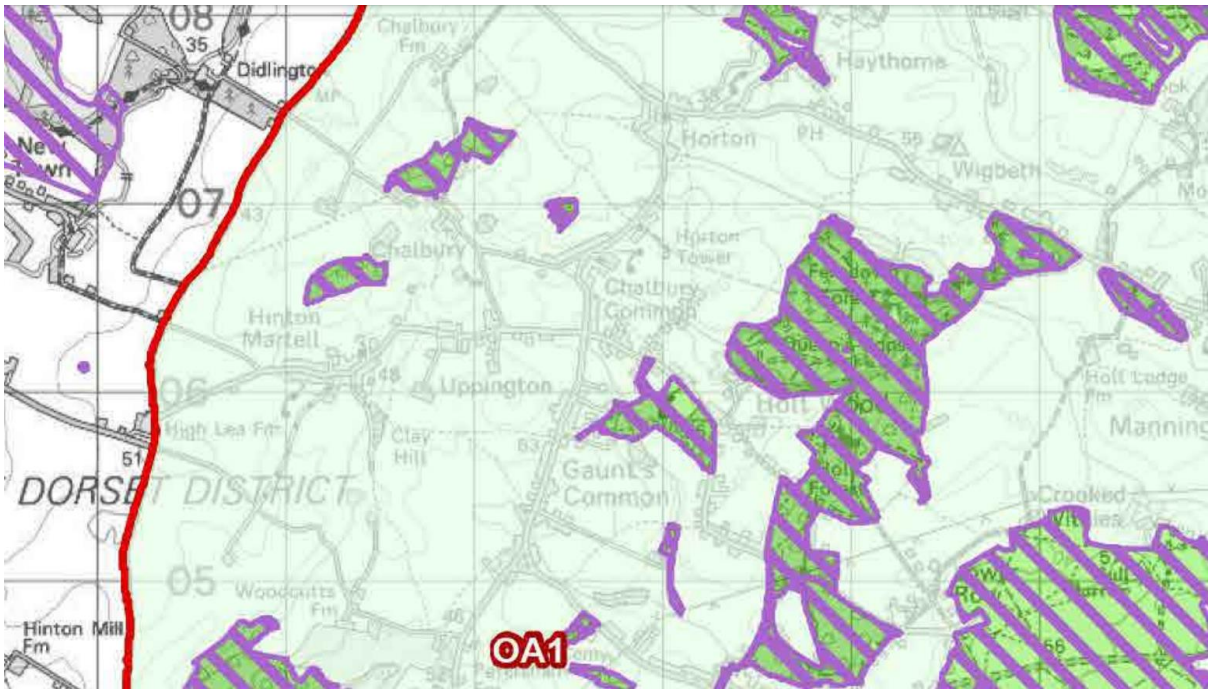

Figure A5.25

Green Belt Purpose 4 Contribution: Outer Areas (North)

- Local Authority boundary
- Inset area
- Green Belt not assessed
- Absolute constraint(s)
- No openness
- Outer Area
- Parcel

Purpose 4 contribution

- Strong
- Relatively strong
- Moderate
- Relatively weak
- Weak/No

- Figure A5.25 identifies that the site is noted as having a **weak or no contribution to Purpose 4** of the Strategic Green Belt Assessment prepared by LUC in December 2020. **Purpose 4 intends to *'preserve the setting and special character of historic towns.***

Appendix A:

Extracts from the Maps showing the Green Belt contribution assessment (for each of the Green Belt purposes) for parcel OA1.

The report states that the *"study did not assess contribution to Purpose 5 and contribution scores were not totalled."* It is understood that Purpose 5 refers to NPPF paragraph 143 e) *'to assist in urban regeneration, by encouraging the recycling of derelict and other urban land'*

In the Summary of Findings tables within the assessment, **parcel OA1** (which the site falls within) is summarised with the following points relating to each purpose:

- **Purpose 1 (*check the unrestricted sprawl of large built up areas:***
  'Land is not close enough to the large built-up area of the South East Dorset Conurbation to be associated with it.'
- **Purpose 2 (*prevent neighbouring towns from merging:***
  'Land does not lie between neighbouring towns.'
- **Purpose 3 (*assist in safeguarding the countryside from encroachment:***
  'Land is countryside.'
- **Purpose 4 (*preserve the setting and special character of historic towns:***
  'The parcel does not contribute to the setting or special character of any historic towns.'
- **Purpose 5:**
  'All Green Belt land is considered to make an equal contribution to this purpose.'

In this case, the most relevant purpose that the Green Belt land serves (relevant to the appeal site) is purpose 3, which relates to NPPF paragraph 143.

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LAND at Anchor Paddock, Batchelors Lane, Holtwood, Holt, Dorset, BH21 7DR

PROOF OF EVIDENCE OF Ellie Lee

APPENDIX B

[14 January 2025]

The Planning Inspectorate

Appeal Decision

Site visit made on 25 February 2020

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 05 March 2020

Appeal Ref: APP/U1240/C/19/3222991
Land adjacent to premises at 6 Uppington Close, Hinton Martell, Wimbourne, Dorset BH21 7HS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr G Stimpson against an enforcement notice issued by East Dorset District Council.
- The enforcement notice was issued on 7 January 2019.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of land from grazing paddock to land used for residential purposes incidental to 6 Uppington Close and the construction of an astro-turf sports area, together with associated goal posts/net, netball posts/net, sleeper walls and access steps, in the approximate position indicated by a black cross on the plan attached to the notice.
- The requirements of the notice are:
  - (a) Cease the use of the land edged red for residential purposes;
  - (b) Remove all the artificial surfaces from the land edged red;
  - (c) Remove from the land edged red all the timber sleeper retaining walls which serve the lowered football/netball pitch/games area and the timber sleeper steps accessing the lowered area;
  - (d) Remove all associated equipment and paraphernalia used in connection with the use of the land for incidental residential purposes, such as goal posts and netball hoops etc. from the land edged red;
  - (e) Once compliance with a) to d) (inclusive) has been achieved, the ground levels shall be restored using suitable quality top soil to those shown on the Dorset Land Surveying Drawing No. 6551/1 dated 4.1.2017 and relevant cross sections which have been attached at Appendix A to the notice;
  - (f) Following compliance with e) above, the land should then be seeded with a mix of meadow grass seed.
- The period for compliance with the requirements is six (6) months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice be varied by the deletion without substitution of the words "such as goal posts and netball hoops etc." in paragraph 5 (d) and "a mix of meadow" in paragraph 5 (f) of the enforcement notice, *"What you are required to do"*. Subject to these variations the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

2. On 13 March 2017 planning permission[1] (the 2017 permission) was granted for 'carry out land drainage works and alter ground levels (partly retrospective)'. Permission was granted subject to one condition only which required the works to be completed within three months of the date of permission. The condition required the removal of all artificial surfaces, the timber retaining wall to the lowered games area and the steps down to it and restoration of ground levels to those shown on drawing 6551/1 dated 4.1.2017.

3. It is clear from the evidence that this permission concerned the operational development that is now the subject of the notice. The parties appear to disagree whether it was implemented; the appellant says not while the Council considers partial implementation to have taken place. This is not a matter that I have any evidence about or any need to resolve in the determination of the appeal.

4. The Council decided not to serve a Breach of Condition Notice. In effect, the notice would seem to have been issued to achieve the same outcome. The 2017 permission forms no part of the appellant's case on either ground (c) or ground (f) and, save for one point, I shall make no further reference to it.

5. The breach of planning control alleges both the material change of use of the land and operational development. The appellant has confirmed that to be his understanding and the grounds of appeal and the case made is on that basis.

6. It is clear from the officers delegated report that the Council considers the operational development to have facilitated the unauthorised material change of use. It did not therefore intend the breach to be read as both I and the appellant have done and I was invited to correct the breach to that effect.

7. The appellant argued that to do so would cause him injustice. Either different grounds might have been pleaded and/or different cases made on the existing grounds.

8. I agreed with that response and indicated to the parties that the appeal would be determined on the basis of the notice as issued unless it was withdrawn by the Council. It decided not to do so.

9. Helpfully, the appellant confirmed that the appeal on ground (d) related only to the alleged material change of use and that the ground (c) appeal concerned only the alleged operational development. That is the order in which I have considered the legal grounds of appeal.

The appeal on ground (d)

10. Where it appears that an unauthorised material change of use has taken place, a local planning authority has a period of 10 years from the date when the breach first began to take enforcement action. In an appeal on this ground the onus is on the appellant to show, on the balance of probabilities, that the 10-year period had ended by the date that the notice was issued. In this case therefore the appellant must show that the development alleged began not later than 7 January 2009 (the material date) and continued substantially uninterrupted thereafter. If the Council has no evidence itself, nor any from

[1] 3/17/0033/FUL

others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.

11. There are two stages to the determination of this ground of appeal. First, the date when the notice land became used for purposes ancillary to the residential use of the dwelling must be established and, second, the date when the notice land became part of the curtilage of the dwelling. They are not necessarily the same dates.

12. The appellant did not acquire the property until 2010. His case on this ground of appeal therefore relies on evidence about the previous owner's use of the property for the period from, at the latest, January 2009 to the sale in 2010.

13. The appeal property is one of six detached dwellings laid out in a cul-de-sac pursuant to an outline planning permission granted in 1987. While the dwellings are large, the plots are quite modest. It appears that three of the homeowners purchased land from the adjoining Sunnylands Farm with the intention of increasing their plot sizes. That purchase was made in 2008.

14. Applying the very well-known principles established in *Burdle*[2], it appears to me that the notice land became part of the planning unit of No 6 when it was purchased by the previous owner.

15. The appellant provides very little evidence about the use of the land between the purchase date in 2008 and the material date. It is simply asserted that by separating it from the remaining Sunnylands Farm both in terms of ownership and, physically, in the form of fencing, it became the residential curtilage of No 6 Uppington Close.

16. I turn first to the use of the land. In my opinion, a comparison of aerial photographs from 2005 and March 2009 show the appeal land fenced off from the residual land at Sunnylands Farm beyond by the later date. I have no reason to doubt that this was also the situation at the material date.

17. However, apart from showing the larger area of what was part of Sunnylands Farm now subdivided into three plots associated with the three dwellings, in the March 2009 image there is no discernible difference in the appearance of the appeal land and that of the residual land beyond the fence. Both appear to be laid to grass with no plants or what might be termed residential paraphernalia visible within the appeal land. This is also reinforced by the image that the appellant dates as being the summer of 2009. Both of these images post-date the material date and, in my view, show no evidence of any residential use of the appeal land. That remains the case as late as the image provided and dated 13 February 2014.

18. In his statutory declaration, the appellant gives no information about the previous owner's use of the notice land except to say that he used a ride-on mower to mow the grass. There is no evidence about how often the grass was cut or how the land was used once it had been.

19. While images of the grass have been provided by the appellant from the sale particulars, whether that shows 'garden' as contended is a matter of judgement. More notable in my view is the way the property is described by

[2] *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240, 244

the agents, presumably with the approval of the seller. The 'main garden' is said to be at the side of the property with the rear garden comprising a stone and brick paved terrace and a wide walkway with a gentle slope leading to a large paddock enclosed by post-and-rail fencing. In my view, the previous owner therefore distinguished the notice land (paddock) from what he regarded as his gardens. Again, there is no reference to the use made of the paddock and no indication of any use at all in the images.

20. The previous owners-but-one, Sandra Peacock and David Crombie, lived in Willow House, the residential garden of which abutted the land of which the notice land is a part. The inference that the appellant draws from that is that, because it abutted the garden, it must have been used as garden. There is no evidence of residential use of the land by Ms Peacock and Mr Crombie and thus no support for the appellant's inference which I therefore give very little weight. Indeed, this inference is contradicted in the appellant's final comments where it is stated that the '…land was formerly part of a large agricultural field and then part of number 6 Uppington Close' (emphasis added).

21. It is noteworthy too that in both planning applications submitted on behalf of the appellant to regularise the drainage works and alteration to ground levels carried out in October 2016[3] and January 2017[4] the existing use of the notice land is given as 'open' rather than 'residential' or 'garden'.

22. To summarise, although the ownership of the notice land changed in 2008 there is no evidence of any change in the use. While any agricultural use was likely to have come to an end, without any positive change to some other use I conclude that at the material date, the lawful use of the planning unit was a mixed use of residential and agriculture uses. It is my view, on the balance of probabilities, that the material change of use alleged in the notice took place at some point after the material date and probably around 2016 when the games pitch was constructed. On that basis alone, the appeal on ground (d) must fail.

23. Nevertheless, I turn now to the matter of 'curtilage' as this is also relevant to the appeal on ground (c). The term 'curtilage' is a concept, not a use of land. Identification of the curtilage of a building is necessary for the application of various Parts of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) and its predecessors. General principles to assist that identification have been established by the courts and are discussed at length in the Encyclopedia of Planning Law and Practice (EPL) at 3B-1042.2 in relation to Part 1 GPDO rights. The relationship between curtilage and the planning unit is further discussed at 3B-1042.3.

24. However, as the EPL makes clear, the curtilage (which relates to a building) and the planning unit (which relates to a use of land) are not necessarily the same; the planning unit may be smaller, or it may be bigger.

25. A case[5] where the planning unit was found to be bigger is specifically mentioned. There, an area of rough land beyond the curtilage may well have been within the same planning unit and capable of being used for purposes ancillary to the primary residential use of the unit although specific curtilage rights were inapplicable.

[3] 3/16/2250/FUL
[4] 3/17/0033/FUL
[5] *Collins v Secretary of State for the Environment* [1989] E.G.C.S. 15

26. That, in my judgement, is the situation here. The area of land that has an intimate association with the dwelling and therefore forms its curtilage remains confined to the side and immediate rear of the dwelling. To the side is a large structure providing children's play equipment, a raised pool and some garden furniture. To the immediate rear is a paved area. Although the notice land is not enclosed or marked off from the curtilage, the courts have held that not to be necessary. The essence of *Collins* is that where an area of land is in the same ownership but does not serve the dwelling in some necessary or useful manner, it does not form part of the curtilage. In my view, until the games pitch was laid, there is no evidence of any use of the notice land in a manner that serves the dwelling. At the material date therefore, my conclusion is that the notice land was not part of the curtilage of the dwelling as contended by the appellant.

27. The appellant refers to two judgements, providing one (*Sumption*[6]) and copying an extract of another[7] from the EPL.

28. The appellant makes two points from *Sumption* which is referred to in the EPL quote from *Challenge Fencing.* The first point is that it confirms that the curtilage of a property can be enlarged to include land formerly in a different demise and later added to the dwelling. That is consistent with the other authorities and is the approach I have taken.

29. For the second, the appellant quotes paragraph 27 from *Sumption.* The critical passage however is the statement 'What matters is what is in fact the use being made of the land.' Again, that is what I have considered. It should also be noted that within paragraph 24 the Judge says:

> The reason for the erection of the fence in this case will not of itself determine whether the land enclosed by it comes within the curtilage. However, it is necessary to look at the factual situation created by the erection of the fence. In an urban environment, land attached to a dwelling house which is able and intended to be used in conjunction with the house (whether or not formally described as its garden) is likely to be within its curtilage. Over the years, land may have been acquired which extends a garden. One has to ask oneself whether there is a minimum period over which it has to be held and perhaps used before it can properly be said to form part of the curtilage.

30. In this appeal the environment is rural, not urban. Nevertheless, these are the questions I have posed and answered. The Judge does not appear to have answered the final question he posed. However, in this case it is 10 years from, at the latest, the material date.

31. At paragraph 26 he says:

> The land had been acquired in 2004, it had been fenced and it was useable and, as I have said, intended to be used as an extension of the garden of Hillside House.

32. That statement was considered in *Challenge Fencing* which concerned the curtilage of an industrial building. Nevertheless, the EPL notes that the judgement has wider implications across a range of different permitted development rights. In a passage from bullet vi) of the quote, which the appellant omitted, it says:

[6] *Sumption & Sumption v London Borough of Greenwich & Rokos* [2007] EWHC 2776 (Admin)
[7] *Challenge Fencing Limited v Secretary of State for Housing Communities and Local Government v Elmbridge Borough Council* [2019] EWHC 553 (Admin)

> It appears from *Sumption* that the Judge considered future intended use of the land or buildings may be relevant, but in my view some care would be needed in applying this proposition to the facts of a particular case. A developer cannot change the curtilage simply by asserting that s/he intends to use the site in a particular way in the future."

33. It seems to me that is precisely what the appellant has sought to argue in this case. Merely taking land into ownership does not change its use unless its use is positively altered by actual use about which evidence is given. Nor does the fact that it may have been purchased with that intention in mind extend the curtilage across it as an irrefutable consequence.

34. For all these reasons, the appellant has failed to show on the balance of probabilities that the use of the notice land was residential at the material date and the appeal on ground (d) therefore fails.

The appeal on ground (c)

35. The appeal on this ground is only in respect of the operational development alleged. The appellant's case has been put forward by both his planning consultant and his planning solicitor. On this ground of appeal their respective submissions are not entirely consistent. It is difficult therefore to understand exactly what case is being argued.

36. The primary argument appears to be that the operational development has taken place within the curtilage of the dwelling and is therefore permitted by Schedule 2, Part 1, Class E in respect of much of the development and by Class F in respect of the hard surface. It is also argued that the laying of the artificial grass surface on the hard, level surface does not amount to development at all. For the primary case to be made out, the appellant must consider the works to be either a building or an enclosure.

37. Given that the Council never intended the notice to allege operational development, it has not considered this ground of appeal in these terms. However, from the totality of its evidence, it is clear that it regards the works to provide the games pitch as a single engineering operation.

38. I can appreciate why the appellant has sought to make a case in respect of the individual elements since that is the way the Council inadvertently described the breach of planning control. However, within the appeal statement, the appellant also suggests that the provision of the games area is a single operation.

39. From my site visit and from the evidence of the two retrospective planning applications (see paragraph 21 above) it is clear to me that this is correct; the provision of the games pitch was a single operation. It entailed a 'cut and fill' type operation into the pre-existing ground contours to create a level surface; the installation of sleepers to form a retaining wall; the provision of steps to provide access to the playing surface; and the laying of that surface and the artificial grass covering. To my mind, that amounts to an engineering operation.

40. For the reasons set out in my consideration of the ground (d) appeal, the notice land was not within the curtilage of the dwelling when the operational development was carried out. Indeed, it is my judgement that, as a matter of fact and degree, it was still not within the curtilage at the date of my site visit.

41. The operational development alleged in the notice is not therefore permitted by Article 3 and Schedule 2, Part 1, Classes E and/or F as contended by the appellant.

42. *Prengate Properties* is cited by the appellant. It does confirm that provided it enclosed something, a retaining wall would not lose that quality of a means of enclosure. It also confirms however, following *Garland*[8], that where the walls provided were part of a larger engineering operation, if the whole operation was not permitted then neither would be the particular part. That is the case here.

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

The appeals on ground (a) and the deemed applications

Introduction and main issues

44. The terms of the deemed planning application are defined by the breach of planning control alleged. For the reasons set out in the Procedural Matters the way the issued notice has been drafted gives rise to two separate deemed planning applications.

45. The appeal site is located within both the South East Dorset Green Belt and an area of great landscape value (AGLV). As already discussed, No 6 is part of a small cul-de-sac development within a small settlement. It is set within the open countryside and while the notice land abuts the cul-de-sac development, its character and appearance (apart from the presence of the games pitch) is almost indistinguishable from the open countryside beyond. The notice land is not visible from any public viewpoints such as roads or public rights of way.

46. The main issues for the determination of both deemed applications are:
    (a) Whether the development is inappropriate development in the Green Belt having regard to the revised National Planning Policy Framework (Framework) and any relevant development plan policies.
    (b) The effect of the development on the character and appearance of the AGLV.
    (c) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development?

Use of the land for residential purposes incidental to 6 Uppington Close

Whether the development is inappropriate development in the Green Belt

47. Framework paragraph 146 confirms that material changes in the use of land are not inappropriate development in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. Whether or not such development is inappropriate in the Green Belt is therefore a matter of planning judgement.

48. The term 'openness' is not defined in the Framework or the statute. However, that it is commonly taken by the courts to mean an absence of built

[8] *Garland v Minister of Housing and Local Government* [1968] 20 P&CR 93

development was noted by the Supreme Court[9] at paragraph 40 although at paragraph 22 it was also stated that the term did not imply freedom from any form of development. Incorporating agricultural land into a residential planning unit and using it for residential purposes may not give rise to built development and a loss of openness cannot therefore be presumed as a matter of principle.

49. However, a loss of openness is the outcome in this case. As the Council, rightly in my view, says, it is the introduction of the games pitch that facilitates the material change of use to residential purposes incidental to the dwelling. While the scheme amounted to an engineering operation, the outcome was the provision of a sizable games pitch set into the slope of the land and incorporating retaining walls and access steps. I understand that the goals and any netball/basketball nets are not permanent features (they were stored in an outbuilding at the time of my site visit) and so the fact that development has taken place may not be obvious beyond the property itself or from the adjoining neighbours' land. But that does not alter the fact that facilitating built development has been introduced into the Green Belt and the material change of use thus fails to preserve its openness. It also represents an encroachment of development into the countryside and thus a conflict with one of the purposes of Green Belt set out in Framework paragraph 134.

50. Furthermore, as has already been discussed, the appellant believes the notice land is already within the curtilage of his dwelling and therefore available for GPDO Class E buildings to be erected. However, the Council has suggested a condition removing these GPDO rights in the event of planning permission being granted. There would therefore be no additional uncontrolled loss of openness from this source but what I consider will be the inevitable pressure to add further structures is a factor which I give some weight.

51. To conclude on this main issue, the material change of use that has taken place is inappropriate development in the Green Belt.

The effect of the development on the character and appearance of the AGLV

52. I have already noted that even when sub divided from the adjoining land, the notice land had a very similar appearance. Once approved for residential use this is likely to change even in the absence of any significant Class E built development following the imposition of the suggested condition. Over time, the appearance would, in my judgement, alter and either become manicured garden and/or home to various items of residential paraphernalia that do not themselves amount to development requiring planning permission.

53. While the harm to the character and appearance of the AGLV would be limited given the absence of views to the notice land from public viewpoints, there would nevertheless be a conflict with policy HE3 of the Christchurch and East Dorset Local Plan Part 1 – Core Strategy (CS) adopted in April 2014 in this regard.

[9] *R(on the application of Samuel Smith Old Brewery (Tadcaster) and others) v North Yorkshire County Council* [2020] UKSC 3

Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development?

54. While the appellant has made numerous references to other types of developments, such as dwellings, that may be approved in the Green Belt and result in residential gardens being laid out in the Green Belt, these are not relevant to this appeal since, as is acknowledged, they arise through the grant of planning permission. As far as I can tell from the way the case is put no other considerations are put forward to weigh in the Green Belt balance.

55. Framework paragraph 143 confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Framework paragraph 144 requires that substantial weight be given to any harm to the Green Belt. In this case that is the harm by reason of inappropriateness, which attracts substantial weight, and the limited harm arising from the conflict with CS policy HE3 to which I give limited weight. While the Council identifies a conflict with CS policy KS3 which deals with Green Belt issues, to my mind it does not specifically address inappropriate development in the Green Belt. There are no other considerations in this case to clearly outweigh the totality of the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

Conclusion

56. This appeal on ground (a) fails and the deemed application for the use of the land for residential purposes incidental to 6 Uppington Close therefore does not succeed.

The construction of an astro-turf sports area

57. The appellant argues that the development is little different in concept to that of a sand school being an outdoor sport or recreation and states that these are often granted planning permission as being not inappropriate development in the Green Belt. It is further argued that the provision of facilities and the use of land for outdoor sport and recreation is not inappropriate development in the Green Belt.

58. That phrasing falls within Framework paragraph 145 (b). However, this paragraph states that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt before listing exceptions to this general principle. It is clear, in my view, that the whole paragraph is referring to buildings. The Council contends, and I have concluded, that the construction of the games pitch was an engineering operation. At one point in the appellant's evidence that is his stated view also. As such, Framework paragraph 145 and the various references by the appellant to sand schools and the like, including the reference to an appeal decision[10], are not relevant to this appeal.

59. I shall deal with this quite briefly, mainly because many of the issues raised have already been addressed under the 'use' above. It has already been established that the construction of the games pitch was an engineering operation.

[10] APP/U1240/C/03/1126926

Whether the development is inappropriate development in the Green Belt

60. Framework paragraph 146 also confirms that engineering operations are not inappropriate development in the Green Belt provided that they preserve its openness and do not conflict with the purposes of including land within it. As above, whether or not they do is a matter of planning judgement.

61. For the reasons given in paragraphs 47 to 49, I have already concluded that this engineering operation, which facilitated the material change of use, fails to preserve the openness of the Green Belt and also represents an encroachment of development into the countryside and thus a conflict with one of the purposes of Green Belt set out in Framework paragraph 134.

62. The construction of the games pitch that has taken place is therefore inappropriate development in the Green Belt

The effect of the development on the character and appearance of the AGLV

63. Given that the goals and net posts are not permanent and the games pitch is set into the slope of the ground I consider that there is no discernible effect on the character and appearance of the AGLV and thus no conflict with CS policy HE3 in this regard.

Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development?

64. The Green Belt balance carried out above (paragraphs 54 and 55) is equally applicable. In respect of the games pitch, the appellant confirms that his children and their friends have always made use of the notice land for games, especially as there is no public park within 5 miles of his house. The works carried out simply make a more useable level area on previously poorly drained ground.

65. While I give some weight to this consideration, Framework paragraph 144 requires that substantial weight be given to any harm to the Green Belt by reason of inappropriateness. The other consideration in this case does not clearly outweigh that harm. Consequently, the very special circumstances necessary to justify the development do not exist

Conclusion

66. This appeal on ground (a) fails and the deemed application for the construction of an astro-turf sports area therefore does not succeed

Overall conclusion on ground (a)

67. For the reasons set out above, the appeals on ground (a) fail and the two applications for planning permission do not succeed.

The appeal on ground (f)

68. As I understand it, the Council's purpose in issuing the notice is to remedy both the breach of planning control and the injury to amenity. In an appeal on this ground the appellant must explain what lesser steps could still achieve those purposes.

69. Several points are made. First, it is suggested that all that is required is to cease the use of the land as residential curtilage. The land would then be recognised as being an outdoor sport and recreation use which could be conditioned for the use of the residents of No 6 only. Since the works of enclosure are development permitted by Schedule 2, Part 1, Class E of the GPDO and the use is 'appropriate' there is no conflict with policy.

70. I have addressed most of this argument in dealing with the appeals on other grounds. In essence, the appellant has misunderstood the relationship between curtilage and the residential use of the planning unit and therefore the GPDO submissions are misconceived. An outdoor sport and recreation use, if not an ancillary residential use and therefore required to cease by the notice, would itself require planning permission as a material change of use from the previous agricultural use; such a permission has not been granted and is not part of the deemed planning application under ground (a).

71. Second, while the appellant sees no need to regrade the site or remove the games pitch, that is the operational development that the Council requires to be removed to achieve its purpose in issuing the notice. Simply replacing the artificial surface with turf as also suggested would not do so. The appellant has not explained how removing the sleepers, which serve a retaining-wall function, without regrading the land is practicable.

72. I consider that part of requirement 5 (d) which says "such as goal posts and netball hoops etc" to be unclear since it is not an exhaustive list. Deletion of this phrase does not alter the sense of the requirement.

73. I agree with the appellant that requiring a meadow grass mix is excessive since there is no evidence from the Council that the land was previously laid to meadow.

74. The appeal on ground (f) succeeds to this limited extent and the requirements will be varied in this respect.

Overall conclusion

75. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed applications.

Brian Cook

Inspector

IN THE MATTER OF AN APPEAL UNDER SECTION 174 TOWN AND COUNTRY PLANNING ACT

APPEAL REF: APP/D1265/C/24/3351182 & APP/D1265/C/24/3351183
APP/D1265/C/24/3351184 & APP/D1265/C/24/3351185
APP/D1265/C/24/3351186 & APP/D1265/C/24/3351187

LOCAL PLANNING AUTHORITY REF: ENF/20/0313

LAND at Anchor Paddock, Batchelors Lane, Holtwood, Holt, Dorset, BH21 7DR

PROOF OF EVIDENCE OF Ellie Lee

APPENDIX C

[14 January 2025]

Appendix C – Council's site measurements (12/12/2024):

Council's Calculations (approx.) measured on 12/12/2024		
No. (on plan below)	**Building/ Structure**	**Volume as of 12/12/2024 (m^3)**
1	Anchor Paddock Outbuilding 1	91m^3
2	Anchor Paddock Outbuilding 2	47m^3
3	Anchor Paddock Outbuilding 3	239m^3
4	Anchor Paddock Outbuilding 4	68.5m^3
5	Anchor Paddock Outbuilding 5	77.5m^3 *Note*: The ground drops at the lower end.
7	Tree House	145m^3
8	Dormer (to Anchor Paddock)	Not measured by officers on site (but can rely on officer measurement in Officer Report of
9	Anchor Paddock Single Storey Extension East	Not measured by officers on site.
10	Anchor Paddock Single Storey Extension West	Not measured by officers on site.
11	Anchor Paddock Original Building (see 1947 aerial map)	Not measured by officers on site.
12	Anchor Paddock Class AA	N/A as there is no PD fallback position.
13	Anchor Paddock Garage	170m^3
14	White Barn Garage	108m^3
15	White Barn Home Office	109.5m^3
16	White Barn Outbuilding	33.5m^3 (not completed)
17	White Barn Glazed Link	Approximately 52.5m^3

		Note: It was not possible to take internal measurements, so width has been estimated from other measurements carried out.
18	White Barn Teen Annexe	240m^3 *Note:* This figure excludes the change in levels and stepped-up areas between White Barn and the Teen Annexe and the higher ground level of Teen Annexe (which all adds to the Teen Annexe being materially larger than the outbuildings it replaced). Therefore, volume is likely to be greater than 240m^3.
White Barn	Barn conversion	747m^3
19	White Barn Single End (Single storey to east end of White Barn)	41m^3
20	White Barn Side Extension (Northern extension to the north of both the original barn & no. 19)	185m^3
21	Chicken Coup	83.5m^3
Wood Shed	Wood Shed (near chicken coop)	27m^3
22	White Barn Agricultural Storage Building One	No longer exists.
23	White Barn Agricultural Storage Building Two	No longer exists.
24	Green House	Not measured accurately on site, as officers did not measure to the pitched roof (so volume is likely to be greater than 97m^3).
25	Retaining Wall	Volume not measured on site. *Note:* Height of one of the posts to the retaining wall (east of Teen Annexe) is approx. 1.6m high.
26	Swimming Pool (for White Barn)	81m^3 (approximate).

Aerial Map dated 27/05/2023 - Dorset Explorer mapping (available online) annotated:

IN THE MATTER OF AN APPEAL UNDER SECTION 174 TOWN AND COUNTRY PLANNING ACT

APPEAL REF: APP/D1265/C/24/3351182 & APP/D1265/C/24/3351183
APP/D1265/C/24/3351184 & APP/D1265/C/24/3351185
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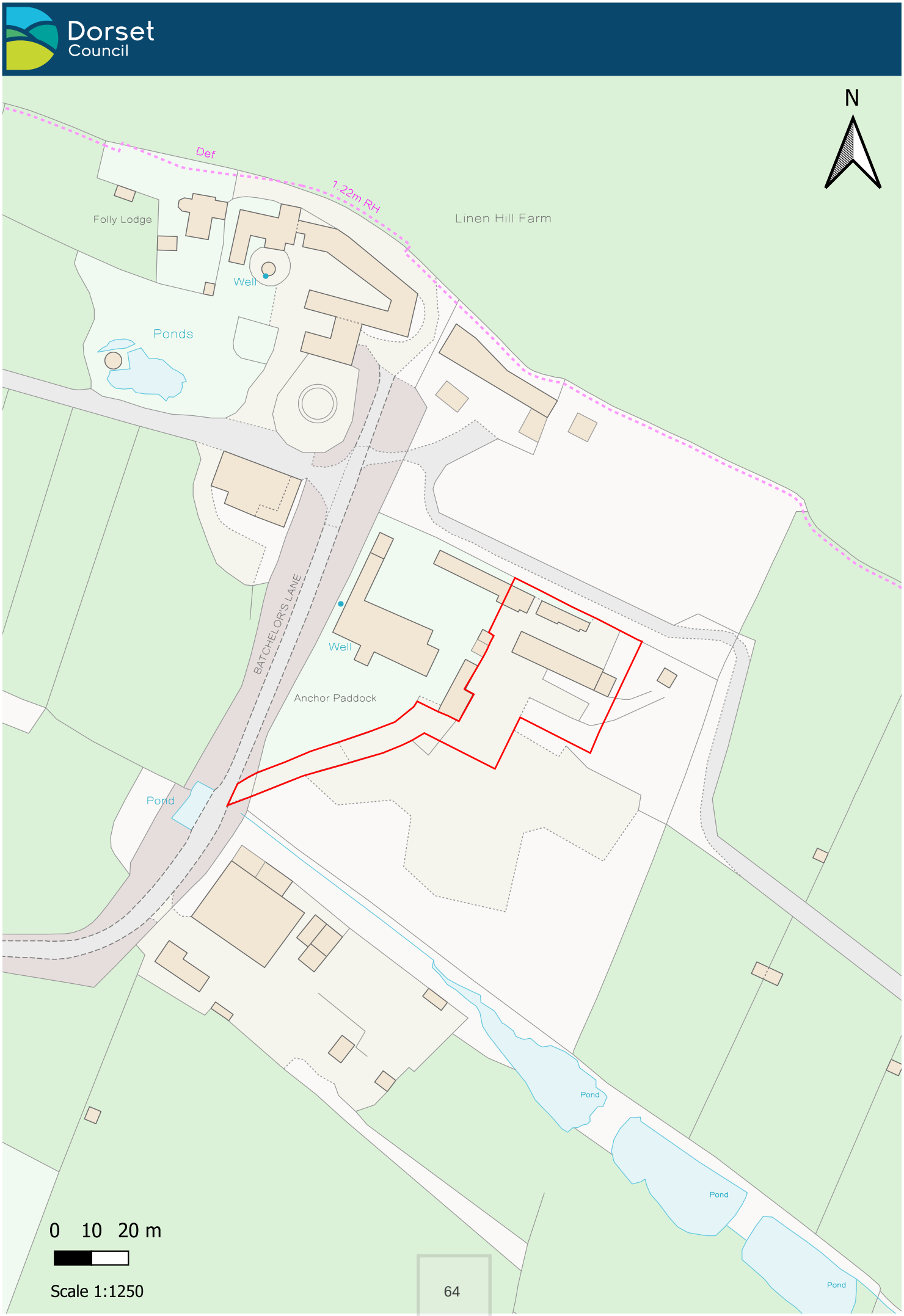
LOCAL PLANNING AUTHORITY REF: ENF/20/0313

LAND at Anchor Paddock, Batchelors Lane, Holtwood, Holt, Dorset, BH21 7DR

PROOF OF EVIDENCE OF Ellie Lee

APPENDIX D

[14 January 2025]


Dorset Council
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IN THE MATTER OF AN APPEAL UNDER SECTION 174 TOWN AND COUNTRY PLANNING ACT

APPEAL REF: APP/D1265/C/24/3351182 & APP/D1265/C/24/3351183
APP/D1265/C/24/3351184 & APP/D1265/C/24/3351185
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LOCAL PLANNING AUTHORITY REF: ENF/20/0313

LAND at Anchor Paddock, Batchelors Lane, Holtwood, Holt, Dorset, BH21 7DR

PROOF OF EVIDENCE OF Ellie Lee

APPENDIX E

[14 January 2025]

Re DORSET COUNCIL – S 174 APPEALS

Re ANCHOR PADDOCK BH21 7DR

APP/D1265/C/24/3351182 & APP/D1265/C/24/3351183

APP/D1265/C/24/3351184 & APP/D1265/C/24/3351185

APP/D1265/C/24/3351186 & APP/D1265/C/24/3351187

COUNCIL'S LEGAL SUBMISSIONS ON S.174(2A)

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1. These submissions are intended to outline, in summary terms, the Council's position in respect of the relevance of s.174(2A) Town and Country Planning Act 1990 (the "**1990 Act**") to the above appeals.

2. In overview, recent amendments to the 1990 Act have significantly curtailed the jurisdiction of the Secretary of State's Inspectors to consider appeals under ground 174(2)(a), and the Council considers this makes a material difference to the ground (a) appeal in respect of Enforcement Notice 1 – relating to Anchor Paddock itself.

Legislation

3. Section 174(2)(a) allows an appeal to be brought in the basis that a breach of planning control constituted by matters stated in the notice ought to be granted permission. This is now restricted by section 174(2A), which provides as follows:

> "(2A) An appeal may not be brought on the ground specified in subsection (2)(a) if—
> (a) the land to which the enforcement notice relates is in England, and
> (b) the enforcement notice was issued at a time after the making of an application for planning permission that was related to the enforcement notice."

4. This is qualified further by subsections (2AA), (2AB), (2AC):

> "(2AA) For the purposes of subsection (2A)—

(a) an application for planning permission for the development of any land is related to an enforcement notice if granting planning permission for the development would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control;

(b) an application for planning permission that the local planning authority or the Secretary of State declined to determine under section 70A, 70B or 70C is to be ignored.

(2AB) But subsection (2A) does not apply if—

(a) the application for planning permission has ceased to be under consideration, and

(b) the enforcement notice was issued after the end of the period of two years beginning with the day on which the application ceased to be under consideration.

(2AC) For the purposes of subsection (2AB), an application for planning permission has ceased to be under consideration if—

(a) the application was refused, or granted subject to conditions, and, in the case of an application determined by the local planning authority, the applicant did not appeal under section 78(1)(a);

(b) the applicant did not appeal in the circumstances mentioned in section 78(2) and the application was not subsequently refused;

(c) the applicant appealed under section 78(1)(a) or section 78(2) and—

(i) the appeal was dismissed,

(ii) the application was on appeal granted subject to conditions, or subject to different conditions, or

(iii) the Secretary of State declined under section 79(6) to determine the appeal."

5. The first, and crucial question arising from the above is to ask whether there are any "related" applications, i.e. whether granting planning permission for the development subject to any "related" application would involve granting planning permission in respect of the matters specified in the enforcement notice as constituting a breach of planning control.

Other potentially relevant applications for planning permission

6. The following applications were validly made and fall to be considered in connection with the above. Each relates to the Anchor Paddock Bungalow (planning unit 1, Enforcement Notice 1):

    a. P/HOU/2022/06621 – 'First floor dormer extension; rear single storey extension (retrospective)' – Withdrawn on 03/03/2023. See CD2.016a-2.016f.
    b. P/HOU/2023/02656 – 'Retain first floor dormer extension' – Refused on 15/09/2023. See CD2.017a-2.017g, CD1.039a-1.039c.
    c. P/HOU/2024/00739 – 'Retain first floor dormer extension, demolition of existing building. See CD1.038a-1.038e.

Conclusions

7. I understand that the reference to "single storey extension" in the first of the above applications is a reference to the single storey extensions now subject to EN1. The reference to "first floor dormer extension" is likewise a reference to the same development described in EN1.

8. Because EN1 was issued within 2 years from the date the aforementioned applications "ceased to be under consideration", the effect of s.174(2A) is to preclude the bringing of a ground (a) appeal in respect of the development described in these three applications: i.e. the dormer extension and single storey extension. There is therefore no jurisdiction for such a ground (a) appeal to be brought, and no basis for the Inspector to consider it.

9. The Council reserves the right to expand on these submissions as necessary during the course of the inquiry.

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14 January 2025