



Proof of Evidence

**APP/D1265/C/24/3351182/3
/4/5/6/7**

Development at:

**Land known as Anchor
Paddock, Batchelors Lane,
Holtwood BH21 7DS**

Prepared By

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On Behalf of the Appellant

14th January 2025

1.0 Authorship

- 1.1 My name is James Cain and I am a Town Planner and Director of Planning Base Limited. I hold a Masters in Town Planning (MPlan) post-graduate degree from the University of Liverpool which I obtained in 2003. I have been a Member of the Royal Town Planning Institute (RTPI) since 2005.
- 1.2 I began my planning career in local government as a Development Control and Policy Officer with West Lancashire District Council and then Blackburn with Darwen Borough Council. In 2004 I joined a multi-disciplinary company as a specialist telecommunications planner working my way up to Senior Planner. In 2007 I joined Horsey Lightly Fynn Solicitors of Bournemouth as their planning consultant which started my experience of working in the Dorset area and I have remained living and working in the county ever since.
- 1.3 In 2012 I joined Coles Miller Solicitors of Bournemouth with the objective of starting up their planning department. This was successful and in 2015 I became a Director of JN Planning Consultants Limited before commencing Planning Base Limited in 2017. In my 18 years working in the Dorset area I have been involved in a full range of planning projects from residential to commercial to enforcement matters.
- 1.4 The evidence which I have provided for this appeal is true and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions. I confirm that I have no conflicts of interest

2.0 Scope and Structure of Evidence

2.1 My evidence is structured around the six bullet points set out in Section 7 of the Inspector's Post Conference Note (dated 21st November 2024). More specifically, those matters relating to the ground (a) appeals for each of the three subject Enforcement Notices which have not been agreed between the main parties.

3.0 Site and Surroundings & History

3.1 A description of the site and surroundings and the constraints have been set out within the Statement of Common Ground (SCG). I previously acted for the owners of Dilly Dallys and I was the planning agent for two applications for Lawful Development Certificates for use of the land as bed and breakfast accommodation including self-contained 9no. chalets in 2016 and 2017 (3/16/1460/CLE – withdrawn; 3/17/2526/CLU – application was lawful). I was also asked to work up a further application for a Lawful Development Certificate in relation to the use of the Tree House in the spring of 2018.

3.2 I was provided with photographic evidence of Mr Stuart Coles living in the Tree House building with his family from July 2013 onwards. The application was worked up and ready to submit in the summer of 2018 but the previous owners were considering selling the land at that point and asked me to hold off progressing with the application.

3.3 The reason why two applications were needed was because the local planning authority did not agree that the first application contained sufficient evidence to prove the use across the whole of the site and a tighter red-line was drawn by them (then Christchurch and East Dorset District Council) to which my clients reluctantly agreed would be acceptable and would suit their

requirements. The Sales Particulars which included an OS Plan and historic aerial photographs show that the site contained a number of buildings particularly in the northern part of the plot.

- 3.4 It is my opinion therefore that the site that is the subject of the Notices is currently one of being a mix of uses which was under one ownership previously with Dilly Dallys and remains under one ownership now with the appellants. All uses are accessed via the main gate at the junction with Batchelor's Lane. Dilly Dallys wanted privacy as the B&B use was for the enjoyment of nudists.
- 3.5 I was instructed by the appellants on 2nd July 2020 by which time of course COVID restrictions had taken hold and the performances of all workplaces, not just Dorset Council, were stretched as new technology had to be brought in to facilitate working from home and all employees had to juggle family life - be it caring for elderly relatives or dealing with children being off school for long periods and needing to be taught from home. It was an unprecedented period of history and the facts in the FOI data (JC1) show that more than half of pre-apps weren't being determined within 8 weeks and over three quarters of applications weren't being determined within 8 weeks in both 2020 and 2021. There was also an expectation in 2020 and 2021 that your application wouldn't be validated for a month or 6 weeks at best and this is confirmed in the data set. I append at JC1 the Dorset Council Performance Data. The appellant's legal team identified the following issues: It appears from the numbers provided that the validation period for applications was 10 times today's usual rate in 2021, despite there being no increase in applications made, and following this around 40 days extra for decisions made following validation in 2021/2 compared to 2018/19. There were 982 applications languishing for more than 6 months in the 21/22 period versus 266 in 2018/19 (almost quadrupling), and only 38% of pre applications responded to in under 8 weeks

in 21/22 versus 66% 2019/20 and 64% in 2024 to date. There was no counter-response from Dorset Council and so the issues should be taken as read.

- 3.6 These facts certainly mirrored my case-load experience across Dorset and other neighbouring authorities at that time. I consider this to be a material consideration and a very special circumstances, both on its own and in combination with other factors such as the Appellant's personal circumstances, especially in the circumstances were I consider the harm to the green belt to be very low.
- 3.7 The appellant contacted me initially solely in relation to a potential Class Q application at what is now White Barn. I was not aware of any breaches of planning on the other parts of the site. I lodged the prior approval application (LPA Refers 3/20/2281/PNAGD) for the Class Q conversion at White Barn on 19th December 2020 and a deemed consent letter was issued on 5th March 2021. The letter recommended the submission of an application for a Lawful Development Certificate and this was lodged (LPA Refers 3/21/1384/CLP) on 12th July 2021 and withdrawn on 6th April 2022. The application was heading nowhere after the Parish Council objected on 16th August 2021 and my client preferred to withdraw the application at that point.
- 3.8 It was not until October 2022 that I was instructed to prepare a retrospective planning application for the dormer at Anchor Paddock. This was validated on 25th October 2022 (LPA Refers P/HOU/2022/06621) and withdrawn on 3rd March 2023. A similar application to retain the dormer at Anchor Paddock was validated on 30th May 2023 (LPA Refers P/HOU/2023/02656) but was refused on 15th September 2023.
- 3.9 A third application to seek to retain the dormer was validated on 12th February 2024 (LPA Refers P/HOU/2024/00739) but this time offering to demolish an

existing outbuilding to offset the increase in volume. This application was refused on 11th October 2024.

- 3.10 Also on 12th February 2024 (LPA Refers P/CLE/2024/00737) an application was submitted to retain the single storey rear extension at Anchor Paddock and this was refused on 11th April 2024.
- 3.11 On 8th April 2024 (LPA Refers P/CLE/2024/01225) an application for a Lawful Development Certificate was validated for the Tree House but this was refused on 27th September 2024.
- 3.12 Between October 2022 and October 2024, the applicant met with the Enforcement Officers of Dorset Council on site and we submitted five applications in that period to attempt to regularise the alleged breaches at the Tree House and Anchor Paddock. Looking at the Statement of Common Ground that has been agreed, it would be fair to say that some of those applications should have been looked upon more favourably than they were at the time.
- 3.13 It is my opinion that the appellant had an overall plan for the site and the existence of COVID stymied the reasonable progress of the preparation of and determination of applications. COVID also provided obstacles for the appellant which could not have been predicted and were unprecedented – decisions were therefore made that might not normally have been, for example, had there been a reasonable pre-app service available at Dorset Council during the deep COVID period then the appellant would have availed himself of that as I would advised him to do so.
- 3.14 Don't forget it was not just the public sector whose performance was hampered by COVID, but the appellant had to rely upon architects and

planning consultants and builders to provide him with advice as he sought to navigate the situation he found himself in. If COVID did not happen then I am sure the decisions made by the appellant would have been different.

4.0 Planning Policy

- 4.1 The SCG lists all of the relevant policies that are relevant to the determination of this appeal.

KS1 – Presumption in favour of sustainable development

It has been agreed by the local planning authority that the Tree House should be granted planning permission either on the basis of an alteration or a replacement. Anchor Paddock has always been a separate dwelling since before the ownership of Dilly Dallys. White Barn has been agreed between the parties that it is a lawful dwelling. It is therefore considered that the principle of three planning units on this site is accepted.

KS2 – Settlement hierarchy

This policy sets out the location, scale and distribution of development within the former East Dorset District. The appeal relating to White Barn is for a change of use of an existing building and not new-build development. The local planning authority in considering a recent application at *Oak Tree Paddock* took the same approach that a change of use was acceptable under KS2 and that this did not constitute new build development which is the thrust of KS2 namely, to prevent new development in areas that don't have the necessary infrastructure, services and facilities. It would be inconsistent of the local planning authority to now take a different approach to that which it took

at *Oak Tree Paddock* or indeed in their assessment of White Barn within this appeal.

KS3 – Green Belt

Given that the appeals do not contain development which conflicts with the most important purposes of the Green Belt (volumetric equalisation has ensured that the total built form now in front of the Inspector is acceptable when compared to recent and historical built form on the site) it is considered that this policy has been adhered to.

KS12 – Parking

There is sufficient space within the site to allow for adequate vehicle and cycle provision.

HE2 – Design of new development

Design must be of a high quality and reflect local distinctiveness. The main parties have agreed in the SCG that the design of the various elements are acceptable in terms of HE2.

HE3 – Landscape quality

The main parties have agreed that there is no harm to landscape character of the area by way of the works undertaken and via volumetric equalisation. The design of the Tree House and Anchor Paddock has been agreed as acceptable and the LPA has not enforced against the external works to White Barn.

ME1 – Safeguarding Biodiversity and Geodiversity

The appellants have provided the local planning authority with the required bat surveys and there is considered no harm to biodiversity or geodiversity as a result of the works undertaken.

ME2 – Protection of the Dorset Heathlands

The appellants have provided appropriate financial mitigation to offset any harm to the Heathlands which are between 400m and 5km from the appeal site.

LN1 – Size of Dwellings

It is considered that there is sufficient living space provided in each of the subject dwellings (internally and externally).

AGLV

The site is within the Woodlands Area of Great Landscape Value. The SPG (adopted June 1997) has been assessed and the proposal does not cause harm to any of the special qualities identified for this location given that the site has historically contained a number of large buildings and they are all discreetly located and screened by trees around the perimeter of the site which will remain in situ and will be secured by the condition relating to the landscaping.

Flooding

The southern-most tip of the Tree House site is within a mapping layer from the Dorset Level 1 Strategic Flood Risk Assessment February 2023 that 'shows the groundwater consultation area as defined by Dorset Council. This dataset may change over time as the criteria are amended but as of May 2023 this is based on the

JBA modelling used in the creation of the upcoming strategic flood risk assessment'. The boundary of the layer is pixelated and the footprint of the Tree House may or may not be within the boundary.

The fact is that the Tree House is not a new dwelling – the Tree House was in situ in July 2013 and the appellants have simply made alterations to it and it has always contained all of the fixtures and fittings found in a dwelling house since that date. The local planning authority accepts that planning permission should be granted for the Tree House and from assessment of the *Atlanta* case even if the Tree House is judged as a replacement dwelling the planning permission would be returned back therefore no new Flood Risk Assessment would be required.

If the Inspector considers that the Tree House does represent a new dwelling then there does need to be a discussion about the ground water flooding. The fact is that the site is sloping and it is unclear whether the footprint of the Tree House is within or outside of the pixelated layer. The site would appear impossible to flood given the topography of the area and this can be assessed at the Site Visit. Whilst I am not a Flood Engineer, my opinion as a Town Planner is that either Site Specific Flood Risk Assessment is not required, or my simple professional opinion based on observable characteristics and information about flooding from the current owner including a specific confirmation from the previous owner that the property had never flooded during their long ownership, is sufficient to amount to a Site Specific Flood Risk Assessment, under Footnote 63 of the revised NPPF (December 2024).

5.0 The Tree House

- 5.1 The SCG confirms that planning permission should be granted (subject to condition) for this dwelling. The Inspector will have seen the evidence

presented under ground (d). If the appeal succeeds on ground (d) then the ground (a) matters in dispute fall away and vice versa.

5.2 It is considered that there is no requirement for a Flood Risk Assessment given the topography of the land and the fact that there is no history of flooding at this site.

5.3 The Tree House is not considered to be materially larger than how it stood on the plot previously in the context of NPPF para 154 (d) and it is either in the same use, or would be suitable for re-use under (h) iv, being of permanent and substantial construction, and then replacement.

6.0 Anchor Paddock

6.1 The SCG confirms that the existing dormer can be retained via volumetric equalisation as has been set out.

6.2 It is considered that Anchor Paddock West is acceptable under paragraph 154(g) of the NPPF as it is certainly within previously developed land and on such land limited infill development is exempt from being termed inappropriate in cases where there is no harm to the openness of the Green Belt. Given the position of Anchor Paddock West adjacent to buildings and being screened by mature vegetation and trees from wider views then it should be considered acceptable under 154(g). In this event, Anchor Paddock West does not need to be made acceptable via volumetric equalisation and AP1 and AP2 can offset other parts of development across the site.

6.3 It is considered that the dormer can be offset by simply demolishing AP2. AP2 is a larger structure than the dormer in isolation and this additional volume

offsets the fact that the dormer is at first floor level and therefore technically more impactful upon the Green Belt than would be the case for a ground floor addition. In my opinion, if Anchor Paddock West is acceptable as an infill development then there is no need to demolish both AP1 and AP2 to offset the impact of the dormer. If Anchor Paddock West is not considered infill then demolition of both AP1 and AP2 is fair. The design of the dormer is considered acceptable in this location and it is located discreetly amongst the taller trees which bound the site which serve to lessen the overall visual impact. AP2 is larger than the dormer and that should be considered sufficient to offset the impact without needing to demolish AP1 as well in isolation.

- 6.4 Anchor Paddock East should be considered as a replacement building under paragraph 154(d) of the NPPF as it is not materially larger than the previous building occupying that part of the site.

7.0 White Barn

- 7.1 The local planning authority do not consider White Barn to be considered previously development land. Previously Developed Land is defined in the NPPF as being:

“Land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed). It also includes land comprising large areas of fixed surface infrastructure such as large areas of hardstanding which have been lawfully developed. Previously developed land excludes: land that is or was last occupied by agricultural or forestry buildings; land that has been developed for minerals extraction or waste disposal by landfill, where provision for restoration has been made through development management procedures; land in built-up areas such as residential gardens, parks, recreation grounds and allotments; and land that was previously

developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.”

There is no suggestion that the land was not lawfully developed for agriculture. There may well have been intervening unlawful uses, but that doesn't stop it being PDL. The definition above offers no requirement for the land to be in current lawful use.

- 7.2 Dilly Dallys were using the land at White Barn as an overspill from the B&B use which obtained the Lawful Development Certificate to the north of Anchor Paddock. That was what they originally applied for in the first Lawful Development Certificate which encompassed the land at White Barn. The building at the former barn which was subject of the Class Q application was clearly in agricultural use for a time but the land around it was not in agricultural use since the Dilly Dallys time and this is evidenced by the aerial photos with hardstanding and vehicles parked and so forth. As such, the land which is currently occupied by the glazed link now clearly was never agricultural and must be previously development land. There has been a mixture of uses at White Barn being used with Anchor Paddock since the B&B ceased. It is not clear whether this is a mixed use or a residential use with limited ancillary B&B use or agricultural use.
- 7.3 White Barn is considered to be located on previously developed land originally but the local planning authority now consider the agricultural use to have been lost. An intervening unlawful use doesn't mean that the land cannot be previously developed land if it was lawful originally as is the case here.
- 7.4 The Inspector would have to determine the curtilage of White Barn. The first question is whether the whole of the land could be considered curtilage given the 'herringbone' history. However, the intention of the appellant is to establish an agricultural use on the neighbouring fields to White Barn as set out in his evidence. As such, a suitable delineation of the curtilage of White Barn is considered to be the dotted line as shown on the ARC survey drawings.

- 7.5 The retaining wall is sandwiched between the Teen Annexe and the White Barn dwelling. The retaining wall is not visible from beyond the property and therefore has zero impact upon the openness of the Green Belt. Further screening is provided by the mature tree coverage to the north of the Teen Annexe. As such, under 154(h)(ii) of the NPPF, it is considered that the retaining wall would not represent inappropriate development in the Green Belt (preserving openness and not in conflict with the purposes of including land within the Green Belt). The wall is also well outside of the Groundwater Risk layer as referred to previously in the Tree House section.
- 7.6 In terms of differences in land levels, no land has been increased in height and what has taken place is a land lowering operation. The land contains different levels and different slopes and is acceptable under paragraph 154(h)(ii) (an engineering operation which preserves openness and does not conflict with the purposes of including the land within the Green Belt).
- 7.7 The swimming pool and greenhouse are located to the east of White Barn in an area that was originally covered by the lawful development certificate applications of 2016 and 2017.
- 7.8 The greenhouse occupies a very similar footprint to the previous structure but the new greenhouse is acceptable as a replacement building that is not materially larger under paragraph 154(d) of the NPPF. There is no benefit to demolishing this structure given that there has been a greenhouse in that position since at least 2014 and the slight increase in height of the current greenhouse does not cause any harm to amenity or character given its discreet setting. This increase in height could be offset by volumetric equalisation or the greenhouse could legitimately be retained by a replacement under paragraph 154(d) and extended under 154(c) of the NPPF at the same time.

- 7.9 The swimming pool also does not impact the openness of the Green Belt under paragraph 154(h)(ii) and does not conflict with the purposes of including land within the Green Belt. Such facilities are commonplace in this part of Dorset. There is a strong argument to suggest that it is acceptable also under paragraph 154(b) of the NPPF being a facility for outdoor recreation. The proposed landscaping scheme will ensure that the visual impact of the pool and greenhouse are further reduced in any event and therefore there will be no conflict with HE3. The appellant has set out plans to commence an agricultural use on this site (chicken coup) and neighbouring land in the immediate future and this will serve to enhance the overall setting and visual appearance of the site in conjunction with the landscaping scheme proposed by way of a condition. I support the curtilage plans attached to attached to Mr White's Proof of Evidence as this will create a significant overall benefit in landscape terms as set out above.
- 7.10 The glazed link between White Barn and the Teen Annexe is considered to be within previously development land and therefore acceptable under paragraph 154(g). It is sandwiched between two larger buildings and serves an important use as set out by the appellant – enabling occupiers of the annexe to enter and leave in the main house within a covered environment whilst at the same time not impacting upon the openness of the Green Belt. Taken together, the glazed link and the White Barn Side Extension are not considered to represent disproportionate additions under the NPPF.
- 7.11 The White Barn Office and White Barn Garage, the garage on its own is not materially larger than the previous building it replaced and is therefore considered acceptable under paragraph 154(d). In addition, the garage and office combined are not materially larger in terms of their overall footprint (see ARC Survey Plan).

- 7.12 The Office is larger than the building it replaced and if the Inspector considers that it is materially larger then this could be offset via volumetric equalisation with the demolition of either AP1 or AP2 (either which may have been ‘saved’ from demolition when assessing the earlier arguments with the volumetric equalisation of AP1, AP2 and the dormer and Anchor Paddock West). AP5 could also be a candidate for offset the office. The approach in the SCG for the dormer was that more ‘equalisation’ is needed due to the dormer being at first floor level as opposed to the demolished buildings being at ground floor – in the case of the volumetric equalisation of the office there is a strong argument to say that it requires less due to it being tucked away in behind other buildings rather than the former hot tub enclosure which it replaced which was much more prominent at the front of the site.
- 7.13 The White Barn Single End should be judged as a replacement building under the NPPF being also not material larger than the previous building.
- 7.14 The chicken coup and the unfinished outbuilding also replaced other structures which are visible on aerial photographs and are set out on the survey.
- 7.15 In the event that the Inspector considers any of the developments to represent inappropriate development in the Green Belt, then it is considered that Very Special Circumstances do exist in the form of the COVID related problems incurred by the appellant which clearly did effect decision making on his behalf, either on their own or in combination with other personal circumstances. Any harm identified is only very limited, amounting more to in principle harm due to inappropriateness rather than any actual visual harm or appreciable impact on openness or urban sprawl, and therefore the VSC identified through COVID and other factors in combination if necessary would

outweigh that harm. Also taking into account the limited curtilage and high quality landscaping scheme proposed and the benefits of ending the unpopular BnB use, and bringing land back into productive use.

Appendix to Proof of Proof of Evidence

By James Cain

JC1 – Data Set of Planning Stats 2018 to 2024