The Planning Inspectorate

Appeal Decisions

Hearing Held on 14 & 15 March 2023

Site visits made on 14 & 24 March 2023

by R J Perrins MA

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

Decision date: 14 June 2023

Appeal A Ref: APP/D3125/C/22/3306729
Diddly Squat Farm, Upper Court Farm and Curdle Hill Farm, Chadlington.

- 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 J Clarkson against an enforcement notice issued by West Oxfordshire District Council.
- The enforcement notice was issued on 11 August 2022.
- The breach of planning control as alleged in the notice is: Without planning permission a material change of use of:- (i) the part of the Land shown edged blue on the attached plan (formerly in agricultural use); and (ii) the part of the Land shown edged green on the attached plan (whose permitted use is as a farm shop with associated parking), to a mixed agricultural and leisure attraction use, comprising café, restaurant, gift/farm shop, parking and lavatory facilities.
- The requirements of the notice are:
  (1) Cease use of any part of the Land for sale or provision of food or drinks to members of the public for consumption on the Land;
  (2) Cease use of any part of the Land as a restaurant or café;
  (3) Cease use of any part of the Land for parking by members of the public except within the area designated for parking on plan PLA_002 REV E approved under application reference 20/01457/FUL;
  (4) Cease the retail sale or provision of any goods directly to members of the public from the Land other than:
  (i) sale within the farm shop of farm goods produced on the agricultural holding;
  (ii) sale within the farm shop of goods produced by farming operations located within a 16 mile radius; and
  (iii) sale within the farm shop of any other goods the sale or provision of which the Council has expressly consented to in writing.
  (5) Reinstate the area around Lowland Barn to a condition similar to that of the agricultural land immediately surrounding it, by:
  (i) removing all hardcore and other surfacing materials including gravel and stone chippings;
  (ii) removing all other landscaping materials including wooden sleepers, wooden plank edging and wood chippings;
  (iii) removing all plants and planting containers and
  (iv) seeding the soil with grass or an arable crop.
  (6) Remove from Diddly Squat Farm:-
  (i) all units and vehicles, whether mobile or otherwise, whose function (whether or not in current working order) is to prepare or provide food or drinks to members of the public for consumption on or off the Land;
  (ii) all mobile lavatory units (including any fixed unit originally brought onto the Land as a mobile unit);
  (iii) all tables, chairs, parasols and picnic tables, including those within the lambing shed (with the exception of those reasonably necessary to be retained for members of staff in connection with agricultural use and the use of the farm shop).

(iv) all landscaping material and plants referred to in paragraph (5).

- The period for compliance with the requirements is 6 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(b),(c),(e),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Appeal B Ref: APP/D3125/W/22/3308506
Diddly Squat Farm Shop, Chipping Norton Road, Chadlington OX7 3PE

- 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 Clarkson against the decision of West Oxfordshire District Council.
- The application Ref 22/00613/FUL, dated 1 March 2022, was refused by notice dated 6 May 2022.
- The development proposed is described as an extension to existing parking area to formalise temporary parking and provision of new access arrangements. Form new storage compound and associated landscaping.

Decision

Appeal A

1. The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Appeal B

2. The appeal is allowed subject to conditions.

Procedural Matters

3. The Hearing sat for two days, and I undertook an accompanied site visit on the afternoon of the 14 March 2022 and then again, when the shop was open, on Friday 24 March 2022. There was no discussion of planning merits at either visit.

4. It was agreed at the Hearing that only those speaking on behalf of the appellant, Council, and a group of Chadlington residents, would be listed in the appearances due to the high level of interest in this case. Nevertheless, a good number of interested people spoke in favour of, and against, the developments. Needless to say, all of those verbal submissions have been taken into account.

Background and Planning History

5. Diddly Squat Farm which extends to some 400 hectares is owned by a partnership between the appellant and one other individual. The farm partnership undertakes farming activities. It is undisputed that the farm shop is operated by the appellant but in a different partnership with another individual as evidenced by the Planning Contravention Notice. That partnership (Diddly Squat Farm Shop) leases an area of land from the farm partnership for retail activities.

6. The site is within the open countryside which is part of the Cotswold Area of Outstanding Natural Beauty (AONB). Access is off the Chipping Norton Road which serves as the eastern boundary to the site and leads to the village of Chadlington to the south and the A361 to the north. Also, north of the site is a

camping and caravan site. Save for that, the surrounding land is open countryside.

7. There are two areas of land embraced by the enforcement notice; Plan B broadly encompasses a field to the east on the opposite side of the road and fields to the south and west of the farm shop. There is no dispute that the field to the east has been used for parking as have the fields surrounding the farm shop. Plan B seeks to ensure any parking is simply not moved elsewhere within the agricultural holding if the notice is upheld. Plan A encompasses smaller areas around the farm shop and Lowland Barn, those areas are joined by a narrow strip which I saw during my site visit was a well-defined field margin/track linking the two.

8. Lowland Barn is a simple low level stone field barn. At the time of my visit, I could see the barn had been re-roofed and is served by up-to-date services for lighting, power and hot water. To the front, facing the A361 (across fields some distance away) new metal grille roller shutters have been installed. Other recent improvements include raised flooring areas some of which extends beyond the building line. Access to the Lowland Barn from the farm shop is via a grassed trackway between fence line and hedgerow, that runs alongside two field margins to the east and south.

9. The farm shop is a stone built simple structure with slate roof. Two doors facing Chipping Norton Road are used as an entrance and exit to the shop. During my second site visit a queue of customers were entering in one door selecting goods and paying at tills situated near to the second door; a one-way system. Next to the farm shop is the 'lambing shed' as described on the enforcement notice, a steel portal framed building with timber cladding above concrete panels and fibre cement roof. When viewed from Chipping Norton Road it is an unsurprising agricultural building typical of its type and commonplace in a rural landscape.

10. The southern elevation is predominantly open. At the time of my second visit the lambing shed was served both inside and out by some 30 or so picnic-style tables; the type that are found in many pub gardens. The eastern most section of the shed had within it a timber structure that spans the entire width. One half contained a bar which was serving hot drinks, alcohol and taking orders for food. To the rear of the bar was a sink, coffee and tea making equipment and barrels of beer and associated equipment, typical of that found in a public house. The other half of the structure was being used for the storage of retail produce.

11. To the rear of the farm shop was a mobile catering unit cooking and serving the food ordered at the lambing shed bar. A further mobile structure, clad in timber, provides male and female toilets with disabled access. The unit was connected to underground services. At the time of my second visit the parking area to the front of the farm shop was full and vehicles were parked along the Chipping Norton Road and further away on the A361. I was able to see traffic being disrupted, visitors to the farm shop walking down the road in conflict with traffic, a significant reduction in the free flow of traffic from either direction and damage being done to highway verges.

12. On my first visit with the parties, when the shop was closed, it was evident that visitors still arrive at the farm shop and park either in the car park or on the road. The majority of those I saw left their vehicles to take pictures of the shop and signage many of which were 'selfies'. That reflects what I saw when I

visited the site some days earlier and viewed the site from public vantage points. Whilst these are snapshots in time, they nevertheless have given me, along with the evidence, a good understanding of the comings and goings associated with the farm shop.

13. It is also clear, from all that I have seen and heard, that a major factor in determining the number of visitors to the site is the popularity of the appellant. Mr Clarkson who is a well-known journalist and presenter. The farm and shop are central to an ongoing television series 'Clarkson's Farm' hosted by Amazon Prime attracting viewers from all over the world. I understand that Season 2 has been aired this year.

14. Turning to the planning history, in 2019 conditional planning permission was granted (ref:19/02110/FUL) for *Erection of a lambing shed and farm shop, including car parking and associated landscaping. Potential for occasional film making.* A further permission (ref:19/03516/FUL) was granted in 2020 for the same development with an amendment to the site access.

15. In October 2020 a part retrospective permission was granted (ref:20/01457/FUL) for the same, save for roofing materials and certain conditions attached to the previous consent. In 2021 planning permission was granted (ref:20/03444/S73) to amend the condition controlling what could be retailed from the site.

16. Therefore, it is clear, that the appellant has planning permission for a farm shop with associated parking and a lambing barn. There is no dispute that these permissions reflect the last lawful use of the land. Upon compliance with the enforcement notice, and in accordance with S57(4) of the Act, the appellant may revert to the previous lawful use. That use would form the basis of any fallback position, a matter which I will return to later.

Appeal A – The enforcement notice, the planning unit and the allegation

The enforcement notice

17. It was accepted at the Hearing that is incumbent upon me to get the notice in good order. To that end the appellant raised a number of concerns regarding: the plans attached to the notice; clarity as to what and where the restaurant and café uses are; the lack of identification of a planning unit; the restrictions on parking and sales from the farm shop, when set against the existing permission; reference to 'Lowlands' Barn; and a number of issues with the requirements.

18. Section 173(2) of the Act says that an enforcement notice complies with s173(1)(a) if it 'enables any person on whom a copy of it is served to know what those matters are', being the matters alleged to constitute the breach. The test is as described in *Miller Mead v MHLG* [1963] 1 A11 ER 459, namely whether the notice tells the recipient fairly what they have done wrong and what they must do to remedy it. In the first instance it is clear that reference to 'Lowlands' is a typographical error given the correct name 'Lowland' is used elsewhere in the notice, to correct it would not cause injustice.

19. Turning to the requirements, as I set out at the Hearing, some have a degree of ambiguity, and I am not satisfied that either party could have any surety on compliance with some aspects given the current wording. Requirements seek reinstatement of land to 'a condition similar to that of' and 'seeding the soil with

grass or an arable crop'. Those phrases do not have any clarity; 'similar' can be interpreted in many ways and the appellant could rightfully question what type of grass/arable crop or what density it should be sown; it is simply not prescriptive enough. To replace these terms with 'to restore the land to its condition before the development took place' is sufficient for validity purposes. In this case the appellant will be the person with the best knowledge of what that previous condition was. To amend the notice in that way would not lead to any prejudice.

20. Requirement 3 seeks to restrict parking to the area given planning permission and as designated on the drawing (ref: PLA_002 REV E). However, I accept that the planning permission does not restrict parking of cars elsewhere within the red line, the requirement is therefore excessive, in that it seeks to do more than remedy the breach of planning control which relates to a material change of use of the land. I will amend requirement 3 of the notice such that it does not enforce beyond what is currently permissible.

21. Requirement 4 seeks to limit the nature of retail sales beyond that permitted by Condition 7 of the latest planning permission. The list of goods goes beyond that set out in Condition 7. The requirement is also excessive in seeking to do more than the breach of planning control. The Council have the power to take action for a breach of condition in any event if they consider sales, beyond that permitted by Condition 7, are taking place. I will therefore delete requirement 4.

22. Requirement 6(iii) is also vague in that it refers to a number of items being removed save for those 'reasonably necessary'. It was agreed at the Hearing that to provide certainty amending the notice to refer to one toilet, one table and two chairs would again not result in injustice. It was also agreed that Requirement 6(iv) should have referred to paragraph 5(iii) not the whole of paragraph 5 and I shall amend the notice in that regard in the same way. Again, to do so would not lead to any prejudice.

The planning unit

23. With regards to other areas of concern, and whilst it is not essential for an enforcement notice to clearly set out what the planning unit is, with any case where it is disputed that a material change of use has occurred, it is first necessary to ascertain the correct planning unit, and the present and previous primary (as opposed to ancillary) uses of that unit or units. The case of *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207, confirmed that an Inspector may correct or vary a notice to ensure it was directed to the correct planning unit.

24. That case set out that the planning unit is usually the unit of occupation, unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes; the concept of physical and functional separation is key. The judgement helpfully sets out three broad categories of distinction:

a) A single planning unit where the unit of occupation has one primary use and any other activities are incidental or ancillary;

b) A single planning unit that is in a mixed use because the land is put to two or more activities, and it is not possible to say that one is incidental to another; and

c) The unit of occupation comprises two or more physically separate areas which are occupied for different and unrelated purposes.

25. Each area that has a different primary use should be considered as a separate planning unit. The area to be looked at is the whole of that used for a particular purpose, including any part of that area which is put to an incidental use of that primary purpose.

26. In this case Diddly Squat Farm extends to some 400 hectares and is owned by a different partnership to the farm shop, albeit the appellant has a hand in each. Although, ownership is rarely determinative when considering the planning unit for planning purposes. What is clear is that the farm shop and associated car parking has planning permission and the shop is supplied by the farm. The planning permission extends to an area, shown on the approved location plan, which includes the lambing barn and parking area to the front.

27. On its face, the argument that the area covered by the permission is a planning unit in its own right has some merit. The appellant is correct in that the planning permission permits three activities: agriculture; a shop; and film making, with associated parking and access. To that end, if those activities, embraced by the enforcement notice were confined to that area my reasoning need go no further in establishing the correct unit.

28. However, it is clear that those activities go beyond the planning permission's red line, as also set out below. There is no dispute that parking has spilled onto adjacent land, and from my site visits, I could also see that customers were not constrained to the land identified on the planning permission. Furthermore, from the evidence (as set out below) it is apparent that activities extended to the Lowland Barn. It seems to me therefore, that the blue line on the enforcement notice is not without merit. It identifies the area of land that activities, beyond that of agriculture, have occurred.

29. Furthermore, whilst there is no physical barrier between much of the area marked in blue on the ground and the surrounding agricultural land. The identified areas appear physically separate in that the area outside the blue line is clearly set out for agricultural purposes only. That within the blue line is associated with the commercial activities at the shop along with access to Lowland Barn which is also bounded by field margins. Overall, therefore and a as a matter of fact and degree, the area in blue has a separate, distinct and substantially different use to the wider agricultural holding. It is necessary to consider if this area identified in blue comprises of more than one planning unit.

30. I find that it is a planning unit in its own right. I come to that view accepting that at one point Lowland Barn could have been a separate field shelter outside of the adjacent field. However, it is clear that access and land between Lowland Barn and the farm shop are not physically and functionally separate. The two are cojoined by the access route along the field margins. With the evidence also indicating that the connecting access was well used when Lowland Barn was being used as a restaurant with customers being transported between the two by tractor. This demonstrates a clear functional and physical link between the two.

31. Turning to the area shown hatched in red on Plan B to the enforcement notice, that purports to show 'part of an agricultural holding..', I recognise that this does not encompass the whole of the farm upon which agricultural activity

occurs, but the enforcement notice does not need to be directed to the farm as a whole. The red shading was explained, in that the Council consider that to be the area which could be used for future changes to activities (such as parking) which would defeat the purpose of the notice. That is not an unreasonable position to take.

32. Overall, and notwithstanding the small triangle of land addressed under the ground (e) appeal, I find that the area identified in blue is a single planning unit in its own right. Although, I recognise within that, the land edged green is incorrect and does not reflect the planning permission. I will amend that to reflect the planning permission. To do so would not lead to injustice.

33. Therefore, within the blue area, the use of land has changed from that which previously existed, which leads me to the allegation.

The allegation

34. The allegation sets out a change of use to 'a mixed agricultural and leisure attraction use, comprising café, restaurant, gift/farm shop parking and lavatory facilities.'

35. There is no dispute that the current use of the land embraces agriculture, farm shop and lavatory facilities. The café and restaurant uses are considered under the ground (b) and (c) appeals. However, whilst I understand the reasoning behind using the term 'gift/farm shop' it seems to me to be superfluous and vague. That is to say what can or cannot be deemed as a 'gift' would be a matter of some debate. For example, if a customer were to buy a pot of honey from a farm shop, and that honey had been produced on the farm, then the customer took it home and gave it to their partner as a gift, then is the honey a farm shop product or a gift shop product? In that light I am not convinced such a description is either robust or necessary when describing the use.

36. For planning purposes, the permitted use of the building is a shop irrespective of what is sold. In this case though, the Council have given planning permission (ref: 20/03444/S73) for the farm shop with planning conditions and one of those conditions restricts what can be sold from the shop. Given that, it seems to me the planning authority already have control over what can be sold within the shop and including 'gift' in the description of the alleged breach brings with it a degree of ambiguity. I shall remove the reference from the allegation.

37. I now turn to the use described as a 'leisure attraction' within the matters alleged. Again, I understand the purpose behind including the term within the allegation. The Council consider that the activities taking place, which go beyond what one would reasonably expect for a farm shop, are more akin to a leisure attraction. Diddly Squat has become a destination for visitors from all over the world. There is a dedicated social media following, events are held, and the shop sells farm shop souvenirs.

38. However, if the ground (a) appeal were to succeed and planning permission were granted for a leisure attraction use, it seems to me that would also be open to wide interpretation. Whilst the Use Classes Order previously referred to *Assembly and Leisure* under Class D2, that is no longer the case and there is no longer reference to *Leisure* within the Order. Furthermore, I have not been directed to any definition of 'leisure attraction' and the argument that the current use is akin to any successful retail business, seeing an enormous

amount of success, is not without merit. The example of Harrods is a salient one, customers visit Harrods from all over the world because of its reputation, they may purchase goods as a result of the visit, they may simply stand outside the closed store and take a 'selfie' but Harrods remains a retail store.

39. Whilst I have sympathy with the view about it being more akin to a leisure attraction, as customers now spend more time visiting Diddly Squat because of what is being offered, which is more than would normally be expected from a small farm shop, ultimately there is nothing to stop customers lingering currently. That may be to simply sit and eat what they have bought in the shop and take in the view and/or take a number of 'Selfies'. Although, I accept that is facilitated in many respects by the tables and chairs being available, it nevertheless seems to me that a leisure attraction use would be one which a customer might reasonably be expected to pay for. That would be a different primary purpose to that of a shop, café or restaurant for example.

40. To my mind Diddly Squat is a victim of its own success, it does not ask for an entrance fee or advertise as a leisure or tourist attraction, it is not comparable to say a Wildlife Park or miniature railway which are reliant upon attracting tourists and paying visitors to be viable. Therefore, I will also correct the allegation to remove the reference to 'leisure attraction' since it does not reflect the land use. Again, to do so, would not lead to prejudice.

41. Bringing these threads together I shall, for the purposes of clarity and understanding, correct the allegation to a change of use to 'a mixed use, comprising agriculture, café, restaurant, farm shop, parking and lavatory facilities.' Arguments as to whether any of these uses are ancillary, I shall deal with under the appeal on grounds (b) and (c).

Appeal A – the appeal on ground (e)

42. An appeal on ground (e) is that copies of the notice were not served correctly. S174(1) provides that 'a person having an interest in the land' to which an EN relates, or a 'relevant occupier' may appeal to the Secretary of State, whether or not a copy of the EN has been served on them. The appellant maintains that a triangle of land at the northern end of the site and next to the Chipping Norton Road and caravan site does not fall within their ownership.

43. At written statement stage the appellant set out that they did not know who owned the site. Although, at the Hearing, I was informed by the appellant's land agent that it was owned by somebody locally who was known to him. Whilst that information wasn't tested, and would have been valuable to the Council prior to the Hearing, I have no reason to doubt the agent.

44. Therefore, and while I accept that the information put forward by the Council suggests some ambiguity over ownership previously, I find, as a matter of fact and degree, that someone with an interest in the land was not served with the notice. I agree that the owner could have, as set out by the Council, pursued an appeal at any point and could have attended the Hearing to make submissions. Clearly that has not happened. Therefore, on its face, the enforcement notice has led to the owner of that piece of land being substantially prejudiced. That would normally be the basis for the notice being quashed.

45. However, I also recognise both parties are in agreement that the use of the land in question has not formed part of the matters alleged in any event. To remove

it from the enforcement notice plans would have no effect upon the purpose of the notice and would not lead to prejudice to either party. Moreover, it would ensure no prejudice would occur to the owner of the land and would provide a pragmatic and sensible solution.

46. Therefore, the ground (e) appeal succeeds in so far as I shall amend the notice to remove the triangular section of land from it.

Appeal A – the appeals on grounds (b) and (c)

47. An appeal on ground (b) is that the matters alleged in the notice have not occurred, and on ground (c) is that there has not been a breach of planning control. The onus on these grounds of appeal is on the appellant, the appropriate test being on the balance of probability. The arguments advanced by the appellant under these grounds are closely linked, in which case I will deal with them together.

48. The main thrust of the appellant's arguments on these grounds centres around the planning unit and which uses are primary or ancillary (that is to say simply associated with the farm shop). Only those uses that are primary uses need be described in the breach of planning control and will be relevant to the question of whether a material change of use from that which was lawful, has occurred. The appellant maintains that the Lowland Barn, the farm shop and lambing barn should be considered individually with only the farm shop being the primary activity; the farm shop simply selling produce from the farm and from local producers. With those activities at times taking place outside of the farm shop and within the lambing shed. Nevertheless, the lambing shed is readily available for lambing, which only occurs for a short time each year. Filming also occurs on the site along with parking which all have planning permission; in other words, no breach has taken place.

49. I will return to those arguments shortly. Firstly though, with respect to the Lowland Barn, the appellant sets out that it should be considered as a separate planning unit as it is physically separable and not part of the farm shop lease. Furthermore, the restaurant operated independently of the farm shop. That being the case permitted development rights apply. That is to say, the change of use of any land within its curtilage, to a flexible use, which includes a use for restaurant purposes, is permitted by Schedule 2, Part 3, Class R of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

50. However, as accepted at the Hearing, if I were to find it was part of a wider planning unit which was being used for a mixed use then the GPDO cannot apply. As set out above I have found Lowland Barn does not form a separate planning unit being functionally and physically related to the other uses. It is therefore part of a mixed use and the GPDO is clear in that permitted development rights cannot apply to a mixed use. Therefore, the use of the building as a restaurant as part of a wider mixed use requires planning permission for which there is none. The appeals on grounds (b) and (c) in respect of considering Lowland Barn separately therefore fail.

51. Even if my findings on the planning unit were different, I am not convinced, on the evidence before me, and from what I saw on site, that the extent of works carried out to the roof, walls and fabric of the barn, along with the external

areas being used, would mean planning permission was not required in any event[1].

52. I say that given the GPDO is also clear in that Class R applies to a building and any land 'within its curtilage'. The appellant relies on an Ordnance Survey extract from 1922 purporting to show the buildings curtilage, but it is neither clear nor precise, the aerial photographs similarly are inconclusive. Therefore, I cannot be certain that the restaurant use, and associated works have gone beyond that curtilage. Moreover, I am unable to contrast the recent operational works carried out to Lowland Barn with what existed previously to establish, with any certainty, whether they amounted to permitted development or not.

53. Although, I do recognise, whether or not a restaurant venture would be profitable is not something to be considered under the terms of the GPDO. I also accept that the appellant went through the correct notification process. However, that cannot be relied upon as found in *Keenan v Woking BC & SSCLG* [2017] EWCA Civ 438. That case established that if a Council fails to make a determination within the statutory period on any prior approval application, the developer can proceed with development which is permitted development – but they would not have permission for development that is not, in fact, permitted development.

54. In any event, I need not consider the use of Lowland Barn any further under these grounds of appeal. Moreover, the appellant's arguments on the remainder of the uses are focussed on the conditions attached to the extant planning permission. However, those conditions simply impose limitations on the permitted use. No planning permission, conditional or otherwise, exists for the wider mixed use described (as corrected) in the enforcement notice. A material change of use of the planning unit would be a new chapter in the planning history of the site. Therefore, any argument concerning compliance or not with the conditions of the previous permissions are not determinative.

55. However, I am mindful that there would be a fallback position if the enforcement notice was upheld. If that was the case the appellant could revert to the existing permission to which those conditions would bite. In addition, the arguments put forward by the parties around the conditions also inform my deliberations on the café use and other aspects of the allegation. It is also necessary to understand the use prior to the breach in order to determine whether the change of use is a material one and thus development. I shall therefore deal with all those arguments here together, which will also inform my reasoning under the appeal on ground (a) should it fall to be considered.

56. Turning then to the farm shop, lambing shed and car parking. The appellant maintains, that in the face of the conditions to the extant planning permission, the following to be germane to the appeals on legal grounds:

- The car parking condition (condition No 3) requires the parking area to be kept but does not preclude parking beyond it. Nor does it limit parking to only those visiting the farm shop.

- Condition 7 limits what may be sold from the shop.

[1] The judgment in *RSBS Developments Ltd v Secretary of State* [2020] EWHC 3077 (Admin) sets out that Article 3(5) of the GPDO provides that the permission granted by Schedule 2 of the GDPO does not apply to an existing building, if the building operations involved in the construction of that building are unlawful.

- Condition 8 limits part of the permitted uses (film making) to 9 months in any 27-month period. They do not need to be consecutive.
- There are no conditions limiting any one use to any one part of the site. The Council chose not to impose further conditions limiting activity.

57. Against that background it has been made clear that the primary purpose of the permission was to allow farm diversification through selling produce from the farm shop. Alongside that, the lambing shed was intended to provide an additional core farming business but was only ever intended to be used between December and April when lambing was taking place and only if necessary. For the remainder of the time the shed would be available for permitted uses.

58. The application was also clear that it would be more than an 'ordinary' farm shop given the filming element with the potential for it to be in a television production. Thus, the farm shop has operated, selling produce from the farm and local suppliers, it has been used for film making and the shed has been available for lambing. That is all in accordance with the planning permission.

59. The farm shop has been very successful but that does not change the purpose of the business or the use of the site. In addition, the nature of the shop use is not limited by condition in terms of where on site that use occurs. The appellant is not restricted to only selling goods from within the farm shop building nor does it prevent cooked produce being sold and eaten on the land.

60. Furthermore, as part of a mixed use the shop is not bound by the Use Classes Order. There is no restriction therefore on the selling of food and drinks to members of the public for consumption on the land. Those sales only form a small proportion of goods retailed from the site as provided for by Condition 7.

61. With respect to car parking, the appellant accepts that parking has occurred elsewhere on the land and beyond that permitted. However, in the main part, that parking was in accordance with GPDO and the temporary use rights therein. Albeit the number of days may have gone over that permitted, that does not amount to a material change of use from the primary uses of a shop and lambing shed (agriculture). For these reasons the appellant maintains there has been no material change of use.

62. Counter to that, the Council set out (in lengthy submissions) that, when regard is had to the approved plans, the retail element is confined to the farm shop and no change of use of the lambing shed or any land outside of the shop was proposed. The Council considers the farm shop is the only part of the site where retail sales are lawful. Moreover, the application did not raise the issue of sales of either hot or cold food for consumption on the premises or for any provision to prepare hot food. The level of provision of hot and cold food for consumption on the site falls outside of the permitted use.

63. Furthermore, given that level of catering, the public are encouraged to stay for longer and it is clear that the site has undergone a radical transformation in less than 3 years from a farm shop to a tourist destination. The amount of *bona fide* farm shop sales are in fact only a small part of the overall activities making up the unlawful use.

64. The Council accept that a highly attractive product may draw large numbers of people for a short period and that would not change the underlying planning use. In the early days the farm shop was operating as such. However, at the

time the enforcement notice was served there was not just a farm shop. Mobile food and drink vending units had been added, along with a café/bar operating in the lambing shed and the provision of picnic tables next to the area being marketed as the 'Big View'. Later the addition of the restaurant in Lowland Barn. That is all clearly corroborated by the evidence of interested parties.

65. Overall, therefore, those changes, along with the extension of the car park, have fundamentally altered the use for which no planning permission has been given.

66. Alongside the Council's submissions are that of local residents who are opposed to the 'expansion' of the farm shop. I have considered that evidence which sets out details such as nearly 50,000 people checking into Diddly Squat Farm Shop as a location on Facebook, alongside numerous photographs showing the levels of use, adverts for dog agility days and other events along with book signings. Traffic surveys and the oral evidence at the Hearing, along with my own site visits have left me in no doubt as to the level of activity on the site and what a customer of Diddly Squat may experience.

67. In the light of all that evidence, I must decide under these legal grounds of appeal whether the material change of use as identified (and corrected) by the enforcement notice has occurred. To that end there must be some significant difference in the character of the activities from what has gone on previously as a matter of fact and degree. The starting point for consideration of that, in this case, is the lawful use of the land. I need not rehearse that in detail, given my reasoning thus far, but suffice to say it is for use for agriculture, erection of a lambing shed, farm shop, occasional filming and associated parking and access.

68. It seems to me that the level of filming is a matter that needs not be resolved here. There is no argument that filming has exceeded the restrictions set out by Condition 8 of the planning permission or that it is a primary use that should form part of the matters alleged. In the same way there is no argument that the access has changed onto the land. In respect of parking, I accept that the appellant's best intentions were to deal with the lack of it by using permitted development rights to secure parking on busy days on agricultural land outside of the area which has permission for parking.

69. However, given the sheer number of vehicles and the lack of clarity in terms of actual days beyond that permitted by the GPDO, there is some inevitability that I find the levels of parking go considerably beyond that for which planning permission has been given. I recognise that there may have been scope for the Council to have come to the conclusion, before granting planning permission, that more parking would be required given the appellant's popularity and that filming would occur. Nevertheless, consent was granted in accordance with the drawing that shows parking for 10 cars and that is the benchmark against which car parking should be measured.

70. Turning to the lambing shed, when viewed from the road it is like any other agricultural building of its type. Prior to viewing it from the open side one would reasonably expect to see lambing pens, feed, livestock and associated equipment during the lambing season. Out of season it would not be unreasonable to expect other agricultural storage, machinery, livestock, or produce perhaps. One would not, by any stretch of reasonableness, expect to find what visitors to the farm shop experience today.

71. A lambing shed is not a place where one would normally sit to eat food, selected from a more than basic menu ordered at the bar, and prepared in a mobile catering unit, or drink beer pulled in the same way as your local pub. To my mind, customers visiting a farm shop, may expect to see lambs at certain times of the year in the lambing shed; for that is its purpose. They would not normally, as was the case during my visit, be expected to be directed to order all food and drink at the 'Big View Bar' within that shed, or to be able to order a bowl of beef chilli, crispy flatbread with sour cream and coriander, or any other brunch or lunch item for that matter.

72. In the same way one would not expect to be able to retire to a picnic bench, of the type found in pub gardens across the land, to eat and drink one's purchases and then afterwards peruse the lavender stall or perhaps stay a while longer for a coffee, another beer or to admire the view. All possible on a dry day without recourse to wellington boots or farm overalls.

73. Regardless of any arguments regarding whether or not the appellant is entitled to sell cooked produce from the farm shop, or where that can be sold from, it is clear that the use of the lambing shed has changed from the use for which it was given planning permission. I recognise that the use would extend to other agricultural activities. However, there is no doubt in my mind, that the current use has introduced a significant change to the character of the locality and is more akin to a café. The activities in the lambing shed are not simply ancillary to the farm shop and lambing shed for which planning permission was granted. The café use being centred on the lambing shed and to the area south of it within the blue line is another primary use within the mixed use.

74. With regards to the restaurant, whilst it wasn't operating in Lowland Barn at the time of my visit, there is no dispute that it was operating as a restaurant. Thus, a change of use in respect of that building, within the planning unit had occurred. I need not address the farm shop in any detail, I recognise, as does the appellant that some of the goods sold do not comply with the requirements of Condition 7. Although, as set out earlier, that potentially would be best enforced by way of a breach of condition should the local planning authority consider it expedient. Finally, and in simple terms, I see no reason to disagree that the toilet facilities go beyond that which one would reasonably expect for a farm shop of the scale and size of that permitted.

75. Overall, therefore, I find as a matter of fact and degree, that the change in the planning unit together with the change in the character of the activities within that new planning unit comprise a material change of use from that permitted, to a mixed use, comprising agriculture, café, restaurant, farm shop, parking and lavatory facilities as alleged in the corrected notice. Thus, the appeals on grounds (b) and (c) fail.

76. I have been referred to the case of *Brooks and Burton Ltd v Secretary of State for the Environment* [1977] 1 WLR 1294, which sets out the principle that "intensification of use can be a material change of use". However, given my findings I need not consider intensification in this case. In any event a notice directed at a material change of use through intensification should explicitly say so. I have also considered the judgements in *Barnett v Secretary for Communities & Local Government* [2009] EWCA Civ 476, *Street v Mountford* [1985] AC 809, *Howells v Secretary of State for Communities & Local Government & Anor* QBD Admin, *Hammersmith LBC v Secretary of State for the*

Environment [1975] 30 P. & C.R. 19 and *Hawkey v Secretary of State for the Environment* [1971 22 P. & C.R. 610 but find nothing to lead me to any other conclusion.

The s78 Appeal and the appeal on ground (a) – Appeals A & B

Main issues

77. The appeal on ground (a) is for the matters alleged in the notice (as amended) which are broader than the s78 appeal, which seeks an extension to the car parking and associated matters as set out in my final bullet on the first page. However, the considerations for both appeals are similar and I shall deal with them under the same heading.

78. The main issue therefore is the effect of the development upon the character and appearance of the countryside location and the Cotswolds Area of Outstanding Natural Beauty (AONB).

Reasons

79. The appeal site is as described above and, along with the adjoining land for some distance, falls within the AONB. As set out in the Cotswold AONB Landscape Strategy and Guidelines the landscape value here is high. The West Oxfordshire Landscape Assessment classifies the appeal site as 'open limestone wolds' within the 'Enstone Uplands'. The site also lies within the Wychwood Project Area, where policy affords special protection to the landscape and biodiversity of the area. Public Rights of Way nearby, connect the site to the wider Cotswold area. The northern boundary of the site covered by both appeals is shared with a campsite which is delineated by a belt of trees.

80. Within that landscape, permission was granted for the lambing shed, farm shop and car parking with a number of conditions. The latest of those permissions (ref:20/03444/S73) included a replacement condition restricting goods to be sold from the farm shop to be limited to those grown, reared or produced on the holding and certain other goods from producers based within a 16-mile radius. The reason given for that condition was that *the use given permission was as an exception to the normal policies of restraint upon retailing in an open countryside location solely on the basis of the nature of the goods being sold being ancillary and related to farming operations in the locality*.

81. Under normal circumstances it seems to me that would have been the end of the matter; a small farm shop, selling local produce, with a shed next to it being used for lambing and other agricultural activities. Given the size of the farm shop, the parking would have been sufficient. However, it is clear that this is not an ordinary farm shop given the occupation and high profile of the appellant. Alongside that the involvement of a multinational television production company, and the broadcast of television series centred on the farm, its employees, the appellant and, amongst other things, the development of the farm shop. My understanding is that the series, of which there have now been two, with a third planned has been watched by many millions across the world.

The mixed use

82. There can be no doubt that the high profile has resulted in the farm shop being 'oversubscribed' such that the effects of it have gone far beyond what one would normally expect from a development/farm shop of this understated size.

Alongside that, and as discussed above, further uses and activities have been taking place; restaurant, café and events to name a few. It is clear the site cannot cope with parking demand and that has had knock-on effects with nearby and adjacent fields being used, along with a substantial amount of parking on the highway and verges.

83. From the evidence before me, and from my own experience during site visits, I am in no doubt that this has caused a huge inconvenience for those who live nearby. It was clear to me that many people visiting on the day of my final site visit had no regard to the proper use of the highway, with verges being further churned up and traffic having to stop, as visitors walked the middle of the road or cars manoeuvred into tight spaces. From that snapshot in time I am not surprised, as heard in evidence, that tensions have run high between some of those living locally and some visitors to the farm shop.

84. In turn, I am also in no doubt that the volume of cars, signage, outdoor seating, catering van and toilet block, along with the use of Lowland Barn (to which I will return) has had a deleterious effect upon the character and appearance of the AONB and the tranquillity that planning policy seeks to protect. Although, given the opening times of the farm shop I do not consider it has had an adverse effect on protection of the dark skies experienced locally.

85. Nevertheless, the fact remains that the Council have given planning permission for a farm shop (with unrestricted opening times) to which visitors will visit in any event. Currently, it seems to me that the appellant could not stop the volume of customers arriving lawfully at the site save for closing the enterprise altogether. Such that, on its face, any harm would continue in any event.

86. However, I recognise that the offering currently found on the site goes beyond that which was granted planning permission. The view that there is more to keep customers on site, than if it were just a farm shop, are not without merit. The undisputed photographic evidence points to a large number of customers sat at benches alongside the lambing shed and elsewhere on the grassed areas along with long queues for the farm shop and elsewhere. That reflects my findings under the legal grounds of appeal.

87. Visitors cannot only visit the farm shop, but they can drink, eat and take in the view as one would when visiting a cafe. When the restaurant was open that would have extended further the amount of time that might be spent on site.

88. Against that background is the undisputed parking data submitted by residents. The latest records for February and March this year indicating up to 390 vehicles[2], the lowest recorded being 71[3] with an average for summer/autumn 2022 being 83 compared to an average of 218 for February/March 2023. However, whilst those figures are unchallenged, I note that they include cars queuing on the A361. I cannot be certain, that all of those cars would have been queuing to get to the farm shop.

89. In addition, the numbers recorded for time periods, as opposed to one particular time, are not clear. For example, 161 vehicles are recorded on Thursday 2 June between 1300hrs and 1400hrs but the records do not set out if that number were there for the entire hour or if it fluctuated. I must therefore temper the weight I give to the records.

[2] Saturday 18 February 2023 between 1230 & 1330
[3] Sunday 23 February 2023 at 1535 hrs

90. Nevertheless, parking demand goes far beyond the provisions available at the farm shop and is subject to some fluctuation. Whilst that fluctuation goes unexplained it seems to me that increases in traffic appear to coincide with the television series and publicity both locally and further afield. For example, the 162% increase suggested for February and March this year was at the same time as publicity/media interest around these planning appeals and the release of the second television series.

91. However, I remain unconvinced that having the farm shop, and permitted parking alone, would reduce substantially the amount of interest in the site and the number of customers and visitors to it. For example, there is nothing before me to suggest that popularity has reduced since the restaurant closed. I have also had regard to the number of people I witnessed parking in the car park and at roadside just to enable them to have a wander around the site and take photographs even when the shop was shut. I noted that some of them were on site for longer than 5 minutes.

92. Therefore, the view that if there was no other provision, save for the farm shop, the average visit would be around 5 minutes appears to be without foundation. Given the popularity of the television series and that of the appellant it would be reasonable to expect, given a third series is planned, a great deal of fluctuation and further interest in the site overall. There appears therefore to be some inevitability that the farm shop will not be comparable to a farm shop attracting short visits for some time yet. Therefore, any harm to the character and appearance of the AONB would continue in any event.

93. In addition, the use of Lowland Barn, as a restaurant, has led to harm in itself. Lowland Barn can be viewed from the adjacent main road. Whilst from that distance, the works that have been carried out to the barn cannot be distinguished, I am in no doubt that when it was being used with tables, chairs, parasols and planters alongside the barn, along with the toing and froing of customers, that it would have drawn the eye. No longer a simple barn, sitting modestly within its agricultural setting, but being at odds with it and leading the viewer to question how it came to be. That has led to unacceptable harm to the character and appearance of the AONB.

94. Drawing these threads together, I find that the mixed-use comprising agriculture, café, restaurant, farm shop, parking and lavatory facilities has led to unacceptable harm to the AONB. Although, that harm is reduced to a moderate level when set against the activities that would be carrying on at the site in any event. Given the planning permission in place, that offering could, in my view, include hot and cold food provided it met the terms of the planning conditions. That is to say upholding the enforcement notice would not exclude some form of food and beverage provision. Although, it would secure removal of the bar, associated operational development and tables from the lambing barn and surrounds.

95. Therefore, the development is contrary to Policies OS2, EH1, EH2 and BC1 of the West Oxfordshire Local Plan 2032. Insofar as those policies seek to, amongst other things: protect the intrinsic character of the area and landscape; to conserve the natural beauty, scenic beauty and landscape of the AONB; and to ensure development is of an appropriate scale. Those policies reflect the aims of the National Planning Policy Framework (the Framework) which seek to

protect and enhance valued landscapes and sets out that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs.

96. In coming to that view, I have considered the submitted Landscape Visual Impact Assessment (LVIA) and recognise it has been carried out in accordance with the relevant guidance. Although, I have discounted the LVIA in so far as it addresses parts of the conversion of the lambing shed for use as a café. Whilst it appears some of those works have already been carried out and are embraced by the enforcement notice. There is no appeal before me which proposes further works, including new glazing to the shed.

97. Nevertheless, I recognise boundary planting would soften the effect of the mixed use on the landscape, along with a wildflower margin and landscaping elsewhere, which could be secured by planning conditions. Although, given the assessment and site layout does not include the Lowland Barn it seems to me it is best discussed within the context of the s78 appeal which includes much of the mixed use along with the proposed car park and access.

98. Before I turn to that I am also mindful that under S177(1)(a) of the Act, I may grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters, or the whole or any part of the land to which the notice relates. I have found that the use of Lowland Barn as a restaurant has resulted in harm in itself. However, with regards to the use of the Lambing Shed as a café there would be some benefits as discussed below. I shall therefore consider granting permission for the matters alleged without the restaurant use and excluding the land associated with it in accordance with S177(1)(a). The s78 appeal is germane to that consideration.

99. Before I go to the planning merits of the s78 appeal, the matter of Intentional Unauthorised Development (IUD) was brought to my attention at the Hearing, albeit briefly, by an interested party and with no real qualification. IUD is also referred to within a number of written submissions. However, part of the underlying rationale for seeking to deter IUD is to avoid prejudicing the opportunity to mitigate the impact of the development through the use of planning conditions. I fail to see how that has occurred in this case given the appeals before me, one of which is borne out of a planning application.

100. Further it is clear the appellant took professional advice and was of the view that the activities taking place did not require planning permission. Moreover, I am also mindful that the Act makes provision for a grant of retrospective planning permission, and planning enforcement that is remedial rather than punitive. In light of that, I attach no weight to the matter of IUD and it will not form part of my deliberations.

The proposed car park, storage compound and associated landscaping

101. My deliberations for the s78 appeal must go beyond the consideration of the parking under the ground (a) appeal. The s78 appeal is for a scheme that goes further in terms of landscaping, layout, access and other details. Although the considerations remain the same in terms of the effect upon the AONB and countryside location.

102. To that end there is no dispute that the location is sensitive to changes arising from agricultural intensification and diversification. I also accept that the site is

in a field corner adjacent to the existing camping site and next to large agricultural fields. The farm shop and lambing shed are existing buildings. Therefore, the effects of the proposed car parking and revised access are the matters to be considered.

103. The car park would occupy nearly 2000 square metres of cultivated agricultural land. I recognise that no features, characteristic of the AONB, such as drystone walls and hedgerows (save for the new access point) would be affected, and the new access would allow more efficient traffic management with an in/out traffic flow facilitated by two access points. Additional parking capacity would reduce the amount of roadside parking.

104. In addition, landscape proposals would reinforce, extend and enhance the existing boundary hedgerows and vegetation and would in time afford screening to the car park from a number of vantage points. The species mix proposed would reflect that found nearby. Vehicles within the carpark would be screened in the first place with willow hurdles. In the long-term native hedgerow planting would provide screening once established

105. However, I also recognise that from a landscape point of view two access points would be more harmful than one and the proposed heavy post and rail for the 'paddock' to the front would not be typical of boundary treatments found locally. The storage compound would add to the built form. In addition, the argument that because vehicles would not be seen, the landscape would not be harmed, is not a good one in principle. An area of agricultural land would be turned into car park and the introduction of that, along with the vehicles that use it, would not, by any stretch, conserve the natural or scenic beauty of the AONB.

106. Whilst landscaping would afford some screening to the car park, the landscaping itself would be an intrusion in its own right to the current open landscape. Furthermore, during peak times, it may be that overspill parking would still be required elsewhere, leading to further harm. I do recognise a storage compound would have less visual impact overall than the open storage of refuse containers currently but it would also be an intrusion into the open landscape.

107. For these reasons, I find the proposed car park would also lead to unacceptable harm to the AONB, contrary to the aforementioned policies. Although once again that harm is reduced to a moderate level when set against the parking activities, to the front of the farm shop, along the roadside and elsewhere, that would be carrying on at the site in any event.

108. In coming to that view, I have considered the development know as 'FarmED' (17/04060/FUL) and the parking given permission in that countryside location. However, each case must be considered on its own merits and from the overhead photograph submitted, it would seem the site location is not comparable in any event. Local residents suggest that provision for the activities could be found elsewhere on the farm holding which would result in less harm, but I am mindful that any siting would have some impact, and no alternatives have been identified in any event.

109. I have also taken into account the accident records locally which cover a period of 11 years. The incidents recorded are not directly outside the farm shop and I note that one was some distance away and another outside the opening times of the farm shop. I am not convinced that use of the farm shop has increased the

accident records locally. Moreover, even if I am wrong in that, the traffic surveys and accident records point to the need for car parking provision.

Other considerations

110. There can be no dispute that a new car park would reduce the adverse effects of the current parking situation on the AONB and upon highway safety. Given the numbers of cars visiting and the fluctuations discussed above, a car park would not, it seems see a complete end to parking off site. Although, given the figures available it is likely to have a more than positive effect on an 'average' day. Furthermore, the provision of parking with a one-way system would inevitably have benefits to highway safety and any adverse effects on the AONB. I say that as cars would be focussed within the car park, with screening, as opposed to within open fields and on the roadside.

111. At the Hearing I also heard from a number of local suppliers who left me in no doubt that the farm shop and other activities have contributed to the local economy. I have no reason to doubt, given the current economic climate and that they were struggling prior to working with the farm shop, that if it wasn't for the farm shop and café, the local supplier of milk may have lost their 140-acre farm, herd of 60 cows and livelihood.

112. A local butcher's business is expanding as a direct result of the farm shop, a second butcher's shop is opening, and employees have gone from 3 in number to 10 full-time staff. All attributed to working with and supplying the farm shop and café. The heartfelt oral submissions, from the provider of the hot food and drink offerings at the café should not be ignored. I am in no doubt that has also contributed to local employment and economy, and I also recognise activities will have raised the profile of the value of homegrown produce, and a broader understanding of agricultural produce.

113. These benefits are set against the background of any previous agricultural subsidy coming to an end. I recognise that the economic benefit has been driven in part by the appellant's celebrity and the television show, but in the current economic climate the argument that the diversification should be supported, if not applauded, is not without merit. It is clear to me that the success of the farm shop and the provision of food and drink in the café has benefitted more than just the appellant and Diddy Squat.

114. The list of 27 companies and people who currently supply the shop and/or café with their own produce, or from produce grown on the farm, is testament to that and undisputed. I also heard that the farm shop was supported by the neighbouring camp site which had also seen an increase in short stays. The contribution of the farm shop to a broader customer base for other businesses nearby is undisputed.

115. That is borne out by the Councils' own Business Development Officer who sets out, amongst other things, that the farm shop is an important diversification scheme for Diddly Squat Farm. Allowing the farm to add value, as well as supporting other local producers and processors. The benefits being felt by other local businesses, particularly in Chipping Norton. That view is supported by Cotswold Tourism and also the supporting text to Policy E2 of the Local Plan which sets out the Council's support in principle of well-conceived farm diversification schemes that secure long term benefits for farming and the local economy.

116. The Framework also identifies the importance of sustainable growth and expansion of all types of business in rural areas including the diversification of agricultural and other land based rural businesses. In addition, it recognises that sites in rural areas may have to be found in locations that are not well served by public transport. The farm shop, along with the hot and cold food provision in the café is, on the evidence before me, contributing significant benefits to farming and the local economy. A matter which attracts great weight.

117. In turn, consideration of the matters alleged, without Lowland Barn and the restaurant use would enable retention of those benefits whilst reducing the overall harm.

Planning Balance

118. I have found harm to the AONB in respect of both appeals. I recognise that harm could be reduced by the proposed landscaping and would have less impacts than parking elsewhere. In terms of the ground (a) appeal it would be further reduced by an end to the restaurant use in Lowland Barn. Nevertheless, even such moderate harm to the AONB carries great weight in terms of the Framework. In that context, under normal circumstances it would be hard to justify, for a farm shop of this size, an extended car park to accommodate up to 70 vehicles.

119. However, permission exists for a development which has and will continue to attract a high number of vehicles, a matter that weighs considerably in favour of both appeals. As do the benefits to the local economy, employment, farm diversification and agriculture. Therefore, given the very particular circumstances of the farm shop in this case, including the current levels of popularity, the benefits amount to the requisite justification for permitting part of the deemed planning application under Appeal A and the s78 development for Appeal B, as set out below, within the AONB.

120. I also recognise there remains a lack of clarity over how long the 'successes' of the farm shop will continue and whether the car park would be required in the long term. That is dependent on several factors including the popularity and longevity of the television series. If the demand for parking was to reduce substantially over time, then the weight in favour of the development would also be substantially reduced. In that light, I will grant permission for a temporary period of 36 months such that the effects of the car parking and café provision centred on the lambing shed can be considered over time.

121. Overall, therefore, whilst the development is counter to the Framework, and those local planning policies that seek to protect the visual aspects of the countryside and AONB, the development would provide a number of positive benefits which attract great weight. Consequently, the material considerations outweigh the identified conflict with the development plan.

122. However, overall, in relation to permanent planning permission, the harm identified is not outweighed by the other considerations raised. Nevertheless, the considerations in favour of the appeal are sufficient to outweigh the harm on a time-limited basis. It is necessary to allow car parking to be constructed and the use (in part), including the café, to continue to enable a full assessment of the effects of the parking provision on future use and demand.

Conditions

123. I have considered the need for conditions put forward by the parties in the light of the Planning Practice Guidance and the discussion at the Hearing.

Appeal A

124. A condition is necessary to limit the use to a period of three years and requiring restoration of the site following that period. A condition is also required for a site development scheme. That scheme would specify a number of matters as set out below and discussed at the Hearing and is necessary to protect the character and appearance of the locality. I will not include reference to a booking scheme given the restaurant use is not approved. I will amend the suggested to condition to refer to the revised green area also for clarity.

125. A condition is necessary to restrict external lighting for the protection of dark skies and it was agreed at the Hearing that whilst opening hours of the shop could not be restricted, given the existing planning permission, a restriction on hours of the café use could be restricted by condition and I shall do so, also to protect dark skies. A condition restricting further permitted development would ensure any further encroachment into the countryside. A condition limiting goods to be sold from farm shop and café is necessary to ensure goods are of local provenance.

126. A condition regarding filming is not reasonable. Filming, temporary or otherwise, does not form part of this appeal and did not form part of the appeal on ground (b); there was no suggestion that it should be considered as a primary use.

Appeal B

127. As well as the standard implementation condition it is necessary to refer to the approved drawings in the interests of certainty. A condition is necessary to limit the use to a period of three years and requiring restoration of the site following that period. I see no reason to disagree that given the construction method that would not be too onerous or unreasonable. Conditions are required to ensure the implementation and retention of the landscaping scheme along with the parking area and its use.

128. A condition restricting goods being sold is not relevant to this scheme. In the same way filming is not part of the development proposed and a condition restricting that is not relevant.

Overall Conclusions

Appeal A

129. For the reasons given above and having considered all matters raised I conclude that Appeal A should succeed in part only, and I will grant planning permission for the change of use of the land to a mixed use, comprising agriculture, café, farm shop, parking and lavatory facilities, but otherwise I will uphold the notice with a correction and variations and refuse to grant planning permission in respect of the other part of the matters (namely the restaurant use in Lowland Barn). The requirements of the notice will cease to have effect so far as

inconsistent with the planning permission which I will grant by virtue of s180 of the Act[4].

Appeal B

130. For the reasons given above the appeal succeeds and I will grant planning permission for an extension to existing parking area to formalise temporary parking and provision of new access arrangements. Form new storage compound and associated landscaping.

The appeal on ground (f)

131. Given my findings on the ground (a) appeal my deliberations focus solely on the requirements in respect of Lowland Barn. The appeal on ground (f) is made on the basis that the requirements of the enforcement notice exceed that required to remove the alleged harm. Much of the appellant's case concerning ground (f) is not focused on Lowland Barn. In addition, the principle in *Kestrel Hydro*[5] is not contested, that is to say it is not enough in ground (f) cases for the appellant to show that the works could serve the lawful use. The notice may still require the removal of such works if they were in fact installed to enable the unauthorised change in use.

132. I have found Lowland Barn does not benefit from GPDO rights as it is part of the mixed use. The arguments concerning sale of retail goods or provision of items within the curtilage of the barn made under ground (f) must therefore fail. Moreover, the purpose of the requirements in the notice fall within S173(4)(a) of the Act, that is to remedy the breach by restoring the land to its condition before the breach took place.

133. That is consistent with the enforcement notice as issued. Bearing in mind the terms of S174(2)(f), the appeal on ground (f) is concerned with whether the steps exceed what is necessary to achieve that purpose. The requirements do no more than seek the restoration of the land to its previous condition and, therefore, are not excessive in any event.

134. The appeal on ground (f) therefore fails.

The appeal on ground (g)

135. It is claimed that at least six months are needed to comply with the notice because of the detrimental impacts on business and livelihoods. My findings mean the requirements, in the short term, only embrace Lowland Barn which is not being used as a restaurant, six weeks is more than sufficient to restore the surrounding land to the condition it was in before the breach took place.

136. The appeal on ground (g) fails.

[4] Section 180 of the Act provides that where a planning permission is subsequently granted for the same development or some part of it, the permission overrides the notice to the extent that its requirements are inconsistent with the planning permission, but the notice does not cease to have effect altogether.
[5] *Kestrel Hydro v SSCLG & Spelthorne BC* [2015] 1654 (Admin), [2016] EWCA Civ 784

Formal Decisions

Appeal A

137. It is directed that the enforcement notice is corrected and varied by; the substitution of the plans annexed to this decision for the plans attached to the enforcement notice and labelled Plan A and Plan B; by the deletion of the name 'Lowlands' in paragraph 2 of the notice and the replacement thereof with the name 'Lowland'; at the end of Section 3 of the notice by the deletion of the words 'agricultural and leisure attraction' and the word 'gift' from the final paragraph.

138. In addition, in respect of the requirements at Section 5 the notice is varied by;

- the deletion of the words 'designated for parking on plan PLA_002 REV E approved under application reference 20/01457/FUL' from requirement (3) and the replacement thereof with the words 'marked in green on the attached plan';
- the deletion of requirement (4) in its entirety;
- the deletion of requirements (5)(i),(ii),(iii) and (iv) and the replacement thereof with the words 'restoring the land to its condition before the development took place';
- by the addition of the following words at the end of requirement (6)(ii) 'with the exception of one lavatory to serve the staff in connection with the farm shop and agricultural use';
- by the deletion of the words 'those reasonably necessary' from requirement (6)(iii) and the replacement thereof by the words 'one table and two chairs';
- by the deletion of the words 'referred to in' from the end of requirement (6)(iv) and the replacement thereof by the words 'removed in accordance with'.

139. Subject to the corrections and variations Appeal A is allowed insofar as it relates to the land identified in blue on Plan A attached to the enforcement notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the use of agriculture, café, farm shop, parking and lavatory facilities at Diddly Squat Farm, Upper Court Farm and Curdle Hill Farm, Chadlington and subject to the conditions set out in attached Schedule A.

140. Appeal A is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to land the land identified in blue on Plan A and hatched in red on Plan B attached to the enforcement notice and planning permission is refused, in respect of the restaurant use at Diddly Squat Farm, Upper Court Farm and Curdle Hill Farm, Chadlington, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

141. The appeal is allowed, and planning permission is granted for an extension to existing parking area to formalise temporary parking and provision of new access arrangements. Form new storage compound and associated landscaping at Diddly Squat Farm Shop, Chipping Norton Road, Chadlington OX7 3PE, in accordance with the terms of the application Ref 22/00613/FUL, dated 1 March 2022 and subject to the conditions set out in attached Schedule B.

R J Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Richard Kimblin KC	Instructed by the appellant
Neil Warner	Planning Consultant
Charles Ireland	Land Agent
Anna Firmin	Landscape consultant
Sue Hetherington	Landscape consultant

FOR THE LOCAL PLANNING AUTHORITY:

Peter Wadsley of Counsel	Instructed by the Council's Solicitor
Chris Wood	Senior Planning Officer
Kelly Murray	Principle Enforcement Officer

INTERESTED PARTIES

Charles Streeten of Counsel	Instructed by a group of Chadlington Residents

DOCUMENTS
Document 1 – Anonymous letter from interested party
Document 2 – Landscape Document bundle submitted by the appellant
Document 3 – *Barnett v Secretary of State for Communities and Local Government*
Document 4 – *Keenan v Woking Borough Council and anor.*
Document 5 – *Bundle of legal judgements submitted by Charles Streeten*

SCHEDULE OF CONDITIONS A – Appeal A

1) The use hereby permitted shall be for a limited period being the period of 36 months from the date of this decision. The use hereby permitted shall be discontinued and the land restored to its former condition on or before the end of 36 months from the date of this decision, in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

2) The use hereby permitted shall cease (save for that which is in accordance with planning permission (ref:20/03444/S73) and all, structures, equipment and materials brought onto the land for the purposes of such use shall be removed and the land restored to its condition before the development took place, within four months of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

   (i) Within 3 months of the date of this decision a site development scheme (SDS) for the area edged in blue on Plan A, specifying details of: number and location of mobile or other food vending units; use of the lambing shed; number of picnic tables; surface water drainage; external lighting; hard surfacing; parking provision; soft landscaping including retention of existing native hedgerows and trees on the boundaries; details of plant species, sizes, number and densities; biodiversity enhancements; a schedule of landscape maintenance for a period of 5 years, including provision for landscape maintenance for a period of 5 years, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

   (ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   (ii) If an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State

   (iii) The approved scheme shall have been carried out and completed in accordance with the approved timetable. Upon implementation of the approved site development scheme specified in this condition, that scheme shall thereafter be retained. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

3) The café part of the use hereby permitted shall be confined to the lambing shed and the strip of land directly outside to the south and edged in green on Plan A, unless agreed as part of the SDS.

4) No external lighting shall be put in place or operated on the site at any time, other than what has been previously submitted to and approved in writing by the local planning authority as part of the SDS.

5) The parking areas shown in the agreed SDS shall be retained and used for no other purpose.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-

enacting that Order with or without modification), no fences, gates or walls or other means of enclosure (save for the purposes of agricultural activities) shall be erected or placed within the area identified in blue on Plan A.

7) The goods retailed from the farm shop shall be solely limited to: i) goods and produce grown, reared or produced on the holding ii) goods and produce from producers based within a 16 mile radius of the farm shop, including meat, vegetables, fruit, flowers, bread and cakes, eggs, dairy products, or other such products as may be first agreed in writing by the Local Planning Authority; and iii) other farm/woodland based products from producers within a 16 mile radius of the farm shop.

8) The café use hereby permitted shall only take place between the following hours:

   0930 – 1630 on days when the farm shop is open to customers.

SCHEDULE OF CONDITIONS B – Appeal B

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be for a limited period being the period of 36 months from the date of this decision. The development hereby permitted shall be discontinued (save for that which is in accordance with planning permission (ref:20/03444/S73) and the land restored to its former condition on or before the end of 36 months from the date of this decision, in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.

3) The development shall be carried out in accordance with the landscaping scheme as set out in the approved plans P885-L-03B dated 14 April 2022 and P8885-L-04B dated 23 February 2022 and details contained in appendices A and B of the Landscape and Visual Impact Addendum - Car Park and Access dated April 2022 by Courtingtons.

4) The landscaping works shall be carried out in accordance with the approved details within 12 months of the commencement of the approved development or as otherwise agreed in writing by the local planning authority. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

5) The parking areas shown on the approved plans shall be retained and used for no other purpose.

The Planning Inspectorate

Plan A

This is the plan referred to in my decision dated: 14 June 2023

by RJ Perrins MA

Land at: Diddly Squat Farm, Upper Court Farm and Curdle Hill Farm, Chadlington

Reference: APP/ D3125/C/22/3306729

Scale: Not to Scale

The Planning Inspectorate

Plan B

This is the plan referred to in my decision dated: 14 June 2023

by RJ Perrins MA

Land at: Diddly Squat Farm, Upper Court Farm and Curdle Hill Farm, Chadlington

Reference: APP/ D3125/C/22/3306729

Scale: Not to Scale