
Appeal Decisions

Inquiry held on 15 & 16 November 2016; 2 May, 16 June , 17 to 20 October & 14 December 2017

Site visits made on 15 November 2016 and 14 December 2017

by R J Perrins MA MCMI ND Arbor TechArborA

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

Decision date: 4 December 2018

Appeal A Ref: APP/X0360/C/16/3142135

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- 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 Roy Maslin against an enforcement notice issued by Wokingham Borough Council.
- The Council's reference is ENF 160207.
- The notice was issued on 10 December 2015.
- The breach of planning control as alleged in the notice is without planning permission the material change of use of the land and buildings to a mixed use for the purposes of a residential dwelling house (under construction), agriculture, event venue and hog roast/catering businesses.
- The requirements of the notice are:
 1. Cease the unauthorised use of the Land for event venue and hog roast/catering purposes
 2. Remove from the Land all equipment associated with the event venue and hog roast/catering use
 3. Remove the internal walls, ceiling and tiled floor from within the barn (annotated as Building A on plan 2)
 4. Remove the shingle and excavate the slab from the hard surfaced areas shown in the approximate location annotated on plan 2
 5. Demolish the pergolas shown in the approximate locations annotated on plan 2
 6. Demolish the two corner infill extensions shown in the approximate locations on plan 2
 7. Excavate the concrete slabs in the locations of the corner infill extensions
 8. Remove all materials resulting from steps 3,4,5,6 and 7 from the Land
 9. Spread topsoil to a depth of 20cms over the areas where the three concrete slabs have been removed and sow with amenity grass seed mix at 50 grammes per square metre.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal B Ref: APP/X0360/C/16/3142138

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- 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 Roy Maslin against an enforcement notice issued by Wokingham Borough Council.
- The Council's reference is ENF 160208.

- The notice was issued on 10 December 2015.
- The breach of planning control as alleged in the notice is without planning permission the excavation of a pond and the formation of a bund.
- The requirements of the notice are:
 1. Infill the pond using the material which forms the bund. Level any remaining piles of material. The approximate locations of the pond and bund are shown on the plan.
 2. Spread top soil to a depth of 20cms over the area formerly covered by the pond and bund and sow with an amenity grass seed mix at 50 grammes per square metre.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Appeal C Ref: APP/X0360/W/16/3141924

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- 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 Roy Maslin against the decision of Wokingham Borough Council.
- The application Ref F/2015/0502, dated 3 March 2015, was refused by notice dated 1 October 2015.
- The development proposed is the erection of an agricultural livestock building and rainwater storage pond.

Summary of Decision: The appeal is dismissed

Appeal D Ref: APP/X0360/W/16/3141922

Barkham Manor Farm, Barkham Road, Barkham, Berkshire RG41 4DQ

- 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 Roy Maslin against the decision of Wokingham Borough Council.
- The application Ref F/2015/0508, dated 3 March 2015, was refused by notice dated 28 September 2015.
- The development proposed is the erection of an agricultural livestock building.

Summary of Decision: The appeal is dismissed

Preliminary matters

1. Evidence was given on oath or by sworn affirmation. A Statement of Common Ground has been submitted which sets out the site description, relevant planning policy, agreed planning conditions and matters of disagreement.
2. The Inquiry was adjourned and resumed on a number of occasions because of the introduction of new evidence concerning the existence or not of a medieval deer park, along with sickness of Counsel and bereavement.
3. In light of the appellant calling his own agricultural witness it was agreed that the appellant would no longer rely on paragraphs 1.27 to 1.48 (save for paragraph 1.40) of his Planning Witness statement with regard to the agricultural use.

4. The revised National Planning Policy Framework ('the Framework') came into force on 24 July 2018. The appellant and the Council have been given the opportunity to comment on the relevance of the Framework to their cases and I have had regard to those responses and the Framework in determining the appeal.

Applications for costs

5. At the Inquiry application for costs were made by both parties against each other. These applications are the subject of separate Decisions.

Background and the arguments concerning the Jacobean Deer Park

Site description

6. The appeal site lies within the countryside to the west of the village of Barkham and to the north of Barkham Manor. Accessed and bounded by a track to the east (a Public Right of Way - Bridleway) from Barkham Road, the site has woodland and agricultural land to the north and west. To the south is bounded by the boundary with Barkham Manor and further agricultural land. Public Bridleways can also be found to the south and running alongside the northern and western most boundaries.
7. The existing farm buildings are laid out in a rectangle with an area laid to lawn in the centre and accessed from the east or through the building labelled 'Building A' on the enforcement notice and from hereon in referred to as 'The Barn'. The northernmost building is split into three distinct areas; at the time of my first visit the largest contained approximately 19 spit or hog roasting ovens and six or seven freezers some of which had whole pig carcasses in them. The next smaller area contained a butcher's block and kitchen racking with various items including cooks overalls, aprons and utensils and serving equipment. That room leads into a small kitchen area with sinks, cooker, dishwasher and preparation surfaces typical of that found in a commercial kitchen. A door led into the westernmost corner where there was an area of hardstanding with a freestanding walk-in freezer/chiller.
8. The barn with tiled floors, plastered walls, mezzanine and domestic light fittings and patio style doors was mainly empty save for some hay bales. The southernmost corner of the buildings housed a workshop with various tools and equipment, along with two separate toilets and a covered area housing gazebos amongst other things. The building to the south was split into three parts one containing various items of equipment and supplies including trailers and heat lamps. The centre section was full of domestic items including a large amount of china and general bric-a-brac. The last section was predominantly clear and set up for initial turkey preparation.
9. The building to the east contained an office with three desks and associated office equipment and a restroom with tables, chairs toilet and washroom. On site, during my first visit, there were a large number of live turkeys and 19 pigs. The foodstore was stocked with pig feed. On my second visit there were a larger number of pigs predominantly 'store pigs'¹ in the fields towards the top of the site along with 7 horses in the fields.

¹ 10-12 weeks old

Deer Park

10. At the opening of the Inquiry it was established that the Council's evidence concerning the proposition that the appeal site formed part of what was once a Jacobean deer park (Arrowsmith's Park) was fresh evidence that the appellant had not had the opportunity to comment upon. The appellant was given time to consider the arguments put forward and produced a rebuttal statement. I also heard from both expert witnesses at the Inquiry.
11. The evidence as to the existence of a Jacobean deer park was examined in some detail. The Council argued that references to an area of some 60-80 acres in a petition dated 1630 indicate that an enclosure had been made and that the petition was from some of the inhabitants of Barkham. Historic documents referencing common grazing land and woodland along with names of Newland Coppice in Windsor Forest and Bear Wood Walk set out in records of court proceedings, amongst other things, were not without merit. The appellant's arguments concerning the 'Liberty of Newlands' were also based on historic documentation and the argument that the park would have been in the Parish of Hurst can be also be found in an extract from the Star Chamber proceedings.
12. Nevertheless, the Council recognise that to come to the conclusion that the appeal site formed part of Arrowsmith's Park, because it was south of Bearwood and south-east of Newland, that "more ambiguous evidence" would need to be taken into account to come to the view that it was in fact a deer park. Whilst I accept the appellant could not identify any other area of 60-80 acres nearby and the documentation identifying up to 60 people coming from Barkham could point to a location in Barkham Parish, such evidence is not compelling. In the same way part of the appellant's argument is based upon an assumption that Newland Coppice was in the locale of Newlands but without any clear documentary evidence to reinforce that view.
13. Moreover, during the adjournment, an application was submitted to Historic England for Barkham Manor Park to be added to the Register of Park and Gardens of Special Historic Interest in England. On 26 July 2017 the appellant was informed by Historic England that following an initial assessment the application was not being taken forward. To that end the lack of concrete evidence is cited along with the fact that little of the surviving stretch of bank and ditch remain and that the date of the park would be late for a deer park. Furthermore there is no evidence that Barkham Manor has been a lodge historically.
14. It seems to me that in light of the findings of Historic England and the Council's own acceptance that the appeal site is the 'best contender' for Arrowsmith's Park that there is some inevitability that no weight can be given to the argument that the appeal site was part of a Jacobean Deer park and it will form no further part of my deliberations. For the purposes of these appeals the site is within the open countryside and adjacent to Barkham Manor a Grade II listed Manor house and stables, with Grade II listed wall, built over what was once a moated site.

Planning History

15. The site has an extensive planning history as set out in the Statement of Common Ground and includes previous appeals (ref 2126821 and 2126829) dated 17 September 2010 for the retrospective erection of 2 farm buildings (units 2 and 4) and the erection of 2 agricultural buildings (part retrospective). Whilst national planning policy has moved on since that time the Inspector found that the proposed buildings, larger than those found today and which form the courtyard, would have resulted in unacceptable harm to the character and appearance of the surrounding countryside. In addition the buildings were not reasonably related to the agricultural activities on the surrounding farmland.
16. Whilst activities at the site have moved on the previous Inspector's findings, including the reasoning which states the appeal site is clearly visible from Barkham Manor should not be ignored.

Appeal A the appeal on grounds (b) and (c)

17. The evidence and submissions made by both parties on these grounds overlap to some extent and I shall deal with them together. It is more logical to consider them in this way. The appellant's case is, in simple terms, based on the submission that no event venue business is taking place as the level of use is not enough for it to constitute a material change of use. Furthermore the hog roasting business is ancillary to the agricultural use of the land and does not amount to a material change of use.
18. Dealing with the event venue matter first I must consider the activities that were taking place when the enforcement notice was served. To that end there is no doubt that the barn was completed in 2011. I accept that just because the venue was marketed and advertised does not mean that an events venue has been operating on the land. Indeed there is no dispute that the nub of matter to be considered is the number of events which have taken place. That is as set out in *Westminster*² where one of the relevant considerations is off-site impacts such as noise and disturbance on residential amenities.
19. In cross examination, the appellant accepted that there had been a number of wedding receptions and in 2014 the land and toilets were being used for archery events. It is suggested that this amounted to no more than 18 isolated events or public gatherings of short duration which would not be sufficient to amount to a material change of use. However, it is clear from the evidence submitted by numerous local residents, both in writing and verbally, that the impacts of the use of the land for events has had a deleterious effect on the living conditions of those who live nearby by way of noise and disturbance.
20. Indeed that was borne out of evidence under oath and the video evidence of vehicles using the access track. I accept the latter could be open to interpretation; it did not specifically show traffic emerging from the appeal site. However, given there were marquees on the land at the same time, the sheer volume of traffic and there was no dispute that other sites along the

² *Westminster City Council v Secretary of State for Communities And Local Government & Anor* [2015] EWCA Civ 482

track could not accommodate so many vehicles, it is evidence that should not be ignored. Indeed I found local residents to be well-informed and credible witnesses and their evidence on oath compelling. The combination of these factors leads me to find that the event activities have had an unacceptable impact on the living conditions of those living nearby.

21. For these reasons, I find, on the evidence currently before me and as a matter of fact and degree, that the activities associated with the event business, had amounted to a material change of use of the land.
22. Turning to the hog roasting business. I accept that the sale of agricultural produce from an agricultural holding could be ancillary; there is no dispute in this case that the sale of turkeys from the land is a good example of that. The case of *Millington*³ sets out that where wine was being produced on the land from grapes grown on it and then bottled, sampled and sold on the land was, having regard to ordinary and reasonable practice, to be regarded as ordinarily incidental to the growing of grapes for wine, included in the general term for agriculture, ancillary to normal farming activities.
23. The court's view was that making of wine, cider or apple juice on the scale with which they were concerned in that case was a perfectly normal activity for a farmer engaged in growing grapes or apples and did not involve development of the land.
24. With regards to the hog roasting business the Inquiry heard that it is indeed, on its face, a successful business. A number of staff are employed to work on the agricultural holding; the appellant, his son and another full-time worker and one part-time worker. That is at odds with the labour requirement for one full-time worker, as set out in the 2011 agricultural appraisal⁴, identified to run an established turkey and pig rearing business on the land.
25. That was also reflected by what I saw during my site visit. There is no dispute that the appellant's son and the part-time worker are mainly office bound and they spend much of their time in the ample office with three desks, associated office paperwork, telephone lines, computers and office paraphernalia which is situated within the agricultural buildings. Under normal circumstances, for a holding of this size, one would question the requirement for such a generous amount of office support and space. Although when set against the hog roasting business and the need to manage bookings, hog roasting events, vehicles, trailers and up to 30 part-time staff, the level of office provision can be understood.
26. I also saw, as set out above, that the majority of the farm buildings were being used for the hog roasting business, be that the storage of equipment for catering at hog roasting events along with hog roasting trailers or the provision of numerous freezers and roasting units. The hardstanding around the buildings is also used to park associated vehicles and trailers. The use of the buildings for activities not related to the hog roasting business, such as the preparation of turkeys were, on any reasonable viewing of the premises, minimal.

³ *Millington v SSETR, Shrewsbury and Atcham Borough Council* [1999] 3 P.L.R 118

⁴ Reading Agricultural Consultants Appraisal 2011

27. In addition to this there is no dispute that the hog roasting business generates its own vehicular traffic through administrative staff and vehicular movements to and from the site to venues and events along with hog roasting/catering equipment. It is also evident that the hog roasting business is the main revenue source. If necessary the appellant stated that the hog roasting business could rely on buying in carcasses and remain profitable. The appellant also accepted that he had not demonstrated that the pig rearing would be viable without the hog roasting business. In that light the Council's view that the agricultural use is ancillary to the hog roasting business and not vice versa is not without merit.
28. I say that accepting that the storage of pork and the selling of that pork on the premises would not be unusual on a farm, indeed is commonplace in some areas. However, in this case there is a not so subtle difference to which I will return shortly. There is also some merit in the argument that the preparation of pigs reared on the land for sale following slaughter elsewhere is ordinarily incidental to the rearing of those pigs. In the same way the crushing, fermentation, washing, settling, mixing and bottling of wine on land where the grapes are produced is not an industrial process.
29. In addition I take no issue with the fermentation process involved in wine production being akin to the cooking of pigs. However, it seems to me that when examined in the round the hog roasting business is not ancillary to the breeding of pigs on the land. It is not comparable to wine being bottled on a vineyard. In that case the bottling and selling of wine on the holding is the end of the agricultural 'activity'; vines are planted, grapes are grown wine is produced, bottled and sold on. I would have some sympathy with the appellant's arguments if pigs were reared on the land, slaughtered, prepared and sold cooked or uncooked, whole or in part on the holding.
30. However, the whole unique selling point of a hog roast is that the hog is taken to a venue on a spit and cooked on site, or the cooking completed on site, and then carved and served. Indeed in a letter to the Planning Inspectorate in June 2013 the appellant sets out that he provides teams which consist of a chef and a server who go out to events. In my experience that also includes everything else required to serve the hog roast such as associated food and/or condiments and I have no reason to doubt, from the evidence submitted, and from what I saw on site, that the same is the case here.
31. When a customer of the hog roasting business pays, a not inconsiderable amount of money, the customer is not just paying for pork bred and slaughtered on the holding; they are paying for an experience akin to any other catering experience. That involves transport, specialist equipment and staff not associated in any way with the agricultural holding. Alongside that the hog roasting business hires its hog roasting machines out for use off-site and unrelated to production of pork on the holding. It is plain to see that customers do not simply turn up at the holding and buy the pork at the place of production.
32. Moreover, it is clear that the appellant has supplemented his own pigs with carcasses bought from elsewhere purely to aid the hog roasting business. That goes against the appellant's assertion that without the pig rearing business the hog roast business would not exist. It is clear that it could and has existed by supplementing the appellant's own pigs with carcasses bought

in from elsewhere. That is regardless of the appellant's concerns over the safety of pig rearing practices on his land and is at odds with the case of *Williams*⁵ referred to in *Millington*, which held that the use for agriculture necessarily includes the selling of products grown on the land but that the selling of products grown elsewhere was not included.

33. The combination of these factors leads me to conclude that the hog roasting business is quite a distance away from selling produce grown or raised on an agricultural holding from the same agricultural holding. In that light I fail to see how it bears any resemblance to the wine production discussed in the case of *Millington*. Thus I find, as a matter of fact and degree, that the hog roasting business is not ancillary or incidental to the agricultural use of the land.
34. The appeal on grounds (b) and (c) must therefore fail.

Appeal A the appeal on ground (d)

35. To succeed on this ground, the onus is upon the appellant to demonstrate, on the balance of probabilities, that the operational development which is the subject of the notice was substantially completed more than 4 years before the date of the notice i.e. on or before 10 December 2011. Under this ground the appellant only seeks to demonstrate that the hardstanding embraced by the notice has been in existence for four years.
36. I am referred to a Google earth image dated 1 January 2010 and a drawing (No. 10_390A_003) purporting to show the extent of 'lawful hardstanding' which the appellant considers was laid and substantially completed in 2007/2008 becoming lawful in 2011/2012.
37. I accept that the aerial photograph appears to show an area of hardstanding commensurate with the plan. However it is only a snapshot in time and the *Google Earth* photograph dated 2014 submitted by the Council shows the hardstanding on the track running to the west to be overgrown. That reflects an image submitted by a local resident dated 2013 also showing that area seemingly laid to grass. In addition the current hardstanding has a large area of block pavements to the front of the barn which do not appear on any of the aerial photographs.
38. The Planning Practice Guidance (the Guidance) sets out an appellant is responsible for providing sufficient information to support an application for a Lawful Development Certificate, which is also the equivalent of ground (d) in an enforcement appeal. The Guidance says: "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability". Those sentiments apply equally to an Inspector at appeal stage.
39. It seems to me that the limited amount of evidence before me is simply not precise or unambiguous enough for me to come to the conclusion that the hardstanding, as depicted on the appellant's drawing, even if it were

⁵ *Williams v Minister of Housing and Local Government* [1967] 18 PCR 514 DC

completed in 2007/8, that it remained in situ for the requisite four years and the operations carried out in 2014/15, as submitted by the Council, were not a further act of development.

40. Thus, on the limited evidence before me, I must find on the balance of probability that the hardstanding embraced by the notice had not been in existence for four years at the time the notice was served.
41. The appeal on ground (d) fails.

Appeal A the appeal on ground (a)

42. Section 177(1)(a) gives power to grant planning permission in respect of the matters alleged in the enforcement notice or in respect of any part of those matters alleged. Under this ground the appellant has chosen to pursue planning permission for the matters alleged save for the events venue. Thus the development for which planning permission is being sought is *the material change of use of the land and buildings to a mixed use for the purposes of a residential dwelling house (under construction), agriculture, and hog roast/catering businesses*. My deliberations therefore focus on the use of the land for a residential dwelling house, agriculture and hog roast/catering business.

Main Issues

43. The main issues are therefore whether the development is appropriate in this location, having regard to the development plan and the Framework in relation to five principal matters: the effect on the character and appearance of the surrounding area; the effect on the setting of the adjacent listed building and wall, the effect upon the living conditions of occupiers of nearby properties with particular regard to noise and disturbance, the effect on highway safety, and the sustainability of the location with particular regard to access to public transport.

Planning Policy

44. The Development Plan for the area includes the Wokingham Borough Local Development Framework Core Strategy adopted 2010 (CS) and the Wokingham Borough Managing Development Delivery Development Plan Document (MDD) adopted 2014. The Council has also published the Wokingham Borough Design Guide in 2012 as supplementary design guidance.
45. As set above the National Planning Policy Framework (the Framework) was revised in July 2018. The Framework sets out that planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Paragraph 213 of the Framework advises that, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them, according to their degree of consistency with the Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given). Where necessary the degree of consistency of individual

policies with the Framework will be considered in my reasoning where this is a matter of dispute.

Character and appearance

46. The site lies within the countryside and is as described above; there is no dispute that the four existing agricultural buildings sit well within the landscape setting. That setting is within the Thames Basin Heaths Area as described in the National Character Area Profile No 129 (February 2014) produced by Natural England.
47. The Berkshire Landscape Character Assessment 2003 defines the area as *K3 – Wokingham Settled Farmlands* which is influenced by the presence of Wokingham a large urban settlement which has led to fragmentation and little evidence of the traditional field pattern. Barkham Manor is identified as being important and to the south and west the landscape is more intact with remnants of a more traditional and rural character.
48. The Wokingham Borough Landscape Character Assessment 2004 (the "LCA") identifies the site as falling within Landscape Character area *L1 Bearwood Wooded Sand and Gravel Hills*. The assessment describes the key characteristics which include undulating upland hills, heavily wooded, a vast artificial lake, smaller scale intimate rural patchwork of deciduous woodland and sheep pasture, recreational use including horse riding, a relatively secretive landscape and the red brick Georgian building of Barkham Manor.
49. The landscape quality is described as high with a strong character and of good condition and the strategy is to conserve and strengthen the existing character. The landscape overall is of moderate sensitivity which means that some changes may be accommodated without being visually apparent albeit that is within the wooded context and 'private' secluded character.
50. The Barkham Village Design Statement refers to the parish of Barkham lying principally in open farmland rising gently toward the ridge known as Barkham Hill with Barkham boasting a number of significant landscape features and views. Policies CP1 and CP3 of the CS seek to maintain or enhance the high quality of the environment and, amongst other things, ensure that there is no detrimental impact upon the landscape. Policy TB21 of the MDD refers to the Council's Landscape Character Assessment and requires proposals to, "retain or enhance the condition, character and features that contribute to the landscape.
51. In that context I accept that the development should be viewed against nearby land uses. The appellant suggest that these include furniture restoration, an antique centre, tea rooms, joinery supplies, bicycle repairs and kitchen supplies. Taken on its face I accept that would indicate commercial diversification being a component of the character of the area. However that was based on a desktop study of *Google Maps* and *Street View* and I do not have details of the uses referred to or if they currently exist. My deliberations in that regard are therefore based on what I was able to see from my site visits and the impact of the current activities.
52. To that end it is clear there are several public vantage points from which to view the site. The site is screened in part with trees, hedgerows and fencing

and the undulating lie of the land has an impact on some views. Nevertheless views into the appeal site are readily available from the surrounding Rights of Way and Barkham Manor. As found by the previous Inspector. I'm also in no doubt that those views are clearer when taken from horseback by users of the bridleways. Whilst I accept the change of use of the existing buildings themselves would not be evident and that views would be more restricted when trees are in leaf; it was clear that the land surrounding the buildings could be seen from the footpath to the north.

53. Whilst there is no signage concerning the hog roasting business and the gates are generally kept shut the existing use has nevertheless led to vehicles, trailers and hog roasting machines being parked and stored on the hardstanding and next to the existing buildings. From what I saw such storage is commercial in appearance and unlike that which one would reasonably expect from an agricultural holding; it leads the viewer to question how it came to be. There is nothing before me to suggest that it is comparable to any other use nearby and the storage of commercial vehicles, trailers and machines, along with the hardstanding necessary to store such items upon, has had an urbanising effect encroaching excessively away from the buildings.
54. Furthermore the landscape character is distinguished by its tranquillity and undeveloped nature. The movement of vehicles and equipment in association with the hog roast business, and as evidenced below, does not conserve or strengthen the high quality (as set out in the LCA) character of the landscape. Moreover, given the appellant's desire to expand the hog roasting business there seems to be some inevitability that if permission were granted such impacts would increase and further paraphernalia associated with the hog roasting business would require further storage exacerbating the harm.
55. Whilst I accept that landscaping measures could be carried out to alleviate any harm I am not convinced that a landscaping scheme, which took into account the local context, would either be effective or not look out of place in the open agricultural setting. In any event the adverse impact upon the landscape character identified above should not be ignored; the argument that the development could be screened is not a good one in principle; it could be repeated too often to the overall detriment of the local landscape.
56. The combination of these factors leads me to conclude that the development has resulted in unacceptable harm to the character and appearance of the countryside and is at odds with the aforementioned planning policies and the Framework which seeks development that is sympathetic to local character and landscape setting. The appellant considers that Policy CP1(1) requires a level of protection beyond that required by the Framework in that it is too vague because of the term 'high quality environment'. I disagree, the broad aim of Policy CP1 is to seek to deliver sustainable development which is consistent with the Framework and its weight should not be reduced. The harm to the character and appearance of the countryside is at odds therefore with the aims, as set out above, of Policies CP1 and CP3.

Setting of listed building and wall

57. The setting of a heritage asset is not a fixed concept; it is concerned with the way the heritage asset is experienced. The Planning Practice Guidance sets out that "*a thorough assessment of the impact on setting needs to take into*

account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it. Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage".

58. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The setting of Barkham Manor and the wall has inevitably been altered by the conversion of the main house into a number of dwellings. Nevertheless the architectural quality of the exterior and, as I saw from my site visit, interior reflect that of the listing notice. Namely a Manor house and stables; C17 enlarged C18 and C19, altered C20.
59. There is no dispute that the fields which form part of the appeal site, now laid to agriculture, to the immediate north and west of the Manor were used historically as parkland. I accept the land was sold separately in the C20 and has been in agricultural use for many years, but despite the inroads of later C20 infill, including the appeal buildings, the historic association cannot be ignored, even if that is to be considered a 'borrowed landscape' as suggested by the appellant. Indeed the land forges a strong and distinctive relationship between Manor house and the surrounding countryside, thus forming part of the wider setting of the listed buildings and therefore their significance.
60. In addition there is a direct degree of inter-visibility between the appeal site and the Manor house. Views of the appeal site and buildings are readily available from first floor windows of the Manor house and from the gardens. To that end there is nothing before me to suggest that the Council's view, given the arrangement and design of windows, that the northern elevation of the building was specifically designed to be seen and to provide views to the landscape beyond which includes the appeal site.
61. Views are also available from the Right of Way that dissects the two properties. Those views include the Manor to the south, and farm buildings and appeal site to the north. Whilst I accept that views are screened in part by vegetation there remains a degree of inter-visibility that cannot be ignored and is within the immediate context of the listed buildings. That is more so in the winter months when the trees are not in leaf. Further views are available across the appeal site to the Manor House from the northernmost Right of Way. It is inevitable therefore that the impact of the hog roasting catering business, as set out above in landscape terms, will impact upon the setting of the heritage assets. That setting is not a concept that lends itself to an exact definition as laid out in *Williams*⁶.
62. Furthermore the deliveries to and from the appeal site, the level of current vehicular activity and that predicted would be experienced from the Manor and its setting. That would be, as discussed elsewhere in this decision, beyond what would be reasonably expected for the site and its surrounds and compounds the harm to the setting. Consequently, in accordance with the clear expectations of the Planning (Listed Buildings & Conservation Areas) Act 1990, I find that the use for hog roasting/catering business has resulted in unacceptable harm to the setting of the listed buildings which would not be

⁶ *R (Williams) v Powys County Council* [2017] EWCA Civ 427

preserved. It would therefore be at odds with Policy TB24 of the MDD which seeks to conserve and seek the enhancement of designated heritage assets.

63. Although the use causes harm to the significance of the heritage assets, given the level of inter-visibility and the distance between the Manor house and the appeal buildings I consider that the harm, whilst material, is less than substantial. Paragraph 193 and 194 of the Framework advise that great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance and any harm to, or loss of, the significance of a designated heritage asset from development within its setting, should require clear and convincing justification.
64. Paragraph 196 sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
65. As explained in greater depth below, the hog roasting business and the contribution it makes to employment and the local economy may reasonably be accepted as public benefit. However, in the wider context these benefits would be limited and as such only carry limited weight in the heritage planning balance. Moreover, whilst the identified harm may be less than substantial, this does not mean this should amount to less than substantial planning objection, especially where the statutory duty to preserve the setting of the listed building (a consideration the Courts have determined is a matter of considerable importance and weight) has not been met.
66. So considered, the harm to the setting of the listed building is clearly not outweighed by the benefits of the scheme. There is therefore, no clear or convincing justification for the development.

Living Conditions

67. I accept that the holding of events would have contributed to the toing and froing from the site and the removal of that element from the mixed use inevitably reduces the impact upon the living conditions of those living nearby. However, as set out above under the appeal on grounds (b) and (c), the current activities at the site are unlike that which could be reasonably expected from an agricultural use selling produce grown or raised on the holding. The commercial use inevitably generates more vehicle movements and it is likely given the nature of the business that activity will peak at weekends and summer evenings when demand is highest.
68. Whilst the appellant suggests the current activities result in an additional three vehicle movements per day I am not convinced that is so. There can be no dispute that the hog roasting business accounts for the majority of vehicle movements to and from the site. That is a vastly different proposition to that which could be reasonably expected for an agricultural unit of a size requiring one agricultural worker who would be expected to live in the agricultural dwelling on site as would be the case here without the hog roasting activities.
69. Thus the hog roasting business in its current form has led to an unacceptable increase in traffic along the rural land and adjacent to residential properties.

Moreover the appellant is seeking to increase the production of pigs which will inevitably increase the harm. I do not accept that moving the business to commercial premises elsewhere would simply move that harm elsewhere as that would be entirely dependent on the site circumstances. Again I am in no doubt that the activities, as evidenced by interested parties at the Inquiry, are having a detrimental effect on the living condition of those living nearby. That could not be overcome by any enforceable conditions restricting sales or hours of operation. That is at odds with Policy CP3 of the CS insofar as it requires development to respect the amenities of adjoining land users and their quality of life.

Highway safety

70. The site is accessed by a bridleway which serves a number of private access points. There can be no dispute that there are few, if any, realistic passing points for vehicles. Given the width of the access, conflict between vehicles and horses is not unlikely as evidenced by the Council's Rights of Way Officer. In particular given the bridleway is well used and forms part of the only circular bridleway route in the Borough, which I accept is more likely to be used at weekends when activities from the hog roasting business would be at their peak.
71. The events business would have contributed to the traffic on the bridleway and would have led to the Highway engineer recommendation to refuse the application because of insufficient information. However, I do not accept the argument stops there as evidenced at the Inquiry. The use without the events business still generates a significant amount of traffic, much of it at the weekend. I heard from the appellant that he may cook 30 pigs at weekends during peak times. That is a considerable number of vehicle and trailer movements along this quiet lane and, as set out, the ambition is to increase that number further.
72. It seems to me some conflict with bridleway users is inevitable. Although I accept that is the case in any event from other users of the lane. Nevertheless the figures used by the appellant for the amount of traffic generated by other users was not corroborated. Furthermore from what I saw during my site visits at varying times, on different occasions, the other uses appeared to be low key and do not mirror the commercial activities being pursued by the appellant.
73. The combination of these factors leads me to find that the hog roasting business has led to an unacceptable impact upon the safe use of the bridleway and thus highway safety contrary to Policy CP6 of the CS which, amongst other things, seeks developments that do not cause highway problems. That is consistent with the Framework which sets out at paragraph 109 that development should be refused if there would be an unacceptable impact on highway safety.

Sustainability of the location

74. The appeal site is rural. There is an hourly bus service nearby but there is no evidence that it is used by any of the workers involved in the hog roasting business. Furthermore, the argument that moving the hog roasting activities off the land would have a greater impact because of extra movement of

produce grown on the land carries little weight. I say that given produce is currently bought in. In addition I do not accept that further trips would be required by the appellant to an off-site cooking location to supervise preparation.

75. In any event such trips would be off-set by the reduction in staff involved in the hog roasting business attending the farm to collect trailers and or catering equipment. Whilst I recognise that the appellant does much of the delivery of hog roast and equipment picking up staff on the way or meeting them at events, it seems to me at peak times the appellant would simply be unable to do all of the deliveries and jobs required. There is some inevitability that other staff would need to travel to and from the farm.
76. As I have found earlier this is not a simple operation involving preparing of produce grown on the land. The appellant is providing an experience akin to any other catering experience and much of that could be done successfully off-site. Consequently I find the appeal site does not have sufficient access to public transport and the site is an unsuitable location for a commercial operation of this nature. That is at odds with Policies CP1 and CP6 of the CS which seek to manage travel demand.

Planning Balance

77. I accept that the hog roasting business has contributed to the local economy; the appellant has grown a profitable enterprise and profitability has increased year-on-year. There can be no dispute that is founded upon the hog roasting activities of the use. The enterprise as a whole employs a number of people, the appellant, his son, agricultural and administrative support, along with a number of workers involved in the catering side of the hog roasting activities. Although the case made by the Council's agricultural witness, that the pig rearing-enterprise would not generate enough income to pay for one full time worker, went unchallenged.
78. Nevertheless given the current activities on the site, and the demand for pigs for hog roasting, I accept that the use as a whole contributes to employment and the local economy and this carries moderate weight in the planning balance. In addition I recognise the Framework at paragraph 84 sets out that decisions should recognise that sites to meet local business and community needs in rural areas may have to be found adjacent to or beyond existing settlements, and in locations that are not well served by public transport.
79. Nevertheless the development has clear and obvious shortcomings in terms of the environmental and social dimensions of sustainability given the conflict with relevant Development Plan policies identified above. Furthermore paragraph 84 of the Framework also sets out that it is important to ensure that development is sensitive to its surroundings and does not have an unacceptable impact on local roads; the development is at odds with both of those requirements.
80. Overall, therefore in the light of the Framework policies taken as a whole, the development is not sustainable. Having weighed the various factors in support of the development in the balance of planning considerations, there are no other material considerations that would outweigh the identified

conflict with the Development Plan. The grant of planning permission would not be appropriate.

Other matter

81. Finally, the Council at the outset of this ground of appeal set out that it was beyond the remit of S177(1)(a) for me to consider the development as I have; without the event venue use. To that end I recognise the nature of a mixed use and that a change in the components and activities therein may involve a change in the mixed use. That is well-rehearsed in *Belmont Riding Centre*⁷ and *Thanet*⁸. However, those judgments do not go to the consideration of s177(1)(a) and whilst I recognise that the removal of the event venue could result in a greater level of activity around the hog roasting operations, that could happen in any event.
82. It seems to me that consideration of the development without the event venue business has not led to any prejudice as it would be a reduction in those activities which parties have had the opportunity to comment upon. Indeed it would be open for me to consider such an option under the auspices of a ground (f) appeal if that were argued. Furthermore there is nothing before me to corroborate the view that s177(1)(a) embraces only operational development and that consideration of the matters put forward by the appellant is not an obvious alternative that is outside of my powers to consider. Moreover, I am dismissing the ground (a) appeal in any event.
83. For all these reasons and having considered all matters the appeal on ground (a) will fail.

Appeal A the appeal on ground (f)

84. Section 173 of the 1990 Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. The requirements of the notice in this case seek the cessation of the use and removal of equipment associated with the use along with internal walls, ceilings, tiled floor, shingle, pergolas, infill extensions, concrete slabs and all resultant materials from the land. That covers everything in the alleged breach of planning control.
85. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity. Given the purpose of the notice is to remedy the breach of planning control, it falls within s173(4)(a). Therefore, any lesser requirements, save for requirement 9 to which I will return, would simply not meet the requirements of the notice and thus would not remedy the breach of planning control.
86. In addition a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use. Even if such works on their own might not constitute development, or be permitted development. To that end the internal walls,

⁷ *Belmont Riding Centre v FSS & Barnet LBC* [2003] EWHC 1895

⁸ *R v Thanet District Council and Kent International Airport Plc* [2001] PLCR 2

ceiling and tiled floor in the barn were installed to facilitate the unauthorised use as an event venue and hog roasting business. There is therefore no agricultural justification for their retention in any event.

87. In the same way the hard surfacing, pergolas and corner infill extensions facilitated the use as an events venue. There is no dispute that the pergolas with hanging baskets surrounding the lawned area were advertised as a "beautiful enclosed courtyard" for event venue purposes. They were not necessitated by any proven agricultural need and certainly not constructed for rain shelter, as opined by the appellant, given they have no roof.
88. The corner infill extensions, from what I saw on site and heard at the Inquiry, were introduced to make more space available for the hog/roast catering and event business, introducing more toilets and providing space for refrigeration of carcasses associated with the hog roasting. As set out elsewhere in this decision the existing buildings provide ample space, for the agricultural activity on the site, without then need for the infill extensions. I say that given the domestic storage that was being carried out at the time of my site visits.
89. In addition arguments that the walls constructed as part of the infill extensions, up to 2 meters in height, should be considered as permitted development is not well-founded. They form part of the development as a whole and there is nothing before me to corroborate the view that they should be considered in isolation.
90. However requirement 9 'to sow with an amenity grass seed mix' goes beyond the purpose of the notice. Agricultural land would not normally be sown with an amenity grass seed mix. The requirements therefore exceed what is necessary to restore the land to its condition before the breach took place. The appellant is best placed to know what the condition of the land was before the breach took place and I will amend the notice by deleting the reference to a grass seed mix and replace it with "return the land to its former condition".
91. The appeal will therefore succeed on ground (f) to that limited extent.
92. Finally under this ground the appellant argues that the requirements of the notice should be amended to reflect that carcasses of pigs weaned on the land can be stored on the land. However the requirements do not require such storage to cease in any event.

Appeal A the appeal on ground (g)

93. It is claimed that 2 years are needed to comply with the notice in order to locate and fit out suitable alternative premises for the hog roast activities. Without which the business would cease trading leading to the loss of jobs. However there is nothing before me to indicate that there would be a lack of suitable premises elsewhere and that such premises would not already be suitably fitted out for the purposes required.
94. Furthermore there is no detail of what such fitting out would involve in any event but if it reflected that currently found at the farm I would not foresee that to be too complex in nature. Thus I find that six months would be sufficient. The appeal on ground (g) should fail.

Overall Conclusion Appeal A

95. For the reasons given above, I conclude that the Appeal A should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals C and D the s78 appeals and Appeal B on ground (a)

96. The appeals as submitted effectively give potential for a number of outcomes:

- Permission for the excavation of a pond and formation of a bund under the ground (a) appeal.
- The erection of an agricultural livestock building and rainwater storage pond (Appeal C).
- The erection of an agricultural livestock building (Appeal D)
- Or any combination of the aforementioned.

97. Given that I will deal with these appeals together and consider the impact of the agricultural buildings and the pond both together and individually.

Main Issues

98. From all that I have heard, read and seen the main issues to consider are; whether the proposed buildings and pond would be reasonably related to the agricultural activity; the effect upon the character and appearance of the countryside; the effect on the setting of the adjacent listed building and whether the development could be considered to be sustainable having regard to its contribution to rural enterprises within the Borough.

Agricultural Activity

99. As set out above the agricultural holding consists of fields and four buildings around a courtyard along with a number of pig arks and pens toward the northern boundary. A pond and bunding have been constructed to the west of the existing agricultural buildings. Those buildings were being used as set out above.
100. Policy CP11 of the CS sets out criteria for development proposals outside the development limits in order to protect the separate identity of settlements and maintain the quality of the environment. The development does not fall within any of the categories identified by Policy CP11 as being acceptable in such locations. The appellant criticises Policy CP11 and argues that CP11(3) effectively prohibits all new agricultural building in the countryside and is therefore inconsistent with the Framework; the appellant points to paragraphs 77 and 78 which require planning policies and decisions to be responsive to local circumstance and need.
101. I disagree, to suggest the policy does not allow any agricultural development is counter-intuitive. I see no reason to disagree with the Council's stance that CP11(3) is of no relevance to new agricultural buildings and it is not relied upon by the Council in any event. Furthermore the broad aims in relation to the character of the countryside and the delivery of sustainable development

remain consistent with its core planning principles and it has a high degree of consistency with the Framework. Therefore the weight to be afforded to Policy CP11 should not be reduced. That reflects the approach of previous Inspectors elsewhere in the Borough⁹. In addition paragraphs 77 and 88 of the Framework fall to be considered with regards to rural housing, not the development sought here.

102. There is no dispute that in order for the buildings and pond to be acceptable they must be necessary for the purposes of agriculture. To that end the appellant sets out that Barkham Manor Farm operates as a well-established pig production unit. There is a need for the proposed buildings to ensure that the pigs are kept within "controlled housing conditions" as required by the Regulations concerning *Trichinella Spiralis*. Furthermore the existing agricultural buildings are currently in use and necessary for the functioning of the farm on a daily basis.
103. Turning in the first instance to the matter of *Trichinella Spiralis*. I accept that the email from the Food Standards Agency (FSA) sets out that the legislation was written with the intention that pigs are primarily housed in buildings and that carnivorous birds need to be kept out of the holding. In that light the keeping of pigs inside controlled housing (the proposed buildings) would, on its face, be the preferable approach. However the author of the email did not appear at the Inquiry and it is of note that the email includes an extract from the Regulations that states 'none of the domestic swine has access to outdoor facilities unless the operator can show by risk analysis to the satisfaction of the competent authority that the time period, facilities and circumstances of outdoor access do not pose a danger for introduction of *Trichinella* in the holding'.
104. That is reflected in the FSA's own guidance¹⁰ which states that there is a useful degree of flexibility in the definition of controlled housing which includes scope for pigs to have some access to outdoor facilities provided that does not pose a danger for introducing *Trichinella* in the holding. The FSA email concludes that 'it will be challenging to show by risk assessment that an FBO¹¹ is applying controlled housing conditions given the situation you describe'. Two points arise from that statement firstly the FSA do not rule out rearing outdoor pigs and secondly the response is based on an extremely brief description of the current operations on the holding and that inevitably tempers the weight I give to it.
105. In addition to that I do not accept that fox control is the only option and that would be difficult; whilst electric fencing may be problematic to maintain, the appellant is on site and I fail to see how such maintenance would be onerous. That and a vermin management plan could well result in a satisfactory risk analysis for the competent authority. Indeed such an analysis has not been carried out to inform the appellant's stance. That may well reinforce the view, which was accepted by the appellant's agricultural witness, that free range pigs can live in controlled housing conditions and it was a matter of what is reasonable and allowable with producers being given a degree of leeway. That was how the appellant was currently operating.

⁹ See decisions submitted by the Council refs: APP/X0360/C/15/3138106 & APP/X0360/A/14/2214855

¹⁰ Testing for *Trichinella* in pigs

¹¹ Food Business Operator

106. Finally on this matter, whilst the appellant's desire to reduce the risk of Trichinella should not be dismissed and I understand he may wish to do that to reduce the public perception of risk, there is simply nothing before me to corroborate the view that such a perception exists. Further, if it does, that it would have an unacceptable impact on the sale of pork. The combination of these factors leads me to conclude that there is no justification for the buildings on controlled housing grounds.
107. Moreover, even if I accepted there was a requirement under the Trichinella regulations to keep the pigs in buildings, there is the matter of the existing buildings and their use. It is to them which I now turn. Under cross examination the appellant's agricultural witness did not dispute the Council's findings that the existing buildings could provide the necessary space for the pig rearing. Albeit additional space would be beneficial.
108. Whilst the appellant maintains that the existing buildings are currently in use such that they would be unavailable for pig rearing I saw during my site visit that the majority of them, save for the small area used for turkey preparation, were in use for servicing of the hog roast business. Storage of catering and hog roasting equipment, personal household items and the office. Whilst there was some storage of agricultural equipment this was minimal and as set out under Appeal A the office space is excessive for the size of holding. I say that given it was agreed that the pig husbandry is the equivalent of one permanent job; on any reasonable consideration of the pig rearing operation it does not require the current level of administrative support. Thus the office space and rest room use of the existing buildings is to my mind excessive.
109. Nevertheless I see no reason to disagree with the view that the operation of an outdoor pig business is extremely difficult and the existing buildings are not suitable for the operation of a pig unit. However that is in their current form and works would be required to make the existing buildings suitable for raising pigs. Double glazed units would need to be removed, floors and walls re-finished and fittings changed or removed. Inevitably though such matters carry little weight; permission was sought for these buildings for agricultural use, the appellant chose to fit them out with fixtures and fittings more suited to a domestic or commercial setting. That should not negate their use as agricultural buildings fit for any other agricultural use.
110. With regards to the pond I accept that it could be used to collect rainwater from the roofs of the proposed buildings and would be good for wildlife and the appellant suggests it would be used for drinking water for his livestock. However that would be at odds with the expert evidence that a pond open to all wildlife should not be used for drinking water. There is also no detail of what impact muck removal from the sow units would have on the quality of water in the pond. Moreover, the appellant has made much of the need for animal hygiene. The pond would be open to all wildlife and the Council's agricultural consultant's view that it would be unsuitable for drinking water was undisputed. There is therefore simply no agricultural justification for the pond and bund.
111. The combination of these factors leads me to find on this issue that the business does not need additional accommodation for practical or welfare purposes and there is no agricultural justification for the proposed buildings or pond.

Character and appearance

112. The policy context and description of the location is set out above under Appeal A. That description does not include any modern agricultural buildings of a similar size to that being proposed. In the first instance therefore they would be unlike anything else in view and at odds with the key characteristics of the LCA. The buildings, on a plateau, either individually or together, would intrude into the topography of the site and would be an unwelcome and incongruous addition into the sparsely settled landscape buffer which is recognised as a key characteristic.
113. The pond with its regular sides and engineered bund is also at odds with the 'secretive landscape' in which it has been placed and does not conserve or strengthen the existing character of the area. Its shape and form appearing more urban than rural. Furthermore whilst the character of the use and appearance of the buildings would be agricultural, that alone does not justify granting permission.
114. In addition I agree that the coalescence of settlements cannot be a valid argument in this case as agricultural buildings are not normally associated with that. However, the size and scale of the buildings proposed is not, as set out under the previous issue, justified by the size of the land holding or agricultural operation on the site; in that light the argument that the buildings would look disproportionately large in context with the associated agricultural land, is not without merit.
115. Furthermore, there is no dispute that the buildings could be viewed from public vantage points. Whether or not that would amount to just the roofs and half the height of the walls, seems to me to be somewhat irrelevant; even with the low pitch of the roofs, their sheer size would lead the viewer to question how they came to be. As set out previously, those views would be exacerbated when taken from horseback. Whilst I accept that views of the pond and its bunds are limited, the regular shape and engineered bunds cannot be ignored and are at odds with the rural setting.
116. I accept that landscaping measures could be carried out to alleviate the harm but I am not convinced that a landscaping scheme, which took into account the local context, would be effective given the scale of the buildings or not look out of place in the open agricultural setting. As previously set out, the adverse impact upon the landscape character should not be ignored and the argument that the development could be screened is not a good one in principle.
117. The combination of these factors leads me to conclude that the development would result in unacceptable harm to the character and appearance of the countryside and is at odds with the aforementioned planning policies and the Framework which seeks development that is sympathetic to local character and landscape setting. That conclusion is in respect of all the developments within the bullets above.

Setting of the listed building and wall

118. There would be little merit in rehearsing all of the detail set out under Appeal A under the same issue, I shall therefore focus on the matter of the impact of

the proposed buildings. There is no dispute as set out under Appeal A that the buildings would be viewed in the context of the land which forges a strong and distinctive relationship between Manor house and the surrounding countryside, thus forming part of the wider setting of the listed buildings and therefore their significance. There would be a direct degree of inter-visibility between the proposed buildings and the Manor house. Views would also be available from the Right of Way to the north across the buildings toward the Manor to the south.

119. Again I accept that views would be screened by some vegetation but there would remain a degree of inter-visibility that cannot be ignored. It is inevitable therefore that the impact of proposed development¹², as set out above in landscape terms, would impact upon the setting of the heritage assets. That impact would be the introduction of fairly utilitarian, steel framed units with manmade bunds into the historic setting. That would fail to preserve or enhance the character as described under Appeal A.
120. Consequently, in accordance with the clear expectations of the Planning (Listed Buildings & Conservation Areas) Act 1990, I find that the proposed development would result in unacceptable harm to the setting of the listed buildings which would not be preserved. It would therefore be at odds with Policy TB24 of the MDD which seeks to conserve and seek the enhancement of designated heritage assets.
121. Although the development would cause harm to the significance of the heritage assets, given the level of inter-visibility and the distance between the Manor house and the proposed buildings I consider that the harm, whilst material, is less than substantial. Paragraph 193 and 194 of the Framework advise that great weight should be given to the asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance and any harm to, or loss of, the significance of a designated heritage asset from development within its setting, should require clear and convincing justification.
122. Paragraph 196 sets out that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
123. As explained under the agricultural justification issue, the agricultural operation and the contribution it makes to employment and the local economy is limited and carries little weight. Inevitably these benefits only carry limited weight in the heritage planning balance. Moreover, whilst the identified harm may be less than substantial, this does not mean this should amount to less than substantial planning objection, especially where the statutory duty to preserve the setting of the listed building has not been met.
124. So considered, the harm to the setting of the listed building is clearly not outweighed by the benefits of the scheme. There is therefore, no clear or convincing justification for the development.

¹² That is any of the outcomes set out in the bullets above.

Contribution

125. The appellant has grown a profitable rural enterprise and profitability has increased year-on-year. There is no dispute that the agricultural element of the enterprise is lawful. However as found under Appeal A the hog roasting activities are not. The enterprise as a whole employs a number of people, the appellant, his son, agricultural and administrative support, along with a number of workers involved in the catering side of the hog roasting activities. It is inevitable therefore that the economic contribution in its entirety should be set aside and this appeal should focus on the agricultural activity.
126. The case made by the Council's agricultural witness, that the pig rearing-enterprise would not generate enough income to pay for one full time worker, went unchallenged. The appellant also accepted that the hog roast pays a significant subsidy to the agricultural use. Therefore setting aside the hog roasting activities, the economic contribution of the pig rearing activity carries minimal weight in the planning balance.

Other matters

127. At the Inquiry there was some discussion around the ground conditions and whether or not the land was suitable for operating an outdoor pig enterprise as set out by the appellant's agricultural witness. I have been pointed to the soilscape profile for the area and times of heavy rainfall, in addition the evidence of the appellant that he uses rubber conveyor belt material to aid ground conditions in wet weather. These are all matters for consideration. However, the most compelling seems to me to be the fact that the appellant has been rearing pigs successfully for some time in the current conditions. That success in itself is sufficient to suggest that ground conditions should not weigh in favour of replacing the outdoor with an indoor enterprise.

Overall Conclusions

128. For the reasons set out above I find that the construction of one or two buildings with rainwater pond, or the rainwater pond and bunding in isolation would result in unacceptable harm to the character and appearance of the countryside and the setting of the adjacent listed buildings. It would also fail to have any meaningful positive contribution to rural enterprises within the Borough.
129. That would be at odds with Policies CP1, CP3 and CP11 of the CS and Policy TB21 and TB24 of the MDD which seek amongst other things sustainable developments which maintain or enhance the high quality of the environment, respect the character of the area, contribute to diverse and sustainable rural enterprises, retain or enhance the condition, character and features that contribute to the landscape and conserve and seek the enhancement of designated heritage assets.
130. Thus the appeal developments would be in conflict with Development Plan policies. There are no other material considerations that would outweigh the identified conflict with the Development Plan. Furthermore the schemes would not represent a sustainable form of development when considered against the policies of the Framework as a whole.

Final Conclusions Appeals C & D

131. For the reasons given above and having considered all matters raised the appeals should not succeed.

Appeal B – the appeal on ground(f)

132. Section 173 of the 1990 Act sets out what the contents and effect of an Enforcement Notice should be. Sub-section 4(a) explains what purposes the steps specified in an Enforcement Notice should achieve. In this case the steps specified should seek to achieve the restoration of the land to its condition before the breach took place.

133. In my view the requirements are generally entirely appropriate to achieve the objective of restoring the land to its condition before the breach took place. However the requirement 'to sow with an amenity grass seed mix' goes beyond that purpose. Agricultural land would not normally be sown with an amenity grass seed mix. The requirements therefore exceed what is necessary to restore the land to its condition before the breach took place.

134. The appellant is best placed to know what the condition of the land was before the breach took place and I will amend the notice by deleting requirements 2 and replacement it with "return the land to its condition before the breach took place".

135. The appeal succeeds on ground (f). .

Final Conclusion Appeal B

136. For the reasons given above, I conclude that the Appeal B should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decisions

Appeal A Ref: APP/X0360/C/16/3142135

137. It is directed that the enforcement notice is varied by the deletion of the description of requirement 9 in paragraph 5 of the notice and the substitution of the words "Restore the land to its condition before the breach took place".

138. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B Ref: APP/X0360/C/16/3142138

139. It is directed that the enforcement notice is varied by the deletion of the description of requirement 2 in paragraph 5 of the notice and the substitution of the words "Restore the land to its condition before the breach took place".

140. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/X0360/W/16/3141924

141. The appeal is dismissed.

Appeal D Ref: APP/X0360/W/16/3141922

142. The appeal is dismissed.

Richard Perrins

Inspector

APPEARANCES

FOR THE APPELLANT:

Michael Rudd of Counsel	Instructed by Ruth Reed
He called	
Roy Maslin	Appellant
Matthew Green	Planning Consultant
Ruth Reed	Landscape consultant
Charles Holt	Agricultural consultant

FOR THE LOCAL PLANNING AUTHORITY:

Cain Ormondroyd of Counsel	Instructed by Wokingham Borough Council
He called	
Angus Farquhar	Agricultural witness
Marcia Head	Planning Officer – s174 appeals
Giles Stephens	Urban Design and Conservation Officer
Chris Hannington	Landscape Witness
Rebecca Walkley	Rights of Way Officer
Mark Croucher	Planning Officer s78 appeals

INTERESTED PERSONS:

Stephen Ollerhead	Local resident
Robert King	Local resident
Graham Powell	Local resident
Martin James	Local resident
Laurence Heath	Parish Council
Keith Refson	Local resident
Richard Firth	Local resident
Janet Firth	Local resident
Nigel Loughlin	Local resident
Stephen Henry	Local resident
Paul Steel	Local resident
Tim Webb	Local resident

DOCUMENTS

DAY 1

1	Rebuttal of Mark Croucher Appendices
2	Invoice copies from Ockwells and Mutchmeats submitted by appellant (Appendix 2 Appellant)
3	Invoice copies from Turner and Mutchmeats submitted by appellant (Appendix 2 Appellant)
4	Signed copy of appellant's statement.
5	Copy of appendices to Mr Farquhar's original planning statement

DAY 3

1	Email from Darren Cutts dated 4 November 2016 submitted by appellant
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2	Copy of Commission Implementing Regulation (EU) 2015/1375 submitted by the Council
3	Plan setting out Council's interpretation of the local soilscales submitted by the Council
4	Charles Holt Proof of Evidence

DAY 4

1	Rebuttal of Mark Croucher Appendices
2	Invoice copies from Ockwells and Mutchmeats submitted by appellant (Appendix 2 Appellant)
3	Invoice copies from Turner and Mutchmeats submitted by appellant (Appendix 2 Appellant)
4	Signed copy of appellant's statement.
5	Copy of appendices to Mr Farquhar's original planning statement

DAY 5

1	Signed Statement of Common Ground
2	Copy of Stephen Ollerhead Statement
3	Copy of Tim Webb Statement

DAY 7

1	Copy of Keith Refson Statement & attachments
2	Copy of Martin James Statement & attachments
3	Copy of Laurence Heath Statement
4	Copy of Graham Powell Statement & attachments
5	Copy of Paul Steel Statement & attachments

DAY 8

1	Note on application for listing submitted by the Council
2	Drawing showing Allotments in the Liberty of Newland submitted by the appellant
3	Copy of British History Online extract in relation to the above.
4	Copy of Robert King Statement & attachments
5	Copy of Letter dated 17 January 2017 from Buffery & Co

During Adjournments

1	Annual weather data submitted by the appellant
2	Plan showing location of weather stations submitted by the appellant
3	Amended Plan 10_390A_999 'overlay plan'
4	Amended Plan 10_390A_003 'site plan - large scale'
5	Statement of Common Ground unsigned
6	Letter from Historic England dated 26 July 2017

Photographs

- A Aerial photo dated 9 March 2014 submitted by the Council
- B Photograph of hardstanding dated 15 March 2010

