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## Appeal Decisions

Hearing held on 4 April 2017

Site visit made on 4 April 2017

**by K R Saward Solicitor**

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

**Decision date: 21 April 2017**

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### **Youngs Farm, St Mary's Lane, Upminster, Essex RM14 3NU**

#### **Appeal A: APP/B5480/W/16/3156238**

- 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 John Young against the decision of the Council of the London Borough of Havering.
- The application Ref P0890.16, dated 28 April 2016, was refused by notice dated 8 July 2016.
- The development is described as "enlarged residential accommodation from site managers original accommodation to accommodate site owners family running organic farm, reduction of garden area and removal of rear roof terrace etc as Drwg. No. 2016/03/05 + location plan - 2016/05/04/01."

**Summary of Decision: The appeal is dismissed.**

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#### **Appeal B: APP/B5480/C/16/3156232**

- 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 John Young against an enforcement notice issued by the Council of the London Borough of Havering.
- The enforcement notice was issued on 2 August 2016.
- The breach of planning control as alleged in the notice is the unauthorised change of use of the barn, shown hatched black on the plan attached to the enforcement notice, to totally residential use and the unauthorised alterations to the external appearance of the barn involving rear dormer window, rear balcony structure, front porch and the erection of a boundary fence to create residential amenity space.
- The requirements of the notice are:-
  - (i) Cease the unauthorised residential use of the barn as a residential dwelling (Class C3).
  - (ii) Remove the unauthorised rear dormer, rear balcony structure and front porch and restore the barn design and layout, both internal and external including any hard-surface so that it accords with the approved plans in application P1580.04.
  - (iii) Remove the unauthorised boundary fence around the barn.
  - (iv) Restore the land around the barn to open agricultural land.
  - (v) Remove from the land all waste materials and machinery brought onto the land for the purpose of complying with the above requirements.
- The period for compliance with the requirements is 3 months for requirement (i) and 9 months for requirements (ii) to (v) inclusive.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f)&(g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

**Summary of Decision: The appeal succeeds in part on ground (g) and the enforcement notice is upheld as corrected and varied.**

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## **Procedural Matters**

### *Appeal A*

1. When the planning application was made in respect of Appeal A, the development had already been carried out. Section 73A of the Act allows permission to be granted for development carried out before the date of the application.
2. The description of development used in the heading for Appeal A is taken from the original application form. This differs from the description in the Council's decision notice and the appellant's appeal form although the box was ticked in the appeal form to indicate there had been no change in description. Both documents describe the development as "the retention of external alterations to existing barn including formation of rear dormer and continuation of use as residential accommodation." Neither "retention" nor "continuation" is development within the meaning of section 55 of the Act.
3. The external alterations applied for included the formation of a rear dormer. During the course of the appeals, the appellant submitted two revised drawings which he has asked me to consider in the context of both appeals. These revisions attempt to overcome the Council's objections regarding the impact of the development on the Green Belt. The changes replace the rear roof dormer with a small projecting roof with window and the addition of two ground floor windows. The porch is removed and the patio style doors are replaced with a more centrally positioned single door and two windows.
4. In addition, the residential curtilage is shown reduced to an area at the rear of the barn with the close boarded fencing at the front removed. This fencing had already been replaced by the time of my site visit except for a short section. The curtilage had also been reduced but did not appear as small as that shown on the revised plans or to accord fully with them. Whereas the revised plans identify an area immediately adjacent to the barn as 'additional screen planting', there was in fact an area of hard surfacing with post and rail fence down one side. The ménage appeared closer to the barn than illustrated. My decision will be based upon the revised drawings rather than what I saw.
5. Taking into account the judgment in *Bernard Wheatcroft Ltd v Secretary of State for the Environment and Another (1980)*, whilst a number of changes are shown, I consider that the revised drawings do not materially affect the substance of the development applied for in Appeal A. The use of the barn remains the same in each set of drawings and whilst the alterations are not insignificant, the schemes are sufficiently close overall to not be regarded as a different development altogether. Further, no prejudice would be caused to third parties through my consideration of these drawings especially as they provide for a reduction in development.
6. Therefore, I shall deal with Appeal A on the basis that the development applied for is external alterations to existing barn (without formation of rear dormer) and use solely for residential purposes.
7. Copies of the notification letters were provided in advance of the Hearing with the exception of the notice of appeal for the section 78 appeal. A printout of the Council's electronic record established that such notice had been given, but a copy of the letter of notification itself was not available at the Hearing. In the

circumstances, I agreed that this could be provided after the close of the Hearing. A copy was produced later that same day and appears to be in order.

### *Appeal B*

8. The basis of the deemed planning application arising from the ground (a) appeal derives from the allegation in the enforcement notice, being the development as it existed at the time the notice was issued. That being so, the application cannot be modified to accommodate a revised scheme differing from that alleged in the notice. Therefore, I shall proceed to determine the ground (a) appeal on the basis of the allegation. Should the ground (a) appeal be unsuccessful, I shall go on to consider the appeal on ground (f) at which point the alterations can be considered in determining whether there are lesser steps to the remedial action sought.
9. At the time of issue of the enforcement notice, there was a rear balcony structure (described by the appellant as a 'veranda') affixed to the rear dormer. This has since been removed and the retrospective planning application sought to replace the veranda with a 'Juliet' style balcony. Neither appears in the revised drawings submitted during the course of the appeal. Whilst the veranda is no longer present, it forms part of the development for which there is a deemed planning application under ground (a). It shall be considered accordingly.
10. It is important to get the enforcement notice right because it forms the basis for the deemed planning application. The notice describes the alleged breach of planning control as "*the unauthorised change of use of the barn... to totally residential use...*" before identifying various alterations to the barn. However, this description requires correction. There is nothing wrong in the Council issuing a composite notice for both a change of use and operational development, but it should be framed in a way to be clear what exactly constitutes a breach of planning control.
11. Among the various forms of development listed is "the erection of a boundary fence to create a residential amenity space". When planning permission was granted in 2012<sup>1</sup> for alterations to the existing barn to provide an office and 2 bedroom residential unit for a site manager<sup>2</sup>, a condition was imposed removing certain permitted development rights including the erection of fences and boundary treatments<sup>3</sup>. The parties confirmed at the Hearing that the fencing attacked by the notice was erected in breach of that condition. Therefore, the fencing is development carried out without the required planning permission. It is cited correctly in the notice in the context of being operational development. However, the fact that the fencing creates "residential amenity space" is not a use of land for planning purposes and the reference should be deleted.
12. It is the change of use of the land from agricultural to use as domestic garden that is in issue. From the written submissions made, the appellant clearly understood that to be the position and indeed acknowledged that such use is a breach of planning control at the Hearing.

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<sup>1</sup> Council planning ref: P0088.12 dated 20 December 2012.

<sup>2</sup> The application plans showed a packing room, tractor store and cold store with a store/germination area in the loft as well as office and residential accommodation

<sup>3</sup> Under Schedule 2, Part 2, Class A of what was then the Town and Country Planning (General Permitted Development) Order 1995.

13. Consequently, it follows that the breach of planning control that has occurred relates to, and is properly described as, "*the change of use of a barn from a mixed use as an office, agricultural use and site manager's accommodation to use as a single dwellinghouse including domestic garden*". This revised wording was agreed by the parties at the Hearing. I shall correct section 3 of the notice accordingly.
14. As a matter of good planning practice the wording of the requirements should reflect the wording of the alleged breach of planning control, unless under-enforcement is deliberately intended (which does not apply here). A corresponding change to the requirement 5.(i) of the notice should be made to "cease the unauthorised use of the barn as a single dwellinghouse with domestic garden". The parties also agreed that the area of enclosed garden should be marked on the enforcement notice plan. They produced an agreed plan identifying the residential curtilage. For improved clarity, I propose to substitute this plan for the one attached to the notice.
15. Paragraph 5.(ii) of the notice requires the barn to be restored to its internal and external layout with reference to the approved plans in the original planning permission for the barn. Although not raised under ground (f), a notice can go no further than requiring restoration of the barn to its condition prior to the breach taking place. It is appropriate that the notice is framed in that way especially as authorised changes may have taken place since inception. I have a duty to ensure the notice is in order and shall make the mentioned change.
16. The Council agreed that it is unclear what paragraph 5.(iv) of the notice means precisely by requiring the land around the barn to be restored to open agricultural land. It would be more accurate to require the land to be restored to its condition before the unauthorised change of use took place.
17. I am satisfied that all of these corrections can be made without causing injustice to either party.

## **Appeals A and B**

### **The appeal under ground (a), the deemed planning application & Appeal A**

18. Ground (a) is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted. This ground is concerned with the planning merits of the case, and it raises the same issues as the deemed application for planning permission. It also raises the same issues on the linked section 78 appeal. Therefore, I shall deal with them together except where the circumstances warrant consideration of the appeals separately due to the revisions in the Appeal A drawings.

#### *Background*

19. The appeal site comprises approximately 2.7 hectares forming an agricultural smallholding known as 'Youngs Farm' with a frontage along St Mary's Lane. The site lies within the Metropolitan Green Belt. It is also within the Thames Chase Community Forest although the Council Officer clarified at the Hearing that this has no particular significance in these appeals.
20. The appeals concern a barn that was built pursuant to the grant of planning

permission in 2004<sup>4</sup> as a 'barn for existing stables'. The use was restricted by condition for the stabling of horses, storage of ancillary equipment and horse feed and for no other purpose including residential use. Planning permission was subsequently granted by the 2012 permission for alterations to the barn to provide an office and a 2 bed residential unit for a site manager without any garden space. A planning obligation deed<sup>5</sup> restricted occupation of the farm manager's accommodation to an employee of Youngs Organic Farm.

21. Due to the site development and set up costs exceeding those originally anticipated, a farm manager was never appointed to take up residence of the barn. Instead, the appellant resolved to develop the business himself with the aid of family members. The barn was converted to a residential dwelling with the immediately surrounding agricultural land given over to residential curtilage. According to the appellant these changes took effect over the summer of 2013. Ever since August 2013, the appellant and members of his family have occupied the barn as a single dwellinghouse.
22. Planning permission for a farm shop was granted on appeal in 2016<sup>6</sup>. Adjoining the farm shop is a reasonably large greenhouse. Two polytunnels have also been built with the benefit of planning permission. A former stable block operates as a 'staff mess room'.
23. Policy DC45 of the Council's Core Strategy (CS)<sup>7</sup>, titled 'Appropriate Development in the Green Belt' sets out the restricted purposes for which development in the Green Belt may be granted planning permission. This policy pre-dates the National Planning Policy Framework (the Framework) which sets out national policy regarding development in the Green Belt in paragraphs 79 and 87-90 thereof.
24. Although broadly following the approach set out in the Framework, the details of Policy DC45 differ from the wording of the Framework and to that extent is inconsistent with it. The parties agreed at the Hearing that the policy may be regarded as being out-of-date. Therefore, I shall consider the appeal on the basis of the Green Belt section in the Framework.
25. The main issues are:
  - whether the development is inappropriate development in the Green Belt for the purposes of the Framework;
  - the effect of the development on the openness of the Green Belt;
  - the effect of the development on the character and appearance of the barn and the surrounding area; and
  - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

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<sup>4</sup> Council ref: P1580.04 dated 21 October 2004

<sup>5</sup> Pursuant to section 106 of the 1990 Act and dated 19 December 2012

<sup>6</sup> Appeal ref: APP/B5480/W/16/3143056 dated 15 April 2016

<sup>7</sup> Core Strategy and Development Control Policies Development Plan Document, adopted 2008

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## Reasons

### *Whether inappropriate development and effect on openness*

26. Paragraph 89 of the Framework establishes that new buildings within the Green Belt are inappropriate unless one of the exceptions listed in paragraph 89 apply. Paragraph 90 identifies certain other forms of development that are not inappropriate in the Green Belt, provided they preserve openness and do not conflict with the purposes of including land in the Green Belt. They include the re-use of a building provided it is of permanent and substantial construction.
27. There is no dispute that the barn is permanent and that it is of substantial construction. The Council's written submissions suggested that the residential use and curtilage are inappropriate development because of the lack of evidence of an existing organic farm use necessitating the dwelling. However, there is no such test within paragraph 90.
28. At the Hearing the Council conceded that based on the revised plans, there is "probably a re-use" of a building. However, it maintains that the use of part of the barn as residential accommodation was intrinsically linked to the instigation and maintenance of the organic farm which was allowed under exceptional circumstances. Furthermore, the extent of external alterations and change in internal layout as enforced against means the barn has been altered so that it is not strictly the same building.
29. Nothing in paragraph 90 refers to the existing lawful use of the building nor does it say that a building must remain the same and cannot be changed before its re-use. To my mind the works are not so extensive as to go beyond what could reasonably be regarded as a re-use or to amount to a different building. Moreover, extensions and alterations to a building are captured by paragraph 89 whereas the fourth bullet point of paragraph 90 is concerned with the 'use' of a building. The wholly residential use is a different use from that approved previously, but it is still a 're-use' of the barn.
30. The barn has now been enclosed to form a residential curtilage. Whilst there is a shared access, the barn and garden form a physically separate area solely used for residential purposes. Thus, it is in a wholly different use from the remainder of the agricultural holding. Although there may be occupants who work on the farm, there is functional as well as physical separation. It is consistent with case law including the judgment in *Burdle*<sup>8</sup> that a separate planning unit has been created.
31. It is the agreed position of the parties that the 'creation of a residential curtilage' around the barn is a material change of use of land falling outside the remit of paragraph 90 and that no other exception applies. The parties therefore consider it to be inappropriate development. It may be inappropriate development when assessed against the openness and Green Belt purposes, but I disagree with the parties' approach. In applying paragraph 90 I consider that the development must be taken as whole rather than to look at the domestic garden area in isolation. It is intrinsically linked to the residential use of the barn. Thus, the garden is ancillary to the residential use and not a separate change of use in itself.

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<sup>8</sup> *Burdle v Secretary of State for the Environment* (1972) 1 WLR 1207.

32. That being so, there is a re-use of the barn with domestic garden. The issue turns to whether it preserves the openness of the Green Belt and the purposes of including land within it so as not to amount inappropriate development.
33. Paragraph 79 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. There is no definition of "openness" in the Framework, but case law has established that openness of the Green Belt has a spatial as well as a visual aspect and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt.
34. A residential use clearly differs from an agricultural use. Not only are more comings and goings to be expected from residential occupants and their visitors, but it also generates the use of vehicles. The emergence of domestic paraphernalia inevitably follows. This all creates harm to the Green Belt. In this case the use has been extended to the enclosure of land for use as domestic garden giving rise to a very significant and harmful urbanising effect. It includes a large patio area to the frontage and shingled areas providing parking provision. The Council also noted garden furniture, a washing line and planters during a site visit.
35. Such use alters the character appreciably. By introducing a domestic use into these surroundings it severely diminishes the rural qualities of the site. These features and activities within the Green Belt do not preserve openness and also conflict with one of the purposes of including land in Green Belts, namely to assist in safeguarding the countryside from encroachment.
36. A reduction in the size of curtilage has less impact than before. Where there was once garden enclosed by high fencing there is now a ménage. Additional screen planting is shown between the barn and ménage. Despite these changes there would still be a harsh urbanised appearance with wide areas of hard surfacing and gravel driveway to the frontage. Further, a clearly defined area in domestic use remains which contrasts starkly with the rural setting and erodes the openness of the Green Belt. The impact of the revisions is still significant.
37. The appellant suggests that the hard surfaced areas to the front of the barn could be replaced by soft landscaping to improve the appearance and a condition could be imposed to strengthen the landscaped areas further. Although that suggestion was welcomed by the Council in principle, it involves yet further revisions to the drawings which are not before me. Moreover, it would not be reasonable to impose a condition which would essentially require parts of the scheme to be changed.
38. Whilst noting that there was hardstanding in this part of the site prior to the full residential conversion, I understand that it was utilised for storage. The Council says the storage of materials was unauthorised. Moreover, the presence of hard-surfacing is not the same as enclosed domestic garden. As the development does not preserve openness and it conflicts with one of the purposes of including land within Green Belts, this reinforces that the use cannot be considered as 'not inappropriate' for the purposes of paragraph 90 of the Framework.
39. It is common ground between the parties that the fencing is a structure which constitutes a 'building' as defined in section 336 of the 1990 Act. As such, the

erection of fencing is inappropriate development pursuant to paragraph 89. It also forms part of the development as a whole. As acknowledged by the appellant, the fencing does affect openness. The effect of the fencing itself is more limited with the post and rail fence proposed in the amended plans than the high close boarded fence attacked by the notice. Nonetheless, a structure remains with an effect on openness albeit relatively limited. It is the enclosure of the land for domestic use which has the more dramatic impact.

40. Whilst the Council maintains a policy objection to the external alterations in Appeal B, it acknowledges that they have not resulted in disproportionate additions over and above the size of the original building. I have no reason to disagree that in applying the exception in the third bullet point of paragraph 89, the conclusion may be drawn that the alterations are a form of development that is not inappropriate. Under the amended scheme both the dormer and veranda are removed and so this particular issue does not arise.

*Conclusion on whether there is inappropriate development*

41. Having regard to all of the above, I conclude that the use of the barn with domestic garden does not preserve the openness of the Green Belt and conflicts with the purposes of including land in the Green Belt. It is therefore inappropriate development in both appeals as is the fencing.

*Character and appearance*

42. Most of the site is open agricultural land. Development is focussed in the north of the site with the barn sited in the north-eastern corner where it is close to the complex of farm buildings. These comprise the former stable building, farm shop, greenhouse and polytunnels. There are two vehicular accesses along St Mary's Lane. Public access is via the eastern access along a gravelled drive to the large yard in front of the farm shop where there is also customer parking. The site as a whole is bounded by hedgerow and there is woodland to the north of the barn.
43. Next to the eastern entrance is a row of houses at Franks Cottages. Golf club buildings are directly opposite the site. Views extend far into the distance over the golf course and the fields beyond. In each direction there is sporadic development, but buildings are principally built near to the road leaving open and undeveloped views of the wider surrounding countryside. The notable exception is the M25 motorway which passes close-by. Despite this and other limited development, the surrounding area is otherwise predominantly rural. The appellant described the area as a transition between the urban area and the entirely rural countryside, but that is not reflective of the distinctly rural characteristics of this site or its immediate surroundings.
44. As originally built, there was a long stretch of high close boarded fence between concrete posts wrapping around the barn and separating the residential curtilage from the remainder of the site. Much of that fence has since been removed, but its effect can be gleaned from the fence that remains in place behind the barn. Copy photographs supplied by the appellant also show how it appeared with high metal gates installed between the fence along one side boundary. It is apparent that the close boarded fencing had a harsh, unrelenting quality unbecoming to the openness of its surroundings whilst also visually severing the barn and the land about it from the remainder of the unit to very detrimental effect.

45. The rear dormer enforced against is still in place. It is a bulky flat roofed addition that fails to respond to any other design aspect of the barn. Judging by the photographs, the veranda supported by brick piers and enclosed by a metal balustrade protruded notably. Together, these additions will have been the focal point of the rear elevation. Being largely out of sight from inside and outside the site would not make them acceptable. The front porch introduces an unmistakably residential characteristic as does the patio style doors which are at odds with the design of the barn as an agricultural building.
46. I conclude that the development as built and enforced against has a significant adverse effect on the character and appearance of the barn and its surroundings contrary to Policy DC61 of the Core Strategy as the character and appearance of the site is neither maintained nor enhanced. It also conflicts with paragraphs 17, 56 and 58 of the Framework insofar as they seek high quality design appropriate to its locality.
47. With the revisions there is now a post and rail fence instead of a close boarded fence which is set further back from the frontage. As it is a lower fence than before of more sympathetic design, its visual impact is not as severe. Attempts have also been made through planting behind the fencing to soften the edge. The Planning Statement accompanying the planning application indicates that the fence would be removed once the planting becomes established. In the circumstances, I find no material harm arising from the fence itself.
48. As revised, the roof dormer would be removed as well as the veranda. A gabled roof would be reinstated in similar manner to that which was approved by the 2012 permission. The porch and patio style doors would also be removed and replaced with a centrally positioned front door with a window either side to also reflect the previously approved design. The main difference would be that the 2012 approved plans show barn doors to the front elevation where there is now a wide window. Given that the overall affect would not be hugely dissimilar from the 2012 permission with the appearance of the barn more closely maintained, I find no material harm to contravene the aforementioned policies.

*Other considerations*

49. Paragraph 88 of the Framework requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.
50. At the time of the grant of the 2012 permission the Council must have been satisfied of the need for a rural worker to live on site. That residential use was not commenced and there has now been a change of use of the barn in its entirety to solely residential use and the establishment of a residential curtilage. In consequence, the issue of whether there is an essential need for what has now become a single dwelling falls to be considered afresh. The residential use is not the same as approved previously and it does not follow automatically that the need is unchanged.
51. The main thrust of the appellant's argument is that there is a functional need for the family to live on site to support the farming business which is an organic farm producing vegetables. It is certified by the Soil Association.
52. The appellant explained at the Hearing how organic farming is more labour intensive and slower than conventional farming. Produce is picked and washed

by hand. Harvesting takes place at various times of day and there are shorter timescales in which this must be done for certain types of crops. Close attention is needed to pest control which is more difficult to manage than conventional farming where crops are sprayed with pesticide. Watering is undertaken at different times of day. Whilst Mrs Young acknowledged that watering could probably be done using a timer, the business has not yet reached a stage to invest in the equipment. It is maintained that the functional need will become greater as the business becomes more established.

53. The Council Officer contrasted the needs arising in this instance to more onerous demands arising in livestock farming where there are seasons necessitating an on-site presence for reasons of animal welfare. Whilst the need in this instance may be less obvious than in those circumstances, it must still be assessed on its individual merits rather than drawing comparisons with another form of farming.
54. The appellant says the family home at No 1 Franks Cottages was sold to raise funds to invest in the farm. His family then moved to live on the farm to run the business. The appellant confirmed that No 1 is a 3 bedroom property that was sold to one of his sons.
55. Following its conversion, the barn became a 3 bedroom home. Apart from Mr and Mrs Young, the barn is occupied by their 24 year old daughter who runs the farm shop. This is open Monday to Saturday from 0900-1730 hours and on Sundays and Bank Holidays from 0900-1330 hours. Mr and Mrs Young's 22 year old son also lives in the barn. He has a full-time job and helps out on the farm on a seasonal basis. Their 30 year old son works full-time on the farm and he also lives in the barn with his wife who looks after the house and their two young children. None of the occupants have alternative accommodation.
56. The appellant has a groundworks business at which he still works full-time. Mr Young intends to wind the business down as the farm becomes more established. In the meantime he works on the farm in the evenings and weekends. The day-to-day management of the farm is essentially the domain of Mrs Young.
57. By the appellant's own admission, the business has not developed as anticipated and it is estimated to be about 2-3 years behind where it was expected to be. Mr Young acknowledged that the business is in its infancy and that the business only really started in 2016 with production of their first crop. Last year a growing season was achieved between March to September. Mr and Mrs Young want to extend the growing season and intend to grow winter vegetables, but they have stalled buying heaters for the polytunnels due to the cost and the outcome of this appeal.
58. Only a relatively small part of the site is currently being used in connection with production. One of the two polytunnels is not yet in use. The one that is in use was full with a wide variety of seedlings at the time of my visit. The majority of the site is open grassed field. Mrs Young explained how the land must be cultivated in phases with a 5 year rotation. This is why only one part of the field is under cultivation.
59. The fact that cultivation of the land only recently commenced for the first time illustrates clearly how the business is some way off being established as a profitable enterprise.

60. When planning permission was granted on appeal for the farm shop, the Inspector decided not to impose a condition limiting what could be sold. I saw a wide range of fresh fruit and vegetables in the shop, but none were produced on the farm. The appellant expects that come the summer around 50% of the fruit and vegetables stocked will be grown on site. The lack of any produce from the farm is demonstrative of the low level of agricultural production that has been achieved thus far.
61. The shelves also contained a variety of bottled and canned produce along with eggs and household items. Animal and bird feed was on sale. Refrigerators stocked items such as soft drinks, snacks, cheese, confectionery together with salad and some fruit. Apparently, despite the diversity and range of products the shop is only 'breaking even' with no profit to pay a wage. It is submitted that the appellant's daughter who works full-time in the shop would need to find another job if the appeals fail. I can sympathise with that position, but I have no evidence to demonstrate that the shop would need to close without a single dwelling on-site providing accommodation for the family unit.
62. The appellant says that advice from experienced organic growers is that once organic produce is available a profit is achievable. This appears somewhat speculative as there is no financial appraisal to support that position.
63. I can see that there has been financial investment in the farm and that productivity appears to be on the increase to which I attach some weight.
64. Dismissal of these appeals could, it is argued, jeopardise the viability of the farm and cause reputational damage. Paragraph 28 of the Framework provides that planning policies should support economic growth in rural areas in order to create jobs and prosperity. It also promotes the development and diversification of agricultural businesses. However, there is no substantive evidence that the farming activities in this instance necessitate the family living on site. The financial burden of acquiring alternative accommodation could be onerous, but this is in circumstances where the appellant owned a family sized dwelling immediately next to the site which could have allowed the needs now being argued to be met. I appreciate that the sale freed up capital, but I have no business plan or financial data before me to support the approach taken. The risk posed to the business is uncorroborated by facts and figures for me to attach anything more than limited weight to this as an argument.
65. I appreciate that having family members living on site offers convenience and saves cost with help available when needed. However, in terms of the need for a permanent on-site presence occupying a family sized home, the case has simply not been made out. Much of the evidence talks of intention, hope and ambition rather than firm evidence of a viable business necessitating a single dwelling. It is stated that there is a firm intention and ability to develop the farm, but that is not particularly supported by the evidence to date which paints a picture of poor business and financial planning.
66. From all that I have read and heard I am not persuaded that the farming activities described necessitate a single dwelling for the family to live on site particularly in view of the scale of operations. It has not been explained adequately why the needs cannot be met by a worker/s living off-site.
67. The appellant asks me to take account of the prior condition of the site. After construction of the barn, he says the land around the building was entirely hard

surfaced and used for open storage. Copy photographs have been supplied to confirm this. In consequence, it is argued that the enclosure of the land has not resulted in the loss of agricultural land or open countryside. I attach little weight to this argument. It may have been previously developed land, but an agricultural hardstanding is still be part of the countryside whereas the establishment of an enclosed residential curtilage has encroached into the countryside.

### *Green Belt Balance*

68. Both the use and fencing enforced against and that in the revised plans is inappropriate development in the Green Belt which is harmful by definition.
69. In Appeal B, the external alterations cause harm to the character and appearance of the barn and its surroundings contrary to CS Policy DC61. The harm to the character and appearance of the barn itself can be addressed by adopting the alternative scheme, but that does not change there being a significant reduction in openness and other harm to the Green Belt arising from the solely residential use and enclosure of garden space.
70. There is not a development plan policy presumption against isolated homes in the countryside that has been brought to my attention. Nevertheless, there is no justification for the change of use based on an essential need for a rural worker to live permanently at or near their place of work in the countryside as set out in paragraph 55 of the Framework.
71. Although the revised development in Appeal A is less harmful than that in Appeal B, according to the Framework substantial weight must be given to any harm to the Green Belt, both temporary and permanent. In each scenario I have balanced the totality of harm against the combined weight of those factors advanced in favour of the development. When considering the factors in favour of the case as a whole, I have reached the view that the other considerations do not clearly outweigh the harm identified when assessed against both the scheme enforced against and the scheme in the amended plans. Consequently, the very special circumstances necessary to justify either development do not exist.

### *Other matters*

72. The appellant asked at the Hearing that if I were to find against Appeal A, consideration be given to issuing a split decision to allow the residential use of the barn based on the revised scheme without a residential curtilage. Section 79 of the 1990 Act allows me to grant planning permission for part only.
73. The Council opposes that approach on the basis that the absence of a garden would not provide adequate living conditions contrary to the objectives of the Framework.
74. Whilst not argued as a fallback position, the appellant submitted that allowing residential use of the barn only would be no different from the change of use of an agricultural building to a residential use as permitted development under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015. In such circumstances it is submitted that there may be no residential curtilage.
75. That may be so, but that is a different procedure where there are not the same considerations. It does not provide justification, nor would it be reasonable, to

allow a single dwelling currently occupied by six adults and two children without access to any domestic garden. It would not afford a good standard of living conditions as advocated in paragraph 17 of the Framework as a core planning principle. Nor would it address the Green Belt harm arising in consequence of the residential use.

*Overall conclusion on ground (a), the deemed planning application & Appeal A*

76. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) fails and the deemed planning application and Appeal A should be dismissed.

**Appeal B - ground (f)**

77. The ground of appeal is that the steps required by the notice to be taken are excessive.

78. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).

79. The Council states that the purpose of the notice is to remedy the breach. That is consistent with the requirements to cease the unauthorised residential use and to remove the structures amounting to operational development. As the reasons for refusal concern the harmful impacts of the fencing and residential curtilage on the rural location and the openness of the Green Belt, it seems to me that the notice is also directed at remedying injury to amenity.

80. Whilst the alternative plans show a development which is less harmful than that existing at the time of issue of the notice, it does not overcome the harm arising as set out in my consideration of the plans in the section 78 appeal. It would still amount to inappropriate development in the Green Belt which would not be outweighed by the other considerations advanced in the appeal.

81. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a) and (b), it is not excessive.

82. The appeal on ground (f) is dismissed.

**Appeal B – ground (g)**

83. The appellant considers that the 3 month compliance period for cessation of the unauthorised residential use of the barn is too short and a period of 6 months is sought instead.

84. Aside from six adults, there are two children aged 2 and 4 years old living in the barn. In the interests of the welfare of the children and possible schooling arrangements needed for the older child, I consider that a period longer than 3 months for compliance is warranted. I am also mindful of the upheaval to the family at a time when the farm is likely to be at its busiest over the summer months and the consequential disruption that could be caused to the business at that time.

85. In all the circumstances of the case, I am satisfied that a 6 month compliance period would be reasonable and proportionate.

86. The appeal on ground (g) succeeds.

### **Formal Decisions**

#### **Appeal A**

87. The appeal is dismissed.

#### **Appeal B**

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

- (a) deleting the whole text in paragraph 3 of the notice and replacing it with:
  - “(i) the change of use of a barn (shown hatched black on the attached plan) from a mixed use as an office, agricultural use and site manager’s accommodation to use as a single dwellinghouse including domestic garden (together shown edged red on the plan); and
  - (ii) unauthorised alterations to the external appearance of the barn involving rear dormer window, rear balcony structure, front porch and the erection of a boundary fence.”
- (b) deleting the first sentence in paragraph 5.(i) and replacing it with “Cease the unauthorised use of the barn as a single dwellinghouse with domestic garden.”
- (c) deleting the words after “hard-surface” in paragraph 5.(ii) and substituting the words “to its condition before the unauthorised development took place”.
- (d) deleting the words “open agricultural land” from paragraph 5.(iv) of the notice and substituting the words “its condition before the unauthorised change of use took place.”

and varied by:

- (e) substituting 6 months as the period for compliance in paragraph 5.(i).

89. Subject to those corrections and variation the appeal is dismissed and 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.

*KR Seward*

INSPECTOR

**APPEARANCES**

**FOR THE LOCAL PLANNING AUTHORITY:**

Scott Davison MRTPI                      Planner

**FOR THE APPELLANT:**

Matthew Letten                              Spectrum Planning

John Young                                  Appellant

Julie Young                                  Appellant

**DOCUMENTS SUBMITTED AT THE HEARING**

- 1 Statement of Common Ground.
- 2 Marked up copy of the enforcement notice plan identifying the residential curtilage enforced against.
- 3 Printout of electronic record for notification of appeals

**DOCUMENT SUBMITTED AFTER THE HEARING**

- 4 Notice of section 78 appeal.



# Plan

This is the plan referred to in my decision dated: 21 April 2017

by **K R Seward Solicitor**

**Land at: Youngs Farm, St Mary's Lane, Upminster, Essex RM14 3NU**

**Reference: APP/B5480/C/16/3156232**

Scale: DO NOT SCALE

