DATED 3 September 2024

Dorset Council enforcement notice reference
ENF/20/0313 Notices One, Two and Three
Notice One: Within the subject planning unit edged purple [Anchor Paddock]: (1) without planning permission, the construction of single storey rear extension (2) without planning permission, the construction of a dormer extension
Notice Two: Within the subject planning unit identified as edged orange on the plan [The White Barn]: (1) without planning permission the conversion of a barn/outbuilding to a habitable dwelling including operational development to extend the barn building (2) without planning permission, the construction of a barn/outbuilding to a habitable dwelling including operational development to extend the barn building (2) without planning permission, the construction of a garage, outbuildings, greenhouse, swimming pool, chicken coup and associated hardstanding
Notice Three: Within the subject planning unit, identified on the map edged in green [The Treehouse]: without planning permission construction of a separate C3 dwelling house
Anchor Paddock, Batchelors Lane, Holtwood, Holt BH21 7DS aka the Treehouse, Anchor Paddock & White Barn and known collectively as Former Dilly Dallys.

ENFORCEMENT NOTICES COMBINED APPEAL STATEMENT

On behalf of

Mr Michael James White and Mrs Michelle Suzanne White

The White Barn, Batchelors Lane, Holtwood, Holt BH21 7DS

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THIS ENFORCEMENT APPEAL STATEMENT is prepared by Sebastian Charles, Solicitor, LLB, LARTPI of Aardvark Planning Law on behalf of Mr Michael James White and Mrs Michelle Suzanne White, of The White Barn, Batchelors Lane, Holtwood, Holt BH21 7DS

It relates to three enforcement notices reference ENF/20/0313 served under a single covering letter and with a single plan attached but therein referred to as Notice One, Notice Two and Notice Three (**Attachment 1**). The notices allege breaches of planning control in relation to different identified parts of the property:

Notice One: Within the subject planning unit edged purple [Anchor Paddock]: (1) without planning permission, the construction of single storey rear extension (2) without planning permission, the construction of a dormer extension

Notice Two: Within the subject planning unit identified as edged orange on the plan [The White Barn]: (1) without planning permission the conversion of a barn/outbuilding to a habitable dwelling including operational development to extend the barn building (2) without planning permission, the construction of a barn/outbuilding to a habitable dwelling including operational development to extend the barn building (2) without planning permission, the construction of a garage, outbuildings, greenhouse, swimming pool, chicken coup and associated hardstanding

Notice Three: Within the subject planning unit, identified on the map edged in green [The Treehouse]: without planning permission construction of a separate C3 dwelling house

The location of the alleged breaches is identified on the plan attached to the enforcement notice. We attach a further annotated version of the plan referencing various other features and buildings for ease and consistency (**Attachment 2**): Treehouse, Dormer, Anchor Paddock Single Storey Extension East, Anchor Paddock Single Storey Extension West, Anchor Paddock Original Dwelling, Anchor Paddock Outbuildings 1,2, 3, 4, & 5 Anchor Paddock Garage, White Barn Garage, White Barn Agricultural Storage Building One, White Barn Agricultural Storage Building Two, White Barn Home Office, White Barn Outbuilding, White Barn Glazed Link, White Barn Teen Annexe, Retaining Wall, White Barn Single End, White Barn Side Extension, Chicken Coop, White Barn Swimming Pool, Greenhouse, Adjacent Farmland. Together with the plan is a key which includes a schedule of areas which is relevant to volumetric equalisation (see below)

Ownership of the appeal property is split across two titles, both registered in Michelle White's sole name, but Michael White retains an equitable interest across the whole. Mr & Mrs White are together "the Appellants". The Former Dilly Dallys was acquired on 21 May 2020. There is a mortgage in favour of OneSavings Bank plc t/a Kent Reliance over title DT476843 (which includes the Treehouse and Anchor Paddock), but which does not include White Barn whose title number is DT476843. This was confirmed in the Planning Contravention Notice Response given in. However registration of various matters are pending at HMLR so the title register does not reflect that, and at the moment shows a previous mortgagee. The position has been somewhat complicated by the firm of Solicitors dealing with two of the registrations becoming insolvent and being the subject of intervention. However, it is expected that this matter will resolve itself during the course of this appeal and that the title position will become clear and the Land Registry will have caught up by the time the planning obligation needs to be finalised and entered into. See

Attachment 3 for current Land Registry documents). In addition, Michelle White is the proprietor of the adjoining parcels of land to the north and west, title number DT333721 **Attachment 4)** acquired 28 April 2023**.** In addition we also note that at times relevant to this appeal the Whites owned land and barns at Horseshoes Farm, Holtwood BH21 7DR and Priors corner, Holtwood, BH21 7EX (**Attachment 5**).

Because the planning issues and the potential solutions to the planning issues span across the whole of the Former Dilly Dallys we have followed the Council's approach of a single overarching planning statement dealing with the history of the site as a whole, and key legal issue and principles, then separate sections dealing with the grounds of appeal for each notice separately.

1. HISTORY & BACKGROUND

1.1 The property is within the Green Belt. It is not within a conservation or otherwise protected by any special designation, it does not fall within the Area of Great Landscape Value AGLV in the adopted local plan. It is outside the settlement confines of Holt.

1.2 It is unclear when the original dwelling at Anchor Paddock was constructed, but it is shown as existing on the plans approved in 1980 for an extension reference 3/80/1858 (**Attachment 6**). Those plans also show a range of outbuildings, including what is now White Barn and the White Barn Teen Annexe. Historic OS maps from 1956 show a building of the same size and shape including the rear projection (**Attachment 7**), but nothing on the 1947 edition. Unfortunately, the earliest Google Earth image is illegible, but the subsequent images show the buildings across the site at various times 2002-2023 (**Attachment 8**)

1.3 In 2016 a certificate of lawfulness application for the whole of the Former Dilly Dallys to be used as bed and breakfast holiday accommodation was refused (reference 3/16/1460/CLE) (decision notice and plan **Attachment 9**), but a subsequent 2017 application reference 3/17/256 for a smaller area excluding White Barn, the Anchor Paddock dwelling and much of the land was approved, although for a slightly different description of development clarifying the main building at Anchor Paddock was a C3 dwelling, and the change of use was only of part to C1 B&B accommodation (decision notice and plan **Attachment 10**). Anchor Paddock Single Storey Extension West is part of the C3 dwelling and Anchor Paddock Single Storey Extension East falls into the C1 part.

1.4 It is important to understand that this matter was being progressed during the pandemic. The White's had been in negotiations and agreed STC to purchase Anchor Paddock and had secured the necessary finance prior to the first lock down in March 2020, but were able to delay the purchase until restrictions were eased after May 10 2020. However the delivery of the project continued to be impacted by the changes in the various restrictions and measures that were applied though until December 2021, and the backlog of matters in the planning system that persisted well beyond then. See timeline **Attachment 11**. These put the Appellants in an incredibly difficult situation with [redacted] due and them needing somewhere to live – they were facing [redacted] if matters did not progress, as well as having contractors and tradespeople also facing [redacted]

if they were not employed to work. They also had a [redacted] so space was starting to become an issue, hence the extensions and dormer to Anchor Paddock and later the additional accommodation at White Barn. Access to professionals for advice was difficult and access to the Council was virtually impossible. Even post Covid the Council appeared to be unable to deal with matters (such as the Class Q and subsequent certificate application) either promptly or at all and at the time of the appeal there are undetermined applications relating to the matters in question.

1.5 The approach adopted by the Appellants was to consider very carefully what was the best solution for the property/situation and proceed with that, fully expecting that certain matters may need to be regularised after the event, and this was confirmed in the response to the PCN **Attachment 12**. That was the approach being followed, before the Council pre-empted matters by serving the enforcement notices. The Appellants might be criticised for the speed with which the regularisation was progressed, but Mr White was having a number of challenges, not just Covid and a [redacted] These matters should be considered cumulatively. We submit that trying to deliver development during Covid is a material consideration and a very special circumstance to be taken into account when considering these appeals, together with (to a lesser extent) the Appellants other personal circumstances. The Appellants have spent in excess of [redacted] trying to resolve the issues before these enforcement notices were served. Whilst the Appellants' accept that errors have been made and matters have proceeding out of sequence, before the necessary consents were in place, the circumstances they were working under are a partial justification for this and some shared responsibility on the part of the Council should be accepted and matters should now be considered not only on the basis of how they did proceed, but also on the basis of how, in normal circumstances they could have been dealt with and considered, if the Appellants' weren't facing [redacted] had access to proper advice and could have engaged with the Councl on the usual timetable that would have allowed them to meet their financial obligations.

1.6 The Whites purchased the former Dilly Dallys on 21 May 2020 and moved in to Anchor Paddock, and found a tenant for the Treehouse. In December 2020 the Appellants' applied for a Class Q prior approval for the adjacent White Barn (**Attachment 13**). This application included a planning supporting statement which explained that White Barn had been in agricultural use on 20 March 2013 and referred to the smallholding reference (11/264/0082) at that date. This would be consisted with the refusal of the certificate in 2016 and the exclusion of the barn from the certificate in 2017. It was also supported by a structural report that included photographs of the exterior (including the White Barn Single End) and of the interior showing the storage of hay bales and farm machinery. This was not refused in the allowed period and accordingly was deemed approved,

1.7 Subsequently there was some doubt as to the validity of the deemed approval which the Appellants sought to clarify with the submission of a certificate of lawfulness application reference 3/21/1384 on 11 July 2021, however the Council appeared either unable or unwilling to deal with the application and by April 2022 it was still undetermined, and because by then the works on White Barn had to be proceeded with to stay within the 3 year time limit, the application was withdrawn (**Attachment 14**).

1.8 Works to convert White Barn were started in July 2022 and the Appellants moved in in December 2022, having done enough to make it habitable, including rebuilding the White Barn Single End. Later the interior was reworked to provide the current layout, and the Whitebarn Side Extension was added. The outbuilding at the rear was rebuilt as the Whitebarn Teen Annexe to provide living space for the Appellants [redacted] and it was clear he would be living at home for the foreseeable future, and connected via the Whitebarn Glazed Link so he wasn't excluded from family life in the barn. The main part of the Whitebarn Teen Annexe was a pre-existing agricultural storage building that can be shown pre-existing on Google Earth, this was connected to two other buildings that can be shown on Google Earth and consolidated into one on the same footprint.

1.9 The Dormer and Anchor Paddock Single Storey Extension East, Anchor Paddock Single Storey Extension West were well advanced when the Council came to inspect in July 2020. The Councils photographs from that site inspection confirm how far advanced those works were at that time (**awaited**). On 7 August 2020 (**Attachment 15**) the Appellants were asked to make a planning application to regularise the dormer (not either of the Anchor Paddock Single Storey Extension East or Anchor Paddock Single Storey Extension West) which was submitted on 25 October 2022 reference P-HOU-2022-06621 which remains undetermined (**Attachment 16**). Although, we note an error on the application form which states the works were commenced on 1 January 2021 and completed on 1 July 2021. The application was not determined and is noted as being withdrawn. On 9 May 2023 the Appellants applied for planning permission for just the dormer reference P/HOU/2023/02656 and this was refused (**Attachment 17**). The Appellants later sought a certificate of lawfulness for the works application reference P-CLE-2024-00737 CLE which was refused (**Attachment 18).** Then the Appellants made a planning application for retention of the dormer linked to demolition of Outbuilding 1 on 10 February 2024 which remains undetermined (**Attachment 19**).

1.10 The Appellants also set about upgrading the Greenhouse which was dilapidated. This we rebuilt on the same base and incorporating some of the material from the original greenhouse. This was rebuilt to a much more attractive and energy efficient design with the objective of using it to support their agricultural operations on the adjacent land, seeding soft fruit etc that could then be grown on. The works carried out were detailed in a certificate of lawfulness application reference P-CLE-2024-01226 (**Attachment 20**) refused.

1.11 After purchase the Whites also decided to improve the treehouse to make it more attractive and this work included changing the pitch of the roof. A photo of the works underway is **Attachment 35** which is also available as a video.

1.12 It was later suggested by the Council that the Treehouse was not a lawful dwelling. On 4 March 2024 an application was made for a certificate of lawfulness confirming the lawfulness of the use of the treehouse as a dwelling based on long user. This application was supported by copious detailed evidence back to 2013 (in excess of 10 years). This application reference P-CLE-2024_01225 remains undetermined (**Attachment 21**).

1.13 We understand that the Council were not prepared to deal with the use of the Treehouse without the works carried out to it also being regularised. Accordingly, the Appellants submitted a planning application detailing the works on 17 July 2024 that was given reference P/FUL/2024/04000 (**Attachment 22**). On 20 August 2024 the Council wrote to the agent for the application purporting to void the application for failure to provide information requested in an invalid letter dated 29 July 2024. After this was queried the Council wrote again to apologies and confirmed that after checking no such invalidation letter was sent and issued a new letter with a further period to deal with the requests of 10 September 2024. The substance of the request are a block plan and a biodiversity checklist and also a further fee because the Council isn't accepting it is a householder application because they haven't yet determined the certificate of lawfulness application to confirm it is a dwelling P/CLE/2024/01225 and hence are demanding a further £35 fee which has been paid without prejudice to the Appellants' position that it is a dwelling and hence the alterations to it are valid householder application. The application was validated on 22 August 2024.

1.14 On 24 July 2024 three enforcement notices were issued. We are unclear on what basis the Council decided it was appropriate to take enforcement action when it hadn't yet determined pending planning applications relating to the dormer and to the use and works at the Treehouse were undetermined. We also asked to see the reports that led to the serving of the notices so we could see what evidence the Council was relying on and what considerations had been taken into account in coming to the decision that it was expedient to do so. To date the Council have refused to disclose or publish the reports, and refused to provide copies of the site photographs etc. These have been requested under Freedom of Information and that request refused and requested under GDPR and that request is pending. We have also had to query with the Council the authority to issue the notices, because without sight of the delegated reports we are unable to link the person that signed the notices with the job title of the person authorised to take enforcement action under the constitution of the Council and this query remains outstanding. We are unclear how the Council have complied with its own policy KS1 'to work proactively with applicants jointly…to find solutions which mean that proposals can be approved wherever possible'.

Planning Policy

1.15 The adopted local plan comprises the 2014 saved policies from the East Dorset Local Plan 2002 comprising GB3, GB5, GB6, GB7 specifically relating to Green Belt, together with the Christchurch and East Dorset Local Plan Part 1 Core Strategy 2014. The Local Plan saved policies are more than 20 years old and the saving more than 10 years old. Only the policies are saved and not the supporting text which do not form part of the policies. The Part 1 Core Strategy is more than 10 years old. The Council does not have a 4 or 5 year housing land supply and hence the tilted balance is applied in relation to housing land supply policies. The policies quoted by the Council in support of its decision to take enforcement action are KS1-3, ME1 & 2, HE2, LN1. The emerging local plan is not scheduled for adoption until 2027 and is likely to be caught up in the changes to the NPPF, particularly relating to green belt and plan making, currently being consulted upon, and accordingly should be afforded little weight. There is no applicable neighbourhood plan.

1.16 GB3 – This has regard to extensions or replacements of existing dwellings in the Green Belt and states that such works will be acceptable so long as there is no material change to the impact of the dwelling on the openness of the Green Belt especially through increases in height or bulk and that any extension should not 'dominate' the existing dwelling. The justification for this policy is set out in the pre-amble at paragraph 6.102 of the 2002 Local Plan where, 'as a general guideline', any extension which increases the floor area by over 50% as it existed in February 1980 would be deemed to represent a disproportionate addition. The 50% rule is therefore not enshrined in any local policy and the relevant Green Belt paragraphs found within the NPPF should be afforded greater weight in policy decisions.

1.17 GB5 – This is in relation to the re-use of agricultural buildings within the Green Belt and lists criteria under which such changes of use would not be permitted. The Class Q and other permitted development rights relating to agricultural buildings clearly supersede the requirements of this policy.

1.18 GB6 – This is a simple policy referring to the removal of permitted development rights by way of condition or legal agreement for further agricultural buildings to be erected.

1.19 GB7 – The appeal site is not within any of the listed village envelopes and so is not directly relevant.

1.20 KS1 – This policy sets out the presumption in favour of sustainable development. It states that local planning authorities 'to work proactively with applicants jointly…to find solutions which mean that proposals can be approved wherever possible'. It is submitted that that the proposals do represent sustainable development. With regards to Anchor Paddock, the fall-back positions are derived from permitted development rights and the volumetric equalisation arguments ensure that there is no additional harm to the Green Belt. This is an existing dwelling within a site which contains a Lawful Development Certificate to allow 9 B&B rooms. This lawful use confirms that the site is previously developed land. The ground (a) appeal confirms that the alleged unauthorised use represents sustainable development. With regards to the Treehouse, the ground (d) appeal sets out that the use a single dwellinghouse began over 12 years ago and that the dwelling now benefits from have significantly enhanced energy efficiency features since the appellant took ownership. White Barn is even more of an example of how a modern dwelling should be built in terms of containing sustainability features for which KS1 overwhelmingly seeks to support. What would not be sustainable is to require extensive demolition or alterations of well designed and constructed buildings that have little or no planning impacts, simply as a matter of abstract principle or to prove a point, especially where other solutions can be found as set out in this appeal statement.

1.21 KS2 – This is a settlement hierarchy policy. Whilst the appeal site is located within the open countryside it certainly does not represent an isolated site and is set amongst a cluster of settlements that are listed as 'villages' in KS2. Gaunts Common is approximately 1km to the south; Hinton Martell is 2km to the west; Holt is 2.5km to the south and Horton is 1km to the north. Limited development within these villages will be allowed under this

policy as a provider of services to its community. The three dwellings that are the subject of this appeal will continue to benefit the local services and facilities that are found within the villages listed in the policy.

1.22 KS3 – This is the general Green Belt policy for the former East Dorset area. The subject development does not conflict with the two listed 'most important purposes' of the Green Belt in this particular area, namely, that the individual settlements will continue maintain their own separate identity as the alleged development is contained within the overall 'Anchor Paddock' site and does not encroach into open fields of Green Belt. The appeal site is surrounded by natural, mature and dense vegetation which ensures that the site is discreet and not impactful to the wider Green Belt. The 'open area of land around the conurbation' remains unchecked as a result of the subject development – indeed there are other buildings and residential properties which serve to enclose the site to the north and south. In addition, there can be no doubt that the lawful use of Anchor Paddock confirms that this is previously developed land. As noted elsewhere in this Statement, the forthcoming changes to Green Belt policy within the NPPF are considered to carry more weight than the Core Strategy policies listed as the latter are over 10 years old.

1.23 ME1 – This has regard to safeguarding of biodiversity and geodiversity. The appellant has prepared relevant bat surveys for the buildings that are offered to be demolished as part of the volumetric equalization.

1.24 ME2 – This policy aims to protect the Dorset Heathlands. The appellant has made a voluntary financial contribution which has been accepted by the local planning authority in relation to White Barn, and see also the proposed planning obligation.

1.25 HE2 – This is a general design policy commonplace in all Local Plans. The subject development is considered to comply with all of the criteria listed. There can be no argument that the design and materials used represent good design and the related energy efficiency benefits that ensue. There is no reciprocal neighbouring amenity harm due to the layout of the dwellings and the use of window placements and boundary treatments. There is no visual impact harm given the discreet nature of the site and general low-slung nature of the buildings. Overall the layout of the three dwellings mirrors the built form which has been present on this site for at least the previous two decades.

1.26 LN1 – The density of development reflects that which is found in the locality. The dwellings at Anchor Paddock and White Barn are large detached dwellings containing ancillary outbuildings which are found elsewhere in Holtwood and neighbouring villages. Similarly, there are some smaller dwellings set within smaller plots in the wider locality such as that which is found at the Treehouse. Such smaller dwellings assist in providing less expensive housing at the lower end of the housing ladder to rent or buy in what it is a desirable part of the county to live.

NPPF

1.27 Absent an uptodate local plan the application stands to be determined based on the version of the NPPF applicable at the time of the decision. The NPPF is currently under review. We reserve our position to make further comment when the outcome of that review is known but for now the relevant paragraphs are 152-155:

Proposals affecting the Green Belt

152. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

153. When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

154. A local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this are:

a) buildings for agriculture and forestry;

b) the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it;

c) the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building;

d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces;

e) limited infilling in villages;

f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites); and

g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:

– not have a greater impact on the openness of the Green Belt than the existing development; or
– not cause substantial harm to the openness of the Green Belt, where the development would re-use previously developed land and contribute to meeting an identified affordable housing need within the area of the local planning authority.

155. Certain other forms of development are also not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. These are:

a) mineral extraction;

b) engineering operations;

c) local transport infrastructure which can demonstrate a requirement for a Green Belt location;

d) the re-use of buildings provided that the buildings are of permanent and substantial construction;

e) material changes in the use of land (such as changes of use for outdoor sport or recreation, or for cemeteries and burial grounds); and

f) development, including buildings, brought forward under a Community Right to Build Order or Neighbourhood Development Order.

1.28 It is agreed that inappropriate development ought not to be approved in the green belt unless very special circumstances exist outweighing the in principle and actual harm to the green belt, unless certain exceptions apply, including extension or alteration, replacement and re-use. Limitations on extension or alteration require that it may not be a disproportionate increase in size over the original dwelling. Although "disproportionate" is sometimes sought to be defined in Local Plans as some arbitrary percentage, no actual percentage is prescribed in the NPPF. There is no percentage prescribed in the saved policy. We understand the Council still refers back to the supporting text from 20022 which is not policy and not saved and which refers to 50% as a "general guide" and so this does not rule out extensions greater than 50% in certain circumstances, taking all relevant matters into account. Replacement buildings are limited to replacements in the same use. Re-use is limited to buildings of permanent and substantial construction.

Legal issues – (1) alteration versus new building, (2) required steps (3) fall back and over enforcement, (4) what is a dwelling and (5) volumetric equalisation.

1.29 One of the issues that applies in this case (to the Treehouse, White Barn Teen Annex, White Barn Single End and Greenhouse), is the extent to which if a building is extensively altered it goes beyond para 154(c) of the NPPF which is supported by Green Belt Policy, either with or without an extension, or whether it becomes an entirely new building, and if it becomes an entirely new building whether that breaks the continuity of the use of such building. Fortunately, the issue was addressed in detail in a recent appeal decision considered by a very experienced Inspector who review the law and leading cases on the topic (**Attachment 23** – APP APP/X0360/C/22/3313844, 3303555 & 3310598 "*Atlanta*"). There are many parallels with the Treehouse but the principles apply to the White Barn Teen Annex, White Barn Single End and Greenhouse). The leading case is *Oates* (**Attachment 24**). In *Oates* the Court considered whether a building that had had these works undertaken *"included the erection of an exo-skeleton shell around each of the three*

buildings; drystone walling to the corners of each building; blockwork between the steel posts; the installation of 24000 natural roof slates; the installation of Tyvek roofing battens; 200mm Cellotex Insulation between the rafters; the provision of Gluelam rafters; welding to the steel sections; the addition of scarfed sections of the timber rafters; and bolts to the steel posts" but crucially "*this exo-skeleton has been erected some 0.3m from the original building and has its own foundations;".* In that case it was found that the works comprised a new building, but the crucial element of the Court's decision is that it is for the decision maker to determine whether it is a new building or not. That thinking and analysis was followed in *Atlanta* and again there the Inspector concluded that it was a new building. In both cases it was found that the final structure contained elements of old and new building. But also the common reason we submit that it was concluded was because the resulting building had a bigger footprint than the original building. In *Oates* the exoskeleton made the building a foot or so larger all the way round. In *Atlanta* the main part of the building was substantially the same as before and retained much fabric and the same size but for insulation in the roof and the infilling of the veranda, but the crucial factor in determining that it was a new building as a whole as because the rear lean to had been constructed on a larger footprint. We submit that were the footprint is identical it is easier to conclude it is a retained/altered building, whereas if it is on a larger footprint that points toward being a new building. In each case; Treehouse, White Barn Teen Annex, White Barn Single End and Greenhouse have been rebuilt on an identical footprint using the existing floor/footings.

1.30 The other issue that was considered in *Atlanta* was whether the use was discontinued whilst the works were being carried out, such that continuity of use for the purpose of establishing the lawfulness of that use was broken. Helpfully and directly in parallel with the facts relating to the Treehouse the conclusion was that the continuity of use was not broken because the use before and after the works was the same.

1.31 Whilst we submit in this case a different conclusion about whether it was a new building or not than in *Atlanta*, the Inspector did helpfully go on to consider the appropriate enforcement step and whether the total demolition and site clearance was the appropriate or indeed only step that the notice could require. We submit that the Inspectors conclusion that two options for compliance could appropriately be specified in the notice and that alongside demolition the breach could also be fully remedied by reversing the works and returning the building to its original size and design. We submit that even if the decision goes against us about whether the altered structures are new building that that is the appropriate step to be required.

1.32 The reason why it is important for reversal to be considered as an option in the enforcement notice is it than becomes material to the consideration of the fall back for a ground (a) deemed planning permission and the issue to be determined in relation to ground (a) becomes the relative merits in green belt and other terms of the existing building versus reverting back to the prior form of the building before the alterations. Although in the case of *Atlanta* that argument did no find favour because the Inspector found that notwithstanding the environmental and sustainability benefits of the improved building, it's size and design was not acceptable. However, it was recognised that there might be a better compromise solution than reverting back to the previous form of development, and

granting a longer time that usual for compliance to allow discussion and compromise scheme to be submitted and approved by the local planning authority. And so it has come to pass with the local planning authority granting two new permissions – one for a scheme of alterations that was less impactful than the as built but involving less work that reverting back to the original design and a planning permission for a complete replacement dwelling (**Attachments 25 & 26**). In this case it is submitted that the Ground (a) appeals are capable of being granted as is, for the current structures as in each case it is a better and acceptable solution in design than reverting back to the original form of construction, captures the environmental and sustainability benefits of the improved buildings and avoids the waste that would be involved in reverting to the original construction. To the extent there is an increase in volume (upwards) we submit that is acceptable in green belt terms as an addition that is not disproportionate in size terms in relation to the original building. The Treehouse's amended pitch makes it slightly taller, the Greenhouse is slightly taller, but White Barn Single End is the same in height and volume. The White Barn Teen Annex is slightly lower and smaller in volume.

1.33 What is a dwelling? The legal position was helpfully considered and summarised in the Atlanta decision referring to the leading cases of *Gravesham, Impey* and *Welwyn Hatfield* (**Attachments 27 28 & 29).** We adopt that position for this appeal: Per *Gravesham*, the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The Treehouse features a fully equipped kitchen, a bathroom, a living area and a separate bedroom. It is fully weatherproof, fully insulated and is heated. It provides all the facilities required for day-to-day private domestic existence. It is therefore a dwellinghouse. It was held in Impey that a change of use could take place as a result of the physical works but that it is necessary to look in the round. In that context, the High Court found that the physical state of the premises is very important, but it is not decisive. The High Court also found that actual or intended or attempted use is important but again not decisive. More recently, in Welwyn Hatfield Lord Mance commented that "too much stress… [has] been placed on the need for actual use".

1.34 Without prejudice to the case made below that there is no breach of green belt policy and that extensions/alterations/replacements/re-use wall within the green belt exceptions, the final fall back is very special circumstances. In this case and entirely without prejudice it is intended to address this in the same way as was accepted in the *Warehams Farmhouse* appeal APP/A3655/D/21/3288976 (**Attachment 30**). The facts in that case are quite complicated, but the solution was simple. It was concluded that because of a simple error by the appellants, including a chimney for a BBQ on the side of a very expensive pool house, that was purported to have been constructed under permitted development (and would have been but for the chimney) in the green belt, and where permitted development rights had been removed in association with implementation of a permission with a condition, the whole pool house was unlawful. And because of the condition there was no option to demolish it and rebuild under permitted development rights without the chimney. The solution that was accepted by the Inspector in that case, entirely correctly in our view, was to address both the in principle and actual impact on openness of the green belt by agreeing to reduce actual and potential built volume elsewhere on the planning unit. This

was secured by a planning obligation securing both the demolition of an existing stable block and agreeing to continue the build out of an extension to the stable block that had been partially implemented (**Attachment 31**). That planning obligation and the resulting neutral impact on openness of reducing built volume (both actual and potential in terms of consented but not yet built) was considered to amount to very special circumstances allowing the Ground (a) permission for the retention of the pool house as granted. To the extent that there are any residual built volume that needs to justified by very special circumstances the Appellants propose to offset that (wherever it arises across matter covered by the three enforcement notices), either by demolition of existing lawful outbuildings (of which there are many on the Anchor Paddock) or by agreeing not to implement a Class AA upwards extension of the original dwelling on Anchor Paddock. A draft planning obligation is included in this appeal (**Attachment 32**).

Bat surveys and demolition

1.35 Whilst formal planning permission/prior approval has not at this point been sought for the demolition of any offset floorspace (other than Anchor Paddock Outbuilding 1 in association with P/FUL/2024/04000 (**Attachment 22**). However it is contended that there is no reasonable basis upon which prior approval could be resisted and hence it can be assumed this is lawfully achievable, other than potentially because of bats and accordingly as a precautionary measure, even though they have seen no signs of bats, the Appellants have or will survey all the necessary buildings for the presence of bats (**Attachment 33**)

2. THE GROUNDS OF APPEAL (TREEHOUSE) (ENFORCEMENT NOTICE THREE)

2.1 The breach alleged in relation to the Treehouse is:

Without planning permission construction of a separate C3 dwelling house

2.2 The steps required are (summary):

- Remove the building and its foundations
- Disconnect all utilities
- Remove all waste and sewage connections
- Remove all building materials
- Restore the land and allow to recover

2.3 The grounds of appeal are grounds (a), (b) (c), (d) (f) and (g) under s174 of the Town and Country Planning Act 1990 (as amended) namely:

Ground (a) - 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 or, as the case may be, the condition or limitation concerned ought to be discharged. (note the relevant fee has been paid to the Local Planning Authority). See below re the planning balance also in relation to ground (a).

Ground (b) - that those matters have not occurred

Ground (c) – that those matters (if they occurred) do not constitute a breach of planning control.

Ground (d) – that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control

Ground (f) - That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. See section 4 below re the planning balance, also in relation to ground (a).

Ground (g) – That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

3. **GROUND (B) (C) & (D) (TREEHOUSE)**

3.1 No new dwelling has been constructed within the last 4 years. The history is detailed on application P-CLE-2024_01225 which remains undetermined (**Attachment 20**). The Treehouse building was constructed during 2012 and 2013, and occupied as a dwelling by Stuart Coles, and then by tenants of the Appellants. Both the use as a dwelling and the building itself are immune from enforcement due to the passing of time. The facilities for it to properly be considered a standalone dwelling and as applied in the Atlanta decision applying Gravesham, Impey and Welwyn Hatfield. As regard the use all the evidence submitted in support of P-CLE-2024_01225 is submitted as part of this appeal and it is submitted that it shows on balance that it has been in use as a dwelling since 2013 and so far as we can ascertain the Council has produced no evidence to contradict that evidence. Under guidance where the Council has no evidence to contradict evidence submitted for a certificate than it ought to be granted.

3.2 More recent works of alteration have been carried out but these are on the footprint of the original building and incorporate parts of the original structure resulting in a building of the same size but for a slight increase in height resulting from a change in the pitch of the roof which was insulated and replaced. The works are alteration do not result in a material change of the appearance of the building other than it is slightly large and the cladding has been changed from horizontal to vertical. However, without prejudice a planning application has been lodged to regularise the works P/FUL/2024/04000 (**Attachment 22**), but it is

submitted that even if planning permission is required for those works that the lawful use as a dwelling house is not affected. At no time since 2013 has any other use, other than as a dwelling house been undertaken.

4. GROUND (F) (TREEHOUSE)

4.1 We submit that steps required cannot include any elements of the building that have been in situ for more than four years and that the requirements to remove the foundations, disconnect all utilities, and remove all waste and sewage connections because these element of the works are immune from enforcement having been carried out in 2012. We also submit that it is not lawful to require total demolition and at most all that could be required is to reverse the works back to the previous design which would entirely address the breach of control (entirely without prejudice to the ground (a) appeal) that planning permission for the works ought to be granted).

5. GROUND (A) (TREEHOUSE)

5.1 Entirely without prejudice to the lead case that planning permission is not required it is submitted that planning permission ought to be granted for either the use (if for whatever reason the lawfulness of that use is not established) and/or for the works if it is found to be needed. In terms of the use, it is accepted that the dwelling is small, but it meets a need for small and hence low cost accommodation and is of reasonable quality compared to other offerings at that price point. Particularly having regard to the housing land supply position, it would be perverse to deprive the tenant of their home on the basis that housing of a higher quality ought to be provided. In terms of the works the design is attractive and better looking that the dwelling before the works and better quality. It performs better from an environmental sustainability and thermal performance point of view and again we consider it would be perverse to require it to be reversed. The dwelling is not visible from any third party vantage point and affect the amenity of no one. The plot is enclosed and the openness of the green belt does not suffer. To the extent that there is in principle harm arising from the very slightly greater built volume arising from the change roof profile this is considered to be negligible. If and to the extent very special circumstances are required to be proven for such a very minor impact, we'd submit that the improved environmental performance and improved living conditions ought to be sufficient together with the other factors quoted at para 1.4 above relating to Covid etc. If the Appellants had applied to change the use, then applied to replace it, then applied to extend it upwards each application itself would have complied with policy and would have been acceptable, leading to exactly the same development we have now. If not, the Appellants would be prepared to offer volumetric equalisation in the first instance for the increased volume versus reversal of the works and in the second instance in relation to the whole volume but only if found to be necessary and no other way to avoid total demolition.

5.2 See above for applicable planning policy analysis.

5.3 We also cite potential human rights impacts on the tenant and the Appellants as a reason for granting planning permission. Although it is accepted that planning has to balance the

rights of the individual with the greater good, we consider that in this case where there are no ascertainable impacts on anyone, only potentially in principle harm to the green belt of such negligible extent and no precedent is set on what are very unique facts

6. GROUND (G) (TREEHOUSE)

6.1 We submit that the time period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. It specifically fails to take into account that the steps required would make the current tenant homeless, that vacating the dwelling might require legal proceedings, and that time would be needed to organise contractors and carry out works.

7. PLANNING CONDITIONS/OBLIGATIONS (TREEHOUSE)

7.1 We do not accept the Council's position that planning permission should not be given, because planning conditions could not overcome these objections, although we aren't able to identify conditions that are actually needed.

7.2 The Appellants have also prepared a draft obligation under s106 Town and Country Planning Act 1990 which if required would secure volumetric equalisation.

7.3 The Appellants accept that is planning permission is to be required and granted that it would need to mitigate the impact on Dorset Heathland and if applications P-CLE-2024_01225 and P/FUL/2024/04000 are not granted will agree the method for paying this which we understand does not require a full planning obligation (has been paid in respect of White Barn see **Attachment 34**) and will meet any reasonable requirement of the Council in that regard.

8. CONCLUSIONS (TREEHOUSE)

8.1 Our lead submission is that there is no case to answer and that the change of use and construction of a dwelling in 2013 has become immune from enforcement. As regards the works more recently carried out our lead submission is that those are not material and do not require planning permission with a fall back that planning permission for them ought to be granted, and with a fall back that full demolition is not justified and that at worst reversal of the works is the most that could be required, although we consider that would be perverse. There is no design or green belt policy bar to the modest upward extension of the building which has improved the environmental performance of the building, creates a better living condition and looks better. No one suffers any adverse impact. If applied for in sequence the development could have been found to be policy compliant. There are very special circumstances relating to Covid and the Appellants circumstances. To the extent there is any in principle harm to the green belt not subject to the policy exception or very special circumstances this can be addressed by volumetric equalisation which is a very special circumstance.

9. **THE GROUNDS OF APPEAL (ANCHOR PADDOCK) (ENFORCEMENT NOTICE ONE)**

9.1 The breaches alleged in relation to Anchor Paddock are:

Without planning permission, the construction of single storey rear extensions

Without planning permission, the construction of a dormer extension

9.2 The steps required are (summary):

- Demolish the rear extensions
- Demolish the dormer and reinstate the roof
- Remove all building materials and waste from the land

9.3 There are two rear extensions with we have described above as Anchor Paddock Single Storey Extension East (rectangular in shape), Anchor Paddock Single Storey Extension West (which is broadly square).

9.4 We have also identified the Original Dwelling. This we have taken to be the original dwelling as shown on and described in the 1980s extension application 3/80/1858 (**Attachment 6**). This is a bungalow with a pitched roof with a single storey rear element. Historic OS maps (**Attachment 7**) are inconclusive as to whether it existed in 1948 as it is first shown in the 1956 edition. In the absence of any evidence to the contrary we submit that the materials and nature of construction point to it either being a pre-1948 construction or built all together post 1948 or there is a reasonable chance the single storey element was built first for some other purpose and then incorporated into the dwelling when the dwelling was constructed. So, our lead argument is the original dwelling includes that single storey element.

9.5 The grounds of appeal are grounds (a), (c), (d), (f) and (g) under s174 of the Town and Country Planning Act 1990 (as amended) namely:

Ground (a) - 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 or, as the case may be, the condition or limitation concerned ought to be discharged. (note the relevant fee has been paid to the Local Planning Authority). See below re the planning balance also in relation to ground (a).

Ground (c) – that those matters (if they occurred) do not constitute a breach of planning control.

Ground (d) – that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control

Ground (f) - That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. See section 4 below re the planning balance, also in relation to ground (a).

Ground (g) – That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

10. **GROUND (C) (ANCHOR PADDOCK)**

10.1 In relation to Anchor Paddock Single Storey Extension West (which is broadly square) only it is submitted that this is permitted development under Part A of Sch 1 of the GDPO as applied at the time it was constructed. All the requirements for that Class are met, height, size of curtilage, proximity to boundary etc. and permitted development rights have not been removed by condition or article 4 direction or otherwise. The requirements of limb (f) are met because the depth of the extension whilst exceeding 4m itself extends less then 4m from the rearmost single storey portion of the Original Dwelling.

11. **GROUND (D) (ANCHOR PADDOCK)**

11.1 The pertinent question is whether the works were substantially complete on the date 4 years prior to the date of service of the enforcement notice (24 July 2020). On that date the works were well advanced and the structure had been completed but the scaffolding was still up, but the Appellants are not certain exactly how advanced they were on that day. At the Council's inspection it is understood that the Council took a set of photographs. The Appellants seek to rely on those as evidence as to the advanced nature of the construction, but to date the Council has refused to share them. The Appellants will argue that the photographs show a sufficiently advanced construction that the Dormer and/or both extensions can be considered to be substantially complete. To the best of Mr White's recollection, the Dormer did not have all its non-structural cladding in place and may not have had windows, but the ground floor extension had had their windows fitted by this time, although this will be confirmed by Council's set of photographs when shared.

11.2 The pad foundations of Anchor Paddock Single Storey Extension East were constructed for the previous building and ought not to be required to be removed as part of demolition.

12. **GROUND (F) (ANCHOR PADDOCK)**

12.1 In relation to the Dormer only it is submitted that rather than total removal an appropriate alternative requirement would be to reduce the height and refinish it to a level that complies with the permitted development requirements as that is less onerous than completely removing it and reinstating the roof and then rebuilding it lower from scratch and would wholly address the breach, following *Atlanta*.

12.2 The Dormer is accepted as not being permitted development under Class B because it is higher than the ridgeline of the existing roof. There is however a potential fall back that if a Class AA upwards extension of the Original Dwelling was carried out, that would raise the roof line, and that because the requirements for Class B roof extensions refer to the existing roof, not to the original dwelling, it then would be possible to rebuild the dormer exactly as it is now under permitted development. This is also material to ground (a).

12.3 In relation to Anchor Paddock Single Storey Extension East and Anchor Paddock Single Storey Extension West the same point applies that rather than requiring total demotion and rebuilding compliant with permitted development from scratch that rebuilding meeting the requirements of their respective permitted development should also be an option, following *Atlanta*.

13. **GROUND (A) (ANCHOR PADDOCK)**

13.1 Entirely without prejudice to the lead case that Anchor Paddock Single Storey Extension West is permitted development it is argued that planning permission ought to be granted for it. It is an attractive design and modest in size and is an infill surrounded on 3 sides by existing built form therefor having negligible impact on the openness of the green belt. No one suffers any adverse impact. To the extent there is any in principle harm to the green belt it stands to be considered whether any exception applies. The only one that is potentially available is extensions and that is constrained because of the very small size of the Original Dwelling. However, there is no hard and fast rule and when considering whether this extension is disproportionate regard has to be had to the design quality, absence of impacts and small size, but especially the very small amount by which the permitted development allowance of 4m is exceeded only if the rear element of the Original Dwelling is found not to be part of it. We submit that it is so negligible as to not require very special circumstances or that it is a very special circumstance that it is such a small volume. To the extent that it is not subject to the exception and other very special circumstances are required this can be addressed by volumetric equalisation. That volumetric equivalence can be considered against the fall back of a slightly less deep extension that would meet permitted development requirements, or failing that in its entirety.

13.2 Anchor Paddock Single Storey Extension East is a similarly high quality design, that impacts the amenity of no one and has no measurable impact on the openness of the green belt. It would meet the requirements for permitted development, but for limb (j) which provides that were it projects beyond the side wall of the Original Dwelling it must not be wider than half the width of the Original Dwelling House. The Original Dwelling is 8.7 m wide and the Anchor Paddock Single Storey Extension East is 8.5 m wide. But a potential fall back would be to reduce the width of the extension to 4.35m. Hence it is the planning merit of only 50% of 8,7m which stands to be considered. The same as Anchor Paddock Single Storey Extension West one exception that is potentially available is extensions and that is constrained because of the very small size of the Original Dwelling. However, there is no hard and fast rule and when considering whether this extension is disproportionate regard has to be had to the design quality, absence of impacts and small size, but

especially the very small amount by which the permitted development width allowance of 50% of 8.7m is exceeded. Of course, the cumulative impact along with Anchor Paddock Single Storey Extension West would need to be considered.

13.3 The difference between Anchor Paddock Single Storey Extension East and Anchor Paddock Single Storey Extension West is that East is a replacement for a pre-existing structure (which is clearly shown on the google earth images) and is roughly the same size, although we note the potential issue of although the structure is attached to the dwelling it appears to have been used as part of the former BnB use. We also note the Council appears to have no objection to the cessation of that use (which gave rise to complaints) and incorporation of the outbuilding, garden and pool back into C3 dwellinghouse use, an accordingly if planning permission had been sought for a change of use to residential that would have been granted and could then have been applied for to be replaced. We submit that doing development that would be acceptable out of sequence, which would have been acceptable if done in a different sequence is a material consideration and very special circumstance.

13.4 Failing all else we submit that the in principle green belt impact is so negligible as to not require very special circumstances or that it is a very special circumstance that it is such a small volume. To the extent that it is not subject to any exception and other very special circumstances are required this can be addressed by volumetric equalisation. That volumetric equivalence can be considered against the fall back of a slightly less deep and wide extension that would meet permitted development requirements or failing that, in its entirety.

13.5 The Dormer is accepted as not being permitted development under Class B because it is higher than the ridgeline of the existing roof. There is however a potential fall back that if a Class AA upwards extension of the Original Dwelling was carried out, that would raise the roof line, and that because the requirements for Class B roof extensions refer to the existing roof, not to the original dwelling, it then would be possible to rebuild the dormer exactly as it is now under permitted development. Whilst the Council appear not to like the design of the dormer in our submission it is an appropriate response and no less attractive and possible slightly more interesting than a dormer just below the ridgeline that would be permitted development. The difference is very marginal, and we submit not sufficient to justify the waste that would arise and adverse impact on the living conditions and amenity of the occupants of taking it down and rebuilding it slightly lower. The impact on amenity on others of the taking down the dormer and rebuilding it compliant with permitted development we would argue is comparable with retaining it as is. As with the ground floor extensions it is possible to argue that an extension can be permitted and there is no hard and fast rule and when considering whether this extension is disproportionate regard has to be had to the design quality, absence of impacts and small size, but especially the very small amount by which the height exceed the ridge of the existing roof that would be permitted development. To the extent that it is not subject to any exception and other very special circumstances are required this can be addressed by volumetric equalisation. That volumetric equivalence can be considered against the fall back of a slightly lower dormer that would meet permitted development requirements or failing that, in its entirety. It can

be offset either by demolition of an existing outbuilding, or possibly better and more relevant by agreeing to forgo a Class AA upward extension of the Original Dwelling. A scheme for the Class AA has been prepared and will be submitted to demonstrate the acceptability and deliverability of that so that its potential can properly be taken into account and the Appellant reserves the right to introduce this into evidence in due course (scheme plans **Attachment 36**).

13.6 Foregoing such an upward extension could entirely offset the very small volumes needed to be offset versus the fallback reduced sizes complying with permitted development of all three elements. Demolition may be required if the whole of the volume was required to be offset.

13.7 See above for applicable planning policy analysis and very special circumstances relating to Covid etc..

14. GROUND (G) (ANCHOR PADDOCK)

14.1 We submit that the time period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. It specifically fails to take into account that the steps required would make the current tenant homeless in order to carry out the works, that vacating the dwelling might require legal proceedings, and that time would be needed to organise contractors and carry out works.

15. PLANNING CONDITIONS/OBLIGATIONS (ANCHOR PADDOCK)

15.1 We do not accept the Council's position that planning permission should not be given, because planning conditions could not overcome these objections, although we aren't able to identify conditions that are actually needed.

15.2 The Appellants have also prepared a draft obligation under s106 Town and Country Planning Act 1990 which if required would secure volumetric equalisation (**Attachment 32**).

16. CONCLUSIONS (ANCHOR PADDOCK)

16.1 Our lead submission is that Anchor Paddock Single Storey Extension West is permitted development, and that Anchor Paddock Single Storey Extension East and the Dormer could be permitted development if they were rebuilt slightly smaller. In the alternative it is submitted they can be granted planning permission as extensions/replacements, or failing that by virtue of the very special circumstance of volumetric equalisation.

17. THE GROUNDS OF APPEAL (WHITE BARN) (ENFORCEMENT NOTICE TWO)

17.1 The breaches alleged in relation to White Barn comprising White Barn, White Barn Garage, White Barn Home Office, White Barn Outbuilding, White Barn Glazed Link, White Barn

Teen Annexe, White Barn Single End, White Barn Side Extension, Chicken Coup, White Barn Swimming Pool, and Greenhouse. are:

Without planning permission, the conversion of a barn/outbuilding to a habitable dwelling including operational development to extend the barn building;

Without planning permission, the construction of a garage, outbuildings, greenhouse, swimming pool, chicken coup and associated hardstanding

17.2 The steps required are (summary):

- Cease using the land and building(s) other than for purposes ancillary to the residential use of Anchor Paddock,
- Remove all kitchen and bathroom fixtures and fittings from the building known as White Barn
- Remove the extensions to the building and foundations identified in orange on the plan
- Remove the outbuildings and swimming pool identified on the plan highlighted in yellow
- Remove the retaining wall identified on the plan as a blue line
- Remove any hardstanding surrounding the building identified as green hatching on the plan
- Restore the land and allow to recover
- Remove all the building materials occurring from the works to dismantle the building from the land

17.3 We are unclear why enforcement action is being taken against the residential use of the barn when the Council state in the enforcement notice itself that conversion of the building could (and we submit does) benefit from a green belt exception para 155 limb (d).

17.4 We are unclear why the Council claims that a failure to make a contribution to Dorset Heathland is a reason for taking enforcement action whilst at the same time acknowledging that the payment has been received **(Attachment 34).**

17.5 It is not accepted that the first requirement is a valid or correct requirement. When an enforcement notice is upheld the use reverts to the previous lawful use. There is no evidence that the White Barn site described as Unit 2 has ever been used as ancillary to the residential use of Anchor Paddock. The only evidence about it past use is the refused certificate of lawfulness application (reference 3/16/1460/CLE) (decision notice and plan **Attachment 9**). Unfortunately, the evidence submitted with that application is not available on line. We ask the Council to add the evidence submitted and their consideration of it to the planning register or in their appeal statement. The fact it wasn't certified then as being

in lawful use for the BNB operation does not mean it wasn't being used for that, just potentially that 10 years long user hadn't been proven. Furthermore the Council cite evidence that the barn was being used for the BNB business (see Tripadviser review) as a reason for rejecting the Class Q. But the Council's own case is not that it was used in association with the residence. It isn't possible to require the use to revert back to a use ancillary to the BNB, first because that BNB use has never been demonstrated to be lawful and second because the BNB use has ceased and you can't require something to be ancillary to a primary use that is not on going. Our conclusion is that the only valid prior use that the barn can be required to revert back to is the prior agricultural use. Under the certificate of lawfulness application (withdrawn) reference 3/21/1384 (**Attachment 12**) ample evidence about the agricultural use of the barn prior to its residential conversion and is incorporated by reference to this appeal.

17.6 We are unclear which "the building" is which is required to be dismantled under the final requirement.

17.7 Each building or part of a building ought to be separately described as there are different planning issues associated with each one.

17.8 The grounds of appeal are grounds (a), (c), (d), (f) and (g) under s174 of the Town and Country Planning Act 1990 (as amended) namely:

Ground (a) - 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 or, as the case may be, the condition or limitation concerned ought to be discharged. (note the relevant fee has been paid to the Local Planning Authority). See below re the planning balance also in relation to ground (a).

Ground (c) – that those matters (if they occurred) do not constitute a breach of planning control.

Ground (d) – that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control

Ground (f) - That the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. See section 4 below re the planning balance, also in relation to ground (a).

Ground (g) – That any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.

18. **GROUND (C) (WHITE BARN)**

18.1 It is not accepted that the residential conversion of White Barn constitutes a breach of planning control, because it benefitted from a deemed Class Q prior approval (Attachment 13)

18.2 The Council's case appears to be that

Q.1 Development is not permitted by Class Q if—

(a) the site was not used solely for an agricultural use as part of an established agricultural unit—

(i) on 20th March 2013, or

(ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or

(iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date development under Class Q begins;

18.3 The Council appears to be trying to argue that it was not eligible for prior approval on the basis of a Tripadviser review reporting that they had eaten an Italian meal in a barn as part of a stay at the BnB submitted by a local objector. The Appellants' submission is that at the time of the application the barn was in agricultural use for the storage of hay and agricultural machinery, as evidenced by the photographs included in the structural report. This hay and machinery arose from the Appellants' farming operations on the balance of the White Barn land and agricultural landholdings elsewhere (Horseshoes Farm and Priors Corner) (**Attachment 5**), and was sold on to other farmers for profit. In the application the Appellants made clear the barn had been part of an established agricultural unit in 2013 and the Council has produced no evidence to contradict this. In the alternative the Appellant submits that it is very clear and shown on the other pictures in the structural report and the Google Earth images that the building was a barn and was built for and has historically been in agricultural use, and hence that the basis for Class Q is made out. There is also a helpful set of historic photos of the barn showing agricultural use of the land (**Attachment 36**). To suggest that a single (or even multiple) occasions of use of a barn for hospitality, barn dance, wedding, charity events etc. negates the primary agricultural use of a barn is clearly wrong and would mean that farmers all over the Country would be in breach of planning law and at risk of enforcement for resuming agricultural use over an alleged change of use. This is simply not the case based on de minimis, 56 day rule, ancillary use or basic common sense.

18.4 Then it stands to be considered whether the approved plans were complied with. The position is somewhat complicated by the phased way in which White Barn was converted, with the Appellants having to do an interim implementation to be able to move in, which

were substantially complete when they moved in and suitable for a new baby. Then followed by a further separate and subsequent phase of works to create the scheme that can now be seen on site. It is submitted that the initial conversion itself complied with the approved plans in all material respects and to the extent material to the question of whether the change of use was lawful. It is accepted that subsequent works went beyond the approved scheme and as confirmed in the PCN that appellant recognises that those further works need to be regularised.

19. **GROUND (D) (WHITE BARN)**

19.1 The foundations of The Greenhouse, White Barn Single End and the White Barn Teen Annex were all constructed more than 10 years ago for the purposes of the building that previously stood on those plots and accordingly may not be required to be removed (see Google Earth images, and Attachment 20 as regards the Greenhouse).

19.2 To the extent that parts of the Greenhouse, White Barn Single End and the White Barn Teen Annex are retained from the original buildings they have been in situ more than 10 years ago and accordingly may not be required to be removed. In respect of the Greenhouse this includes the internal block work and parts of the plinth.

19.3 To the extent that areas of hardstanding predate the recent works and are associated with the historic farm activities they were constructed more than 10 years ago and accordingly may not be required to be removed (see Google Earth images).

19.4 There were historically utilities already running to the buildings which it is not now within the scope of enforcement to require removal, including water to the greenhouse and electricity to the barn.

20. **GROUND (F) (WHITE BARN)**

20.1 In relation to White Barn we are unclear what the purpose is of requiring the removal of the kitchen and bathroom fixtures and fittings is, if White Barn is required to be used ancillary to the dwelling at Anchor Paddock. Anchor Paddock is some distance away and if you were using White Barn for instance as a home office (which would be lawful) you might want to cook up a snack or use the toilet without having to walk all the way back to Anchor Paddock, possibly in inclement weather, to do so. The removal of those items do not serve any purpose or remedy any breach of planning control. As explained above we do not consider the requirement to use White Barn ancillary to Anchor Paddock is valid.

20.2 The requirement to remove all foundations exceeds what is necessary to the extent that such foundations predate the recent works as they do not amount to any breach – The Greenhouse, White Barn Single End and the White Barn Teen Annex (see Google Earth images).

20.3 The requirement to remove the whole of the Greenhouse, White Barn Single End and the White Barn Teen Annex that are retained from the original buildings exceeds what is required and rather than total demolition reinstatement to the prior design is appropriate.

20.4 The requirement to remove all hardstanding exceeds what is necessary to the extent that such hardstanding predates the recent works as it does not amount to any breach (see Google Earth images).

20.5 The requirement to remove utilities exceeds what is necessary to the extent that such utilities predate the recent works and do not amount to any breach.

21. **GROUND (A) (WHITE BARN)**

21.1 Our lead submission is that change of use of White Barn is Class Q, but in the alternative that reuse for residential purposes is an exception under Green Belt policy and ought to be granted planning consent and we think that is tacitly accepted by the Council. The Council's issue appears to be in relation to other works. Or possibly in relation to design. White Barn is an exemplar design capturing the essence of a barn conversion and avoiding appearing suburban and accordingly entirely appropriate in it setting. A high-quality finish has been achieved and the project is an exemplar of sustainability including solar panel and air source heat pump and a range of high quality features. In addition the appeal site's hard and soft landscaping have been designed and implemented to a high standard (although there are some snagging items to attend to), with new trees planted, and when finally complete will be a home to be proud of. The Appellants intend to live there long term and develop a farming enterprise on the Adjacent Farmland they own, bringing on soft fruit seedlings in the Greenhouse and ranging their chickens from the Chicken Coup. They envision a rural lifestyle for themselves and their [redacted]

21.2 Particularly having regard to the housing land supply position, it would be perverse to deprive the Appellants of their amazing home on the basis that although conversion is acceptable there is some issue with the design that requires it to revert back to some pointless prior use.

21.3 The Retaining Wall ought to be permitted as it is a replacement for the previous retaining wall and has no Green Belt or other planning implications or impacts on anyone's amenity.

21.4 The Greenhouse ought to be permitted as it is a replacement for the previous Greenhouse and in the same use. As with the Treehouse there is no design or green belt policy bar to the modest upward extension of the building which has improved the environmental and functional performance of the building and looks better. No one suffers any adverse impact. To the extent there is any in principle harm to the green belt not subject to the exception this can be addressed by very special circumstances explained above in relation to Covid etc, and if required volumetric equalisation which is a very special circumstance. It is intended to be used in the future as part of an agricultural enterprise on the Adjacent Farmland owned by the Appellants.

21.5 The Chicken Coup ought to be permitted as it is a replacement White Barn Agricultural Storage Building Two and in the same use. It is intended to be used in the future as part of an agricultural enterprise on the Adjacent Farmland owned by the Appellants. Volumetric equalisation is not proposed for the Chicken Coup.

21.6 The Swimming Pool has no impact on the openness of the Green Belt, is a facility for outdoor sport and recreation and is in keeping with the character of the area which features large dwellings with attractive landscaped ground and swimming pools are a common feature (e.g. at Anchor Paddock next door).

21.7 The White Barn utilities ought to be granted consent (whether or not consent is granted for any other elements) as they have no impact on the green belt or any other planning policy, it would be unsustainable to remove them and have to reinstate them and would be likely to be required for resumption of the previous lawful use of the appeal site and well as any alternative development proposals. For instance, the foul drainage would be needed to provide appropriate welfare facilities for agricultural workers in any event.

21.8 The White Barn hardstanding ought to be granted consent (whether or not consent is granted for any other elements) as it has no impact on the green belt or any other planning policy and is largely replacement for pre-existing hardstanding (in some cases which remains under the new hardstanding). The appeal site had large areas of hardstanding (see Google Earth images) and overall the net effect of what has been removed and added is not material in landscape and visual impact terms, but also the landscape benefits from the tidying up and landscaping of the site outweigh such residual impacts as there may be and additional landscaping could be implemented if required to make the hardstanding acceptable.

21.9 The White Barn Single End is an alteration of an existing building and does not increase the volume of the building at all (disproportionately or otherwise). In the alternative it is an extension that is not disproportionate given the very large size of the original building. To the extent that Very Special Circumstances are required (and we say not at all) those are explained above in relation to Covid etc, and in addition volumetric equalisation is proposed to the extent required.

21.10 The White Barn Teen Annex is the appropriate reuse of an existing building. The works are alterations of an existing building and ds do not increase the floorspace of volume of the building at all (disproportionately or otherwise). In the alternative it is an extension that is not disproportionate given the very large size of the original building. In the further alternative, like Anchor Paddock Extension East, it is a replacement that would have been appropriate if it had been applied for after a change of use had been granted from agricultural to ancillary residential, which would itself have been an appropriate and green belt policy complaint change given that the building is/was permanent and substantial. To the extent that Very Special Circumstances are required (and we say not at all) those are explained above in relation to Covid etc, and in addition volumetric equalisation is proposed to the extent required.

21.11 The White Barn Side Extension is an extension that is not disproportionate given the vary large size of the original building. To the extent that Very Special Circumstances are required (and we say not at all) those are explained above in relation to Covid etc, and in addition volumetric equalisation is proposed to the extent required.

21.12 The White Barn Glazed Link is an extension that is not disproportionate given the vary large size of the original building. To the extent that Very Special Circumstances are required (and we say not at all) those are explained above in relation to Covid etc, and in addition volumetric equalisation is proposed to the extent required.

21.13 White Barn Outbuilding – is under 2.5m tall. If the White Barn were to be granted planning permission, then a replacement outbuilding for the White Barn Outbuilding would be permitted development under Class E. To the extent that Very Special Circumstances are required (and we say not at all) those are explained above in relation to Covid etc. In respect of this building volumetric equalisation is not proposed.

21.14 White Barn Home Office – To the extent that Very Special Circumstances are required (and we say not at all) those are explained above in relation to Covid etc, and in addition volumetric equalisation is proposed to the extent required.

21.15 White Barn Garage - To the extent that Very Special Circumstances are required (and we say not at all) those are explained above in relation to Covid etc, and in addition volumetric equalisation is proposed to the extent required.

21.16 See above for applicable planning policy analysis and very special circumstances relating to Covid etc.

22. **GROUND (G) (WHITE BARN)**

22.1 We submit that the time period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed. It specifically fails to take into account that the steps require the Appellants to lose their home and that time would be needed to organise contractors and carry out works. However, a serious human rights issue would arise as the financial consequences of this enforcement notice if it were to be upheld would be catastrophic for the Appellants and [redacted] This is disproportionate to the breaches of planning control that have occurred, because is approached in a different way would in the main have complied with policy and been capable of being granted consent.

23. **PLANNING CONDITIONS/OBLIGATIONS (WHITE BARN)**

23.1 We do not accept the Council's position that planning permission should not be given, because planning conditions could not overcome these objections, although we aren't able

to identify conditions that are actually needed, other than potentially a condition on the White Barn Teen Annex that it is only used as an annexe ancillary to the White Barn, and landscaping if required. 15 new trees have already been planted.

23.2 The Appellants have also prepared a draft obligation under s106 Town and Country Planning Act 1990 which if required would secure volumetric equalisation.

24. CONCLUSIONS (WHITE BARN)

24.1 The enforcement notice is not well drafted and some elements are incorrect. Whilst it is accepted errors have been made and applications should have been made and determined in sequence before works were carried out, the overall end result is one that would have been policy compliant if proceeded with in a different sequence. Planning permission can be granted for all the elements being enforced against.

25. CONCLUSIONS OVERALL

25.1 This is a difficult and complicated situation made more difficult by the Council serving enforcement proceedings whilst the Appellants legitimate attempts to regularise matters are still under consideration and it if very difficult to square the Council's conduct with compliance with its own policy KS1 'to work proactively with applicants jointly…to find solutions which mean that proposals can be approved wherever possible'. Whilst the Appellants accept that given they were working under very challenging circumstances relation to Covid etc. they have done their best to resolve matters and the detailed analysis set out above provides a comprehensives and fully policy compliant route to resolving all the planning issues, without the need to take the drastic step of turning the Appellants out of their home, [redacted] or requiring very expensive and totally unsustainable works to demolish perfectly acceptable and sustainable development, that is not harming anyone. Whilst green belt policy is to be respected, and the efficacy of the planning system is also to be respected and proceeding with works ahead of the requisite consents never to be condoned, in this case after detailed analysis of the law and directly applicable appeal decision, solutions proposed in this appeal ought to be accepted.

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SCHEDULE

Attachments

1. **COPY OF ENFORCEMENT NOTICES AND PLAN**

2. **SITE PLAN AND KEY**

3. **TITLE TO ANCHOR PADDOCK AND WHITE BARN**

4. **TITLE TO ADJACENT LAND**

5. **TITLE TO OTHER AGRICULTURAL LAND HORSHOES AND PRIORS CORNER**

6. **PLANNING PERMISSION FOR 1980S EXTENSION SHOWING EXTENT OF ORIGINAL DWELLING 3/80/1858**

7. **HISTORIC OS MAPS**

8. **GOOGLE EARTH IMAGES**

9. **REFUSED CERTIFICATE OF LAWFULNESS FOR DILLY DALLYS 3/16/1460/CLE**

10. **GRANTED CERTIFICATE OF LAWFULNESS FOR DILLY DALLYS 3/17/256**

11. **COVID TIMELINE**

12. **PCN RESPONSE**

13. **CLASS Q APPLICATION (WHITE BARN)**

14. **CERTIFICATE OF LAWFULNESS APPLICATION FOR WHITE BARN (WITHDRAWN) 3/21/1384**

15. **7 AUGUST 2020 LETTER FROM DORSET COUNCIL ASKING FOR A REGULISATION APPLICATION FOR THE DORMER**

16. **PLANNING APPLICATION TO REGULARISE DORMER (WITHDRAWN) P- HOU-2022-06621**

17. **SECOND PLANNING APPLICATION TO REGULARISE DORMER (REFUSED) P/HOU/2023/02656**

18. **CERTIFICATE OF LAWFULNESS FOR THE DORMER (REFUSED) P-CLE-2024-00737 CLE**

19. **THIRD PLANNING APPLICATION TO REGULARISE DORMER INCLUDING DEMOLITION OF OUTBUILDING (UNDETERMINED) P/HOU/2024-00739**

20. **CERTIFICATE OF LAWFULNESS APPLICATION FOR GREENHOUSE (REFUSED) P-CLE-2024-01226**

21. **CERTIFICATE OF LAWFULNESS FOR TREEHOUSE (UNDETERMINED) P/CLE/2024/01225**

22. **PLANNING APPLICATION TO REGULARISE TREEEHOUSE WORKS (UNDETERMINED) 2024-04000**

23. **APPEAL DECISION *ATLANTA* APP/X0360/C/22/3313844, 330355 & 3310598**

24. ***OATES V SSCLG & CANTERBURY CC [2018] EWCA CIV 2229 (12 OCTOBER 2018)***

25. ***ATLANTA* REPLACEMENT PERMISSION**

26. ***ATLANTA* REBUILD PERMISSION**

27. ***GRAVESHAM BC V SSE & O'BRIEN***

28. ***IMPEY V SECRETARY OF STATE FOR THE ENVIRONMENT_ QBD 2 JAN 1983 -***

29. ***SSCLG V WELWYN HATFIELD***

30. ***WAREHAMS FARMHOUSE* APP/A3655/D/21/3288976**

31. ***WAREHAMS FARMHOUSE* PLANNING OBLIGATION**

32. **ANCHOR PADDOCK DRAFT PLANNING OBLIGATION**

33. **BAT SURVEY**

34. **RECEIPT FOR DORSET HEATHS PAYMENT RE WHITE BARN**

35. **WORKS UNDERWAY AT TREEHOUSE (ALSO AVAILABLE AS A VIDEO)**

36. **SET OF PHOTOGRAPHS SHOWING AGRICULTURAL USE OF WHITE BARN**

37. **CLASS AA SCHEME PLANS FOR ORIGINAL DWELLING**