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## Appeal Decisions

Inquiry Held on 16 to 19 November 2021 and 23 to 25 February 2022

Site visit made on 16 November 2021

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 7 June 2022**

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### **Appeal A Ref: APP/Q3115/C/21/3269785**

### **Land at Greys Meadow Studio, Rotherfield Greys, Henley-on-Thames, Oxfordshire RG9 4QJ**

- 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 Clive Hemsley against an enforcement notice issued by South Oxfordshire District Council.
- The enforcement notice was issued on 12 January 2021.
- The breach of planning control as alleged in the notice is: Without planning permission the undertaking of various building, engineering and other operations including:
  - 1) the erection of buildings;
  - 2) the formation of earth bunds;
  - 3) the laying of a track and various hardstanding areas;
  - 4) the erection of retaining walls;
  - 5) earthworks to create a tiered garden and a basement level courtyard;
  - 6) hard landscape works to create paths, steps, patios and courtyard areas;
  - 7) the installation of outdoor sculptures;
  - 8) the installation of a mail box; and
  - 9) the installation of a signage board.
- The requirements of the notice are:
  - (i) Demolish or otherwise take down all buildings, including their foundations.
  - (ii) Dig up the track, hardstanding areas, retaining walls and hard landscape works referred to in 3 above.
  - (iii) Pull down, dismantle or otherwise remove the outdoor sculptures, mailbox and signage board referred to in 3 above.
  - (iv) Remove from the Land all materials resulting from the works required by i), ii) and iii) above.
  - (v) Dig up the earth bunds referred to in 3 above in a manner that does not cause damage to existing mature trees or the roots of existing mature trees to levels commensurate with the natural levels and fall of immediately adjoining lands.
  - (vi) Reinstate areas disturbed by the works required by i), ii), iii), iv) and v) above by the backfilling of any excavations using clean fill, the spreading of top soil to levels commensurate with the natural levels and fall of immediately adjoining lands and the sowing of grass seed.
- The period for compliance with the requirements is twelve months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: Appeal A is dismissed and the enforcement notice is upheld with corrections and variations as set out in the decision below.**

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## **Appeal B Ref: APP/Q3115/W/20/3263610**

### **Land at Greys Meadow Studio, Rotherfield Greys, Henley-on-Thames RG9 4QJ**

- 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 C Hemsley against the decision of South Oxfordshire District Council.
- The application Ref P20/S2723/FUL, dated 22 July 2020, was refused by notice dated 11 November 2020.
- The development proposed is: Erection of art studio, with details of access, car parking and landscaping (Retrospective).

### **Summary of Decision: Appeal B is dismissed.**

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#### **Procedural Matters**

1. Since the determination of the application subject of Appeal B, the South Oxfordshire Local Plan 2011-2035 Adopted December 2020 (SOLP) has been adopted and now forms part of the development plan for the purposes of both Appeal A and B. The saved policies of the previous local plan and the former core strategy document have, therefore, been superseded by the relevant policies of the SOLP referred to in the decision notice.
2. Following the appellant's initial appeal submissions regarding the validity of the notice, the Council requested that the appointed Inspector make a preliminary finding as to whether the enforcement notice subject of the appeal (the notice) is in fact invalid or a nullity. Accordingly, I sought the views of both parties via an initial pre-inquiry note (PIN1) sent on 24 May 2021. I had regard to the response I received from both parties, which in the case of the Council's submissions included an annotated plan of the site. Despite this, I was unable to reach a decision on the notice before hearing evidence at the inquiry and visiting the site. A second pre-inquiry note was sent to advise the parties of this.
3. At the inquiry there was further discussion regarding the validity of the notice. The Council also provided an amended annotated plan (ID5), as well as suggesting further corrections to the enforcement notice (ID6). I have had regard to these documents in reaching my decision on the notice, as follows.

#### **The Notice**

4. Section 173 of The Town and Country Planning Act 1990 as amended (the 1990 Act) sets out the necessary contents and effect of an enforcement notice, and is entirely relevant to the matter of nullity and validity. In PIN1 I drew the parties' attention to the settled case law which sets out the modern approach to nullity (*Oates v SSCLG v Canterbury CC [2018] EWCA Civ 2229*), to which I have had regard. This makes it clear that an enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it, which is a principle established in *Miller-Mead v Minister of Housing and Local Government [1963] 2 Q.B. 196*, also brought to my attention.
5. The powers transferred to Inspectors under section 176(1)(a) of the 1990 Act include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement

notice. In each case, the only test is whether the correction or variation will cause any injustice to the appellant or the local planning authority.

6. My first concern with the notice is that in part 3 it alleges the undertaking of various building, engineering and other operations **including** those listed. This suggests that there may be more matters than those listed in the notice. The Council confirmed that no more than the matters listed were targeted by the notice and, as such, agreed that the word 'including' could be deleted. The appellant did not raise any objection to this.

#### *Erection of buildings*

7. The parties agree that one of the buildings that is the subject of the notice is the building on site referred to as the art studio (the AS). It is also common ground that the AS as constructed does not accord with the plans approved by reason of any of the planning permissions granted for the site<sup>1</sup>. The dispute between the parties is whether or not the erection of this building amounts to development without planning permission or development in breach of condition. Part 1 of the notice states that the breach falls under section 171A(1)(a) of the 1990 Act, which is the 'carrying out of development without the required planning permission'. The appellant suggested that the building has the benefit of planning permission and, as such, reference to section 171A(1)(b) should also be included in part 1 of the notice, which is 'failing to comply with any condition or limitation subject to which planning permission has been granted'. It is for this reason that the appellant suggested that the notice does not comply with section 173 of the 1990 Act.
8. Section 173(1) of the 1990 Act informs that an enforcement notice shall state (a) the matters **which appear** to the local planning authority to constitute the breach of planning control (my emphasis); and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls. On issuing the notice it is clear that it **appeared** to the Council that the breach of planning control, consisting of the erection of buildings, fell within 171A(1)(a), not (b). It has, therefore, only referred to this section of the 1990 Act in part 1 of the notice. Whether or not that is correct is a matter that falls squarely to be considered under the ground (b) and (c) appeal. Nevertheless, on its face the notice complies with section 173(1)(a) and (b). For this reason, and having regard to the caselaw brought to my attention<sup>2</sup>, I do not find the notice to be a nullity or invalid for the reasons suggested by the appellant.
9. The appellant has also pointed to the reasons for the issue of the notice, that these refer to the development being 'tantamount to the creation of a residential dwelling'. There is no dispute that this is directed at the AS. The Council conceded that the AS is not a dwelling, and acknowledged that a notice cannot be issued in respect of a prospective breach of planning control<sup>3</sup>. However, it maintained its objection to all development on site as being domestic and urban in character.
10. I have some sympathy with the appellant, that the words used in the reason for issuing the notice might intimate that the allegation is the erection of a

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<sup>1</sup> These are the planning permissions reference: P17/S1779/FUL, P16/S2721/FUL, and P15/S4319/FUL.

<sup>2</sup> *Koumis v Secretary of State for Communities and Local Government* [2015] J.P.L. 682.

<sup>3</sup> *R v Rochester-upon-Medway CC ex parte Hobday* [1990] JPL 17; [1990] JPL 923.

dwelling, particularly as certain housing policies of the development plan are referred to. However, the use of the word 'tantamount' means that the erection of a dwelling is not directly alleged in the notice, even when taken as a whole. Furthermore, such an allegation is not made in the part of the notice that specifies the matters that appear to the Council to constitute the breach (part 3), nor is it referred to in the requirements of the notice (part 5). For these reasons, I am satisfied that the notice does not attempt to attack a prospective breach of planning control, and that the recipient of the notice can be reasonably certain that the allegation is not the erection of a dwelling. As such, the notice is not invalid as a result of the reasons given for its issue.

11. Notwithstanding the above, whilst the notice alleges at part 3(1) 'the erection of buildings', it does not specify the number of buildings alleged to have been erected or their location. As noted above, it is agreed that one of the buildings is the AS. The parties have also referred to a 'store' close to the eastern boundary of the site, which the appellant has assumed is also the subject of allegation 3(1). However, he stated that this is a shipping container clad with timber boards. In addition to this, the appellant also stated that the Council have previously referred to other structures on the site. He suggested that it is not clear whether these are also the subject of the notice.
12. For the reasons given above, there is a degree of uncertainty with regard to what on site is the subject of allegation 3(1). It would appear that, in determining what the notice might regard as buildings, the recipient would have to exercise a degree of judgement, and he may not be certain that his judgement is correct in terms of what is the target of the notice. Whilst the Council suggested that the buildings are conspicuous, this provides little assistance in establishing with the necessary degree of certainty what items on site are buildings for the purposes of the notice. As such, I find the notice to be invalid.
13. In addition, requirement 5(i) appears to relate to the allegation specified in 3(1) of the notice, but I cannot be certain that the requirement to demolish or otherwise take down **all buildings**, would achieve nothing more than remedying the breach of planning control. I also find the notice invalid for this reason.
14. I do not, however, find the notice to be so hopelessly unclear as to make it a nullity. I have had regard to the caselaw referred to by the appellant, including *Sarodia v Redbridge LBC [2017] EWHC 2347*. Unlike that case, I am satisfied that the allegations of the notice match the requirements. The appellant has knowledge of the site and he is not so confused by the notice as to be unable to assume what items are its intended target.
15. The Council confirmed that the notice is directed at an allegation of two buildings on the site, the AS and the store. It suggested that these are clearly shown in outline form on the plan attached to the notice. Having visited the site and having compared the enforcement notice plan with the Council's amended annotated plan (ID5), I can see that the items coloured grey on the enforcement notice plan correspond to the buildings the Council claim are the target of the notice. This does not, however, change my conclusions above, as ID5 is not contained within the notice.

16. The notice could be corrected to achieve the necessary degree of certainty by referring in part 3(1) to the ID5 annotated plan and the erection of two buildings, and by referring in part 5(i) of the notice to 'the two buildings' as opposed to 'all buildings'. However, I must be satisfied that such a correction would not cause injustice in this case.
17. In this regard, I note that the appellant's appeal submissions refer to the AS and store under the ground (a), (b), (c) and (f) appeal and that the ground (g) appeal relates to all matters referred to in the notice. As such, it is not likely that the appellant would have approached his appeal differently, had there been the necessary degree of certainty with regard to the allegation of the erection of buildings. Furthermore, both parties agree that only the AS and the store would be caught by requirement 5(i). All things considered, I am satisfied that no injustice would be caused were I to correct the allegation and requirement 5(i) in the manner set out above.

#### *Earth bunds*

18. The location and extent of the earth bunds have not been identified on the enforcement notice plan, nor are their location and extent described in part 3 of the notice. The Council stated that their location was not specified as these 'operations are evolving and transitioning in their form and location within the site'. Indeed, the appellant has referred to the deposit of excavated material on the land and his attempts to remove some of the material from the site. Whilst these circumstances may well cause difficulty in drafting an enforcement notice, this does not address my concerns with the lack of certainty as to the extent and location of operations that the notice targets. That the bunds are conspicuous on the land is of little assistance in providing the necessary certainty in this case.
19. Whilst the appellant has acknowledged that some soil deposits have been allowed to grow over to provide screening, he suggested that others were simply part of the construction process. Nevertheless, the appellant stated that earth bunds have already been removed. He has referred to earth bunds in his grounds of appeal, but suggested that he cannot respond appropriately to the allegation due to the lack of clarity with regard to the location of the earth bunds that are the target of the notice.
20. I am not satisfied that the recipient of the notice would be reasonably certain of what he has done with regard to the allegation of 'the formation of earth bunds'. Furthermore, he would not have sufficient certainty that he has complied with the enforcement notice when undertaking works set out in part 5 of the notice.
21. The ID5 plan indicates two locations of the earth bunds. Whether or not the features on site in these locations are 'the formation of earth bunds' is a matter to be considered under the ground (b) appeal. I consider the plan and the Council's clarification of there being two bunds sufficient to provide the necessary certainty with regard to this allegation. However, were I to correct the notice, the appellant suggested that he would be disadvantaged. Although he made an appeal under ground (b) and (c), he suggested that, had he known the extent and location of the works alleged by the Council, he would have submitted further information to the inquiry, including a levels survey. I am, therefore, concerned that injustice might be caused were I to

correct the notice and continue to consider the appeal with regard to these matters.

22. As for the requirements of the notice that relate to the earth bunds, I have concern with the requirement 5(v) to 'dig up' the earth bunds. It would appear that the Council's aim is for the removal of the bunds and the return of the land 'to levels commensurate with the natural levels and fall of immediately adjoining lands'. Clearly the **removal** of the soil contained within the bunds is required to achieve this, but the notice does not require the removal of the earth bunds, whether that be off site or to another location elsewhere within the site. Either way, I am not satisfied that the recipient of the notice would be sufficiently certain that he was required to remove the earth bunds when the notice only contains a requirement to dig them up.
23. The Council suggested an amendment to the notice which would require the use of the material in the bunds to back fill other parts of the site, following compliance with other requirements of the notice. I am, however, concerned that these requirements would be more onerous.
24. All things considered, I conclude that I am unable to correct the allegation and requirements of the notice without causing injustice in respect of this matter.

*Retaining walls, earthworks, hard landscape works, track and hardstanding areas*

25. I now turn to the operations described as the laying of a track and hardstanding areas; the erection of retaining walls; earthworks to create a tiered garden and a basement level courtyard; and hard landscape works to create paths, steps, patios and courtyard areas. Again, the location and extent of these operations have not been identified on the enforcement notice plan, nor are their location and extent described in part 3.
26. Whilst I note that the plan attached to the notice includes some areas that are outlined with solid or dotted lines, there is no certainty that these lines define any operations alleged in the notice, or the nature of the operations defined by these lines.
27. It may have been difficult to specify the location of certain operations as these occupy the same area of the site. Nevertheless, I am not satisfied that there is sufficient certainty with regard to which operations on site correspond to the limited description of the matters specified in part 3 of the notice.
28. Furthermore, I do not consider the operations to be conspicuous in the landscape. Accordingly, I do not consider there to be sufficient certainty as to which operations on site are the subject of the notice. For this reason I find the notice to be invalid. It is not, however, so defective as to make it a nullity. The appellant is not so confused by the notice as he has again correctly identified the matters that the notice targets.
29. I note the appellant's case, that some of the operations have the benefit of permission granted under The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended for temporary buildings and uses; that permission has been granted for some of the operations in any event; and that some have been removed. However, these are not matters that make the notice invalid or, indeed a nullity. Instead, they are matters to be considered under the grounds of appeal that have been made.

30. Again, the ID5 plan provides a more precise location of the alleged works. It shows the approximate location of the retaining walls and the areas described as hard landscaping (paths, steps and patios), as well as the track and hardstanding. Some of the corrections to the notice suggested by the Council (ID6) also provide a better description of the allegations, particularly when considered together with the ID5 plan. These provide the necessary certainty with regard to the location and extent of the allegations made. With the benefit of these corrections, I find the requirements to dig up the track and hardstanding areas, retaining walls and hard landscaping works, together with the requirement to remove from the land the resulting material to be sufficiently precise.
31. Notwithstanding this, I note the appellant's case with regard to requirement 5(vi), which includes 'the backfilling of any excavations using clean fill'. This requirement would not only apply to the excavation resulting from the alleged earthworks, if corrected as suggested by the Council, but also that resulting from the demolition of the AS, including its foundations, required by 5(i). These works would expose the excavation undertaken to provide the basement level of the building. No other excavations have been brought to my attention that could be regarded as being caught by this requirement. For this reason, the recipient of the notice would be reasonably certain of what he is required to do, provided I make the corrections to the allegation as set out above. However, correcting the allegation to clarify that the excavations would result from requirement 5(i), as well as the earthworks alleged in part 3 of the notice would provide a greater degree of certainty.
32. I am satisfied that the retaining walls, earthworks, hard landscape works and track identified in the ID5 plan are those referred to by the appellant in his evidence and were discussed in detail at the inquiry. Whether or not any of these require planning permission is a matter to be considered under the grounds of appeal. I have been given no reason to find that the appellant would have approached his appeal in a different way, had he had the clarification provided by the Council. As such, I am satisfied that correcting the notice in the manner set out above would not cause injustice to any party.

#### *Outdoor sculptures*

33. The location of the outdoor sculptures has not been identified on the enforcement notice plan, nor has their location been described in part 3 of the notice. Whilst the Council suggested that there can be no reasonable difficulty in identifying these on site, it would be necessary to exercise some judgement in order to identify what items on site are outdoor sculptures. This introduces a degree of uncertainty with regard to the items that are the subject of the notice, and whether compliance with the notice has been achieved by undertaking the works specified in requirements 5(iii) and (iv).
34. The Council has attempted to identify the location of the sculptures on the ID5 plan. Having had the benefit of the site visit and the evidence given at the inquiry, I am still concerned that the recipient of the notice would not have the necessary degree of certainty with regard to what items on site are sculptures, even with the benefit of the ID5 plan. The appellant described one of the items the Council suggested is a sculpture as merely an attractive fallen tree branch. It was also suggested that sculptures have moved over time. This brings into question whether or not the allegation that these items are



operations is correct, and whether an allegation of a material change of use of the land for the display of outdoor sculptures might be more appropriate.

35. Added to this is the uncertainty of 5(iii), which requires the removal of only a single sculpture, rather than multiple sculptures referred to in the allegation. As drafted the notice would underenforce in respect of all but one sculpture, but the recipient of the notice would not be certain which of the alleged sculptures he must remove. The Council suggested a change to the notice to make the allegation and the requirement consistent by referring in both to either multiple sculptures or a single outdoor sculpture. The former suggested correction would make the requirements of the notice more onerous, causing injustice to the appellant, whilst the latter would make the notice no more precise as multiple locations are identified on the ID5 plan.
36. For the reasons given above, I find the Notice defective with regard to the allegation and requirements relating to outdoor sculptures and I do not consider it capable of correction with regard to these matters.

#### *Mail box and signage board*

37. Again, the location of the mail box and signage board has not been identified on the enforcement notice plan, nor has their location been described in part 3 of the notice. Their approximate location is, however, sufficiently identified on the ID5 plan, which provides the necessary degree of certainty in this case.
38. Whilst I note the minor nature of these items, these are not included in the appellant's ground (b) appeal, and I have been given no reason to disagree with the Council's position, that the mail box and signage board are operations that are permanently fixed to the land.
39. I am satisfied that correcting the allegation relating to the mailbox and signage board to make reference to the ID5 plan would not cause injustice in this case. The appellant's evidence clearly relates to these two items in the location indicated on the plan. Furthermore, it was not suggested that the appellant would have approached his appeal in a different way with regard to these items, had their location been more accurately described in the notice as drafted.

#### *Summary on the notice*

40. I have concluded that I am unable to correct the defects of the notice found in allegations 3.2) and 3.7). Accordingly, the only course of action that would not cause injustice to any party would be to remove these allegations from the notice, together with the corresponding requirements. In concluding as such, I am mindful of the provisions of section 171B(4) of the 1990 Act, which would allow the Council to issue a further notice in respect of these matters, should it be considered expedient to do so. Of the remaining allegations and requirements, I have concluded that any defects or misdescriptions can be corrected without causing injustice. This will include reference to, and the addition of, the ID5 plan. In the interests of clarity, I will add a title to this plan (labelling it 'Plan 2') and add some minor annotation.

#### **Ground (b)**

41. The appeal on ground (b) is that the matters alleged in the enforcement notice, which appear to the Council to constitute the breach of planning

control, have not occurred. The test of the evidence is on the balance of probability and the burden of proof is on the appellant.

42. At the inquiry the appellant clarified what matters are the subject of his ground (b) appeal. Having regard to the corrections I intend to make to the notice, my consideration of the ground (b) appeal is confined to the buildings, and the laying of a track and hardstanding areas.

*Art studio*

43. The permission granted on 27 July 2017 by reason of the application reference P17/S1779/FUL (P17) has been drawn to my attention. The application sought to vary a condition of the earlier P16/S2721/FUL permission (P16) and sought consent for an alternative design, form and siting. P16 granted permission for the 'removal of existing timber building and separate store and erection of a replacement purpose-built art studio and store for private use'.
44. It is agreed that the AS does not accord with the scheme approved by reason of the P17 permission, or any of the other permissions granted. However, it is the appellant's case that the P17 permission has been implemented, that the AS has the benefit of this permission, but that the development has been carried out in breach of condition 1 of the permission, which states that the development shall be carried out in accordance with the plans listed.
45. For the appellant to succeed in this case, he must not only demonstrate that the P17 permission has been implemented, but that the building subject of the enforcement notice is comprised in the development approved by reason of the P17 permission.
46. Dealing first with implementation, as the P17 permission is linked to the P16 permission as a variation of a condition of that permission, I have considered both permissions. In support of his case, the appellant pointed to the works to demolish the historic timber building and store. On this matter, I note that both the P16 and P17 applications sought permission for their removal, as well as the construction of other development. Indeed, their removal is included in the description of development on the decision notices. I also note that conditions of these permissions require the demolition of the existing buildings to take place prior to the commencement of the new development. Accordingly, both P16 and P17 specifically authorised the demolition of the historic buildings on site.
47. There is no dispute that the historic timber building and store were demolished after the P17 permission had been granted and before either the P17 or P16 permission had expired. The appellant suggested that both buildings had been demolished by November 2018, which the Council did not dispute. As such, works specifically authorised by the P16 and P17 permissions were undertaken. Further to this, I have been given no reason to conclude that these works were undertaken in breach of any conditions of those permissions. Accordingly, I find the development approved by both the P17 permission and P16 permission has begun. The remainder of the development permitted by P17 and P16 can, therefore, be carried out<sup>4</sup>.

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<sup>4</sup> Having regard to *Salisbury District Council v SoS* [1982] J.P.L. 702.

48. In reaching this conclusion I acknowledge that the appellant agreed that the works to demolish the historic timber building and store would not on their own have been sufficient to implement the P17 permission<sup>5</sup>. Whilst I cannot agree with his view for the reasons given above, it does not necessarily follow that the AS building on site has the benefit of the P17 permission, as suggested by the appellant<sup>6</sup>. For that to be so, the AS must be comprised in the development approved by reason of the P17 permission. In this regard, I have considered the case law that has been drawn to my attention. In particular *Commercial Land Ltd/Imperial Resources SA v SoS TLGR [2003] J.P.L. 358 (Admin); [2003] JPL 358*, which directs the decision maker to consider the differences between what has been built and what was approved, as well as the usability of the as built works in the permitted scheme.
49. The parties agree that the drawings of the building subject of Appeal B accurately show the dimensions of the enforced against AS. In this regard, I note the detail provided in ID4, which is a document prepared jointly by both parties showing the agreed dimensions of the P17 building compared to the Appeal B building and, therefore, the AS. From this I can see that the AS measures some 0.4 metres taller. It was also agreed at the inquiry that the footprint is some 30% larger, taking into account the full extent of the projecting element on the north west facing elevation of the AS<sup>7</sup>. This is a significant difference between the permitted and enforced against schemes.
50. Importantly, the AS includes an exposed elevation at basement level that is achieved by significant engineering works to the rear of the building. This forms an integral part of the operation, which cannot be disregarded when comparing the AS with the P17 building. Whilst the P17 scheme includes a basement, this does not feature as an external element of the building. I also consider this to be a significant difference between the two schemes.
51. Turning to a comparison of location, during the site visit the approximate position of both the Appeal B and P17 building were marked on site in relation to the AS. As such, it was agreed that the location of the AS accords with neither the approved location of the P17 building nor the proposed location of the Appeal B building. It is important to refer to the location of the Appeal B building as the proposed layout plan submitted with the application<sup>8</sup> shows the approved location of the P17 building in outline.
52. The orientation of P17 would be the same as both the Appeal B building and the AS. However, the P17 building would be located further south east within the site; its front (north west facing) elevation would be in the approximate location of the rear (south east facing) elevation of the Appeal B building. When compared to the location of the AS, it was agreed that the Appeal B building would be some 11 metres closer to the south east boundary of the site and 3 metres closer to the north east boundary. It therefore follows that the degree of separation between the P17 building and the AS would be even greater than this. There would be in the region of 11 metres between the front elevation of P17 and the rear elevation of the AS, and the position of the Appeal B building would be between the two.

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<sup>5</sup> In the cross examination of Mr Munnings.

<sup>6</sup> The appellant makes no such claim with regard to the P16 permission.

<sup>7</sup> Agreed by Mr Munnings in cross examination.

<sup>8</sup> Plan reference 2020/093/PL1 revision C.

53. In view of the above, there would be no overlap of the footprint of either building, such that any of the external walls of the AS building could be regarded as forming part of the permitted P17 scheme. The distance between the two would be such that it is not likely that any element of the existing building, even the excavation and engineering works to the rear, could be used in the permitted scheme.
54. I acknowledge that the power lines referred to by the appellant, connected to the development as built, could be connected to the P17 building, if constructed. These are not, however, shown on the P17 approved plans. Even if these works are regarded as complying with the approved scheme, the degree of compliance is limited when the development as a whole is considered.
55. There may be some similarities in the appearance of the above ground level elements of the building on site, when compared to the P17 scheme, and I acknowledge that the building on site is used as an art studio, as permitted by P17. These similarities are, however, small when compared to the significant differences identified above. I note the appellant's reasons for changing the location, design and appearance of the building, but these are of little relevance to this ground (b) appeal.
56. Having regard to all of the above, I conclude that, despite the P17 permission having been implemented, the building on site is not, as a matter of fact and degree, comprised in the development permitted by P17. Reference in part 1 of the notice to section 171A(1)(a) alone is, therefore, correct. For this reason I find that the matter alleged in the notice with regard to the AS has occurred. The ground (b) appeal should fail in this regard.

#### *Store*

57. The store has a linear form and its southernmost section comprises a metal shipping container around which a timber frame has been constructed. The frame partly rests on the container, and has been designed to accommodate timber cladding and a varied roof form. Indeed, I note the roof structure has created a void above the container. I observed some works to prepare the ground under the container, as described by the appellant. These include cemented pillars of concrete blocks and a solid concrete ramp to the southern end of the store.
58. The frame and cladding encasing the container continues to the northern end of the store where this forms an insulated and enclosed room. This has a timber frame and timber boarding, and has been fitted with an entrance door and windows.
59. The appellant accepted that part of the store is a building<sup>9</sup>, but suggested that the section comprising the shipping container is not. The store has the appearance of a single unit. There is nothing before me to suggest that the alterations to the container (the frame and cladding) and the room at the northern end of the unit were not constructed as one. Indeed, the appellant described the works to construct the unit as it now appears on site and the reasons for this<sup>10</sup>. These works have had the effect of physically attaching the container and the unit as a whole to the ground. The result of this is that the

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<sup>9</sup> Mr Munnings' evidence in answer to my questions.

<sup>10</sup> Mr Hemsley's evidence in answer to my questions.

store has the character and appearance of a permanent structure that has caused a physical change to the site.

60. Whilst I note the suggestion that the container is temporary, it is only one element of the unit on site. The appellant confirmed that, in order to remove the container, the remainder of the unit would fall down<sup>11</sup>.
61. Having regard to the store's means of construction, degree of permanence, character and size, I find that it is, as a matter of fact and degree, a building that falls within the meaning of development in section 55(1) of the 1990 Act. For this reason I conclude that the matter alleged in the notice with regard to the store has occurred. Accordingly, the ground (b) appeal should fail in this regard.

### *Track*

62. In the first instance, it is the appellant's case that there is no fixed and surfaced track on the site. He referred to the permission granted for a temporary period for the formation of a track during the construction of an art studio<sup>12</sup>. He acknowledged that this permission has now expired, but suggested that time is needed to allow what is there to return to grass.
63. I saw evidence on site of material laid to form a track. I observed a well-formed track from the entrance gate to the south east corner of the site. It was mostly the width of a large vehicle and has clearly been used for vehicular access across the site. Its surface comprised compacted material, including aggregate, which had a very different form to the softer grassed areas either side. This can be seen in a number of the most recent photographs of the track provided by the Council<sup>13</sup>. Whilst vegetation may well grow on the track in time, this would be through the solid compacted material I saw on site. It is, therefore, more likely than not that a track has been laid on the site. In addition, I am satisfied that this is in the approximate location indicated on the ID5 plan.
64. As an alternative to the appellant's contentions outlined above, he suggested that there has for a long time been a track of sorts on the site. The appellant described this as providing access from the entrance gate, across the site, to the historic buildings and to the rear of the appellant's former adjoining residence. The appellant pointed to the OS plan for the site<sup>14</sup>, and suggested that the track is shown on this plan, which dates from 2010.
65. The Council have provided a series of historic photographs of the site taken as early as 2012, 2013 and 2014<sup>15</sup>, in which I can see no obvious sign of a track across the site. Whilst there is evidence of vehicle tracks across the site in the 2003 aerial photograph<sup>16</sup>, the location of these does not on the whole accord with the location of the track as shown on the ID5 plan. The 2015 aerial photograph also shows evidence of a lighter surfacing across a short section close to the north east boundary of the site. I do not, however, have evidence sufficient to demonstrate that this comprises the compacted material I observed, across the extent of track indicated on the ID5 plan.

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<sup>11</sup> Mr Munnings' evidence in answer to my questions.

<sup>12</sup> Council reference P18/S2253/FUL.

<sup>13</sup> Council's appendix 40, dated 30 September 2020.

<sup>14</sup> Mr Munnings' appendix 2.

<sup>15</sup> Council's appendices 11, 12 and 16.

<sup>16</sup> Council's appendix 5.

66. Whilst I have had regard to the oral evidence given in respect of the suggested historic track, I cannot be satisfied that the appellant has discharged the burden of proof in this case when all evidence is taken into account. The appellant has failed to demonstrate, on the balance of probability, that either there is no track or that there was already a track in the location indicated on the ID5 plan. Accordingly, I find that the breach of planning control consisting of the laying of a track has occurred. I conclude, therefore, that the ground (b) appeal should fail in this regard.

### *Hardstandings*

67. The ID5 plan indicates hardstanding areas in three locations on the appeal site. The first is part way along the track. At the visit I observed that this area had been finished in the same compacted material as the track, as can be seen in the Council's photograph from September 2020<sup>17</sup>. Again, its finish was very different when compared to the softer grassed areas around it. Whilst I note the suggestion that this area is related to the use of the land as an art studio, this does not mean that the laying of this area of hardstanding has not occurred.
68. The second area is to the front of the store building. Whilst it was suggested that a hardstanding has not been laid in this area, I was unable to differentiate between the finished surface of this area and that of the track. At the visit it was evident that compacted hard surfacing material had been used in this location, rather than this area having been a churned up, formerly vegetated part of the site. Again, there was a notable difference in the surfacing of this area when compared to nearby grassed areas or the vegetated area under the canopy of the nearby trees. I am not, therefore, persuaded that a hardstanding has not been laid in this area.
69. As for the third area of alleged hardstanding, it is the appellant's case that this is historic and was the base of the former buildings on site. The photographs provided by the Council from January 2015<sup>18</sup> show the former timber stable building with a brick plinth at its base and a hard surfaced apron to the front. There was also a building adjoining this. Whilst these buildings have since been demolished, the appellant's evidence is that their solid bases were not removed. This is not disputed by the Council.
70. I have noted the location of the former buildings on site, which in my judgement broadly accords with the location of the third hard surfaced area shown on the ID5 plan. There is no corroborated evidence before me to demonstrate that this area is materially larger than the former hard surfaced area that accommodated the historic buildings. For example, no measurements have been provided to compare the existing hard surfaced area with the area that would have been occupied by the historic buildings. All things considered, it is more likely than not that the third hard surfaced area is historic and that the laying of a hardstanding in this location has not occurred.
71. In summary on the matter of the laying of hardstanding areas, I find that the laying of two of the three hardstanding areas identified in the ID5 plan has, on the balance of probability, occurred. Notwithstanding this, I am satisfied

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<sup>17</sup> Council's appendix 40 - photograph at page 348.

<sup>18</sup> The Council's appendix 21 - page 145 and 146.

that the appellant has discharged the burden of proof with regard to the hardstanding area located in the southern corner of the site. The appellant's ground (b) appeal only succeeds to this extent.

*Conclusion on the ground (b) appeal*

72. Having regard to all of the above, the appellant has failed to demonstrate that the development as alleged in the enforcement notice, consisting of the erection of two buildings, the laying of a track, and the laying of two areas of hardstanding have not occurred. I conclude, therefore, that the ground (b) appeal should fail with regard to these matters.
73. Notwithstanding this, the appellant has discharged the burden of proof with regard to the hardstanding area located in the southern corner of the site. The ground (b) appeal should succeed to this extent. Accordingly, I shall vary the notice to exclude this area of hardstanding from the allegation and the corresponding requirements. This matter does not, therefore, fall to be considered under the ground (a), (c), (f) and (g) appeal.

**Ground (c)**

74. To succeed on ground (c), the appellant must demonstrate that, on the balance of probability, the matters alleged in the notice do not constitute a breach of planning control. Again, the burden of proof is on the appellant.
75. Having regard to the corrections and variations I intend to make to the notice, the allegations to be considered under ground (c) are the erection of two buildings; the laying of a track and two hardstanding areas; the erection of retaining walls; earthworks to create an excavation; hard landscaping works; a mail box; and a signage board.

*Art Studio*

76. As noted earlier in this decision, the parties agree that the AS does not accord with the scheme of development approved by reason of the P17 permission. I have concluded under the ground (b) appeal that the allegation of the erection of this building without the required planning permission, rather than a failure to comply with a condition of the P17 permission, is correct. The building does not, therefore, have the benefit of the P17 permission, and no other permissions that would authorise the building have been drawn to my attention. Furthermore, it has not been suggested that the building does not require planning permission.

*Store, track and hardstanding areas*

77. I note that both the description of the development approved by reason of the P17 and P16 permissions includes the erection of a store. However, I have been provided with the approved plans and these do not show any building in the location of the store. Similarly, the approved plans do not demonstrate that the hardstanding areas and track are comprised in the development approved.
78. Again, it has not been suggested that the store, hardstanding areas and track do not require planning permission or that they have otherwise been authorised. Indeed, the appellant has acknowledged that the temporary permission for a track has expired. That the approved art studio building

might have required a parking area and access track does not alter this conclusion.

*Retaining walls, excavation, hard landscaping works, mail box and signage board*

79. I note the appellant's suggestion that such operations as retaining walls, earthworks, and hard landscaping works might be permitted by P17 as works associated with the approved art studio building. Regardless of whether or not this is correct, the operations listed in the notice are associated with a building that does not have the benefit of the P17 permission. This is not least because the AS and, therefore, the associated works are not in the approved location.
80. When questioned on this at the inquiry, the appellant was unable to point me to any planning permission that has been granted, or is deemed to have been granted, for the mail box and signage board<sup>19</sup>.

*Conclusion on ground (c)*

81. I have been given no reason to conclude that the development consisting of the erection of two buildings; the laying of a track and two hardstanding areas; the erection of retaining walls; earthworks to create an excavation; hard landscaping works; a mail box; and a signage board do not require the benefit of express planning permission, in accordance with section 57 of the 1990 Act. Neither has it been suggested that there are any other permissions for this development. Accordingly, and having regard to all evidence before me, I conclude that on the balance of probability this development constitutes a breach of planning control. The ground (c) appeal should, therefore, fail.

**Ground (a), the deemed application for planning permission and the application for planning permission (Appeal B)**

82. Although the description of development includes 'details of access, carparking and landscaping', the application subject of Appeal B was amended so that the scheme comprises only of a building with a basement; a basement patio area and walkway to it; and walkways and steps around the building. I understand this application was submitted in an attempt to seek permission for the AS, subject of Appeal A. However, at the inquiry the parties agreed that if Appeal B were allowed, this would not grant consent for the AS and associated development.
83. Notwithstanding the above, the development subject of Appeal B and part of the development (including the AS) subject of appeal A are similar in some respects, in particular the use and its impacts. Furthermore, the reasons for refusal of the Appeal B planning application and the reasons for issuing the enforcement notice are broadly similar. I have, therefore, considered these schemes of development together, indicating where there are differences between the two and considering these matters separately.
84. From the substantive reasons for issuing the enforcement notice and the reasons for refusal of the application subject of Appeal B, I have identified the main issues as follows:

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<sup>19</sup> Mr Munnings' evidence in answer to my questions.



- i) Whether or not the location of the development is/would be acceptable, having regard to relevant planning policy and guidance on the location of such development;
  - ii) The effect of the development on the character and appearance of the site and surrounding area, with particular regard to the site's location within the Chilterns Area of Outstanding Natural Beauty (AONB);
  - iii) Whether or not the development is/would be acceptable, having regard to relevant planning policy and guidance on energy efficiency, sustainability of design and carbon reduction; and
  - iv) The effect of the development on highway safety, having regard to parking and access to the site.
85. Much of the appellant's evidence, in particular his landscape evidence<sup>20</sup>, concentrates on making a comparison between the development subject of the appeal and the previously approved development on the site. Such comparisons are relevant, but only following a determination on whether these permissions are a material consideration and what weight should be attributed to them. Having regard to how the appellant has made his case, it is important that I set out here how I have approached my determination of the ground (a) appeal and Appeal B.
86. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have, therefore, considered the development subject of each appeal on its merits, dealing with each main issue in turn. I have identified where there is or would be harm and where conflict occurs with the development plan. I have then considered any material considerations that have been brought to my attention, including the suggested fall back planning permissions for the site. I then go on to consider whether these are of sufficient weight to indicate that my determination should be made otherwise than in accordance with the development plan.

#### *Location*

87. The use of both the AS and the Appeal B building is for the purposes of an art studio. A condition limiting the use of either building to a private art studio is agreed in principle. However, I note the Council's concerns that such a use of the building would not be limited to only a single artist and members of his family.
88. At the inquiry the appellant described how he intends to use the AS, if his ground (a) appeal is allowed, and what trips to the site might be generated. This would involve his use of the site on most days and would also include, on occasion, visiting artists to work alongside him. The use would also generate visits to the site from those he intends to paint, weekly deliveries of supplies, and movements to and from the site for the purposes of transporting large props or large pieces of art work. Indeed, the appellant has compared the use to a business use. It is on the basis of this use that I have considered this first main issue.

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<sup>20</sup> The proof of evidence of Mr Hanson.

89. I note the reference to Policy STRAT1 (The Overall Strategy) of the SOLP, but cannot agree with the appellant's view that this policy is not relevant to the appeals before me. This Policy sets out the principles of the Council's strategy for **all** types of development within its administrative area. It promotes development to the most sustainable locations. Part of the strategy is to protect and enhance the countryside, in particular designated areas such as the AONB, by ensuring that outside of towns and villages any change relates to very specific needs.
90. Reference is made to Policy TRANS5 (Consideration of Development Proposals) of the SOLP, which requires development to, amongst other matters, be designed to facilitate access to high quality public transport routes, including safe walking routes to nearby bus stops or new bus stops.
91. The approach of Policies STRAT1 and TRANS5 is supported by the National Planning Policy Framework (the Framework), which encourages the active management of patterns of growth to support its objectives for the promotion of sustainable transport (chapter 9). My Attention has also been drawn to chapter 6 of the Framework on building a strong and competitive economy, parts of which are relevant to the location of the development.
92. Whilst the appellant refers to policies EMP2 and EMP10 of the previous local plan, these are no longer policies of the development plan. Furthermore, my attention has not been drawn to any similar policies of the SOLP.
93. Although adjacent to the boundary of residential properties and close to the settlement to the north west, the appeal site is not within a town or village for the purposes of the development plan. As such, the development plan requires that any change (in this case new development) must relate to very specific needs. I am mindful of the appellant's evidence with regard to the lack of appropriate existing art studio space elsewhere. This has not, however, been supported with sufficient evidence of an assessment of the available accommodation within the Henley-on-Thames area, where I understand the appellant would prefer to work.
94. I understand the appellant's preference for carrying out his work at the site and can see that his family's interest in the site has influenced his choice for the location of his art studio. The use described by the appellant might well necessitate a location within the Henley-on-Thames area, but it does not justify development in a location that does not accord with the Council's strategy.
95. In addition to the above, it is apparent that access to and from the site is reliant on less sustainable transport modes, with little evidence of access to the site by public transport. I also note that the surrounding road network is typical of that in a rural location, with a general lack of footways and lighting. Access to the site on foot or by bicycle is not, therefore, likely to be the most attractive option. For this reason I cannot regard the site as being in a location that facilitates access to public transport or safe walking routes.
96. I acknowledge that chapter 6 of the Framework encourages sustainable growth and expansion of businesses in rural areas, and informs that sites may need to be found beyond existing settlements, in locations that are not well served by public transport. However, this is only where the development meets local business and community needs. Having regard to my findings

above, I cannot conclude that the Framework supports the development in this particular location.

97. I acknowledge that the Council has previously approved other art studio buildings in this location and, in doing so, they acknowledge the appellant's need for art studio space. Whilst I consider whether these permissions represent a realistic fallback later in this decision, they do not change my findings, that there is insufficient evidence before me to demonstrate that there is a specific need for an art studio in this location.
98. All things considered, I cannot conclude that the development subject of Appeal B would be in an acceptable location, having regard to the relevant planning policy and guidance. I reach the same conclusion with regard to the various elements of the development subject of Appeal A. In doing so I have regarded all operations subject of the deemed planning application to be associated with the AS, as the evidence has indicated. Accordingly, I find both schemes in conflict with SOLP policies STRAT1 and TRANS5, as well as the relevant chapters of the Framework.

### *Character and Appearance*

#### *- The appeal site and the surrounding area*

99. The appeal site is a fairly linear parcel of land, that has a subtle slope from its north east to its south west boundary. I also noted a slope in the easternmost part of the site, towards the rear boundary. Whilst there were historic buildings on site close to the rear boundary, these have been removed. There is, therefore, no built development on site save for the matters that are the subject of Appeal A and the hardstanding area in the south east corner of the site.
100. Although the site is fairly open to the south and west, the south east and north east boundaries are dominated by trees and a wooded area which separates the site from the adopted highway. There is a public right of way (PROW) broadly to the west, separated from the appeals site by the adjoining land. Although in a rural location, there is a row of dwellings to the south and south east of the site and a settlement some distance to the north west.
101. The site is within the AONB, and in the Chilterns Plateau with Valleys landscape character area, as described in the South Oxfordshire District Council Landscape Character Assessment dated November 2017 (LCA). It is suggested that the landscape type of this part of the character area is a semi-enclosed dip slopes, the characteristics of which include:
- typically level or more gently sloping ground;
  - open fields contained within a strong structure of woods, hedgerows or trees to form a loose mosaic;
  - strong structure of woods and hedgerows generally provides visual containment and results in moderate to low intervisibility;
  - distinctive pattern of winding rural roads, irregular field boundaries and scattered rural settlements, typical of 'ancient countryside'; and
  - generally rural and unspoilt character but with some 'suburbanising' influences within rural settlements and along main roads.

102. The appeals site and surrounding area demonstrates these characteristics.

*- Policy and Guidance*

103. Starting with the Framework, chapter 15 is of most relevance. At paragraph 176 it informs that great weight be given to conserving and enhancing the landscape and scenic beauty of the AONB.

104. Policy ENV1 (Landscape and Countryside) of the SOLP informs that the highest level of protection will be given to the landscape and scenic beauty of the Chilterns AONB. The policy sets out the circumstances where development would be permitted in the AONB. This includes where it conserves, and where possible enhances, its character and natural beauty. Policy DES1 (Delivering High Quality Development) requires new development to be of a high quality design that respects existing landscape character. Policy DES2 (Enhancing Local Character) requires, amongst other matters, that the design of all new development reflects the positive features that make up the character of the local area, and that it physically and visually enhances and complements the surroundings.

105. In addition to the LCA, referred to above, I have also been provided with an extract of the Chilterns AONB Management Plan 2019-2024 (CMP), the objectives and policies of which reinforce the policies of the development plan and the requirements of the Framework. Finally, the Chilterns Building Design Guide (CBDG) provides detailed guidance with regard to various elements of development, including advice on its location and siting, access and parking.

*- The AS building, retaining walls to the rear and hard landscaping (Appeal A)*

106. Although listed separately in the enforcement notice, having viewed the AS building, retaining walls to the rear and hard landscaping surrounding the building, I am satisfied that they form part of the same operation and ought to be considered together.

107. The AS has a steep pitched roof, with a gable projecting from its north west facing (front) elevation. The roof is tiled and there are roof lights on most roof slopes. The elevations include the exposed timber frame, glazing and timber cladding with a small brick plinth. Most elevations are dominated by glazing. The development incorporates a basement level, the area of which is comparable to that of the ground floor of the building. Access to this can be gained from a basement level patio area and ramp to the rear of the building. This access and patio area have necessitated substantial retaining works.

108. I acknowledge that the general design of the building above ground level, including its roof form, its shape and the consistent use of materials, accords with the CBDG and its encouragement of the more traditional building forms. The excessive use of glazing does not accord with the windows and doors checklist at 3.66 of the guidance, but this is not to the detriment of the building's design. In this regard, I note that the design of the AS above ground level can be compared to that shown in the CMP, which is the winner of the Chilterns building design award. I do not, however, have sufficient evidence to compare the setting of that building or any development associated with it, such as retaining walls or hard landscaping that are associated with the AS in this case.

109. The AS has an exposed elevation to the basement which alters the character of the building at the rear. The exposed height of the rear elevation, the excavation, and the substantial retaining works have resulted in a building and setting that appears overtly engineered. This has a detrimental effect on the building's ability to assimilate into the landscape. The excessive use of hard surfacing and material in the building's setting does not accord with the CBDG, which specifically advises that development should avoid excessive earth works and excavated basements (checklists 3.9 and 3.25). The AS, when considered together with the engineering works and hard landscaping, has changed the rural character of the site, such that it has had a suburbanising effect on this parcel of land.
110. In addition to the above, the building is significantly divorced from other nearby development, in particular the row of dwellings to the east and south east of the site which front onto the unnamed highway. If those dwellings are to be regarded as one of the scattered rural settlements that are characteristic of the landscape type within which the appeals site is located, the AS is detached from it. The development does not comfortably form part of that settlement.
111. The building is also some distance from the closest boundaries of the site. Its location does not, therefore, benefit from the visual containment that could result from a close proximity to the existing trees and landscape features that dominate some of the site's boundaries, in accordance with checklists 3.9 and 3.10 of the CBDG. The more recent orchard planting does little to mitigate the detached location of the building. I find the building's location within the site to have been poorly chosen.
112. The building's prominence is exacerbated by the scale of the development. The roof form and ridge height, together with the substantial front projecting gable, result in a building that is not subtle in its presence on the site. I cannot agree with the appellant<sup>21</sup>, that the scale of the building is relatively small and sympathetic to the scale of the site. That a substantial building sits within a substantial plot does little to reduce its effect on the landscape. Whilst the building may be smaller than the residential buildings to the south and south east, there is a significant degree of separation with these buildings, as noted above. It would not, therefore, be reasonable to compare the size of these with that of the AS. The building's size and location make the building a prominent feature that is a substantial encroachment of built development into the rural landscape.
113. Having regard to the above, I conclude that the building, together with the associated hard landscaping and retaining walls to the rear are unacceptable in terms of the landscape effect on the site and the surrounding area. For this reason I find the effect of this development on the character of the local landscape and the AONB to be substantially harmful.
114. As for the visual effects of the development, I acknowledge that the woodland separating the site from the adjoining highway provides a substantial screen to views from the highway. The appellant has, however, acknowledged that there are glimpsed views of the AS through this woodland from the lane. Whilst I could appreciate the encroachment of the development from views

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<sup>21</sup> Paragraph 8.6 of Mr Hanson's proof of evidence.

from the lane, I acknowledge that others travelling along the lane are more likely to be in a vehicle or on a bicycle, rather than on foot.

115. Having walked the PROW, I could see the development from points along this route. Indeed, viewpoint 4 of the appellant's landscape evidence<sup>22</sup> shows the AS against the backdrop of the adjoining woodland and trees. Whilst I acknowledge that views of the development from the PROW are intermittent and at a distance, the development is visible to walkers along this route.

116. To summarise with regard to the effect of the development comprising the AS, retaining walls and hard landscaping, my findings above lead me to conclude that the development causes harm to the character of the site and the surrounding area. I acknowledge that the development is not highly visible. Nevertheless, it still causes detriment to the appearance of the site and its setting. For this reason the development fails to conserve or enhance the landscape and scenic beauty of the AONB, in conflict with the development plan policies and relevant sections of the Framework referred to above.

*- The development subject of Appeal B*

117. As noted above, the development subject of Appeal B comprises a building with a basement, which the parties agree would have the same form and size as the AS on site. The scheme also includes a basement patio area with a walkway down to this. This would also necessitate engineering works and retaining structures similar to those to the rear of the AS. The submitted plans also show some hard landscaping walkways and steps around the building.

118. The appearance, size and form of the building, together with its associated works, would be broadly similar to that considered above. As such, the vast majority of my findings with regard to that development would also apply to the scheme subject of Appeal B. My findings only alter when regard is had to the proposed location of the building.

119. The footprint of the Appeal B building would sit further towards the rear boundary of the site. Its front elevation would, therefore, be broadly in line with the rear elevation of the AS. It was, however, agreed that the building would sit a short distance closer to the wooded area between the site and the highway.

120. As for the finished height of the Appeal B building relative to the AS, I noted a discernible slope in the rear part of the site, from the rear elevation of the AS towards the rear boundary. As such, if the Appeal B building were built on the site as I observed it, it is likely to be at a slightly lower level to the AS. Despite the appellant's landscape witness' agreement with this, I acknowledge that the appellant's planning witness did not<sup>23</sup>. Nevertheless, I note that the levels details of the site (neither existing nor proposed) were submitted with the Appeal B application, such that it would be clear that the slab levels would be the same for both.

121. Having regard to the above, it is likely that the Appeal B scheme would be less visible in the landscape than the AS when viewed from the PROW,

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<sup>22</sup> Viewpoint 4 in the proof of evidence of Mr Hanson.

<sup>23</sup> In answer to my questions put to Mr Hanson and Mr Munnings.

particularly as it would sit further into the site and at a slightly lower level. The visual effect from the nearby highway is, however, likely to be broadly similar when the two are compared, particularly as the building would be marginally closer to the wooded area. In terms of the effect of the development on landscape character, I have no reason to reach a different conclusion to that reached in respect of the existing development. The location of the scheme, closer to the trees along the south eastern and north eastern boundaries, would be a slight improvement in terms of the choice of location when compared to the existing. However, having regard to the scale of the development and the extent of engineering works, the development as a whole would still have a negative effect on the character of the site and its setting. It would still be an unacceptable encroachment of built development into the rural landscape.

122. For the reasons given above, I conclude that the proposed development subject of Appeal B would be unacceptable in terms of its effect on the character and appearance of the site and surrounding area. It would fail to conserve or enhance the landscape and scenic beauty of the AONB. Accordingly, the development would conflict with the development plan policies and relevant sections of the Framework set out above.

*- The store, track, hardstandings, retaining wall, mailbox and signage board (Appeal A)*

123. I now turn to consider the remaining elements that are the subject of the deemed planning application (Appeal A). The varied roof shape of the store building along its substantial length renders it unusual within this rural context. Although clad in timber, it has a domestic appearance that adds to the suburbanising effect the AS has on the character of the site. Materials aside, the extensive use of a flat roof and its unusual design does not reflect the traditional character of buildings in the area, in accordance with the CBDG and the 3.25 and 3.33 checklists.
124. Although still divorced from the majority of residential buildings to the east and south east, the store building benefits from a location adjacent to the rear boundary and rear tree line. I also acknowledge that I could not see this building from the PROW and that views of it from the adjoining highway are limited. Nevertheless, I cannot regard the building as conserving or enhancing the character of the site, the surrounding area or the AONB. Rather it contributes towards the harm caused by other development on the site.
125. Whilst I acknowledge that the appeals site is substantial in area, the track and hardstanding areas are excessive. These areas of hard surfacing are visible from the highway at the site entrance and dominate the site, particularly towards the rear. This development has changed the character of the site, such that it has a more domestic and urban appearance, as described by the Council. Vehicle parking on these areas, even if controlled in their number, would further alter the rural character of the site and the surrounding area.
126. I acknowledge the appellant's suggestion that these hard surfaced areas would grass over. Planting on these areas is, however, not likely to succeed if these areas are driven over or used for parking, turning or external storage. Accordingly, I wholly agree with the concerns expressed by the previous

inspector<sup>24</sup>. These man-made features on areas of the site that were previously undeveloped cause harm to the character of the site and detract from the landscape and scenic beauty of the AONB.

127. With regard to the retaining wall to the side of the drive, the mailbox and the signage board, these are features that add to the urbanising effect the development overall has had on the site. The sign and the mailbox in particular announce the presence of the development subject of this appeal and, therefore, contribute to the harm it causes.

*- Parking area (Appeal B)*

128. Although not proposed as part of the scheme, the Council oppose the development subject of Appeal B because of the lack of parking within the site. Whether or not such provision is necessary is a matter I consider later in this decision. My consideration here is only in respect of the effect of such provision on the character and appearance of the site and the AONB.

129. A condition has been suggested requiring the provision of a parking and turning area for not more than 2 vehicles to be located close to the entrance of the site. In this location any hard surfacing and parking would be highly visible from the adjoining highway. I have already concluded above that hard surfacing is a man-made feature that would cause harm to the character of the site. For this reason I can only conclude that hard surfacing and parking at the site entrance would neither conserve nor enhance the landscape and scenic beauty of the AONB.

*- Summary on character and appearance*

130. Having regard to all of my findings above, I conclude that the scheme of development that is the subject of the deemed planning application fails to conserve or enhance the landscape and scenic beauty of the AONB. As such, the development subject of Appeal A is not acceptable with regard to its effect on the character and appearance of the site, the surrounding area, and the AONB.

131. Although materially different when compared to the Appeal A scheme, I also conclude that the development subject of Appeal B would fail to conserve or enhance the landscape and scenic beauty of the AONB. Accordingly, the proposed development would also have an unacceptable effect on the character and appearance of the site, the surrounding area, and the AONB.

132. For the reasons given above, I conclude that the schemes of development subject of both Appeal A and Appeal B conflict with policies ENV1, DES1 and DES2 of the SOLP, as well as the CMP, the CBDG, and the Framework.

*Energy efficiency, sustainability of design and carbon reduction*

133. This third main issue is a matter not referred to in the reason for refusal of the application subject of Appeal B. It is also not considered in the report prepared in respect of that application. I have, therefore, only considered this matter with regard to the development subject of the deemed planning application.

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<sup>24</sup> The Council's appendix 19 – appeal decision reference APP/Q3115/W/15/3028126.



134. The Council's approach to its case with regard to this third main issue is that, even having regard to the appeals submissions, there is not sufficient information to demonstrate that the design of the development addresses the principles of energy efficiency, sustainability and carbon reduction. In this regard the notice refers to policies DES1, DES7 (Efficient Use of Resources), DES8 (Promoting Sustainable Design), and DES10 (Carbon Reduction) of the SOLP. I note these policies require, amongst other matters, that development minimises energy consumption, is sustainable and resilient to climate change; maximises passive solar heating, lighting, natural ventilation, energy and water efficiency; makes efficient use of water; minimises carbon and energy impacts by reason of a buildings design and construction; and meets BREEAM excellent standard. These policies are in accordance with the environmental objective of the Framework, in particular the advice in chapter 14 on meeting the challenge of climate change.
135. Whilst I note the appellant's oral submissions, that the AS is energy efficient and that it has approval under the building regulation regime, there is little evidence before me to demonstrate that the development complies with the requirements of the policies listed. Notwithstanding this, a condition has been suggested by the Council requiring the submission of an energy efficiency scheme for the AS, demonstrating the achievement of a BREEAM excellent standard. Indeed, I note that a similar condition has been suggested for Appeal B.
136. At the inquiry the parties were satisfied that a scheme of energy efficiency could be devised that would incorporate both existing and proposed elements or features that would satisfy the requirements of the policies. The Council did not suggest that compliance with the policies could not be achieved retrospectively, and I can see no reason to disagree with this position. I also note that the parties agreed to a condition that would mean the development is removed in its entirety, in the event that a scheme is not submitted, that a submitted scheme is not approved, or that an approved scheme is not implemented in accordance with the approved details.
137. For the reasons set out above, provided that a suitably worded condition is imposed on any planning permission granted, I conclude that the development is acceptable in terms of energy efficiency, sustainability of design and carbon reduction. The development does not, therefore, conflict with policies DES1, DES7, DES8, and DES10 of the SOLP. Neither can I identify conflict with the Framework.

#### *Highway safety*

##### *- Parking*

138. The matter of parking is referred to in both the enforcement notice and the reason for refusal of the application subject of Appeal B. However, having regard to the evidence before me, it is apparent that the Council's concerns with regard to this matter are different for each appeal.
139. The deemed planning application seeks permission for hard surfaced parking areas which provide for vehicle parking on the site. The Council does not, therefore, object to this element of the development on the basis of highway safety, rather the effect of the hard surfaced areas and on-site parking on the character and appearance of the site and the AONB. I have already

considered this in the section on character and appearance earlier in my decision.

140. The Appeal B scheme does not include any proposed parking areas or hard surfacing. As such, the Council's concerns are with regard to a lack of such provision on site and the effect of this on highway safety. Whether such provision can be made on-site in a discreet, sensitive and environmentally sensitive manner is also a concern of the Council, but is a matter I have already considered earlier in this decision.
141. The appellant pointed to the previous planning permissions for the site which he said did not include off-site parking provision. These include P17, P16 and the P15/S4319/FUL permission granted for the use of the historic buildings on site as an art studio and store for private use (P15). I note that a condition was imposed on these permissions, making it necessary to seek a further consent for any new hard surfaced areas. Notwithstanding this, the appellant stated that the need for on-site parking and a turning area is obvious<sup>25</sup>.
142. In this regard, I note the appellant's evidence on how he proposes to use the site in the case of either Appeal A or Appeal B, including the number and type of vehicles that are likely to visit the site. With this in mind, I note the highway authority did not object to the Appeal B application, provided a parking and manoeuvring area is provided within the site in the interests of highway safety. Having noted the character of the adjoining highway, I agree with the representations of the highway authority, even if vehicle movements and parking requirements were to be low. The nature of the highway is such that any parking and manoeuvring in the carriageway and/or on the verge between the highway and the site access would, in all likelihood, be detrimental to highway safety.
143. Having regard to the above, I am satisfied that there would be a need for hard surfacing within the site to provide for adequate parking and turning. The Council suggested a condition to require the submission of details of a parking area on land adjacent to the existing entrance to the site and limiting on-site parking to 2 vehicles. The appellant did not object to this. This requirement would overcome the likely harm that might arise to highway safety, as set out above. It would not, however, alter my conclusions with regard to the effect of this hard surfacing and parking on the character and appearance of the site and the AONB.
144. Notwithstanding this, on the matter of parking I conclude that the development subject of Appeal B would have an acceptable effect on highway safety, provided that a suitably worded condition is imposed on any planning permission granted. I would also conclude the same with regard to the development subject of Appeal A, taking into account the suggested condition for a parking and turning area on site for two vehicles. For this reason neither scheme conflicts with the requirements x), xii), and xiii) of Policy TRANS5 of the SOLP, which relate to the provision of parking and turning space.

- Access

145. It is the Council's case that, in order to provide the development subject of both appeals with a safe access and egress, improvements to the existing

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<sup>25</sup> Paragraph 9.4 of Mr Munnings' proof of evidence.

access arrangements are required. A condition was suggested requiring a visibility splay of 2.4 by 43 metres in each direction, measured in the location of the site entrance from the edge of the carriageway, with no obstruction above a height of 0.9 metres.

146. The appellant's reasons for suggesting that the recommended condition is not necessary are central to the matter of whether or not the previous permissions for the site represent a realistic fallback position. These are considered later in this decision. The appellant does not, however, provide any evidence to dispute the suggested dimensions of the vision splay and does not suggest that the appeals schemes would not generate any vehicle movements. Indeed, he agreed that vehicle parking and turning in the site is needed.
147. I note the appellant's account of the likely vehicle movements for both the Appeal A and Appeal B schemes. These include daily visits by the appellant or artist using the building, occasional visiting artists, visits by those he intends to paint, weekly deliveries of supplies, and movement to and from the site for the purposes of transporting large props or large pieces of artwork. It is, therefore, likely that the use in the case of both appeals schemes would generate at least one or two vehicle movements to and from the site each day. Having noted the character of the highway and the existing access arrangements, I have no reason to disagree with the highway authority's recommendations for the vision splay. These findings would not alter even if I were to find the existing access arrangements comparable with others in the area.
148. The Council's concerns are that the required vision splay cannot be provided and maintained by the appellant. ID11 shows the extent of the adopted highway in the vicinity of the appeals site, this does not include the wooded area and verge along the whole of the north east boundary. The Council suggested that, as the vision splay would incorporate land to the south east of the access, which is owned by a third party, the appellant would not have the necessary control over the land to maintain the required vision splay in accordance with the suggested condition.
149. In disagreeing with the Council, the appellant pointed to his right of access over the third party land and suggested that he could pursue matters with the third party, in the event that the right of access becomes blocked or unavailable for any reason. He suggested that if vegetation were to grow in the vision splay above the agreed maximum height, this would have the effect of blocking the access and line of sight on the road itself. In these circumstances, it was suggested by the appellant that he would be able to require the third party to cut back vegetation on this land and, if the third party failed to do so, the matter could be pursued through legal proceedings.
150. To secure compliance with the necessary condition via this mechanism, the appellant would rely on the good will of the third party land owner. The representations of the third party indicate that this is not likely to be achieved. Formally securing the maintenance of the vision splay would not be a simple matter, particularly as this would rely on other legal proceedings. Based on the evidence before me, I cannot be satisfied that the appellant is likely to secure the necessary control over the land within the required vision splay.

151. As an alternative, the appellant suggested that compliance with the condition could be secured by reliance on 'highway rights'. He suggested that these extend over a 2 metre strip on either side of the carriageway and allow for the maintenance of the verge. In this regard, he has drawn my attention to the provisions of section 71(1) of the Highways Act 1980 as amended, which states:

(1) It is the duty of a highway authority to provide in or by the side of a highway maintainable at the public expense by them which consists of or comprises a made-up carriageway adequate grass or other margins as part of the highway in any case where they consider the provision of margins necessary or desirable for the safety or accommodation of ridden horses and driven livestock; and a highway authority may light a margin provided by them under this section.

152. On its face, these provisions allow the highway authority to provide a margin to the side of the carriage way, if it is considered necessary. I acknowledge that such a margin might pass some control of land within the vision splay from the third party to the highway authority. However, the appellant was not able to confirm whether the highway authority had exercised its duty in respect of the land in question. The Council suggested that it had not, as this land would have been indicated as adopted highway on the ID11 plan.

153. Even if the highway authority were to consider its section 71(1) duty in the future for the highway, it could conclude that a margin is not necessary or that a margin is only necessary on land opposite the appeals site access. All of this considered, I cannot conclude that the appellant is likely to secure the means to comply with the necessary condition by reliance on the above provisions of the Highways Act 1980 as amended.

154. In view of my findings above, and having regard to the tests of planning conditions set out in the Planning Practice Guidance on the Use of Planning Conditions, I cannot be satisfied that a condition requiring the maintenance of the vision splay would be reasonable or enforceable. For this reason I conclude that the development subject of Appeal A and Appeal B does/would have an unacceptable effect on highway safety with regard to the matter of access to the site. Accordingly, I find conflict in both cases with Policy TRANS5 of the SOLP, which requires safe and convenient access for all users to the highway network.

### *P17 and fallback*

#### *- Approach*

155. I have had regard to all caselaw drawn to my attention on the matter of the suggested fallback<sup>26</sup>. This requires a determination as to whether the P17 permission, or indeed any of the other permissions, are a material consideration in this case, and then what weight should be attributed to them in the planning balance. I have already found the P17 scheme to be extant. It is, therefore, a material consideration. Critical to the second step is consideration of whether the permitted development would be a realistic

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<sup>26</sup> Including *Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government* [2009] EWCA Civ 333; *R (Kverndal) v LB Hounslow* [2015] EWHC 3084 (Admin); *Gambone v Secretary of State for Communities and Local Government* [2014] EWHC 952 (Admin), and *Mansell v. Tonbridge & Malling Borough Council* [2017] EWCA Civ 1314.

prospect and whether it would be less desirable in terms of harm than that for which planning permission is sought.

*- Realistic prospect*

156. When the appellant was asked at the inquiry whether he would choose to implement the P17 scheme in the event that his appeals fail, he gave a mixed response. In answering he was of the view that the accommodation in the P17 scheme would be comparable to the AS and Appeal B building, but I do not consider his view in this regard to be correct. The art studio accommodation comprised in the AS is significantly greater than that permitted by P17 and, as such, the space the appellant would have to work in would be compromised if the P17 scheme were taken up. A large portion of the P17 building would accommodate a tractor and orchard equipment store. Such storage does not feature in the AS or Appeal B building. The first floor space and basement also add significantly to the usable floorspace in these buildings. In addition, I note the appellant's reliance on the basement of the AS and access to it. The flexibility of the space available allows him to work on large sculptures and canvases, as well as the use of large props. The P17 building would have a much smaller basement and no external basement access.
157. The appellant acknowledged that in the P17 building he would not be able to do three quarters of the work he does within the AS. Despite this he confirmed that he would not construct the basement element of the permitted scheme, but suggested that adaptations to the building would be needed to accommodate the larger items of his work described above. The appellant had not, however, explored any alternatives or possible adaptations to the P17 scheme. Notwithstanding this, the appellant said that he would need some form of art space and his preference for this would be at the appeals site. He said that he would very reluctantly construct the P17 building<sup>27</sup>.
158. Having regard to the evidence before me, I am not persuaded that the P17 scheme as permitted would, on the balance of probability, be a realistic prospect as an alternative to the development subject of the appeals before me. Whilst the appellant clearly wishes to have some form of art studio accommodation on the site, I am not persuaded that the P17 scheme is likely to be it. There may be an appropriate alternative to this scheme, but I do not have sufficient evidence of it, such that it would carry any weight in this case. Notwithstanding this, I cannot ignore that P17 is an extant permission. I also acknowledge that the land is likely to be more valuable with this permission, but have little evidence of the appellant's intention to sell the land or of there being any other potential owner wishing to construct the P17 building. On this basis, the P17 scheme is more likely to be a theoretical alternative, rather than a realistic prospect. It is, however, an alternative that would be preferred by the appellant over the P16 scheme or nothing at all.

*- Comparison of P17 with the Appeal A and Appeal B schemes*

159. I acknowledge that the appearance and form of the P17 building, as well as the architectural detail and materials, compares with that of the above ground elements of the AS and Appeal B building, although I note that glazing is less prevalent than in the schemes that are before me.

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<sup>27</sup> The evidence of Mr Hemsley given in cross examination.

160. It is agreed that the ridge height of the P17 building would be some 0.4 metres lower than the AS building. However, in my judgement it is likely that the difference in the finished height would be greater, taking into account ground levels with the discernible slope I observed towards the rear boundary and the approved location of the P17 building, closer to that boundary. Whilst I note the appellant's evidence on this, no levels details were approved as part of the P17 scheme, and I have no other evidence to demonstrate that the slab level of the AS, Appeal B and P17 building would be the same.
161. It was also agreed that the footprint of the AS and Appeal B building would be some 30% larger than the P17 building, which is a substantial difference. Indeed, the footprint of the front projecting gable and porch canopy, which account for some of this difference, are substantial elements of the AS building overall. The ridge height of this part of the roof matches that of the main section and, as such, adds substantially to the bulk of the development, when compared to the P17 scheme. The P17 building would also be closer to the rear boundary of the site than either the AS or the Appeal B building.
162. Most notably, the P17 building would not include a basement elevation and the scheme would not include a basement patio or retaining works to provide any form of access to the building's lower level. The basement would not, therefore, comprise any external element of the building.
163. The overall quantum of development would be notably less with the P17 scheme and it would be less conspicuous within the landscape when compared to the AS and Appeal B scheme. Being less bulky and with a notably smaller footprint, it is more likely that the building would better assimilate into the landscape. Whilst still divorced from other built development or settlements in the area, it would be closer to the rear boundary and, therefore, more likely to be visually contained by the tree line along this boundary. I note that the depth of the woodland between the site and the highway increases towards the rear of the site. It is, therefore, likely that there would be less glimpsed views from the highway.
164. Having regard to the lower finished height of the P17 building, together with its location closer to the rear of the site, it is more likely that the building would be less prominent from views from the PROW than the AS and the Appeal B building.

*- Summary on P17 and fallback*

165. It may well be the case that the P17 scheme would be comparable to the development before me in terms of its location within the Council's administrative area, highway safety, energy efficiency, sustainability of design and carbon reduction. However, my findings above only lead me to conclude that the schemes of development subject of both appeals before me would be less desirable than the P17 scheme in terms of their effect on the character and appearance of the site and the AONB. For this reason, although the P17 scheme is a material consideration in this case, I only attribute limited weight to it.

*Other material considerations*

*- P16 and fallback*

166. I have concluded above that the P16 planning permission has been implemented and is, therefore, extant. Notwithstanding this, the appellant expressed no intention of constructing the P16 building permitted in the event that his appeal should not succeed. He explained that it would simply not meet his requirements. The P16 scheme is not, on the balance of probability, a realistic alternative to the development subject of these appeals. I have not, therefore, explored whether it would be less desirable than the schemes before me. I acknowledge that it is a material consideration as an extant permission, but it carries minimal weight in the planning balance.

*- P15 and fallback*

167. There is no dispute that the P15 permission was implemented. However, I cannot conclude that the lawful use of the site is as an art studio and, therefore, that this would be material to the determination of the appeals. P15 granted permission for the use of the historic buildings as an art studio building and associated store. Whilst the appellant described occasionally painting in the open, integral to an art studio is the ability to paint or sculpt in inclement weather; have subjects pose in comfort and under cover, as demonstrated by the appellant; wash and maintain brushes and other art implements; and store props and materials, including paints and canvasses. As such, I am unable to conclude that, on the balance of probability, the art studio use permitted by P15 survives following the demolition of the historic buildings. Accordingly, this matter carries no weight in this case.

*- Other fallbacks*

168. Other alternative fallbacks have been suggested by the appellant, including a former use of the site as a donkey sanctuary and a residential use. These uses may well have been lost by reason of the art studio use permitted by P15, and the subsequent removal of the historic buildings on which this use is likely to have relied upon. Notwithstanding this, the evidence points to these being no more than theoretical, rather than realistic alternatives to the appeals schemes. They carry very little weight in this case.

*- Other matters*

169. The appellant had intended inviting other users to the AS who were receiving palliative care, although acknowledged that this would not comply with any condition limiting the use of the AS to a private art studio. Even if there were no other material implications resulting from such a use (increased traffic generation, for example), as the appellant suggested that such a use of the AS would be infrequent, this is a limited benefit of the Appeal B scheme. I would conclude the same if such a use were intended for the proposed scheme.

170. It was suggested that charities benefit from the sale of some of the appellant's art work. The appellant also sees some of his dog portrait work as helping bereaved dog owners. I note that these were aspects of the appellant's work prior to his construction of the AS. Nevertheless, I acknowledge that the AS allows this work to continue and is, therefore, a

small benefit to the Appeal A scheme. I have no reason to conclude that the same benefit would not result from the Appeal B development.

*Planning balance and conclusions on Appeal B, ground (a) appeal and deemed planning application*

171. I have concluded that the development subject of Appeal A is acceptable with regard to energy efficiency, sustainability of design and carbon reduction, as well as its effect on highway safety with regard to the matter of parking. I have, however, found harm with regard to its effect on the character and appearance of the site and surrounding area. The development neither conserves nor enhances the landscape and scenic beauty of the AONB, which must be given great weight in accordance with the Framework. I have also concluded that the location of the development is unacceptable, and that access to and from the site is such that this has a harmful effect on highway safety. I have reached the same conclusion with regard to the likely effects that would result from the development subject of Appeal B. For these reasons I find conflict with the development plan in respect of both appeals.
172. I have had regard to all material considerations, including the suggested fall back alternatives and benefits of the scheme, but find these of insufficient weight to indicate that the determination of either appeal should be made otherwise than in accordance with the development plan. Neither can I be satisfied from the evidence before me that the imposition of conditions could overcome the harm I have identified. Accordingly, I conclude that planning permission ought not to be granted for either of the developments subject of the appeals before me.

**Ground (f)**

173. For the appeal to succeed on this ground, I must be satisfied that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by the breach. Having regard to the requirements of the notice, its purpose must be to remedy the breach of planning control that has occurred.
174. Whilst the appellant suggested that the AS could be altered to make it more acceptable, an alternative scheme has not been submitted in any detail, such that this might be considered. Nevertheless, the appellant acknowledged that an alternative would not remedy the breach of planning control in this case.
175. I note the suggestion that the remaining elements of the development are required in connection with the approved P17 building, or that they are useful in some way. This is not, however, relevant to whether or not any requirement of the notice relating to them exceeds what is necessary to remedy the breach of planning control.
176. No alternative or lesser steps have been suggested to achieve the purpose of remedying any element of the breach in this case and, having regard to both the nature of the breach and requirements of the notice, no other steps that would achieve this purpose are obvious to me. On this basis I can only conclude that the steps required in the notice, once corrected and varied, are necessary and proportionate. For these reasons, the appeal under ground (f) should fail.



## **Ground (g)**

177. An appeal on ground (g) is that the period specified in the notice falls short of what should reasonably be allowed. The notice specifies a period of 12 months from the date it takes effect. The appellant suggested a period of 3 years is required to demolish and clear the land of the matters listed in the notice.
178. Whilst restrictions imposed during the Covid-19 pandemic might well have had an effect on the availability of contractors required for the works to comply with the notice, I have no substantiated evidence to suggest that these problems prevail to the extent that a longer period is now required. I have not been given any other reason to conclude that there is a shortage of suitable or qualified contractors at this time, or that specialist contractors would be required because of the site's location in the AONB.
179. The 12 month period given in the notice is substantial. That more time than this might be needed for the appellant to find alternative studio accommodation is not sufficient to outweigh the harm that would result from the development during the additional 2 years.
180. I have no other reason to conclude that the requirements of the notice cannot be complied with within 12 months. As such, I do not find that the period specified in the notice falls short of what should reasonably be allowed. For this reason, the ground (g) appeal should fail.

## **Conclusion Appeal A**

181. For the reasons given above, I conclude that the appeal on ground (b) should succeed insofar as it relates to the hardstanding located in the southern corner of the site, which is part of allegation 3.3). Otherwise, the appeal on ground (b) should fail insofar as it relates to all other matters that will remain in the notice, once corrected and varied as intended. The appeal on grounds (a), (c), (f) and (g) should also fail.
182. I shall uphold the enforcement notice with corrections and variations, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## **Conclusion Appeal B**

183. I conclude that the appeal should be dismissed.

## **Formal Decision Appeal A**

184. It is directed that the enforcement notice is corrected and varied by:

- The deletion of the words:  
'including: 1) the erection of buildings; 2) the formation of earth bunds; 3) the laying of a track and various hardstanding areas; 4) the erection of retaining walls; 5) earthworks to create a tiered garden and a basement level courtyard; 6) hard landscape works to create paths, steps, patios and courtyard areas; 7) the installation of outdoor sculptures; 8) the installation of a mail box; and 9) the installation of a signage board.'

from part 3 and their replacement with the words:

`comprising: 1) the erection of 2 buildings in the approximate location indicated on the plan entitled "Plan 2", hereby annexed to this enforcement notice (referred to hereinafter as "Plan 2"), and identified as "No 1 Studio Building" and "No 2 Store" in the Plan 2 key; 2) the laying of a track in the approximate location indicated on Plan 2 and identified as "Track" in the Plan 2 key; 3) the laying of 2 hardstanding areas labelled "A" and "B" in the approximate location indicated on Plan 2 (for the avoidance of doubt this excludes a third hardstanding area in the southern corner of the Land, the approximate location of which is also shown on Plan 2, but this area has not been labelled on the plan with a letter); 4) the erection of retaining walls in the approximate location indicated on Plan 2 and identified as "Retaining Walls" in the Plan 2 key; 5) earthworks to create an excavation in the approximate location indicated on Plan 2 and identified as "Excavation" in the Plan 2 key; 6) hard landscape works to create paths, steps, patios and courtyard areas in the approximate location indicated on Plan 2 and identified as "Hard Landscaping Works" in the Plan 2 key; and 7) the installation of a mail box and a signage board in the approximate location indicated on Plan 2';

- The deletion of the words 'all buildings' from part 5.(i) and their replacement with the words 'the two buildings referred to in part 3.1) of this notice';
- The deletion of the words '3 above' from part 5.(ii) and their replacement with the words '3.2), 3.3), 3.4) and 3.6) of this notice';
- The deletion of the words 'outdoor sculpture,' from part 5.(iii);
- The deletion of the words '3 above' from part 5.(iii) and their replacement with the words '3.7) of this notice';
- The deletion of the words '(v) Dig up the earth bunds referred to in 3 above in a manner that does not cause damage to existing mature trees or the roots of existing mature trees to levels commensurate with the natural levels and fall of immediately adjoining lands.' from part 5;
- The addition of the words 'referred to in 3.5) of this notice and resulting from the works required by (i) above' after the words 'backfilling of any excavations' in 5.(vi);
- The deletion of the words 'iv) and v)' from part 5.(vi) and their replacement with the words 'and iv)'; and
- The addition to the annexe of the plan entitled "Plan 2"<sup>28</sup>.

185. Subject to the corrections and variations, in part pursuant to ground (b), the appeal is otherwise dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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<sup>28</sup> ID1 with additional annotation – a copy is attached at the end of this decision.

**Formal Decision Appeal B**

186. The appeal is dismissed.

*J Moss*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Gavin Collett

Magdalen Chambers

He called:

Mr Phillip Hanson  
Mr Simon Munnings  
Mr Clive Hemsley

Planning Consultant  
The Landscape Practice  
The appellant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Juan Lopez

Essex Chambers

He called:

Mr Robert Cramp

South Oxfordshire District Council

### **INTERESTED PERSONS:**

Ms Anna Colivicchi

Member of the press – The Henley  
Standard

## **INQUIRY DOCUMENTS**

- ID1 Suggested conditions from the Council
- ID2 A plan to aid the site visit
- ID3 The opening statements of the Council
- ID4 Annotated plans showing agreed measurements - final version
- ID5 An enforcement notice plan with annotation – final version
- ID6 Extract of the enforcement notice with suggested track changes.
- ID7 Brochure entitled 'The dog portrait artist of Henley'
- ID8 The opening statements of the appellant
- ID9 Revised list of suggested conditions from the Council
- ID10 Suggested conditions from the appellant
- ID11 Email dated 24 February 2022 showing the extent of the adopted highway from the Council's records.



# The Planning Inspectorate

## Plan

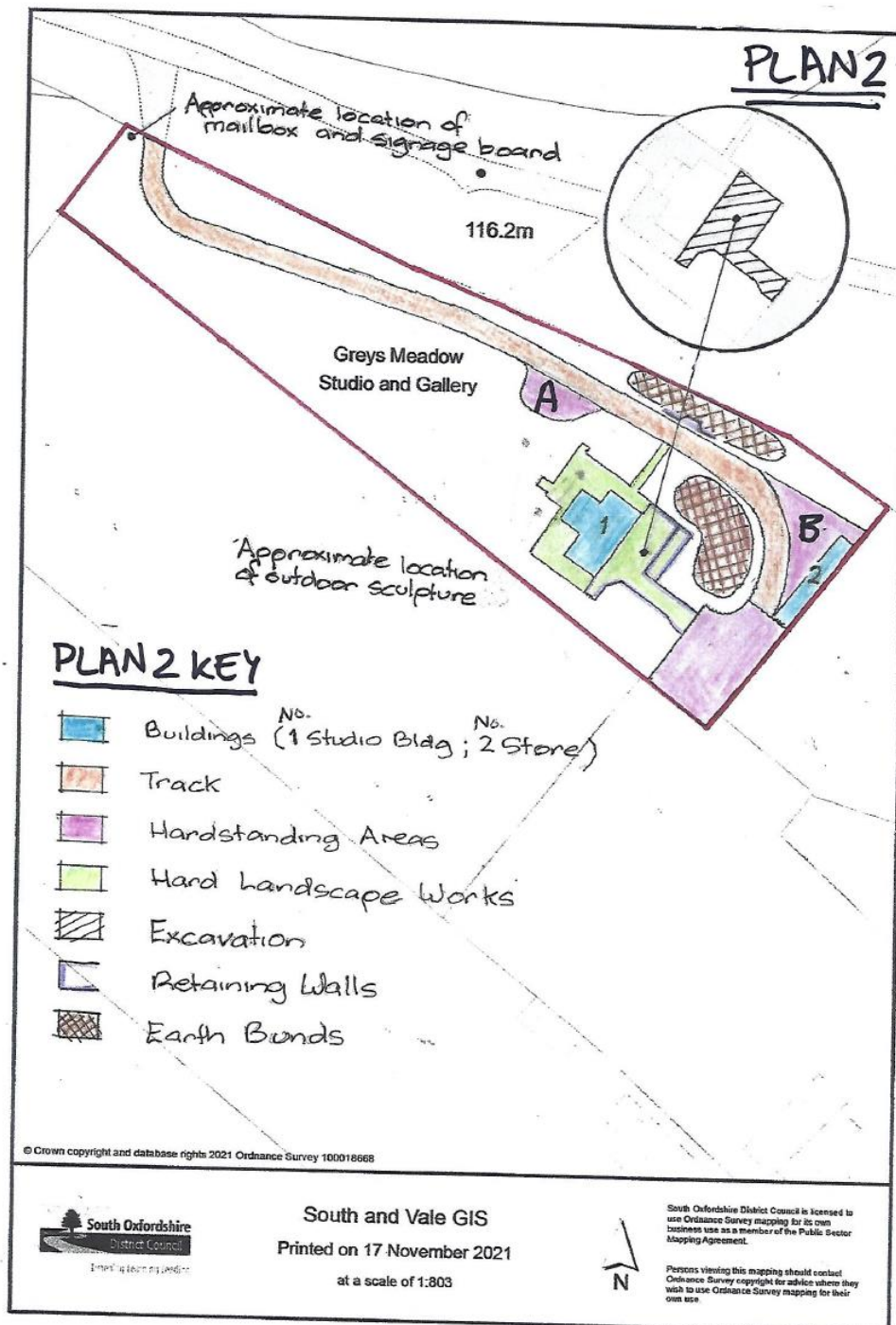
This is the plan referred to in my decision dated 7 June 2022.

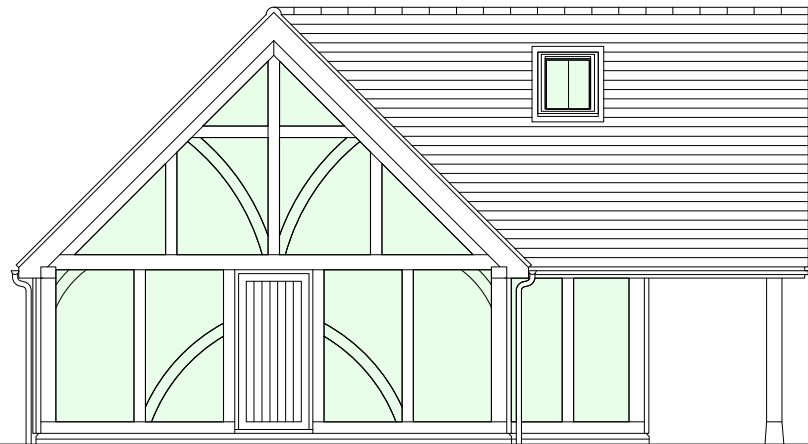
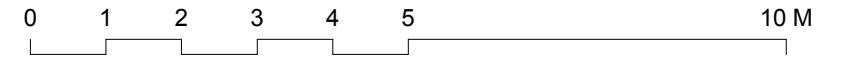
by J Moss BSc (Hons) DipTP MRTPI

Land at: Greys Meadow Studio, Rotherfield Greys, Henley-on-Thames, Oxfordshire RG9 4QJ

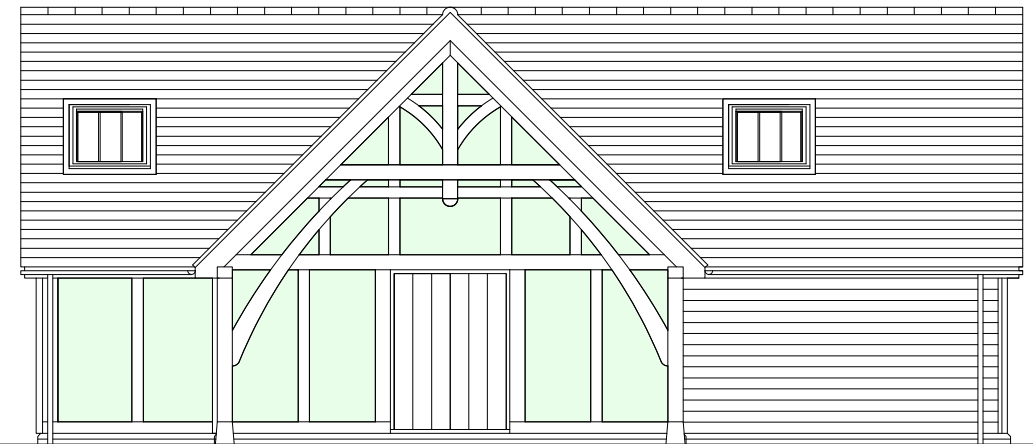
Reference: APP/Q3115/C/21/3269785

Not to scale



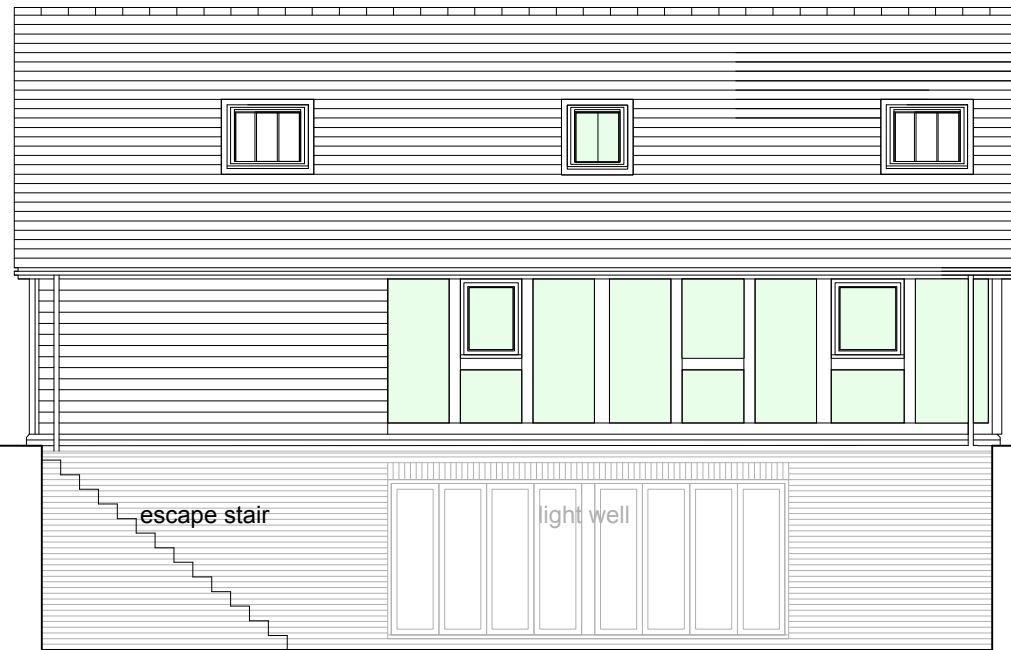


North-East Elevation

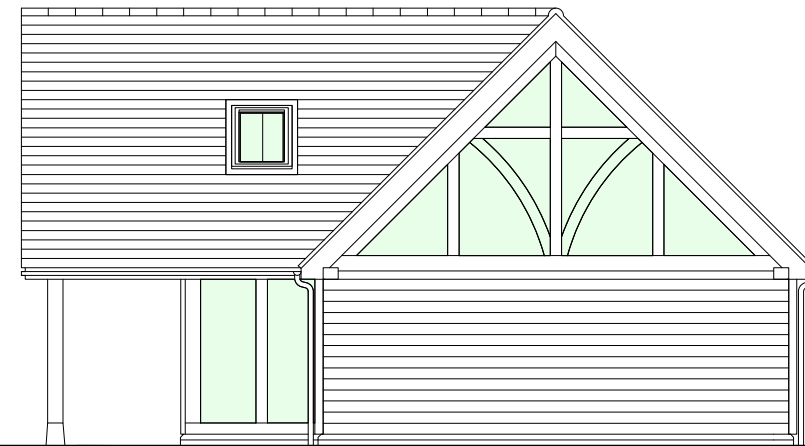


North-West Elevation

light well significantly reduced shown dotted



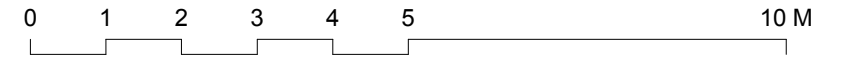
South-East Elevation



South-West Elevation

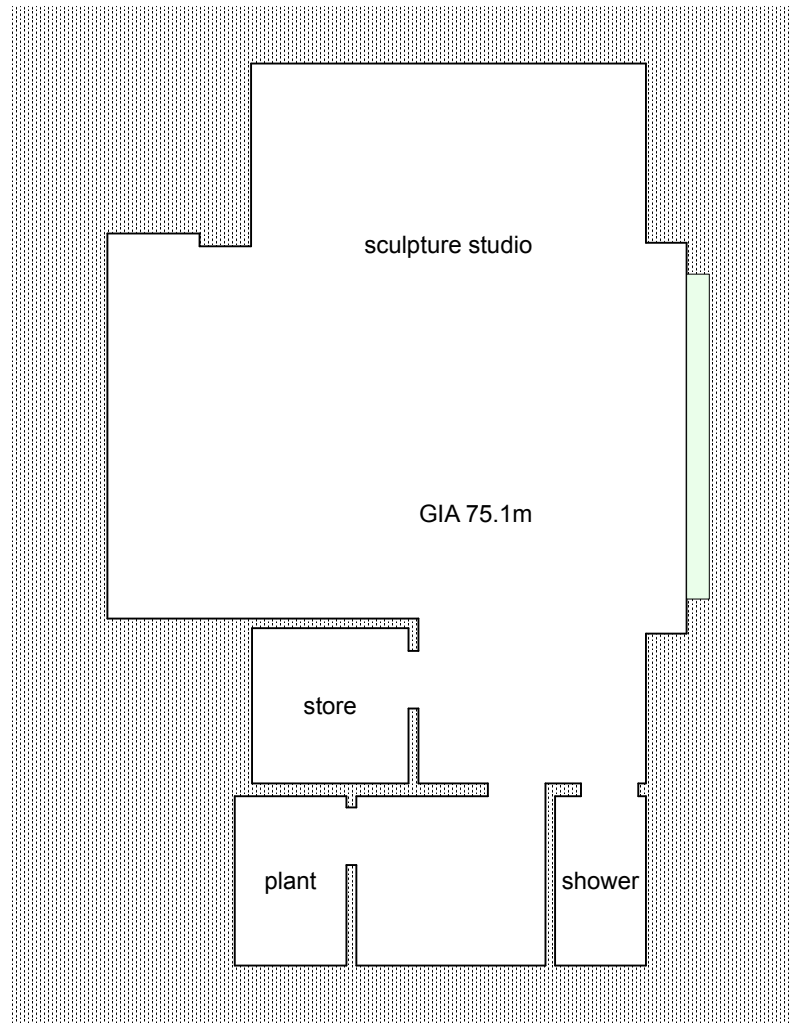
light well significantly reduced shown dotted

# Appendix C

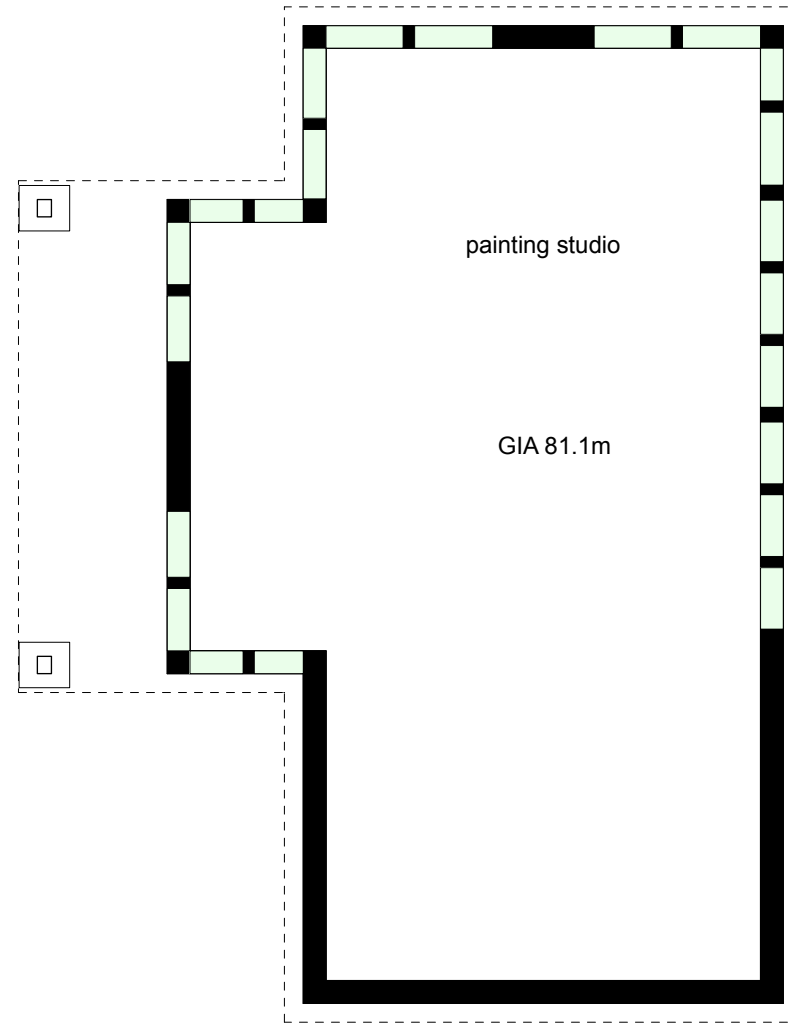


Total GIA 183.2m

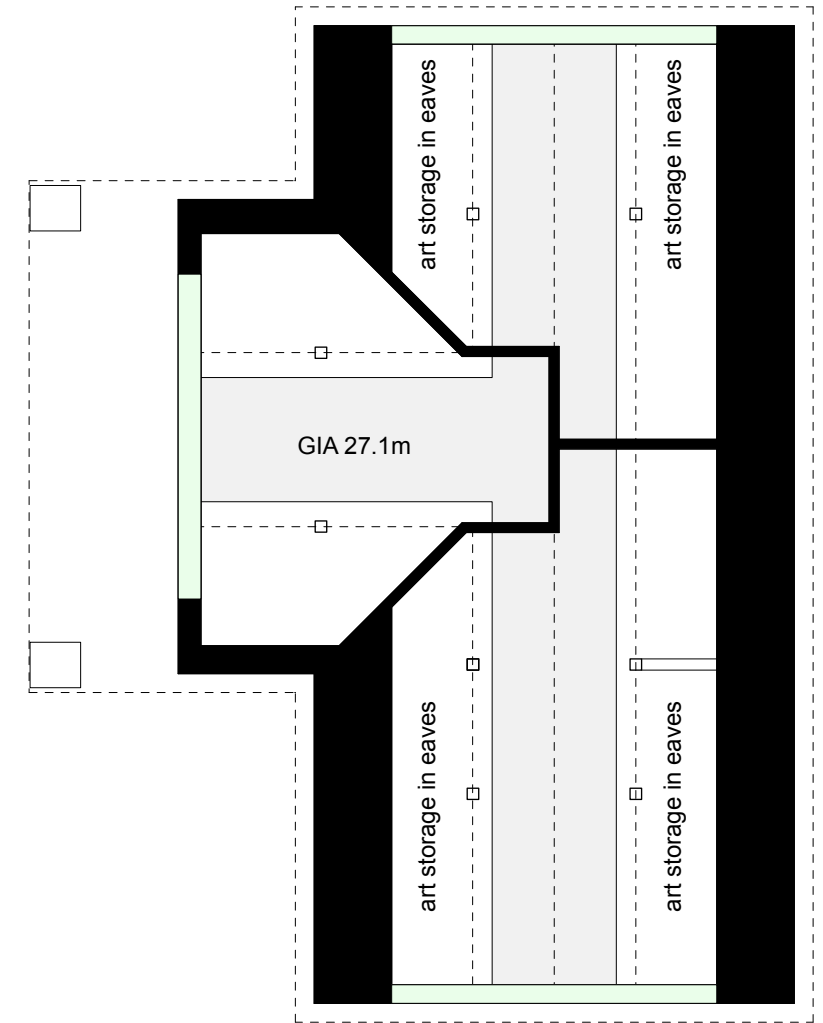
floor area with 2m head room shown shaded grey



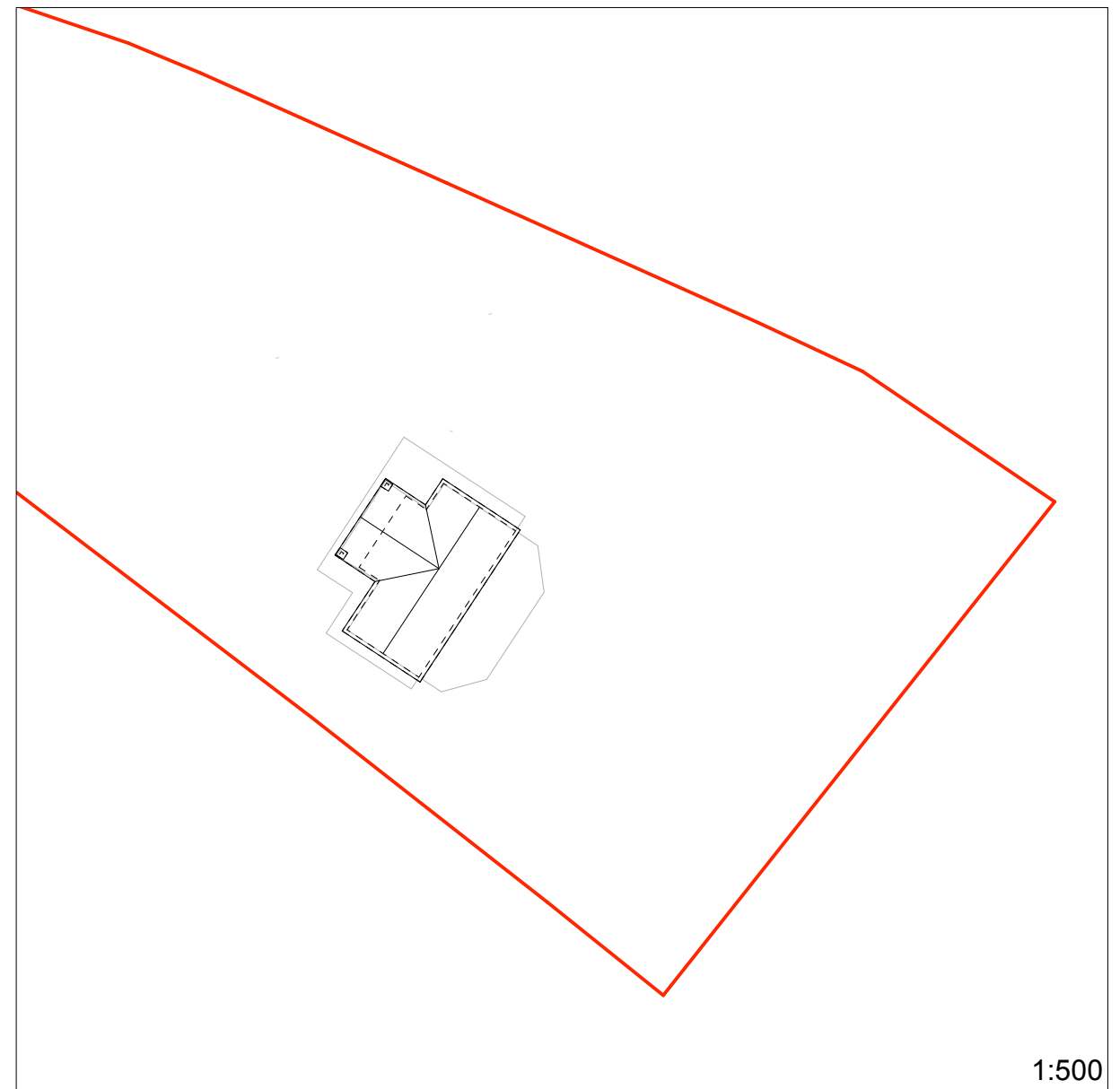
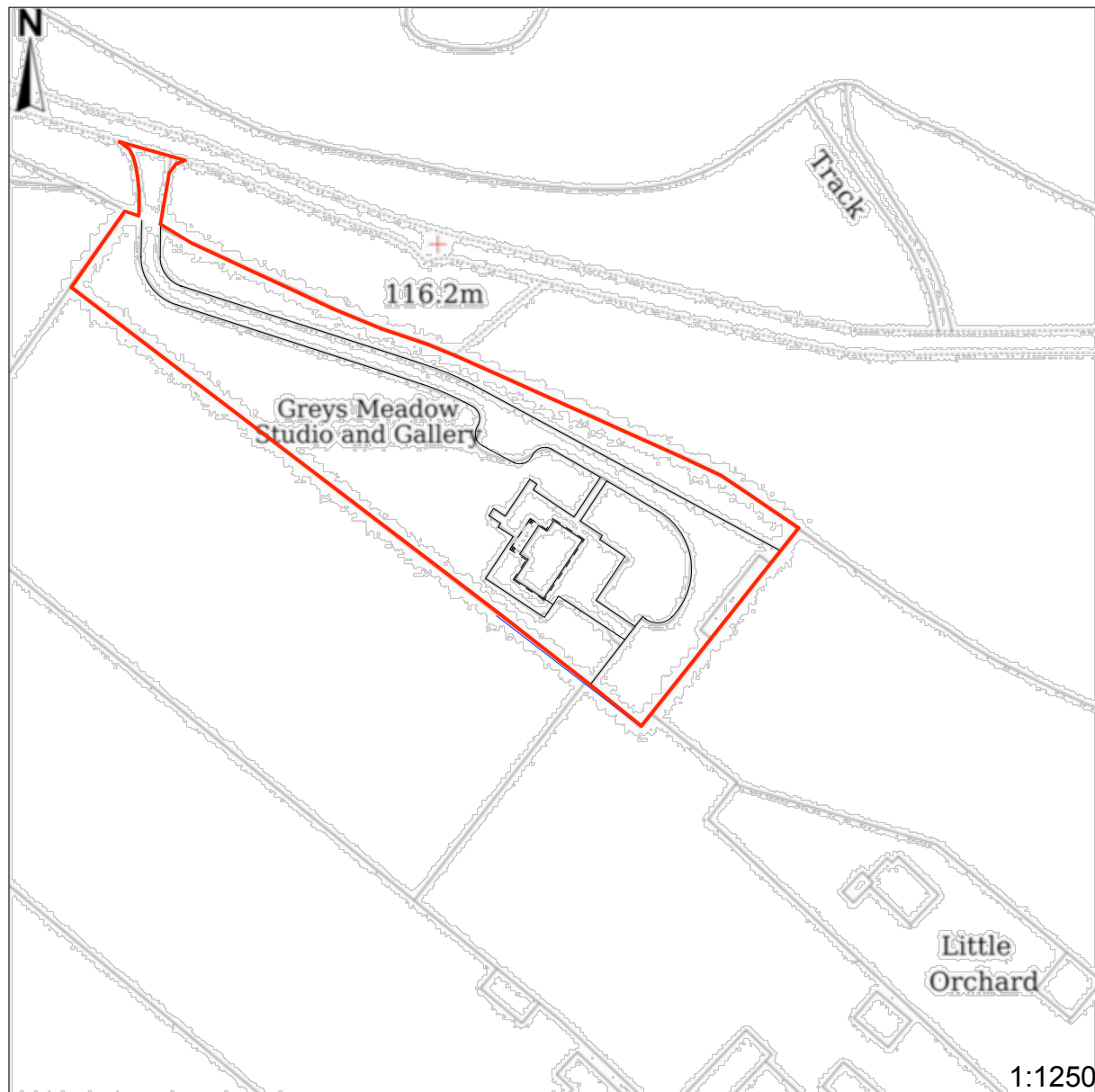
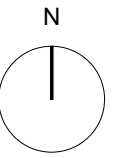
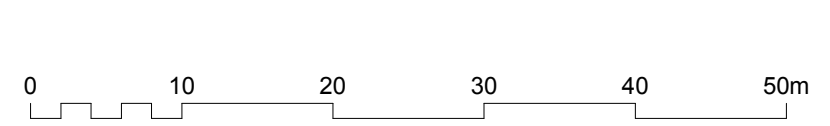
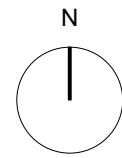
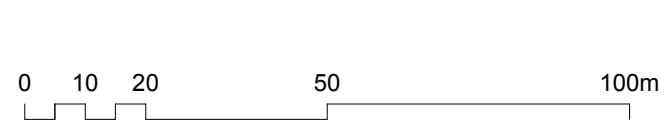
As Built Basement Floor



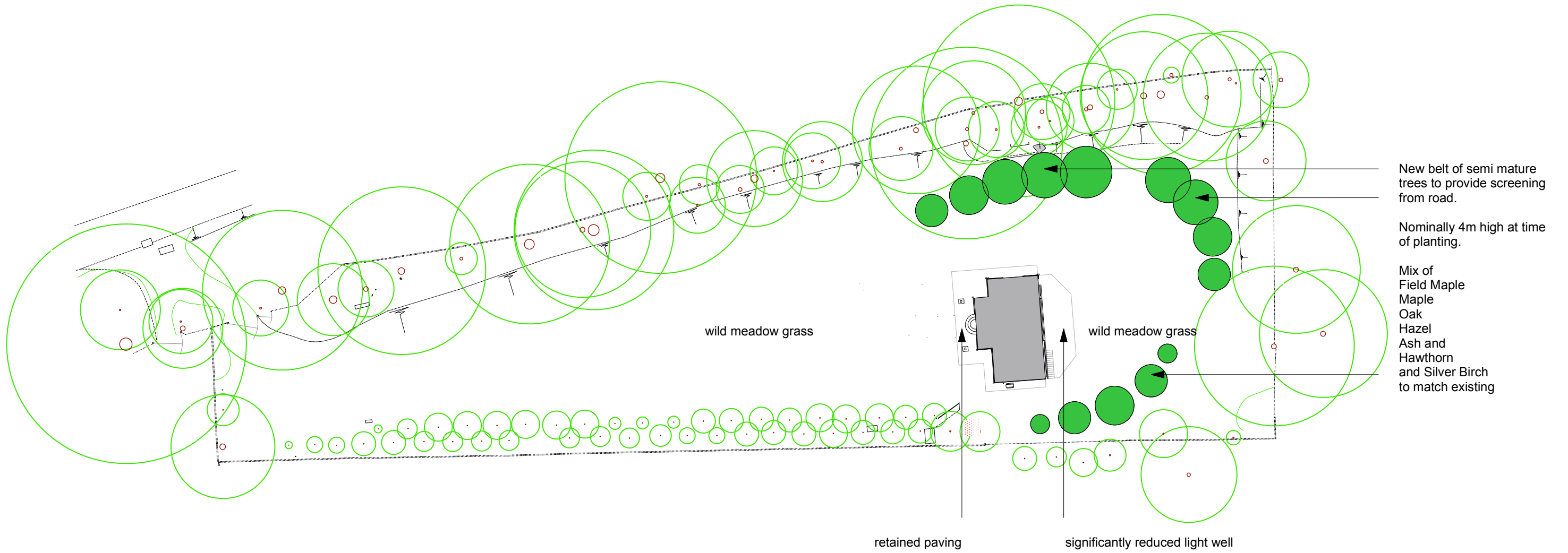
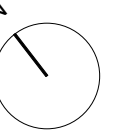
As Built Ground Floor



As Built First Floor







# Appendix D

## APPENDIX D – Photographs taken 8<sup>th</sup> June 2023





# Appendix E

## APPENDIX E – Photographs taken 20<sup>th</sup> September 2023





