

General Development Applications

(5/g) Application No's: PAP/2021/0028, PAP/2021/0029 and PAP/2021/0030

Old Rail Farm, Hurley Common, Hurley, CV9 2LS

- i) Change of use of land to stationing a shepherd's hut for holiday accommodation and associated walkway and parking area, and formation of visitor car park for existing permitted holiday lets,**
- ii) Change of use of redundant agricultural building to workshop for the maintenance of HGVs and agricultural vehicles, together with associated development including formation of hardstanding**
- iii) Change of use of redundant agricultural building to stables, feed storage, office, mess room, commercial horse-rug washing, and dog-grooming and associated works**

all for

Mr and Mrs Stibbs

Introduction

These applications are being reported back to Board following their consideration on the 2nd August 2021. The previous report is attached for convenience at Appendix A. Since that time, there have been a number of changes to the planning considerations relevant to their determination. These are:

1. The adoption of the new Local Plan.
2. Certificates have been served on the owners of the access road – Severn Trent Water Ltd and the Ministry of Defence.
3. The applicants have provided a highway statement in respect of the applications (see highways section of report).
4. The applicants have provided an ecological survey (see biodiversity section of the report).
5. One application (iii above) has been amended to remove proposed residential accommodation for a groom and now includes an office/mess room instead.
6. Warwickshire County Council have investigated an alleged waste use on site.
7. Discussions have taken place with the agent in respect of the uses occurring on site.

Additionally as before, the recommendations include the need to consider the expediency of enforcement action should planning permissions be refused and in respect of other unauthorised development on the site, together with prosecution if such action is not complied with.

The Site

The site relates to areas of land on a farm which comprises a substantial two-storey farm house to the south of the site; an L-shaped range of brick one-storey barns, a cow

shed, a large portal framed building, a small brick built building and another large utilitarian building.

A part of the L-plan range has been used as a self-catering cottage/ holiday let since 2015 when it was converted. This was considered to be permitted development under Part 3 Class M of General Permitted Development Order at the time. Also, planning permission was granted for two additional self-catering cottages in 2019. This has yet to be completed in its entirety.

Access is afforded along an un-adopted road from Hurley Common. It is a shared access in that it is also used by Severn Trent Water vehicles visiting the Water Treatment Works to the west.

A Public Right of Way runs south to north to the east of the farm - reference T55a - and another runs east to west south of the farmhouse - reference T55 - as indicated on the plan contained in Appendix B.

The site is located outside of a defined development boundary and within the Green Belt.

The Proposals

These are as outlined in the descriptions give in the “header” above.

A planning statement and a sustainability statement have been submitted with the applications. A transport statement and ecology report have been submitted during the consideration of the application.

The applicant indicates that the workshop for the maintenance of HGVs would only be for his own vehicles and this would number three in total.

Applications (i) and (iii) are retrospective as the proposed developments have now been carried out. Application (ii) has been carried out in part, but the agricultural maintenance use is currently taking place in the large agricultural building in application (iii). Plans illustrating the proposals are at Appendices C and D for the shepherd’s hut; E and F for the HGV use and G and H for the mixed uses.

Development Plan

The North Warwickshire Local Plan 2021 - LP1 (Sustainable Development); LP2 (Settlement Hierarchy), LP3 (Green Belt), LP11 (Economic Regeneration), LP13 (Rural Employment), LP14 (Landscape), LP16 (Natural Environment), LP29 (Development Considerations) and LP30 (Built Form)

Other considerations

National Planning Policy Framework 2021 – (the “NPPF”)

Consultations

Warwickshire County Council as Highway Authority - It objects to all three applications because of the intensification of the access which is considered to be substandard.

Environmental Health Officer – No objection to all three applications subject to conditions.

Representations

Three objections have been received on each application referring to the following matters:

- Nuisance from the proposed uses, adversely affecting the amenity of adjacent properties
- Noise and disturbance from HGV and vehicles passing property.
- There should be no material increase in traffic.
- Impact on the Green Belt
- Overlooking and loss of privacy
- The entrance drive is restricted and there have been “many near misses”
- Ownership of road
- Other unauthorised development taking place.

One representation of support has been received on each application, supporting the application for the following reason:

- Good to see redundant buildings being used in a sympathetic way.

Observations

a) The Green Belt

The site lies within the Green Belt. Inappropriate development here is defined as being harmful to the Green Belt and thus carries a presumption of refusal. What is or is not inappropriate is defined in the NPPF. In the cases here there is some overlap between the various categories of “development” proposed and thus each possible category will need to be identified. Members will be aware that the construction of new buildings, with exceptions, is inappropriate development. One of these is where the building is an appropriate facility for outdoor sport or outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The re-use of buildings is not necessarily inappropriate provided that the building is permanent, of substantial construction and meets the two conditions set out above. Material changes in the use of land, may not necessarily be inappropriate, provided that they too preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

With the cases in hand, each has been described as a change of use and that will be the starting point for assessment as to whether the proposals are inappropriate or not. However, because of the changes do involve the re-use of existing buildings there is the overlap as referred to above.

There is no definition of openness in the NPPF, but national guidance advises that it is made up of four elements – spatial, visual, the degree of activity associated with a development and whether the development is permanent or not. There are five purposes for including land within the Green Belt and in this case the most significant one is to safeguard the countryside from encroachment. Each of the proposals will need to be considered against this background.

Firstly, in respect of the shepherd's hut, it is not considered that it falls within the exception of being an "appropriate facility", as it relates to tourism, rather than to outdoor sport or outdoor recreation. The application however is for the change of use of the land and this includes the siting of the "hut", the creation of hardstanding, fencing, provision of a hot tub and other engineering works including two parking spaces to the south of the access. The proposal also includes an additional ten parking spaces for the existing bed and breakfast unit to the west of the farmhouse. The hut is on land that is currently vacant of buildings. As a consequence, and by reason of its height, volume and overall extent, the development would lead to a loss of openness. The structures, associated paraphernalia, the extent of the car parking and all of the vehicular and human activity is also considered to have an adverse visual impact. Although set back from the road, it would be seen from the adjoining access as well as the public footpaths which run close to the site. Moreover, the application is not for a temporary use. Overall, there would be an increased urbanising impact because of the intensification of development leading to encroachment of the countryside. The proposal is not considered to meet the conditions set out in the NPPF, thus meaning that it is inappropriate development in the Green Belt.

The second proposal is for the change of use of a former agricultural building for the maintenance of HGVs and agricultural vehicles, including the formation of hardstanding. It is a permanent building of substantial construction. As a consequence, the re-use of just the building would be appropriate development under the definitions set out above. However, the definition is also contingent on the proposal preserving openness. The inclusion within the proposal of the change of use of land and the creation of a sizeable hardstanding to the rear of the building on which to park HGV's, other vehicles and for the storage of equipment and material takes this proposal beyond re-use. This outdoor area has an adverse spatial and visual impact as it is visible from the adjacent footpath to the east - the T55a. Additionally there is all of the activity associated with the use of this area that causes these adverse impacts. It does not therefore preserve openness. The proposal also conflicts with the safeguarding purpose of the Green Belt given the intensification and urbanising influence. In conclusion this proposal is considered to be inappropriate development in the Green Belt.

The final proposal is to change the use of a redundant agricultural building to stables, with a tack room, office, mess room, feed storage, commercial horse-rug washing, and dog-grooming. In this case the building is existing, permanent and of substantial construction and its reuse would thus be appropriate development under the definitions above. The application itself is defined by a red line which just includes the building itself and a small outside area for dogs. The proposal would thus appear to be

appropriate development. However, unauthorised areas have been engineered outside for use in association for the proposals. The applicants have indicated that although it is not clearly shown, parking for the uses would be within the existing internal courtyard of the farm buildings rather than on this outside area. Further consideration will thus have to be given to this later in the report.

It is therefore concluded that two of these applications represent inappropriate development in the Green Belt and that the third is also likely to. As such substantial weight is given to this conclusion and thus planning permissions should not be granted except in very special circumstances.

b) Other harms

i) Highways

Local Plan policies support development in situations where there is sufficient capacity within the highway network to accommodate the traffic generated. Local plan policies LP13 and LP29 both require safe and suitable access to be provided for all users. They indicate that development should not cause an unacceptable adverse impact on the safe and free movement of pedestrian, vehicular or other traffic on the trunk or rural road network as a result of heavy vehicle usage.

Paragraph 111 of the NPPF makes it clear that development should only be refused on highways grounds where there would be an unacceptable impact on highway safety, or the residual cumulative impacts of the scheme are severe.

The shepherds hut, livery use, HGV maintenance yard, office/mess room, rug washing and dog grooming uses could lead to a significant cumulative increase in the number of comings and goings to the premises. The applicant points out that there would not be a significant increase because the HGV repair and maintenance is a personal use; the horse rug activity would only be one vehicle a week as the business would operate on a collect and return basis, and the dog grooming use would be in operation for two days a week and would be only for three or four dogs on those days.

In addition to this, it is material that there are existing established uses on site - bed and breakfast and self-catering – and there is the fall-back of continuation or reversion to agricultural uses and activity – particularly in respect of the type and frequency of traffic generation. As recorded earlier the access here is shared in that Severn Trent Water use it to access the Water Treatment Works to the southwest of the farm. Members should also be aware that The Traffic Commissioner has also given the applicant an Operator's Licence for six vehicles. This is conditioned on an interim basis such that, *“Vehicles must not enter or leave the operating centre before 0730 or after 1800 on Mondays to Fridays; before 0730 and after 1300 on Saturdays. Vehicles shall not enter or leave the operating centre at all on Sundays and Bank Holidays.”*

Since the last report, the applicant has submitted a highway statement in support of the matters he refers to above. It concludes with the following points:

“1) No new buildings would be constructed. Parking and manoeuvring are all available on site, and electric vehicle charging would be provided.

2) The application site access is from Hurley Common. Hurley Common is not a busy road. There is sufficient capacity within the highway network to accommodate traffic generated from proposals which are based on established uses. There would be very little increase in traffic generation anyway; far less than if the farm was brought into a fully operative farming use. Hurley Common is lit with street lighting. There are "SLOW" road markings provided on the carriageway. There have been no road traffic accidents in the vicinity of the application site access over the last five years for which data are available, and Hurley Common and the application site access are considered safe. The application site access has been in use over decades, and is successfully negotiated by farm staff, visitors to the farm, and Severn Trent related HGV drivers. If officers feel that it is necessary, the applicant would be happy to provide funding to provide additional white lining and signage in the vicinity.

3) The vehicular access road is constructed to a good standard, being surfaced tarmac, and there are passing places available.

4) The highway network is safe, and there is plenty of spare capacity. The application site access is safe. Passing places are available. A public right of way network provides alternative routes for pedestrians. Internal roads, parking and manoeuvring are adequate.

5) At paragraph 111 in NPPF, it states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe. The proposed development would not have a severe effect on the road network. Therefore, there appears to be every reason why in highways terms the proposed developments should be approved."

The County Council as Highway Authority has responded on a number of grounds indicating that it disagrees with some of these assertions. No vehicle movement data has been provided and nothing in respect of the unauthorised haulage business has been provided either. There have also been recent accidents in 2021 and 2004. It is contended that the access is in poor condition and in need of improvement with pot holes and cracks in the surfacing. As the access is owned by the MOD, permission would be required from them to carry out any works.

Of contention also is the adequacy of the access for HGV movements. The access is restricted in width and evidence from objectors has been provided showing that this does cause issues with HGV access and egress. No evidence has been provided clearly indicating that longer vehicles or articulated vehicles can use the access without driving over the footway on the opposite side of the road. The access is not wide enough to allow for two-way movements of cars. There are posts either side of the access used to protect the adjacent land. In terms of visibility this is restricted to 40 metres looking right (rather than the required 120m). Also, traffic speeds along this road are higher than the speed limits. Pedestrian safety is also an issue and although there is a public right of way in the vicinity of the access, this restricts mobility restricted users, where as using a shared access is a more favourable option.

In conclusion even taking into account the applicant's considerations, the access is presently considered to be substandard – limited visibility, limited passing spaces and no separate footway for pedestrians. This has been the overriding consideration of the Highway Authority – the access not being suitable for commercial vehicles or for two-way vehicle movements. It is contended that cumulative impacts of the proposed uses and other unauthorised uses would lead to an intensification of the existing access. Based on this advice, officers consider that it has not been demonstrated that the proposals either individually or cumulatively would not have a detrimental impact on highway safety for all road users. The proposal would thus not accord with Policies LP13 and LP29 of the adopted Local Plan and particularly the relevant paragraphs of the NPPF.

ii) Ecology

In respect of ecology, Local Plan policy LP16 seeks to protect and enhance the natural environment and provide net gains for biodiversity where possible, reflecting the wording of the NPPF at paragraph 174(d). The passing of the Environment Act 2021 brings a mandatory requirement for most proposed development to achieve a **10%** biodiversity net gain.

A survey has now been carried out by the applicant which indicates that there is negligible presence of bats. There are signs of bird nesting. Mitigation can be carried out in respect of this through the provision of 4 bat and bird boxes. Also, a small scale biodiversity gain through wildflower meadows and tree planting across the applicant's ownership can ensure that the proposal complies with the Local Plan policy and recent legislation. It is not considered therefore that there are ecological harms caused.

iii) Residential Amenity

Another consideration with these applications is that of the developments' impact on the amenity of nearby residential properties reflected in Local Plan policy LP29. Furthermore, paragraph 185 of the NPPF states that planning decisions should consider the impacts of pollution on living conditions and "avoid noise giving rise to significant adverse impacts on health and the quality of life" (185a).

Bearing in mind the distance from neighbour's properties it is concluded that the increased movements from HGV's and other vehicles is the only aspect of the proposed developments where the amenities of residential properties could be considered detrimental. It is not considered that there is sufficient evidence to demonstrate a significant harmful impact in this instance given the "fall back" position outlined in section (i) above and that in order to attract a refusal, the policy requires the impact to be "unacceptable".

iv) Other Harms

It is acknowledged that there is no identifiable heritage harm, significant visual harm nor adverse impacts arising from surface water drainage.

c) The Harm Side of the Planning Balance

The harm side of the planning balance therefore amounts to the Green Belt harm identified earlier and the highway harm outlined above. If the applications are to be supported, then the applicant has to show that any material considerations he advances in support should “clearly outweigh” the total level of harm caused such that they amount to the “very special circumstances” that would enable that support.

d) The Balance

In respect of the proposal for the shepherd’s hut, the applicant advances arguments revolving around farm diversification and meeting a tourism need. These are acknowledged, but the application site is no longer in sole use as an agricultural holding and it has not been shown from an operational or business case point of view that the addition of one extra unit of tourism accommodation would support any ongoing agricultural activity. Moreover, there is the extant consent on the site that has not been fully taken up. These considerations carry little weight and are not sufficient to clearly outweigh the total harm caused.

In respect of the HGV use, then the applicant has been unable to provide any considerations which might be weighed in the final planning balance. The site is not appropriate for such a use and even if there was the agricultural “fall-back” the size of the holding has significantly decreased in the past few years. As such there are no matters that would clearly outweigh the harms caused.

Whilst the final application would be appropriate development in respect of Green Belt as submitted, the highway harms are still prevalent. As such this matter is considered of significance such that the proposal is not acceptable as access would be via a substandard access.

e) Enforcement Action

The three proposals are recommended for refusal as set out below. As there are retrospective matters here as identified above, the matter of whether it is expedient to commence enforcement action needs to be considered.

Government guidance is that such action is a last resort and that it should be proportionate. In this case there are other considerations that need to be weighed in the assessment of whether formal action would be “expedient”, as that is the test set out in legislation. Firstly, there is the fall-back of continuation or reversion to agricultural uses and activity – particularly in respect of the type and frequency of traffic generation. There is then the take-up of the 2019 planning permission which would generate traffic and there is also the fact that STW vehicles regularly use this access.

Additionally, Members should be aware that there would be a cost to the applicant if enforcement action is agreed and is successful. There would be a loss of income in respect of the holiday accommodation and the cost of removing and finding new accommodation for the HGV maintenance activity. These matters are considered to be of weight in the balance. However, the loss of income for the accommodation is not considered to be significant here given the extant consents for equivalent

accommodation on the site. As such the harms identified above are considered to carry greater weight and would supply the reasons for the service of the Notice. In respect of the HGV activity then the applicant took a “risk” in acquiring and commencing the activity in breach of planning control and a move here involved a search for premises which would have to be undertaken again. It is considered that the harms here are sufficient for enforcement action.

The requirements of any Notice in respect of the shepherd’s hut would be for its removal and all of its associated infrastructure and the ancillary hardstanding with the re-instatement of the land and a compliance period of three months.

The requirements of the Notice to do with the HGV use would be for the cessation of the use; the removal of the vehicles and associated plant and equipment together with the hardstanding and the re-instatement of the land within a compliance period of six months.

The requirements of the Notice to do with the other uses would be for the cessation of the rug-washing, dog-grooming and office uses. The use of the building for stabling and food storage is appropriate as is its use as a mess room for employees on the holding. A compliance period of three months is appropriate.

f) Further Unauthorised Development

Following site visits from officers, it is considered that there are other unauthorised developments at Old Rail Farm. Since the report in August 2021, no applications for the retention of further developments have been received. Warwickshire County Council as the Waste Authority has investigated an alleged aggregate (haulage) business said to be operating from on the site. They have concluded that there is no “waste transfer” use here and that it is not within its remit as Waste Authority to assess whether there is an unauthorised haulage use on site.

There are considered to be two additional unauthorised developments at the holding indicated on the map below.

- a) A haulage business together with the creation of areas of hardstanding for the business which includes the storage of materials and waste on the site
- b) An additional shepherd’s hut – shown as “2” to the east of the fishing lake



The applicant runs a haulage business from this site as is clear from his website and there has been a noticeable increase in development on the site during the course of dealing with the applications. This has led to large areas of materials, hardcore and products within the site as a whole, most noticeably in an area to the north of STW works. The business carries out a number of services including ground works, clearance, aggregate supply and machinery supply. Both materials and off-site materials are delivered to site. Over the last few months hoppers and used material have appeared on the site. The use requires the deliveries of some materials to the site, so it can be stored in hoppers and then taken off site.

The haulage use is an inappropriate use within Green Belt and leads to harm to the openness of Green Belt. This is particularly in respect of all of the elements identified earlier – adverse spatial and visual impacts as well as to significant activity and encroachment of the countryside.

As well as storage areas, materials, machines and other items stored outside, this gravelled and part hard-surfaced area the area resembles a depot or builder's yard. These items volumetrically affect the openness of this part of the Green Belt and the openness cannot be said to be preserved by what is now happening on the land. These are significantly harmful to the openness of this part of the Green Belt. The overall visual impact is significantly intrusive and harmful to this part of the land area. The areas and its immediate surroundings can be seen from the public footpaths both near and distant viewpoints within the site and it is considered that the overall development is obtrusive and jarring within open countryside setting. The applicant has attempted to screen these areas with bunding, but this in itself has had an impact on the landscape.

Notwithstanding this, the development does have a visual intrusion. Officers consider that the development is contrary to Local Plan policies LP13 (e) and LP29 which seek to protect and enhance the quality of the area. It is also contrary to the policies set out in

section 11 of the NPPF (conserving and enhancing the natural environment). The development also impacts on the biodiversity of the surrounding area without assessment of any loss or gain.

The cumulative highway implications of the use are also compounded by the haulage use.

In terms of the final planning balance and the expediency “test”, then farm diversification and support for rural business and employment has to be taken into account. These are considerations which should be added into the assessment of the final planning balance and should be weighed against the identified harms. However in this case, they are not considered to attract significant weight. This is because the use is not one where it is considered that it is essential to have a rural location and also there is little in the way of submitted evidence to show that the use is contributing to farm diversification.

The balance here is considered to lie with enforcement action being expedient.

The use of the additional shepherd’s hut has not commenced as yet. However, the hut has been sited on a hard-surface and some services have been provided. Generally, a similar assessment as above has been carried out. However, in terms of the impact on the openness the hut is well assimilated within a dense area of landscaping at present. It must be remembered that the hut is an inappropriate form of development and inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. These would only exist where the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. As the development is not yet complete it could include some additional paraphernalia which may harm the green belt. The use also exacerbates the existing substandard access arrangements. Overall, officers conclude that the benefits of the scheme would be limited in terms of providing farm diversification and tourist accommodation. In line with the Framework, officers attach substantial weight to the harm that would be caused to the Green Belt by reason of inappropriateness and the loss of openness. Therefore, the benefits and all other considerations would not clearly outweigh the totality of harm to the Green Belt. As such, the very special circumstances necessary to justify the scheme do not exist. In this regard the proposal would conflict with the Framework and as it already exists consideration should be given whether it is expedient to take enforcement action. The harm is such that it is necessary to take enforcement action for its removal and remediation.

Recommendations

A) That planning permissions be REFUSED in all three cases for the following reasons:

i) PAP/2021/0028 – The Shepherd’s Hut

1. The application site is located within the Green Belt and the shepherds hut and its associated development and infrastructure are considered to represent an inappropriate form of development. It would not preserve openness and would conflict with the purposes of including land within the Green Belt. There are no material considerations to clearly outweigh the Green Belt harm caused so as to

amount to very special circumstances. The proposal does not accord with Policy LP3 of the North Warwickshire Local Plan 2021 nor Section 13 of the National Planning Policy Framework 2021.

2. The development fails to secure safe vehicular access by reason of the limited width of the access road without separate pedestrian footway and a substandard access onto Hurley Common. Accordingly, the proposal is contrary to policy LP13 of the North Warwickshire Local Plan 2021 and paragraph 111 of the National Planning Policy Framework 2021.

ii) PAP/2021/0029 – HGV Maintenance

1. The application site is located within the Green Belt and the change of use to a workshop and associated development would not preserve the openness of the Green Belt by introducing development onto a previously open part of the site, reducing openness from both a spatial and visual perspective. Furthermore, the proposal would encroach into the open countryside, conflicting with one of the five purposes of including land within the Green Belt. There are no material considerations identified which clearly outweigh the harm caused and thus amount to very special circumstances. The proposal does not accord with Policy LP3 of the North Warwickshire Local Plan 2021 nor Section 13 of the National Planning Policy Framework 2021.
2. The development fails to secure safe vehicular access by reason of the limited width of the access road without separate pedestrian footway and a substandard access onto Hurley Common. Accordingly, the proposal is contrary to policy LP13 of the North Warwickshire Local Plan 2021 and paragraph 111 of the National Planning Policy Framework 2021.

iii) PAP/2021/0030 – Other Uses

1. The development fails to secure safe vehicular access by reason of the limited width of the access road without separate pedestrian footway and a substandard access onto Hurley Common. Accordingly, the proposal is contrary to policy LP13 of the North Warwickshire Local Plan 2021 and paragraph 111 of the National Planning Policy Framework 2021.

B) That it is considered expedient to serve Enforcement Notices under Section 178 of the Town and Country Planning Act 1990 for the reasons given in this report in respect of all the following unauthorised developments. Additionally and as appropriate, if there is non-compliance with the requirements of an extant Notice, it is recommended that prosecution proceedings be commenced under Section 179 of the same Act.

- i) In respect of PAP/2021/0028, the removal of the shepherd's hut and its associated utilities, fixtures and fittings including hard-standings, a walkway and parking area from the site together with the re-instatement of the land to its former condition and levels with a compliance period of three months

- ii) In respect of PAP/2021/0029, the cessation of the use of the building shown on the Notice Plan for the maintenance and parking of HGV's together with all incidental plant and equipment and their removal from the site together with the removal of the hardstanding shown on the Notice Plan and its re-instatement to its previous condition with a compliance period of six months.
 - iii) In respect of PAP/2021/0030, the cessation of the use of the building shown on the Notice Plan for horse-rug washing, dog-grooming together with their incidental office use and the removal of all associated utilities, fixtures and fittings with a compliance period of three months.
- C)** That it is considered expedient to serve Enforcement Notices under Section 178 of the Town and Country Planning Act 1990 for the reasons given in this report in respect of all the following unauthorised developments. Additionally and as appropriate, if there is non-compliance with the requirements of an extant Notice, it is recommended that prosecution proceedings be commenced under Section 179 of the same Act.
- i) The removal of the second shepherd's hut as identified in this report and its associated utilities, fixtures and fittings together with the re-instatement of the land to its previous condition and levels with a compliance period of three months.
 - ii) The cessation of the use of the land as shown on the Notice Plan as an HGV operating centre, together with the parking of HGV's, their storage and their maintenance and repair and the subsequent removal of all HGV's and associated plant and equipment from the land and the reinstatement of the land to its former condition and levels with a compliance period of twelve months.

General Development Applications

(6/e) Application Numbers: PAP/2021/0028, PAP/2021/0029 and PAP/2021/0030

Old Rail Farm, Hurley Common, Hurley, CV9 2LS

- i) Change of use of land to stationing a shepherd's hut for holiday accommodation and associated walkway and parking area, and formation of visitor car park for existing permitted holiday lets, for existing permitted holiday lets
- ii) Change of use of redundant agricultural building to workshop for the maintenance of HGVs and agricultural vehicles, together with associated development including formation of hardstanding
- iii) Change of use of redundant agricultural building to stables, tack room, overnight accommodation for groom, feed storage, commercial horse-rug washing, and dog-grooming

all for

Mr and Mrs Stibbs

Introduction

These applications are being reported to the Board as the recommendations include the need to consider the expediency of enforcement action should they be refused and in respect of other unauthorised development on the site.

The Site

The site relates to a farm which comprises of a substantial two-storey farm house to the south of the site; an L-shaped range of brick one-storey barns, a cow shed, a large portal framed building, a small brick built building and another large utilitarian building.

A part of the L-plan range has been used as a self-catering cottage/ holiday let since 2015 when it was converted. This was considered to be permitted development under Part 3 Class M of General Permitted Development Order at the time. Also, planning permission was granted for two additional self-catering cottages in 2019. This has yet to be completed in its entirety.

Access is afforded along an un-adopted road from Hurley Common. It is a shared access in that it is also used by Severn Trent Water vehicles visiting the Water Treatment Works to the west.

A Public Right of Way runs south to north to the east of the farm - reference T55a - and another runs east to west south of the farmhouse - reference T55 - as indicated on the plan attached (Appendix A).

The site is located outside of a defined development boundary and within the Green Belt.

6E/35

The Proposals

These are as outlined in the descriptions give in the "header" above.

A planning statement and a sustainability statement have been submitted with the applications together with an agricultural appraisal for the groom's accommodation.

The applicant indicates that the workshop for the maintenance of HGVs would only be for his own vehicles and this would number three in total.

Applications (i) and (iii) are retrospective as the proposed developments have now been carried out. Application (ii) has been carried in part, but the agricultural maintenance use is currently taking place in the large agricultural building in application (iii).

Plans illustrating the proposals are at Appendices B and C for the shepherd's hut; D and E for the HGV use and F for the mixed uses.

Development Plan

North Warwickshire Core Strategy (October 2014) - NW1 (Sustainable Development); NW2 (Settlement Hierarchy), NW3 (Green Belt), NW9 (Employment), NW10 (Development Considerations), NW12 (Quality of Development), NW13(Natural Environment), NW15 (Nature Conservation) and NW17 (Economic Regeneration)

North Warwickshire Local Plan 2006 (Saved Policies) - HSG3 (Housing Outside of Development Boundaries); ENV12 (Urban Design), ENV13 (Building Design), ENV14 (Access Design), ECON9 - Re-use of rural buildings, TPT1 (Transport Considerations in new development), TPT3 (Access and sustainable travel and transport), TPT6 (Vehicle Parking) and Appendix 3 (Parking Standards Guidance)

Other Relevant Material Considerations

The North Warwickshire Local Plan Submission Version, March 2018 - LP1 (Sustainable Development); LP2 (Settlement Hierarchy), LP3 (Green Belt), LP11 (Economic Regeneration), LP13 (Rural Employment), LP14 (Landscape), LP16 (Natural Environment), LP31 (Development Considerations) and LP32 (Built Form)

Proposed Main Modifications to the Regulation 19 Local Plan 2021 – MM21 (in respect of Policy LP1); MM24 (in respect of LP2), MM28 (in respect of LP3 Green Belt), MM55 (in respect of LP11), MM57 (in respect of LP13), MM74 (in respect of LP31) and MM74 (in respect of LP32)

National Planning Policy Framework 2019 – (the "NPPF")

Consultations

Warwickshire County Council as Highway Authority - It objects to all three applications because of the intensification of the access which is considered to be substandard.

Environmental Health Officer – No objection to all three applications subject to conditions.

Representations

Three objections have been received on each application referring to the following matters:

- Nuisance from proposed use, adversely affecting the amenity of adjacent properties
- Noise and disturbance from HGV and vehicles passing property.
- Should be no material increase in traffic.
- Impact on the Green Belt
- Overlooking and loss of privacy
- Entrance drive is restricted, so many near misses
- Ownership of road
- Other unauthorised development taking place.

One representation of support has been received on each application, supporting the application for the following reason:

- Good to see redundant building being used in a sympathetic way.

Observations

a) The Green Belt

The site lies within the Green Belt. Inappropriate development here is defined as being harmful to the Green Belt and thus carries a presumption of refusal. What is or is not inappropriate is defined in the NPPF. In the cases here there is some overlap between the various categories of "development" proposed and thus each possible category will need to be identified. Members will be aware that the construction of new buildings, with exceptions, is inappropriate development. One of these is where the building is an appropriate facility for outdoor sport or outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The re-use of buildings is not necessarily inappropriate provided that the building is permanent, of substantial construction and meets the two conditions set out above. Material changes in the use of land, may not necessarily be inappropriate, provided that they too preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

With the cases in hand, each has been described as a change of use and that will be the starting point for assessment as to whether the proposals are inappropriate or not. However, because of the changes do involve the re-use of existing buildings there is the overlap as referred to above.

There is no definition of openness in the NPPF, but national guidance advises that it is made up of four elements – spatial, visual, the degree of activity associated with a development and whether the development is permanent or not. There are five purposes for including land within the Green Belt and in this case the most significant

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one is to safeguard the countryside from encroachment. Each of the proposals will need to be considered against this background.

Firstly, in respect of the shepherd's hut, it is not considered that it falls within the exception of being an "appropriate facility", as it is in fact a residential use. It also relates to tourism, rather than to outdoor sport or outdoor recreation. The application however is for the change of use of the land and this includes the siting of the "hut", the creation of hardstanding, fencing, provision of a hot tub and other engineering works including two parking spaces to the south of the access. The proposal also includes an additional ten parking spaces for the existing bed and breakfast unit to the west of the farmhouse. The hut is on land that is currently vacant of buildings. As a consequence, and by reason of its height, volume and overall extent, the development would lead to a loss of openness. The structures, associated paraphernalia, the extent of the car parking and all of the vehicular and human activity is also considered to have an adverse visual impact. Although set back from the road, it would be seen from the adjoining access as well as the public footpaths which run close to the site. Moreover, the application is not for a temporary use. Overall, there would be an increased urbanising impact because of the intensification of development leading to encroachment of the countryside. The proposal is not considered to meet the conditions set out in the NPPF, thus meaning that it is inappropriate development in the Green Belt.

The second proposal is for the change of use of a former agricultural building for the maintenance of HGVs and agricultural vehicles, including the formation of hardstanding. It is a permanent building of substantial construction. As a consequence, the re-use of just the building would be appropriate development under the definitions set out above. However, the definition is also contingent of the proposal preserving openness. It is the inclusion within the proposal of the change of use of land and the creation of a sizeable hardstanding to the rear of the building on which to park HGV's, other vehicles and for the storage of equipment and materials, that takes this proposal beyond re-use. This outdoor area has an adverse spatial and visual impact as it is visible from the adjacent footpath to the east - the T55a. Additionally there is the activity associated with the use of this area that causes these adverse impacts. It does not therefore preserve openness. The proposal also conflicts with the safeguarding purpose of the Green Belt given the intensification and urbanising influence. In conclusion this proposal is considered to be inappropriate development in the Green Belt.

The final proposal is to change the use of a redundant agricultural building to stables, with a tack room, overnight accommodation for a groom, feed storage, commercial horse-rug washing, and dog-grooming. In this case the building is existing, permanent and of substantial construction and its reuse would thus be appropriate development under the definitions above. The application itself is defined by a red line which just includes the building itself. The proposal would thus appear to be appropriate development. However, unauthorised areas have been engineered outside for use in association for the proposals. The applicants have indicated that although it is not clearly shown, parking for the uses would be within the existing internal courtyard of the farm buildings rather than on this outside area. Further consideration will thus have to be given to this later in the report.

It is therefore concluded that two of these applications represent inappropriate development in the Green Belt and that the third is also likely to. As such substantial weight is given to this conclusion and thus planning permissions should not be granted except in very special circumstances.

b) Other harms

i) Highways

Saved Policy TPT1 supports development in situations whereby there is sufficient capacity within the highway network to accommodate the traffic generated and saved policy TPT3 stipulates that development will not be permitted "unless its siting, layout and design makes provision for safe and convenient pedestrian and vehicular access and circulation". Emerging local plan policy LP31(6) reflects Core Strategy policy NW10(6) - both of which require safe and suitable access to be provided for all users.

Paragraph 109 of the NPPF makes it clear that development should only be refused on highways grounds where there would be an unacceptable impact on highway safety, or the residual cumulative impacts of the scheme are severe.

The shepherds hut, livery use, HGV maintenance yard, groomsman's accommodation, rug washing and dog grooming uses could lead to a significant cumulative increase in the number of comings and goings to the premises. The applicant points out that there would not be a significant increase because the HGV repair and maintenance is a personal use; the horse rug activity would only be one vehicle a week as the business would operate on a collect and return basis, and the dog grooming use would be in operation for two days a week and would be only for three or four dogs on those days.

In addition to this, it is material that there are existing established uses on site - bed and breakfast and self-catering – and there is the fall-back of continuation or reversion to agricultural uses and activity – particularly in respect of the type and frequency of traffic generation. As recorded earlier the access here is shared in that Severn Trent Water use it to access the Water Treatment Works to the southwest of the farm. Members should also be aware that The Traffic Commissioner has also given the applicant an Operator's Licence for six vehicles. This is conditioned on an interim basis such that, "*Vehicles must not enter or leave the operating centre before 0730 or after 1800 on Mondays to Fridays; before 0730 and after 1300 on Saturdays. Vehicles shall not enter or leave the operating centre at all on Sundays and Bank Holidays.*"

Notwithstanding all of these other considerations, the access is still substandard – limited visibility, limited passing spaces and no separate footway for pedestrians. This has been the overriding consideration of the Highway Authority – the access not being suitable for commercial vehicles or for two-way vehicle movements. Based on this advice, officers consider that it has not been demonstrated that the proposals either individually or cumulatively would not have a detrimental impact on highway safety for all road users. The proposal would thus not accord with Policy NW10 of the Core Strategy and particularly the relevant paragraphs of the NPPF.

ii) Ecology

In respect of ecology, Core Strategy policy NW15 requires development to “ensure that there is a net gain of biodiversity” and emerging policy LP16 seeks to protect and enhance the natural environment and provide net gains for biodiversity where possible, both reflecting the wording of the NPPF at paragraph 170(d).

No surveys have been submitted in respect of the presence of a bat or bird roosts within the buildings. Also, the proposals will lead to the loss of a number of areas within the site, some of which have ecological potential.

Given the significance of bio-diversity as a material consideration of significant weight, it is not considered that the proposals have shown that there would be a net gain in bio-diversity. The proposals do not therefore accord with Policy NW15 or the associated paragraphs in the NPPF.

iii) Impact on residential amenity

Another consideration with these applications is that of the developments' impact on the amenity of nearby residential properties. 2014 Core Strategy Policy NW10 (9) requires all development proposals to avoid and address unacceptable impacts upon neighbouring residents, such as but not limited to noise, light, and other pollution.

The wording of this policy is amended and carried forward into policy LP31 (Development Considerations) of the emerging local plan. Furthermore, paragraph 180 of the NPPF states that planning decisions should consider the impacts of pollution on living conditions and “avoid noise giving rise to significant adverse impacts on health and the quality of life” (180c).

Bearing in mind the distance from neighbour's properties it is likely that the increased HGV movement and vehicles movement is the only aspect of the development where the amenities of residential properties could be considered detrimental. It is not considered that there is sufficient evidence to demonstrate a reason for refusal in this instance given the “fall back” position outlined in section (i) above and that in order to accord with the policy the impact has to be “unacceptable”.

iv) Sustainability

The application site is located outside a defined settlement boundary for the purposes of Policy NW2 of the Core Strategy or for emerging Policy LP2 within the Submitted Local Plan, 2018. Both policies as well as the NPPF indicate that new residential development outside of development boundaries and thus in the countryside is not be encouraged. However, that which is related to an essential agricultural or rural business need could be supported. The applicant has advised that the groom's accommodation is required to provide care and supervision of seven livery stables. The 24-hour requirement relates to issues of illness out of hours. In this instance however it is considered that the applicant's own house and the presence of the holiday accommodation could provide initial cover. It is not considered that it has been shown that there is an essential need for permanent accommodation. No operational or business case has been provided. This proposal cannot be supported as it would not accord with Policy NW2 or the NPPF.

c) The Harm Side of the Planning Balance

The harm side of the planning balance therefore amounts to the Green Belt harm identified earlier and the other harms outlined above. If the applications are to be supported then the applicant has to show that any material considerations he advances in support should "clearly outweigh" the total level of harm caused such that amount to the "very special circumstances" that would enable that support.

d) The Balance

In respect of the proposal for the shepherd's hut, the applicant advances arguments revolving around farm diversification and meeting a tourism need. These are acknowledged, but the application site is no longer in sole use as an agricultural holding and it has not be shown from an operational or business case point of view that the addition of one extra unit of tourism accommodation would support any ongoing agricultural activity. Moreover, there is the extant consent on the site that has not been fully taken up. These considerations carry little weight and are not sufficient to clearly outweigh the total harm caused.

In respect of the HGV use then the applicant has been unable to provide any considerations which might be weighed in the final planning balance. The site is not appropriate for such a use and even if there was the agricultural "fall-back" the size of the holding has significantly decreased in the past few years. As such there are no matters that would clearly outweigh the harms caused.

Whilst the final application would be appropriate development as submitted, there is no support for the accommodation and highway harms are still likely.

e) Enforcement Action

The three proposals are recommended for refusal as set out below. As there are retrospective matters here as identified above, the matter of whether it is expedient to commence enforcement action needs to be considered.

Government guidance is that such action is a last resort and that it should be proportionate. In this case there are other considerations that needed to be weighed in the assessment of whether formal action would be "expedient" here, as that is the test set out in legislation. Firstly, there is the fall-back of continuation or reversion to agricultural uses and activity – particularly in respect of the type and frequency of traffic generation. There is then the take-up of the 2019 planning permission which would generate traffic and there is also the fact that STW vehicles regularly use this access.

Additionally, Members should be aware that there would be cost to the applicant if enforcement action is agreed and is successful. There would be a loss of income in respect of the holiday accommodation and the cost of removing and finding new accommodation for the HGV maintenance activity. The latter is considered to be of weight in the balance. The loss of income for the accommodation is not considered to be significant here given the extant consents for equivalent accommodation on the site. As such the harms identified above are considered to carry greater weight and would supply the reasons for the service of the Notice. In respect of the HGV activity then the applicant took a "risk" in acquiring and commencing the activity in breach of planning

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control and a move here involved a search for premises which would have to be undertaken again. It is considered that the harms here are sufficient for enforcement action.

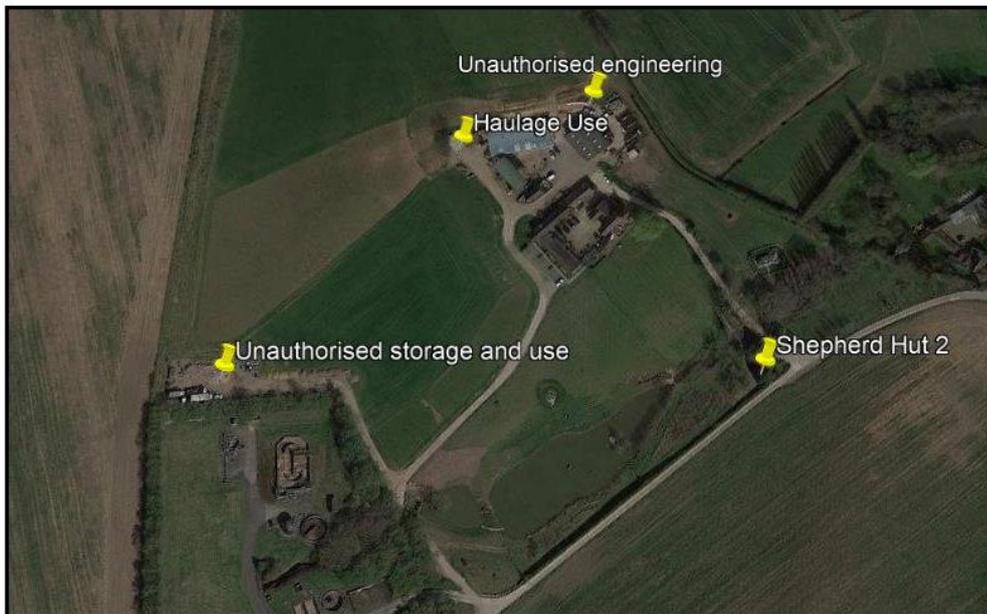
The requirements of any Notice in respect of the shepherd's hut would be for its removal and all of its associated infrastructure and the ancillary hardstanding with the re-instatement of the land and a compliance period of three months.

The requirements of the Notice to do with the HGV use would be for the cessation of the use; the removal of the vehicles and associated plant and equipment together with the hardstanding and the re-instatement of the land within a compliance period of six months.

f) Further Unauthorised development

Following site visits from officers, it has become apparent that there are other unauthorised developments at Old Rail Farm. These are indicated on the map below:

- a) A haulage business together with the creation of areas of hardstanding for the business which includes the storage of materials and waste on the site
- b) An additional shepherd's hut 2 site to the south of the fishing lake



The applicant runs a haulage business and there has been a noticeable increase in development on the site during the course of dealing with the applications. This has led to large areas of materials, hardcore and products within the site as a whole, most noticeably in an area to the north of STW works. Hoppers and used material have appeared on the site. The use requires the deliveries of some materials to the site, so it can be stored in hoppers and then taken off site.

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The haulage use is unacceptable in that the proposed development is leading to harm to the openness of Green Belt. This is particularly in respect of all of the elements identified earlier – adverse spatial and visual impacts as well as to significant activity and encroachment of the countryside.

As well as storage areas, materials, machines and other items stored outside, this gravelled and part hard-surfaced area the area resembles a depot or builder's yard. These items volumetrically affect the openness of this part of the Green Belt and the openness cannot be said to be preserved by what is now happening on the land. These are significantly harmful to the openness of this part of the Green Belt. The overall visual impact is significantly intrusive and harmful to this part of the land area. The areas and its immediate surroundings can be seen from the public footpaths both near and distant viewpoints within the site and it is considered that the overall development is obtrusive and jarring within open countryside setting. The applicant has tried to disguise these areas with bunding, but this itself has had an impact on the landscape.

Notwithstanding this the development does have a visual intrusion officers consider that the development enforced against is contrary to policies NW12 and NW13 of the Core Strategy which seek to protect the and enhance the quality of the area. It is also contrary in my view to the policies set out in section 11 of the NPPF (conserving and enhancing the natural environment). The development also impacts the biodiversity of the surrounding area.

The highway implications of the use are also compounded by the proposal.

In terms of the planning balance although there may be diversification, there are more fundamental concerns in respect of proposal. As well as harming the Green Belt in principle through inappropriateness, it is also harmful due to its negative visual impact on the general character and appearance of its rural location. The use is not outweighed by any other consideration and therefore the harm is such that it is necessary to take enforcement action for its removal and remediation.

The use of the additional shepherds hut has not commenced as yet, however the hut has been sited on a hard-surface and some services have been provided. Generally, a similar assessment as above has been carried out. However, in terms of the impact on the openness the hut is well assimilated within a dense area of landscaping at present.

It must be remembered that the hut is an inappropriate form of development and inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. These would only exist where the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations. As the development is not yet complete it could include some additional paraphernalia which may harm the green belt. The use also exacerbates the existing substandard access arrangements. Overall, officers conclude that the benefits of the scheme would be limited in terms of providing farm diversification and tourist accommodation. In line with the Framework officers attach substantial weight to the harm that would be caused to the Green Belt by reason of inappropriateness and the loss of openness. Therefore, the benefits and all other considerations would not clearly outweigh the totality of harm to the Green Belt. As such, the very special circumstances necessary to justify the scheme do not exist. In this regard the proposal would conflict

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with the Framework and as it already exists consideration should be given whether it is expedient to take enforcement action. The harm is such that it is necessary to take enforcement action for its removal and remediation.

Recommendations

a) That planning permissions be **REFUSED** for the following reasons:

i) PAP/2021/0028 – the Shepherd’s Hut

1. The application site is located within the Green Belt and the shepherds hut and other associated development and infrastructure is considered to represent an inappropriate form of development. It would not preserve openness and would conflict with the purposes of including land within it. There are no material considerations to clearly outweigh the Green Belt harm caused so as to amount to very special circumstances. The proposal does not accord with Policy NW3 of the North Warwickshire Core nor Section 13 of the National Planning Policy Framework 2019.
2. The development fails to secure safe vehicular access by reason of the limited width of the access road without separate pedestrian footway and a substandard access onto Hurley Common. Accordingly, the proposals are contrary to saved policies TPT1 and ENV14 of the 2006 North Warwickshire Local Plan policy NW10 of the 2014 North Warwickshire Core Strategy and paragraph 109 of the National Planning Policy Framework 2019.
3. The development fails to show any bio-diversity gain and thus does not accord with Policy NW15 of the North Warwickshire Core Strategy 2014 nor Section 15 of the NPPF, particularly paragraph 170 (d).

ii) PAP/2021/0029 – HGV maintenance

1. The application site is located within the Green Belt and the change of use to a workshop and associated development would not preserve the openness of the Green Belt by introducing development onto a previously open part of the site, reducing openness from both a spatial and visual perspective. Furthermore, the proposal would encroach into the open countryside, conflicting with one of the five purposes of including land within the Green Belt. There are no material considerations identified which clearly outweigh the harm caused and thus amount to very special circumstances. The proposal does not accord with Policy NW3 of the North Warwickshire Core Strategy 2014 nor Section 13 of the National Planning Policy Framework 2019,
2. The development fails to secure safe vehicular access by reason of the limited width of the access road without separate pedestrian footway and a substandard access onto Hurley Common. Accordingly, the proposal is contrary to saved policies TPT1 and ENV14 of the 2006 North Warwickshire Local Plan; policy

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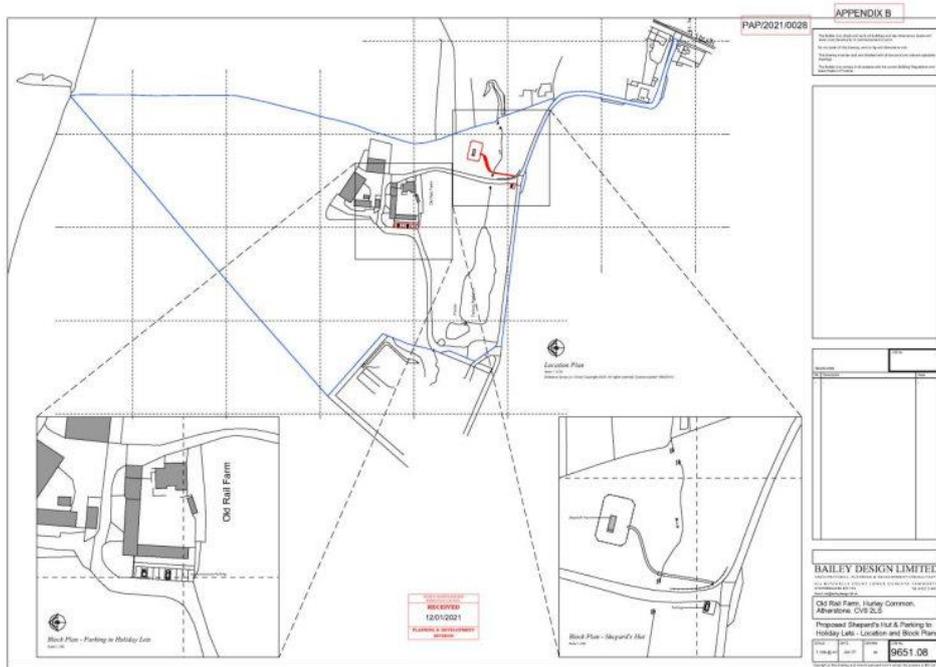
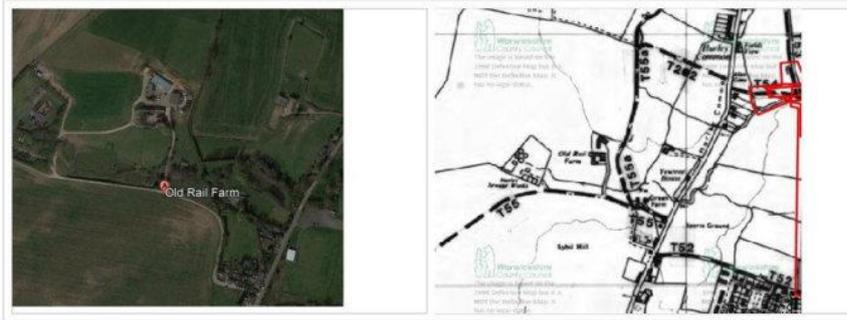
NW10 of the 2014 North Warwickshire Core Strategy and para 109 of the National Planning Policy Framework 2019.

3. The development fails to show any bio-diversity gain and thus does not accord with Policy NW15 of the North Warwickshire Core Strategy 2014 nor Section 15 of the NPPF, particularly paragraph 170 (d).

iii) **PAP/2021/0030 - stabling**

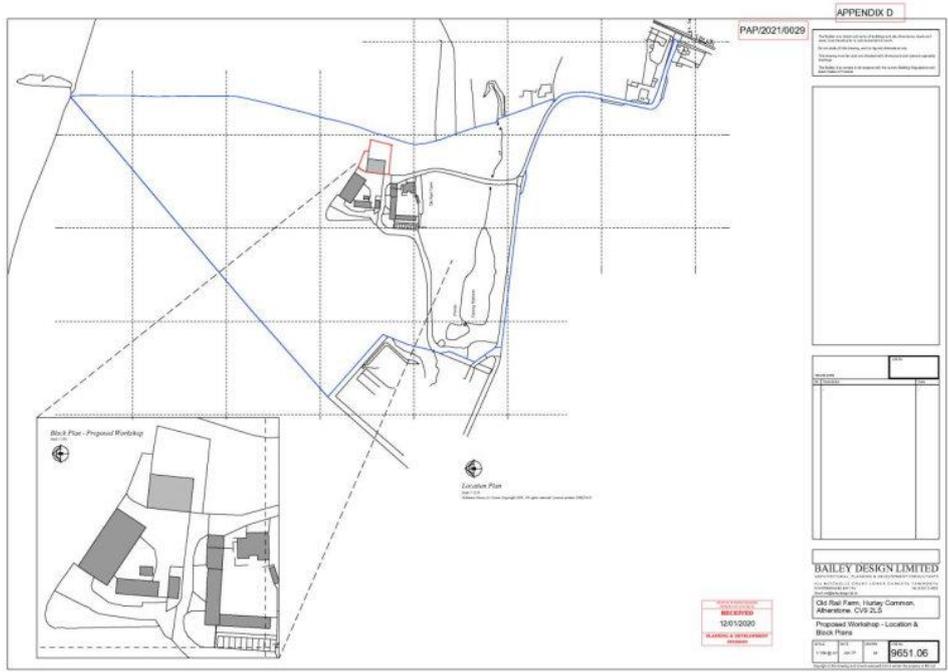
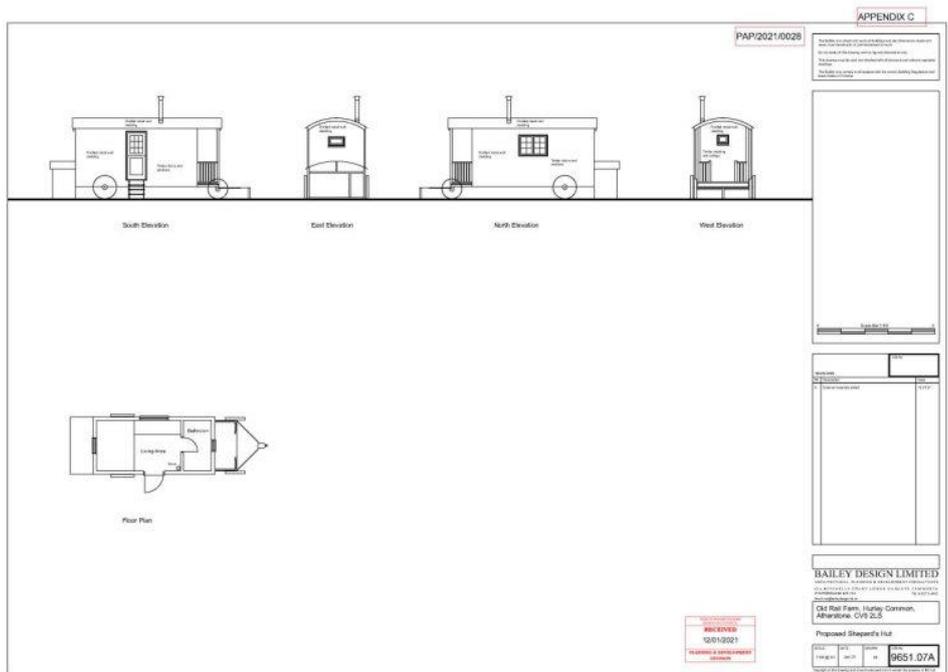
1. It has not been demonstrated to the satisfaction of the Local Planning Authority that there is a demonstrable essential need for a permanent groom's dwelling at the site and as such, the proposal would not accord with Policy NW2 of the North Warwickshire Core Strategy 2014 nor Paragraph 79 of the National Planning Policy Framework 2019
 2. The development fails to secure safe vehicular access by reason of the limited width of the access road without separate pedestrian footway and a substandard access onto Hurley Common. Accordingly, the proposals are contrary to saved policy TPT1 and ENV14 of the 2006 North Warwickshire Local Plan, policy NW10 the 2014 North Warwickshire Core Strategy and para 109 of the National Planning Policy Framework 2019
 3. The development fails to show any bio-diversity gain and thus does not accord with Policy NW15 of the North Warwickshire Core Strategy 2014 nor Section 15 of the NPPF, particularly paragraph 170 (d).
- b) That it is considered expedient to serve Enforcement Notices for the reasons as outlined in this report in respect of the unauthorised developments with the requirements as outlined and with the compliance periods as recommended.

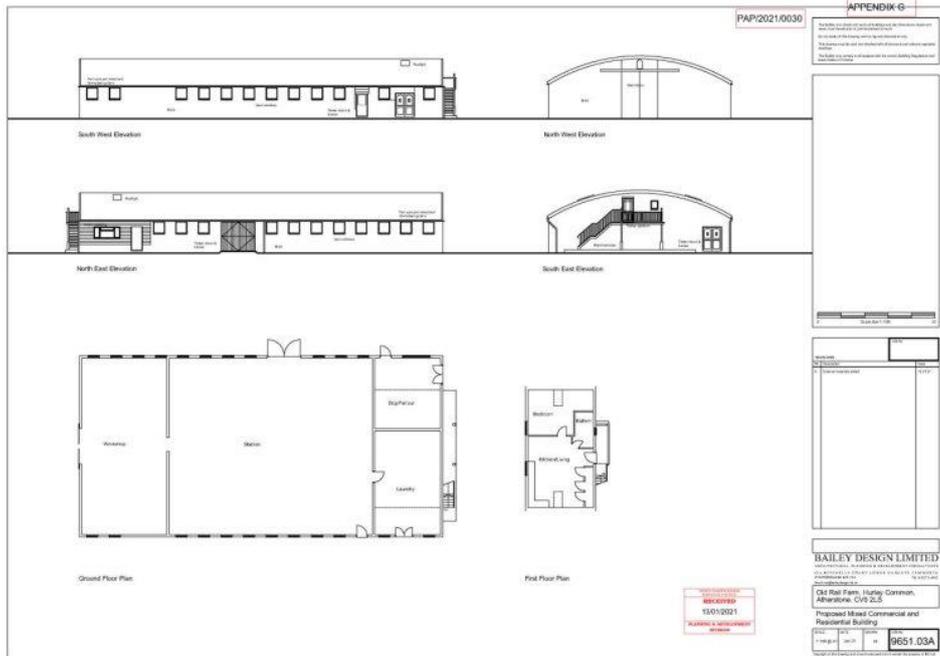
Appendix A - Ariel photograph and footpaths



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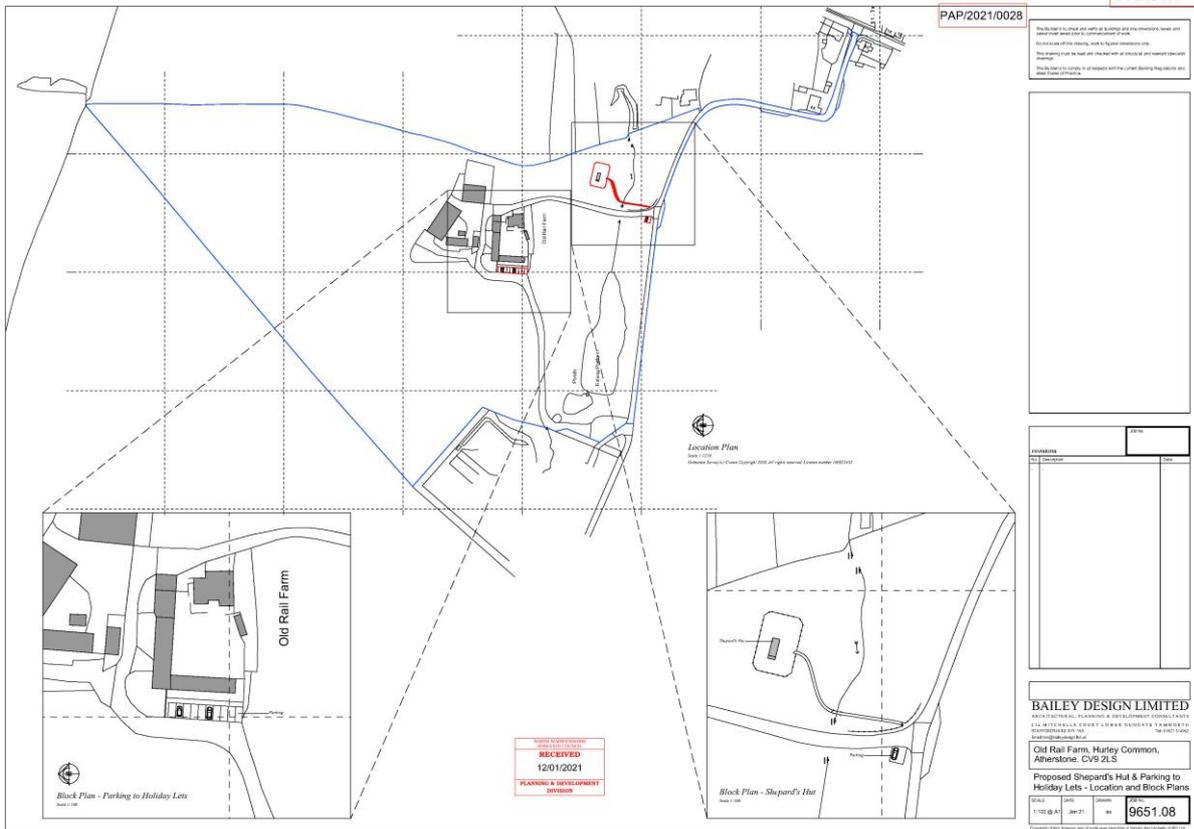
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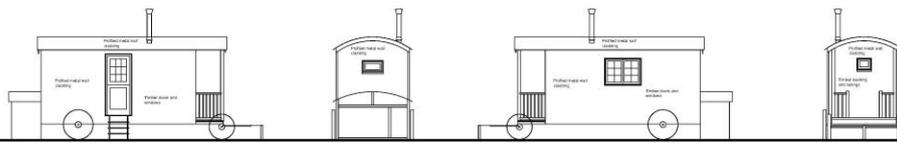
APPENDIX B

Appendix A - Ariel photograph and footpaths



PAP/2021/0028

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South Elevation

East Elevation

North Elevation

West Elevation



Floor Plan



REVISIONS	
No.	Date
1	12/01/2021
A. Corrected drawing error	

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Old Rail Farm, Hurley Common,
 Aylesbury, CV9 2LS

Proposed Shepard's Hut

RECEIVED
 12/01/2021
 PLANNING & DEVELOPMENT
 DIVISION

SCALE	DATE	ISSUED	NO.
1:50 @ A1	Jan 21	04	9651.07A

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