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## Appeal Decision

Virtual Inquiry held on 12 January 2021 & 7 -10 June 2021

Site visit made on 10 June 2021

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

an Inspector appointed by the Secretary of State

Decision date: 03 September 2021

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**Appeal Ref: APP/B3410/C/19/3232151**

**Banks Farm, (also known as "Mince Pie Hall"), Hollington Road, Rocester, Staffordshire ST14 5HY**

- 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 Bamford Property Group Limited against an enforcement notice issued by East Staffordshire Borough Council.
- The enforcement notice was issued on 28 May 2019.
- The breach of planning control as alleged in the notice is:  
Without planning permission the erection of a building in the approximate position shown cross hatched on the attached "Plan 2" to the enforcement notice.
- The requirements of the notice are:
  - 5.(a) Dismantle the unauthorised building
  - 5.(b) Remove the resulting materials of (a) from the land.
- The period for compliance with the requirements is:
  - i) With regard to 5.(a) above, 30 days beginning with the day on which the notice takes effect.
  - ii) With regard to 5.(b) above, 30 days beginning with the day on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended (the 1990 Act).

**Summary Decision: The appeal is allowed on ground (c) and the enforcement notice is quashed after correction in the terms set out below in the Formal Decision.**

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### Application for costs

1. At the Inquiry an application for costs was made by East Staffordshire Borough Council against Bamford Property Group Limited. This application is the subject of a separate decision.

### The Notice

2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
3. Prior to the Inquiry the appellant produced an amended version<sup>1</sup> of a plan<sup>2</sup> that is attached to the enforcement notice. The amended version of the plan

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<sup>1</sup> Core Document: D3 – Plan GA-2

<sup>2</sup> 'Plan 1'

indicates an area of land edged in red that is a considerably smaller area of land than that edged red on 'Plan 1'. Both parties were given the chance to comment on this matter at the Inquiry.

4. Even though, the whole of the area edged red on 'Plan 1' is owned by the appellant the building that forms the alleged breach of planning control is located within the complex of buildings known as Banks Farm. There is no dispute given that the area edged red is smaller that neither party would be caused injustice if I replaced 'Plan 1' with the amended plan. Consequently, I intend to delete 'Plan 1' and the reference to it, within section 2 of the enforcement notice, and substitute 'Plan 1' with the plan annexed to this decision and the reference to it with the wording 'amended plan'.

### **Preliminary Matters**

5. The Inquiry commenced on 12 January 2021 and was adjourned without hearing any evidence on that day. The adjournment was required to ensure sufficient time was programmed to hear all the evidence without significant breaks between the sitting days. The Inquiry sat for four days virtually between 7 and 10 June 2021.
6. The revised National Planning Policy Framework (the Framework) has been published since the Inquiry was closed. Both main parties were given the opportunity to comment on any relevant implications for the appeal.

### **Background**

7. Banks Farmhouse, 'Mince Pie Hall', is a statutorily listed building in Grade II\* and was first listed 12 January 1966. There is no dispute that the outbuildings forming the eastern and northern edges of the foldyard pre-date 1948 and are within the curtilage of the listed building.
8. In 2012, planning permission/listed building consent was granted<sup>3</sup> for conversion and alterations to Mince Pie Hall and an extension to the existing outbuildings, including the demolition of two agricultural buildings to the north of Mince Pie Hall, to provide 25 units of accommodation. In 2015 amendments to the above scheme were approved<sup>4</sup>. Refurbishment works to Mince Pie Hall were subsequently carried out to create two staff apartments.
9. In 2015, planning permission/listed building consent was granted<sup>5</sup> for the demolition of the buildings to the north of Mince Pie Hall and the erection of a detached building block to provide 10 en-suite rooms with shared kitchen, lounge and utility areas to form an accommodation block for workers employed at the golf course. This scheme has been built.
10. In 2016, applications were submitted for planning permission/listed building consent<sup>6</sup> to create a central green keeping and maintenance facility for the golf course at the appeal site. (hereon cited as the 2016 Apps) These applications were withdrawn after objections were raised to the applications by Historic England.

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<sup>3</sup> Ref Nos: P/2012/00023/JPM and P/2012/00024/JPM

<sup>4</sup> Ref Nos: P/2015/01034 and P/2015/01035

<sup>5</sup> Ref Nos: P/2015/01324 and P/2015/01325

<sup>6</sup> Ref Nos: P/2016/00368 and P/2016/00436

11. In 2014 planning permission was granted<sup>7</sup> for the construction of an 18-hole golf course and associated practice facilities and numerous associated works. A subsequent section 73, of the 1990 Act, application was granted<sup>8</sup> in 2016 which altered the access arrangements. (hereon referred to as the 2016 permission) Construction of the golf course commenced in 2016 and it is now open for play.
12. The planning permissions for the golf course cited above included, in an area identified on the phasing plan as 'phase 4', proposals for the erection of a principal clubhouse, restaurant, hotel accommodation, leisure/spa and ancillary administrative facilities in the central part of the golf course site. In 2017 a single storey detached building to form a golf academy was granted<sup>9</sup> planning permission. Ahead of phase 4 coming forward, planning permission was granted<sup>10</sup> in 2019 for a single storey extension and associated glass link to the existing golf academy building to form an interim golf clubhouse. As part of this grant of planning permission the appellant covenanted via a section 106, of the 1990 Act, planning obligation not to implement phase 4 due to concerns of overlapping permissions (hereon cited as the S106 Agreement). In 2019, planning permission was approved<sup>11</sup> for the construction of 10 golf lodges to provide visitor accommodation for the golf course complex. The golf academy, its extension to form the interim clubhouse and the lodges have been constructed.
13. In 2017 the appeal building was erected. It comprises a steel portal frame, single span workshop and office, with concrete floors and clad in metal sheeting. It is 18.0m by 19.5m and accessed via a roller shutter door and a pedestrian door to the south-west elevation together with a further pedestrian door to the east elevation.

### **The ground (c) appeal**

14. An appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. In an appeal on this ground the appellant has to demonstrate on the balance of probability that the matters alleged, to have occurred, in the notice do not constitute a breach of planning control. The planning merits of the development are not relevant as my decision on this ground of appeal rests on the facts of the case, on relevant planning law and judicial authority.
15. Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) sets out permitted development (PD) rights relating to temporary buildings and structures (hereon cited as Class A). It states that '*The provision on land of buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land*' is PD.
16. It is the appellant's case that the appeal building was at the date of its erection, and remains, required temporarily in connection with and for the duration of operations associated with the construction of the adjoining golf course complex.

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<sup>7</sup> Ref No: P/2014/00228

<sup>8</sup> Ref No: P/2016/00434

<sup>9</sup> Ref No: P/2017/00256

<sup>10</sup> Ref No: P/2018/00232

<sup>11</sup> Ref No: P/2018/00846

17. The Council considers that the size and various aspects of the building's construction all mark it out as an essentially permanent building, which could not simply be moved without at least some demolition and rebuilding/further ground works. It also considers that the appellant 'hoped' that the building could be retained on a permanent basis following the withdrawal of the 2016 Apps and that it is unclear that a building is 'required' in connection with operations on the adjoining land.
18. In *Wilsdon*<sup>12</sup>, which is a relevant case, the judge, at paragraph 17 states that *'Whilst of course it is possible that a landowner would wish to erect a permanent building to serve a temporary purpose, as a matter of common sense, absent any other explanation, the larger and more permanent the building in question the less likely it is to be genuinely "required temporarily" in connection with the carrying out of development on the land or on adjoining land. Common sense has some role to play in planning control and the proposition that a permanent building may fall within Class A in Part 4, whilst in principle correct, raises the obvious question: why would anyone go to the time, trouble and expense of erecting a permanent structure if it is required only temporarily? In any particular case there may be a sensible explanation but it would be necessary to look at the facts of each case to see whether or not such an explanation had been provided. It is not unreasonable to adopt, as a starting point, the proposition that a landowner will not usually erect a permanent building if it is merely required temporarily. Similarly, the length of time taken to construct the building and the length of time that it has been and is likely to be in situ must also be relevant considerations.'*
19. In the *Hall-Hunter*<sup>13</sup> case the judge stated that *'It was submitted before the Inspector, and before me, that since the word "operations" in Class A was not defined, it should be given its ordinary and natural meaning, which would include "farming operations". The Inspector rejected that submission. In my view he was correct to do so. Parkes is authority for the proposition that there is a "pattern that runs through [the] Act": namely the distinction that is drawn between development by the carrying out of operations and development by the making of a material change of use: see per Geoffrey Lane LJ at page 214.... Bearing that pattern in mind, one would expect that the words "operations ... carried out on, in, under or over ... land" in Class A were being used as a convenient shorthand for operational development, to be contrasted with "the use of land" referred to in Class B.'*
20. I acknowledge that Class A does not provide a time scale for when the rights conveyed would apply. Nonetheless, the basis of the provision is to provide buildings and structures that are temporarily required for the duration of operations and therefore it is not open-ended. The building has been on the appeal site since 2017 which is a relatively long period and the golf course is open to play. However, there is no dispute that the construction of the golf course and its associated country club are not yet fully completed and that phases/works specified within section 4 of the Statement of Common Ground (SoCG) remain to be constructed. Both parties have agreed that the appeal building is being used temporarily as the central project/administrative office and storage/maintenance compound in connection with the construction of the

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<sup>12</sup> *R (oao Wilsdon) v FSS & Tewkesbury BC* [2006] EWHC 2980 (Admin); [2007] JPL 1063

<sup>13</sup> *R (oao Hall Hunter Partnership) v FSS & Waverley BC* [2006] EWHC 3482 (Admin); [2007] JPL 1023

- remaining phases of the golf course and country club as well as part of the green keeping and maintenance hub at the appeal site.
21. The appeal building is a relatively large metal framed structure that is mainly clad in metal sheeting. It has a concrete floor/base and the metal framed structure is bolted to that concrete floor/base. There are low brick walls between the pillars of the metal frame that act in part as retaining structures due to the topography. There are drainage channels in places around the building and downpipes on the building are linked to those channels. Mr Ingestre stated at the Inquiry that the building took eight weeks to construct.
  22. I accept that the building is capable of being retained on a permanent basis and that it is relatively large. Nevertheless, the cladding could be removed and the metal frame unbolted from the concrete floor to enable the building to be relocated or removed. Some demolition would be required in relation to the remainder of the building. As a starting point, it would be reasonable to consider, as outlined in the *Wilsdon* case, that a landowner would not usually erect a permanent building if it is merely required temporarily.
  23. However, in this case the evidence before me indicates that the appellant has significant resources available to them and can therefore absorb the costs of providing the appeal building for a temporary period and then removing or relocating it. This evidence is supported by the fact that the appellant has also constructed an interim clubhouse for a temporary period until a revised phase 4 of the golf course complex is able to be constructed.
  24. The construction of the golf course complex has been ongoing since 2016 and the appellant has undertaken operations involved in its construction since 2017. The building was erected after the withdrawal of the 2016 Apps and it is located in a similar position to the building proposed within the 2016 Apps. The appellant has also stated that they hope to retain the building on a permanent basis as a green keeping and maintenance hub. A ground (a) appeal and deemed planning application is before me to retain the building either on a permanent basis or for a temporary period.
  25. I noted at the site visit that the building appears to be in use to store and maintain numerous pieces of machinery and that a room within the building is in use as an office. There were also tables set out within the workshop area which I was told is linked to temporary safety measures associated with the Covid-19 pandemic. The evidence is that the machinery is used for sand capping, contouring, excavating and moving material, some of the machines are precision mowers used in the maintenance of the greens and that the office is used by staff involved in the day-to-day management of the construction of the golf course complex. Furthermore, since the 2016 Apps the traditional former agricultural buildings adjacent to the appeal building have been repaired and are now fully utilised for storing smaller pieces of machinery, chemicals, fertilisers and as staff facilities associated with the greenkeeping and maintenance of the golf course.
  26. On the evidence before me it is more likely than not that the appeal building, was when it was erected, when the enforcement notice was issued and, is currently being used principally in connection with operations associated with the construction of the adjoining golf course complex. There is little evidence to dispute the appellant's stance that the use for greenkeeping facilities and maintenance is a minor part of its overall use. The golf course development is

a large and complicated project, therefore, it is not surprising that it has been ongoing for a number of years especially given the impact of the Covid-19 pandemic.

27. Taking into account all of the above, the appellant's aspirations and hopes to retain the building on a permanent basis once the duration of the operations associated with construction of the golf course complex do not, in my judgement, indicate that in this case the building was/is not required temporarily for the purposes of Class A.
28. Whether the building is 'required' is taken to mean what is genuinely 'reasonably required' as stated in *Wilsdon*. It does not therefore mean necessary, and nor does it mean merely desirable or convenient.
29. Section 55 of the 1990 Act defines "development," as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land. As stated in the *Hall-Hunter* case, 'operations' for the purposes of Class A can be taken to be a shorthand for operational development that is the carrying out of building, engineering, mining or other operations in, on, over or under land. Operational development involves a physical alteration to the land.
30. The limitation at A.1 of Class A states that '*Development is not permitted by Class A if – (a) the operations referred to are mining operations, or (b) planning permission is required for those operations but is not granted or deemed to be granted*'. Consequently, if the 'operations' cited in Class A require planning permission and it has not been granted or deemed to be granted the PD rights conferred by Class A do not apply.
31. There is no dispute that planning permission has been granted for the golf course. When the appeal building was erected in 2017 the golf course was under construction. Operational development associated with the 2016 permission was, on the balance of probability, being carried out on the adjoining land to the appeal site at that time. Evidence submitted on behalf of the appellant includes a list of works already undertaken, works scheduled before the 2021 golfing season starts and future/additional construction works proposed. At the Inquiry I heard that the Covid-19 pandemic had caused some slippage to the works scheduled/proposed and that some of the works are now complete, some are ongoing, and some are to start later in 2021. These include: -
  - Installation of over 25,000 linear metres of drainage pipe into the fescue roughs is proposed to start later in 2021.
  - Lengthening of course by 250 yards by the construction of several new tee complexes is ongoing.
  - Extension of the creeping Bentgrass turf nursery and the construction of a rye/fescue turf nursery is ongoing.
  - Renovation of the 17th island bunkers is being planned.
  - Construction of a second practice putting green is being planned.
  - Golf course site woodland renovation is ongoing.

32. The golf course woodland renovation is permitted by condition 28 of the 2016 permission. There is no dispute that the installation of drainage pipes is operational development that is permitted by condition 27 of the 2016 permission. The evidence indicates that the drainage works permitted by this condition also included sand capping, which is the process of replacing the top eight inches of soil with sand. The operations associated with the drainage works are due to start later this year and the appellant has stated that they form the last of the outstanding matters to be completed in relation to the 2016 permission (other than phase 4). It is highly likely that staff working within the appeal building oversee the operations and machinery stored and maintained therein is required to carry out these operations.
33. The lengthening of the course, nursery works, 17<sup>th</sup> bunkers and the practice putting green do not have planning consent in their own right. There was dispute at the Inquiry as to whether these works require additional planning consent/s to the 2016 permission. I acknowledge that these works could entail physical alteration/s to the layout of the land which has/have some degree of permanence to the land itself. Consequently, it is a matter of fact and degree as to whether these works constitute 'operations' and require planning permission separately or collectively. Moreover, there is disagreement between the main parties as to whether planning permission for phase 4 can be treated as being granted for the purposes of Class A.
34. Nevertheless, it seems to me, on the balance of probabilities that there have been and there are likely to be further operations on the adjoining land in the near future, in relation to implementing the 2016 permission. Phase 4 of the 2016 permission has yet to be started and all parties accept that a revised planning application would need to be submitted prior to its construction. It is not certain when operations relating to phase 4 would commence. However, the operations relating to implementing the remainder of the 2016 permission, appear to be nearing completion.
35. The appeal building is adjacent to Mince Pie Hall and is within the setting of that listed building. At the Inquiry the Council argued there are alternative locations for the appeal building that would have a lesser impact on the significance of the listed building and would provide similar public benefits with regard to the temporary and permanent retention of the building through the ground (a) appeal and deemed planning permission. However, Class A does not include any limitations or conditions in relation to listed buildings or their settings. The Council also considers that given the appellant's extensive landholding and its nearby facilities at JCB World it is unclear why the plant and machinery, to be used to undertake the remainder of the operations related to the 2016 permission, are reasonably required to be kept within the appeal building.
36. As stated previously, it is more likely than not that the principle use of the appeal building is currently in connection with operations associated with the construction of the adjoining golf course complex. There is little evidence before me to indicate that the principle use of the appeal building would alter significantly whilst the operations relating to implementing the 2016 permission are completed. It appears reasonable that the plant and machinery would be required to be stored and maintained within a building.

37. The appellant submitted evidence to indicate that nearby buildings are fully utilised and/or not suitable to be used for the plant and machinery. I noted at the site visit that the archive building, the dutch barn and the traditional former farm buildings are all in active use. The ITC and insurance buildings are currently empty but are due to be demolished and their use is restricted by the S106 Agreement. As such these buildings do not currently appear to be alternative locations for the storage/maintenance compound. In my judgement the appeal building appears to be reasonably required temporarily in connection with operations being or to be carried out on the adjoining land.
38. Consequently, based on the written and oral evidence before me, and on the balance of probability, the appeal building was and is currently required temporarily in connection with and for the duration of operations being or to be carried out on land adjoining the appeal site. As such, it is PD under Schedule 2, Part 4, Class A and so is granted planning permission by Article 3 of the GPDO, subject to the conditions and limitations set out under A.1 and A.2.
39. As stated previously Class A does not provide a time scale for when the rights conveyed would apply provided the appellant removes the appeal building when the operations are complete. The fact that the building has been on the land for four years does not accrue it immunity from enforcement action as there is no breach of planning control if the conditions and limitations set out under A.1 and A.2 are met.

### **Conclusion**

40. On the balance of probabilities, the appeal on ground (c) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed. In these circumstances, the appeals on grounds (a) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not need to be considered.

### **Formal Decision**

41. It is directed that the enforcement notice be corrected: by the deletion of 'Plan 1' and the reference to it, within section 2 of the enforcement notice, and the substitution of 'Plan 1' with the plan annexed to this decision and the reference to it with the wording 'amended plan'.
42. Subject to corrections above, the appeal is allowed on ground (c) and the enforcement notice is quashed.

*D. Boffin*

INSPECTOR



## Amended Plan

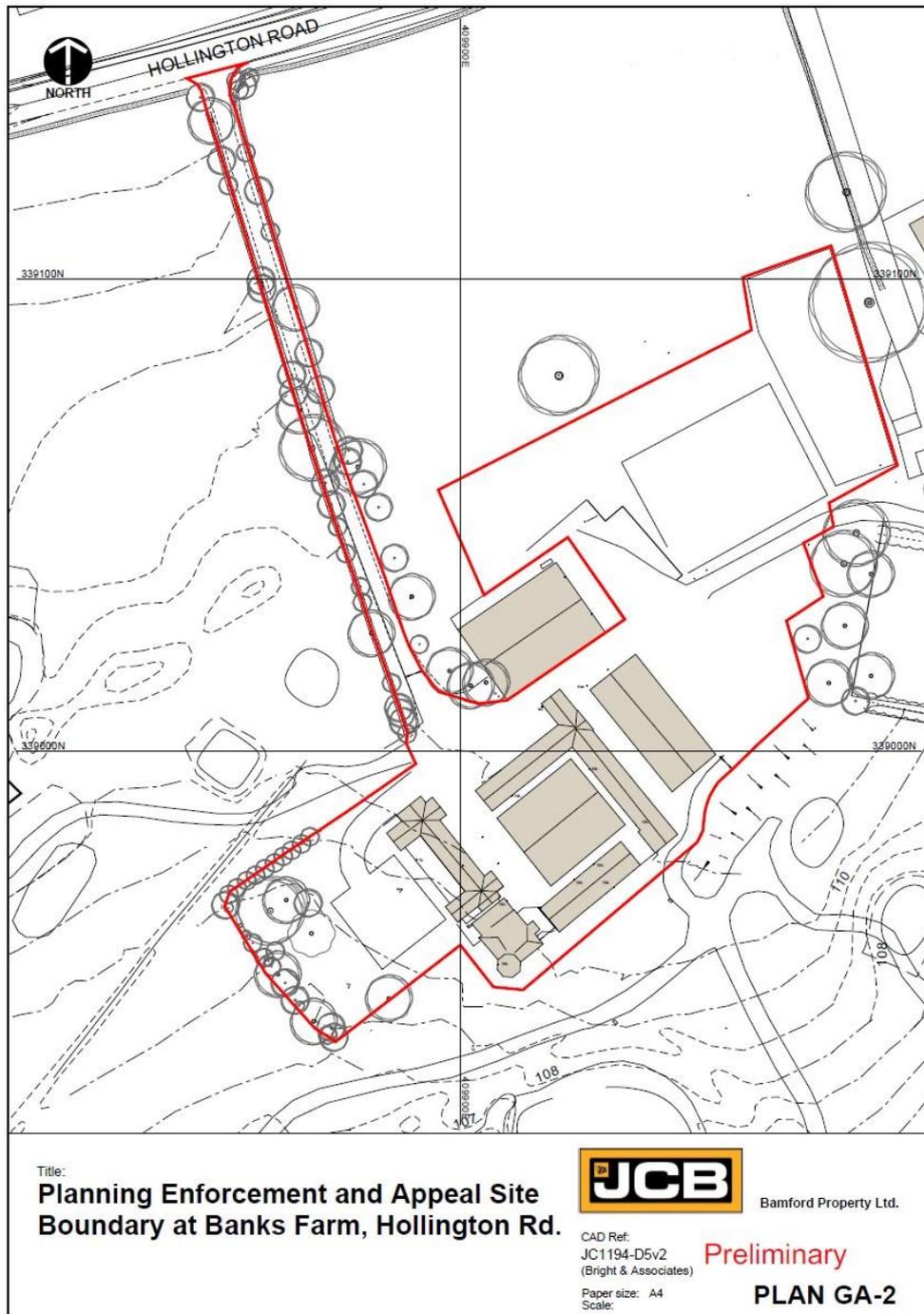
This is the plan referred to in my decision dated: 03 September 2021

by **D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

**Land at: Banks Farm, (also known as "Mince Pie Hall"), Hollington Road, Rocester, Staffordshire ST14 5HY**

**Reference: APP/B3410/C/19/3232151**

Scale: Not to Scale



## **APPEARANCES**

### FOR THE APPELLANT:

Douglas Edwards QC

Instructed by Grant Anderson of Hill Dickinson solicitors

He called

Dr Nigel Barker – Mills  
James Ingestre  
Andy McMullen

Barker – Mills Conservation (Heritage Matters)  
Bamford Property Limited (Company Matters)  
Director - Broadgrove Planning and Development Ltd (Planning Matters)

### FOR THE LOCAL PLANNING AUTHORITY:

John Hunter QC

Instructed by Angela Wakefield of East Staffordshire Borough Council (ESBC)

He called

David Ward  
James Bate  
Helen Kent

Planning Enforcement Officer - ESBC  
Conservation Officer - ESBC – (Heritage Matters)  
Associate Director of Planning – Land Use Consultants Limited (Planning Matters)

## **DOCUMENTS**

- 1 Extract of Estates Map 1853
- 2 Extract of OS Map 1886
- 3 Landscape Masterplan L2(ii) Rev A
- 4 Drainage Strategy approved under condition 27 of Planning Permission (P/2016/00434)
- 5 Note re Lift in Subject Building
- 6 Aerial Photo of Saunton Sands Golf Club
- 7 Note re Outstanding Construction Works
- 8 Note re Heritage Asset Dates/the Baroque Period
- 9 Note re Vehicle Maintenance Lift and Size of Green Keeping Facilities/Compound
- 10 Fayrewood Fish Farms v Secretary of State 1984 WL 282262 (1983)