

**AREA PLANNING COMMITTEE (SOUTH AND WEST)**

**20 OCTOBER 2016**



**REVOCATION, MODIFICATION AND DISCONTINUANCE ORDERS  
MILL HOUSE FARM, WINDMILL**

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**Electoral Division: Evenwood**

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**1. Purpose of the Report**

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- 1 This report concerns very rarely-used powers that are available to local planning authorities to revoke or modify planning permissions, or to require the discontinuance of or restrictions on land uses or the removal of buildings. The powers are analogous to taking enforcement action, although with two significant differences in this case. The first is that the uses or buildings on the land under consideration are not unauthorised, but benefit from planning permissions. The second is that compensation is payable on the use of powers to deprive landowners of rights previously granted.

- 2 The purpose of this report is for Members of the Committee to state their opinion to the Head of Planning and Assets about whether, and if so how, the Council should utilise those powers, under sections 97 and 102 of the Town and Country Planning Act 1990, to make orders requiring the revocation or modification of planning permissions, and/or to require the discontinuance of uses of land or the alteration or demolition of buildings at Mill House Farm, Windmill.
- 3 Section 97 of the 1990 Act provides that the local planning authority may, if it considers it expedient having regard to the development plan and to other material considerations, make an order revoking or modifying any permission to develop land that has been granted on an application made under Part III of the 1990 Act. The power may only be exercised before any building operations have been completed (or before any change of use has taken place), and will not affect any operations that have already taken place.
- 4 Where an order is opposed, it shall not take effect unless it is confirmed by the Secretary of State.
- 5 Section 102 of the 1990 Act provides that the local planning authority may, if it considers it expedient in the interests of the proper planning of its area (including the interests of amenity) having regard to the development plan and to any other material considerations, make orders to:
  - (i) Require the discontinuance of any land use, or to impose conditions on the continuance of a use of land; or
  - (ii) Require steps to be taken to alter or remove buildings or works.
- 6 An order under section 102 may also grant planning permission for any development of the land to which the order relates.
- 7 Any order under section 102 requires the confirmation by the Secretary of State.
- 8 In either case there is a requirement to pay compensation to the landowner or the holders of other land interests affected by the decision. The anticipated costs to the public purse involved in the various options, which are a material consideration in the decision, are set out in the accompanying exempt report.

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## **2. Decision-making**

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- 9 The committee's role is an unusual one, in that Members are not being asked to take a decision but instead to state their opinion for consideration by the Head of Planning & Assets. The Head of Planning & Assets has the constitutional authority to make these decisions. The power to make discontinuance orders is a delegated function of the Planning Committee; whereas the power to make revocation and modification orders lies in full Council. Although the costs to the Council of making any orders are a material consideration, it is important to recognise that these are Council (and not Executive) functions. The overriding question is whether it is expedient to make any orders in the interests of good planning.

- 10 It is considered that for the Head of Planning & Assets to receive the views of Members, after engaging in a consultation exercise and after giving the opportunity for public speaking at committee, will aid decision-making in this instance. Ultimately the decision will be taken by the Head of Planning & Assets after giving due consideration to the views of the Committee as well as those making representations.

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### **3. The existing permissions and their conditions**

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- 11 Permissions have been granted for three barns on agricultural land at Mill House Farm in Windmill. The operating provisions of these permissions are summarised below:

**Barn 1: 6/2005/0524/DM**

Permission was granted for the erection of a general purpose agricultural building measuring 243 square metres in floor area.

Conditions were imposed to require landscaping to the western boundary of the site, maintenance of the existing boundary hedgerow, and to restrict the use of the barn to agricultural purposes.

**Barn 2: 6/2008/0197/DM (an amendment to permission 6/2007/0566/DM)**

Retrospective permission was given for a general purpose livestock building measuring 243 square metres in floor area (251 with a link structure since erected under permitted development rights).

Conditions were imposed to require a scheme for foul and surface water disposal to be agreed, and for animal waste to be disposed of in accordance with recognised good agricultural practice.

**Barn 3: 6/2008/0256/DM**

Permission was granted for the erection of a general purpose livestock building measuring 449 square metres in floor area.

Conditions were imposed to require compliance with the application plans; a restriction on external illumination; a restriction to use for the overwintering of cattle only; a requirement to improve the site access; a restriction on vegetation clearance; and a requirement for the subsequent approval and implementation of a waste management plan.

The waste management plan has subsequently been approved on appeal, although does not yet apply to the site because this barn has not yet been built. It requires:

- (i) Manure to be spread in accordance with good agricultural practice;
- (ii) Not allowing contaminated water to enter watercourses.

In order to manage complaints, it also requires:

- Appropriate storage of manure and soiled bedding in specified locations.
- Storage of manure for no more than 12 months.
- Manure spreading operations to be carried out on specified land.
- Carry out farming activities in accordance with Protecting our Water, Soil and Air: A Code of Good Agricultural Practice for farmers, growers and land managers (Defra, 2009). The guidance advises the following in relation to spreading operations:

“Use a weather forecast to help choose suitable conditions for spreading. The best conditions are where air mixes to a great height above the ground, which are typically sunny, windy days, followed by cloudy, windy nights. These conditions cause odours to be diluted quickly. Check wind direction in relation to nearby housing before spreading.”

It also requires steps to establish a working relationship between neighbours:

- Maintain good relationship with neighbouring residents.
- Avoid spreading at weekends, bank holidays, or in the evening.
- Provide information about manure spreading operations when required.
- Adhere to management plan.

It also requires a monitoring protocol, the restriction of high intensity events such as clearing manure, removing soiled bedding and manure spreading operations, and the management plan to be reviewed and adjusted as needed on an annual basis.

- 12 The current position is that Barns 1 & 2 have been erected and put to use. Works to implement the permission for Barn 3 have been commenced (meaning that it is presently open to the landowner to complete the permission) but has not been built out beyond the initial preparatory works.

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#### **4. Background to the current decisions**

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- 13 The Council has been recommended to make decisions on revocation, modification and discontinuance by the Local Government Ombudsman (“the LGO”) who issued a report in 2012 finding that the three planning permissions for barns on agricultural land at Mill House Farm were granted as the result of maladministration. Residents had complained of serious impacts on their residential amenity resulting from the use of the barns.
- 14 Those findings of maladministration lay partly in the Council’s (and our predecessor Council’s) failure properly to grapple with the potential impacts

on residential amenity which could result from the use of the barns for housing livestock, or to impose adequate planning conditions to control those impacts.

- 15 The LGO's findings of maladministration were also based on the unauthorised decisions by officers to grant permission for the first two barns under delegated authority. This was because the LGO was presented with letters purportedly written to the Council by the Parish Council, objecting to the developments. The LGO found that Council officers had removed these letters from the planning files. If the Council had received these letters then they would have triggered a requirement to refer each of the applications to the Committee for a decision. However, following a police investigation into the provenance of those letters, it has transpired that the Council never did receive them – and so they never were removed from the planning files – because they were forged by one of the complainants, who has since been convicted on two counts of using a false instrument with intent to deceive.
- 16 The LGO has recently revisited her report in the light of the conclusion of those criminal proceedings. She no longer considers that the 2 permissions in question were taken without the requisite delegated authority. However she does still consider that the Council failed to properly consider the planning merits of all three proposals, and so maintains her original recommendation that the Council gives consideration to revoking or modifying the permissions or discontinuing the developments.
- 17 The Council has accepted the LGO's recommendation.
- 18 The LGO also recommended that before determining whether to make any Orders, the Council should commission independent reports on the planning impacts of the barns. These are discussed below.
- 19 The relevant law on the Orders that may be made is set out above in paragraphs 1–8. For clarity, the section 97 power of revocation or modification is available only in respect of Barn 3, which has not yet been built. The section 102 power of discontinuance or of requiring the alteration or removal of buildings is available only in respect of Barns 1 and 2. However it is appropriate to consider the two sets of powers together, as the LGO requires the Council to consider the existing and potential amenity impacts of the uses of the site as a whole.

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## **5. Description of the site and surroundings**

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- 20 Mill House Farm comprises approximately 19½ hectares (48 acres) some of which (approximately 8 ha) is owned and some of which (approximately 11½ ha) is rented.
- 21 The site is situated within the hamlet of Windmill which is in the countryside to the north west of Bishop Auckland. Mill House Farm is situated on the eastern side of the road through Windmill, approximately 400 metres to the north of its junction with the C32 (Nettlebed Lane).
- 22 The main farm complex comprises of 2 cattle barns and an attached storage shed, which are positioned beside the road. The yard surrounding the

buildings is unmade, compacted ground. The farm also uses an open fronted pole barn for storage, approximately 135m to the south, opposite the chapel.

- 23 Vehicular access is taken from the road into the yard to the north of the farm buildings.
- 24 Two static caravans and a linking structure are positioned roughly east of the site entrance. These are required to be removed under an extant enforcement notice.
- 25 There is a low boundary wall between the road through Windmill and the site. There are a number of trees and other vegetation along this wall and in the highway verge.
- 26 The closest houses to the application site are Ivy House and Oak Lodge. These are situated on the western side of the road through Windmill and are to the north-northwest of the barns.
- 27 Ivy House comprises a two storey property positioned gable end on to the road. It has windows at ground and first floor level in its south facing elevation which provide outlook towards the south.
- 28 Oak Lodge is to the west of Ivy Cottage further from the road through Windmill. Oak Lodge also comprises a two storey property with a southerly outlook.
- 29 Other dwellings are also situated in the vicinity of the site. In general they are surrounded by agricultural fields and a scattering of dwellings and other buildings including agricultural buildings.
- 30 A public footpath runs to the south of Ivy House and Oak Lodge and continues across the fields to the north of the site following an existing field boundary.

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## **6. Other relevant history of the site**

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- 31 The planning and enforcement history of the site is set out as follows:

### **Planning Applications (9)**

- [Prior Notification for Siting of 2 Storage Containers For Animal Feed, temporary for one year](#)

Ref. No: DM/14/00624/PNB | Status: Application Approved

- [Agricultural workers dwelling and 2 no. temporary static caravans](#)

Ref. No: DM/15/00200/FPA | Status: Application Withdrawn

- [Shed to store hay/straw](#)

Ref. No: 6/AF/2008/0013 | Status: Prior Notification Not Required

- [Lean to attachment to existing building](#)

Ref. No: 6/AF/2007/0008 | Status: Prior Notification Not Required

- [Discharge of condition 7 \(waste management\) of planning permission 6/2008/0256/DM](#)

Ref. No: 6/2012/0026/CON | Status: Appeal Allowed

- [Erection of general purpose livestock building](#)

Ref. No: 6/2008/0256/DM | Status: Application Approved

- [General purpose livestock building \(retrospective\)](#)

Ref. No: 6/2008/0197/DM | Status: Application Approved

- [Erection of general purpose agricultural building to house livestock and feed silo](#)

Ref. No: 6/2007/0566/DM | Status: Application Approved

- [Erection of general purpose agricultural building](#)

Ref. No: 6/2005/0524/DM | Status: Application Approved

#### **Planning Appeals (4)**

- [Appeal against Hedgerow Removal Notice](#)

Ref. No: 15/00042/ENF | Status: Appeal Dismissed

- [Agricultural workers dwelling and 2 no. temporary static caravans](#)

Ref. No: 15/00044/NONDET | Status: Appeal Withdrawn

- [Appeal against Enforcement Notice for Change of use of land for residential purposes](#)

Ref. No: 16/00008/ENF | Status: Appeal Dismissed

- [Discharge of condition 7 \(waste management\) of planning permission 6/2008/0256/DM](#)

Ref. No: 6/APP/2012/0008 | Status: Appeal Allowed

32 The current position following enforcement actions on the site is that a hedgerow should be replaced by 23<sup>rd</sup> February 2017 and unauthorised residential caravans on the site must be removed by 8<sup>th</sup> September 2017.

33 The site is split into two separate land holdings; as noted above, some of it is owned and some of it is rented. The rented part comprising approximately 11½ hectares is to the south and is understood to be rented by BJS Farms Limited on an agricultural tenancy. The details of this tenancy (and therefore the security of the arrangements) are not known to the Council. The 'owned' part is to the north and comprises a little over 8 hectares. It is this part upon which the two barns and the third permission are located.

34 The land is nominally owned by Brian and Janet Sewell but following bankruptcy proceedings it is understood that the title vests in the Official Receiver and that there is a mortgagee having a secured charge over the property. BJS Farms Limited claims to have a tenancy agreement over this part of the land as well as over the southern part. The position is as yet unclear about whether any such tenancy would take priority over the secured charge – and about whether there would be any compensation entitlement arising in favour of BJS Farms. It is mainly for these reasons that the Council's officers have been unable to make headway in reaching any voluntary agreement about the planning future of the site. (In principle, any revocation, modification or discontinuance – though not any grant of alternative permissions – could be achieved through a section 106 agreement rather than through the making of formal Orders.)

35 The site history complained of by local residents to the LGO was summarised by her thus:

*In 2006 and 2007 Teesdale District Council officers granted planning permission for agricultural buildings in a small rural hamlet. The officers had no authority to give the permissions and did not impose any conditions to protect the amenity of homes between 60 and 100 metres away. The buildings were used to house up to 120 intensively reared veal calves.*

*The nearby residents (some only 60 metres away) complained repeatedly to Teesdale District Council's Environmental Health Service about the impact on their lives of the smell from the beasts' excrement and of noise from feed being mixed on the site, from the clanging of metal tethering and from the beasts.*

*In 2008 Teesdale District Council received a planning application for a third building that would have allowed some 240 cattle to be housed. The Environmental Health Service did not inform the Planning Service of the problems repeatedly reported by residents. One resident began to keep meticulous records of her contacts with the Council's officers.*

*Teesdale District Council did not decide the planning application before it ceased to exist and its functions were taken over by the new Durham County Council in April 2009.*

*Supported by their local Councillors, the residents continued to complain to the Environmental Health Service about the impact on them of the use of the existing buildings. They also made representations about how much worse it would be if planning permission were granted for another building. One says 'I've had 6 years of hell....I don't open windows in my home. I keep them shut in useless attempts to drown out site noise and stop the stench....This is worse in summer. I basically have to choose if my lack of sleep will be with windows shut and my bedroom stuffy; or windows open but louder cattle noise and appalling smells.'*

36 Local residents have continued to complain about nuisances emanating from the site over the years since the LGO's first report. They have generally communicated via an e.mail address, 'Windmill Residents', which is understood to represent the residents of properties at Ivy House, Oak Lodge, and no.s 4, 5, 6 and 9A Windmill. The complaints can be broadly summarised as raising the following issues:

- Site fires disposing of plastic/toxic material;



- Noise and stench;
  - Continuous and unnecessary spreading of animal waste including at weekends;
  - Odours from mucking out deep waste;
  - Odours from pig excreta;
  - Removal of a hedgerow;
  - Introduction of residential caravans;
  - Burning of waste materials;
  - Sour, strong stench from manure resulting in residents being unable to spend time in their gardens or hang out their laundry and an exodus of rats and flies from the site;
  - Use of noisy machinery at night;
  - Noise from cattle lowing at night.
- 37 Planning Officers have had cause to visit the site on several occasions, as described below.
- 38 At the time of the Ombudsman's report of February 2012, the Council was investigating an allegation of the unauthorised siting of a residential caravan on the land. The case file was opened on 8 August 2011 and closed on 11 April 2012, having found that there was no subsisting breach of planning control. Complaints were received on 18 August 2011 and 26 September 2011. The local MP raised the issue on 10 February 2012. The landowner had provided advanced warning of her intentions to bring a caravan onto the site.
- 39 The issue was investigated by a site visit on 17 August 2011 where the caravan was noted. 'Drive by' monitoring visits took place on 3 occasions in December; 7 occasions in January; 5 occasions in February; and 5 occasions in March. A further visit to the site took place on 25 January when the landowner provided access to view the livestock and to discuss the use of the caravan. The caravan was found not to be in residential use, but to be sited in connection with the agricultural use of the land. Therefore no breach of planning control was occurring.
- 40 Two potential planning breaches were investigated in 2015. The first was of the unauthorised use of the site for residential purposes, facilitated by the installation on the site of 2 caravans. Sewage treatment infrastructure had also been installed. Two complaints were received, in February 2015. Following a number of site visits it appeared to the Council that a breach of control had occurred, and it was determined in October 2015 that it was expedient to issue an enforcement notice requiring the removal of the caravans. This was served on 27 October 2015 and the appeal was dismissed in September 2016.
- 41 A separate complaint was received in April 2015 concerning the allegation of the unauthorised removal of a hedgerow protected by the Hedgerow

Regulations. Again this was found to be established and a Hedgerow Replacement Notice was served, and upheld on appeal.

- 42 Finally a complaint was received at the end of February 2016 alleging the unauthorised use of one of the buildings (the pole barn, situated in the southern (rented) part of the site, and not a building with which this report is concerned) for housing livestock, and that hay bales had been used to form pens for ewes and lambing. A site visit took place on 3 March 2016 whereby it was established that there was no breach of planning control. The use of the building does not contravene planning controls, and the formation of pens using hay bales was considered not to amount to development requiring planning permission.
- 43 The enforcement officer's visits to the site were primarily for the purpose of investigating these particular alleged breaches of control. Her opinion of the general environment of the site on all such occasions was that there were no untoward impacts on adjoining residents. She also attended the site in connection with the two recent appeals (concerning the hedgerow and the caravans) on 5 April 2016, 21 July 2016 and 11 August 2016.
- 44 These were all prearranged visits.
- 45 On the first of those visits, it transpired that the appeal site visit had been cancelled by the Planning Inspectorate and so the officer was unable to observe the farm other than to note the mud on the road arising from farm traffic.
- 46 On 21 July 2016, the officer found the farmyard to be quiet. No animals were observed in the buildings although were heard. Farm vehicles and implements were being stored under cover inside the buildings. There was no activity in the yard. A heap of aged manure was visible behind the farm buildings. A mound of manure was in the field immediately to the rear of the caravans on the site. Most of this mound had been spread. Calves were stood or lying on this area. The manure heap did not give off an odour discernible from outside of the site or other than close to the heap. Cows with calves and a bull were grazing in the fields.
- 47 On 11 August 2016 the officer visited together with a planning officer. There were some cows (approximately thirty) visible in the field to the south of the site. Cows and calves were also present in the fields behind the caravans and the site was quiet. There were a few animals within the buildings, along with farm implements and vehicles. There was no obvious change to the manure heap in the field behind the caravans, and the officer did not discern any particular odour from the farm buildings or the manure.
- 48 In 2015 a planning application was made for residential development on the site, and visits have been made in connection with that application. The planning officer visited on 11 February and 9 April. Again, the principal purpose of his visits was to assess the planning application. He did not note any undue environmental impacts of the agricultural operations on the site.
- 49 Environmental health officers have also visited the vicinity of the site on a number of occasions since the LGO's 2012 report in response to complaints, with no findings of any statutory nuisances, as set out in the table below:

Date	Details	Actions	Outcome
20.3.2012	Odour nuisance	Telephone response	Emailed Advice NFA
17.8.2012	Odour from Mill House	Email sent	NFA
2.4.2013	Water Pollution	Email sent	Referred to Env Agency
9.5.13	Animal Welfare	Site Visit 9.5.13	NFA
20.5.2013	Animal Welfare		
13.6.2013	Animal Welfare	Site Visit 18.6.2013	NFA
25.9.2013	Noise and odour from Pigs	Monitoring sheets sent	NFA
17.7.2014	Burning on site	Programmed monitoring	No Nuisance NFA
		Site Visit 17.7.2014	Case closed
		Site Visit 12.12.2014	
		Site Visit 6.1.2015	
		Site Visit 22.1.2015	
		Site Visit 28.1.2015	
		Site Visit 3.2.2015	
		Site Visit 4.2.2015	
30.7.2014	Burning on site	Site Visit 5.2.2015	
28.1.2015	Caravans on site	Referred to Planning	
18.2.2015	Burning on site	Media footage received indicating burning on site and dark smoke	Letter of advice sent to Mr & Mrs Sewell via their Solicitor
13.7.2015	Odour from manure and brewery waste	Site Visit 22.7.15	No Nuisance NFA
		Site Visit 31.7.15	
		Site Visit 2.8.15	
3.8.2015	Vermin Infestation	Site visit 3.9.2015 to Windmill residents.	Advice given
26.5.2016	Odour / Noise / Flies Nuisance from Manure	Site Visit 27.5.2016	No Nuisance NFA
26.5.2016		Site Visit 10.6.2016	
27.5.2016		Site Visit 15.6.2016	
30.8.2016		Site Visit 12.9.2016	
20.9.2016		Site Visit 14.9.2016	
26.9.2016		Site Visit 21.9.2016	
26.9.2016	Burning on site		under investigation

50 To summarise, officers have visited the site on several occasions over the past few years. These visits have been in response to complaints about the

site as well as in connection with planning applications and appeals. The assessment of the current harm, if any, arising from the activities on the site (relating to the permissions for the barns) is summarised in section 12 of this report.

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## **7. The current business operations on the site**

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- 51 The Inspector assessing the waste management plan in 2013 recorded (at paragraph 7 of his decision):

*Prior to the instigation of the 'single suckler' system in 2009, different operations involving different cattle numbers had been supported. Information submitted with the original application for the new 'general purpose building' indicated that, by July 2008, there were 100 'bucket fed' calves and 75 cattle over 6 months old on the holding; the new structure was then intended for 40-60 additional animals. Subsequently, a different system operated, the holding accommodating 160 animals brought in at about 6 months for 'fattening' over a 4-5 month period, though no estimate for the potential increase in the size of the herd to be accommodated by the new structure was then given.*

- 52 He went on (at paragraph 15) to say that he:

*estimate[d] that the enlarged herd that could be housed with the addition of the new building, amounting (as indicated) to some 100 cows, 50 calves and 1 bull...*

(at paragraph 16:)

*in May 2012 the herd was stated to consist of 175 cattle with the new building accommodating an increase to 240 animals (60 cows from 6-12 months, 60 beef cattle fattened from 6-14 months and 120 calves up to 6 months).*

(at paragraph 17:)

*The concern that some 320 animals might be housed on the holding is, I think, ill-founded.*

- 53 Consulted about an application for a dwellinghouse on the site in 2015, the Council's Community and Animal Health Manager reported that

*using the BCMS system for recording cattle, the farm at 21 April 2015 had 114 cattle registered at Mill House Farm. We are not aware of cattle at a different farm, though if they are under a different name that may account for us not having knowledge of this. With regard to sheep, a farmer is required to submit an annual figure in December. There has been no declaration since 2010.*

- 54 The 'Agricultural Appraisal' submitted by BJS Farms on 23<sup>rd</sup> January 2015 in support of that application stated that the operation on the farm was then as follows:

- 4.2 *BJS Farms Ltd operates an established livestock unit consisting of a suckler cattle and some 25 breeding ewes.*
- 4.3 *The suckler herd consists of 50 suckler cows mainly calving over the winter months when housed. 1 limousin bull used for breeding. The breeding stock mainly being home reared dairy X continental cows. Approx. 5 of the heifer dairy X continental calves that are reared each year are kept for herd replacements.*
- 4.4 *The 25 breeding ewes lamb late February. In addition to this BJS Farms also purchases approx. 100 additional store lambs over the winter months...*
- 4.5 *BJS Farms Ltd also hand rears some 60 dairy X continental calves...*
- 4.6 *BJS Farms Ltd also has two outdoor reared traditional saddle back sows...*
- 4.8 *All of the land is set down as permanent pasture for the grazing of the livestock with approx. 28 acres being set aside for the production of hay/silage each year for foddering the livestock...*

55 A table was also produced of the livestock then said to be on the site, and the proposed numbers following the erection of the third barn:

<b>Livestock Requirements</b>	<b>Head now</b>	<b>with 3<sup>rd</sup> barn</b>
Suckler cows	45	45
Breeding heifers	5	5
Breeding bulls	1	1
Store cattle	45	90
Replacement heifers	5	5
Calf rearing	60	60
Breeding ewes	25	25
Breeding ram	1	1
Lambs	40	40

Store lambs (winter keep)	100	100
Breeding sows	2	2

- 56 The submission from BJS Farms in support of that application stated that there was no intention to complete the construction of the third barn due to the enterprise not being able to manage the additional livestock until they could live within sight and sound of the livestock. There is no planning permission in place or in contemplation that would enable them to do so lawfully (the current caravans requiring removal next year under the terms of the extant enforcement notice).
- 57 Advice was sought from Robson & Liddle, rural practice surveyors, in relation to the application for a dwellinghouse. That advised that a reasonable standard space requirement for a suckler cow would be 7.5 – 8.0 sq. m. down to 1.5 – 3.0 sq. m for calves. It was questionable if there is sufficient land for the livestock stated but that would depend greatly on their number and ages. They concluded, among other matters, that:
- Livestock numbers were relatively high
  - The age of the livestock and how long they are on the holding is particularly relevant to the labour requirement
  - The amount of land cannot sustain this number of livestock, however it may depend on how long livestock are kept on the holding
  - There was a significant lack of information regarding the financials of the business which could additionally be facing considerable uncertainties with regard to land ownership.
- 58 Overall it was concluded that whilst there was a functional requirement for a dwellinghouse on the site, the financial viability of the business was not sufficiently demonstrated to justify this.
- 59 Subsequently BJS Farms have volunteered information about the number of animals on the site. In August 2016 they stated that there were 154 head of cattle on the site.
- 60 The Council's Animal Welfare officer has also been consulted for the information he currently holds about cattle numbers on the site. On 29 September his records were that there were 174 head of cattle on the holding.

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## **8. The available options**

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- 61 The Council must first decide whether it is expedient to make any Orders at all, having regard to the development plan for the area and any other material considerations. 'Doing nothing' is one potential outcome.

- 62 If it is expedient to make any Orders, the question is then the form that any such Orders should take. This could range from imposing additional conditions on the use of the barns, to requiring physical alterations to be made, to requiring the demolition and removal of the existing barns and revoking the permission for the third. The principal options set out in a consultation letter to interested parties were these:
- (1) Require the demolition and removal of the two existing barns, and revoke the permission for the third;
  - (2) Decide to leave the permissions intact;
  - (3) Impose a suite of additional planning conditions to apply to the ongoing use of the existing two barns, and the third barn if it is built. These could address the noise and odour complaints received and seek to manage those issues, by for example requiring management plans to be in place and/or to control the hours when feed mixing could take place;
  - (4) Require physical alterations to be made to the existing barns (and the third if it is built), to assist with soundproofing;
  - (5) Require the removal of the barns and grant a replacement planning permission elsewhere on the site, further away from neighbouring residents;
  - (6) Some combination of the above.
- 63 It was explained that each of options (1) (2) and (5) were considered an unlikely outcome in this case. Options (3) and (4), or a combination of them, were said to have their merits. However consultees were informed that it was considered that a combination of additional planning conditions coupled with a revocation of the permission for the third barn, as yet unbuilt, was likely to be the preferred option. Consultees' views were invited on all options, none of which have been discounted. However the consultation naturally focussed on what the Head of Planning Services was minded to decide.

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## **9. Development Plan for the area and other policy considerations**

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### **The Development Plan**

- 64 The principal consideration in determining the expediency of any Orders is the development plan for the area. This consists of the saved policies of the Teesdale Local Plan and is generally supportive of agricultural development.
- 65 Policy GD1 is permissive of development that is of a high standard of design and which would contribute to the quality and environment of the surrounding area; that is in keeping with the character and appearance of the area; that would not disturb or conflict with adjoining uses; that would not unreasonably harm the amenities of adjoining occupiers; that would provide adequate drainage; that would be energy-efficient; that is designed to deter crime; that

would not unreasonably harm the rural landscape; that would not endanger habitats; that would not detrimentally affect archaeological assets; that would incorporate adequate landscaping; that would not be unacceptably detrimental to public health; that would not significantly pollute the environment; that would not risk water quality; that would provide adequate and safe access to the site; and that would not generate unacceptable levels of traffic on the local road network.

- 66 Policy ENV1 supports agricultural development that does not unreasonably harm the landscape or wildlife resources of the area.

### **National Planning Policy and Guidance**

- 67 The NPPF requires local plans to support economic growth in rural areas including by promoting the development of existing agricultural businesses. Planning should prevent new and existing development from contributing to or being put at unacceptable risk from, or being adversely affected by, unreasonable levels of pollution (paragraph 109), including by ensuring that new development is appropriate for its location, taking into account the effects of pollution on general amenity (paragraph 120). Planning decisions should aim to avoid significant adverse impacts from noise, mitigate and reduce to a minimum other adverse impacts from noise, and also recognise that development will often create some noise.
- 68 Planning Practice Guidance advises that planning can manage potential noise impacts in new development by for instance, reducing or containing noise at source, considering layout, or using planning conditions to restrict activities allowed and at certain times. It also recognises that odour can be a planning concern and planning conditions can be used to secure mitigation.

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## **10. Expert Reports**

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### **AECOM**

- 69 As recommended by the LGO the Council commissioned reports from consultants to advise upon the amenity impacts of the barns. A report was commissioned from AECOM. The LGO's recommendation was to commission a report on the existing and prospective amenity impacts of the three barns and consider whether to make any Orders as a result. Instead AECOM addressed the issue in terms of putative fresh applications. At 3.1 of their report they stated that they "have approached the planning application as if it has just been submitted and this theme is followed through below". They concluded that Barn 1 could reasonably have been granted permission with conditions, but that Barns 2 and 3 should not be approved in addition. Their report was issued in May 2013.
- 70 In relation to the first barn, AECOM proceeded on the basis that it could house 55 cattle. The report suggested that the visual impact should be reduced by suitable screening and through submission of materials by condition (3.6.1). Conditions were also suggested regarding drainage (3.6.2). An accompanying Odour Assessment concluded that the proposal had the potential to cause an unacceptable level of odour, again with conditions



suggested (3.6.3). These conditions included that the building should not be used to permanently house cattle, and regarding the removal of bedding, feed mixing, storage of slurry, and drainage. They advised that it would not be possible to restrict the type of livestock through a planning condition. An Odour Management Plan should be introduced. A noise assessment concluded that there would be significant noise impacts (3.6.4) and suggested conditions, including times for loading and unloading cattle, and the introduction of a Noise Management Plan. Having made these recommendations, AECOM then concluded that by imposing such planning conditions, the farming operation would thereby be limited “to a point just below where it will become unacceptable”.

71 They then considered that neither of the other two barns should be granted cumulatively with the first.

72 As noted above, AECOM’s report did not directly address the LGO’s recommendation but was instead directed to a hypothetical re-determination of the planning applications rather than to the expediency of making revocation or discontinuance Orders.

### **FAIRHURST**

73 Subsequently the Council commissioned a further assessment from Fairhurst. They initially took the same approach as AECOM, to hypothetically re-determine the applications, and considered that all three barns could reasonably have been permitted subject to the imposition of additional conditions. This advice was received in November 2014.

74 Further advice was sought from Fairhurst in order to direct them to the specific questions of revocation, modification and discontinuance. Their instructions in relation to their addendum report, which was received in August 2015, were:

- a) To confirm whether, having regard to the known and reasonably anticipated amenity impacts of the three barns, the developments could be made acceptable;
- b) Having regard to the full range of powers available to the Council, how that might best be achieved; and
- c) Notwithstanding their view on the optimal solution, what a reasonable range of responses by the planning authority might be.

75 Fairhurst recommended that a noise management plan be imposed; that Barns 1 and 2 be physically altered; that the buildings be used only for cattle or sheep and not for pigs, poultry or any other farm animals; that the number of cattle and/or sheep in each building should be limited; and that the animal waste management plan previously approved on appeal for Barn 3 should be imposed on the continuance of the use.

76 They had previously advised that requirements were imposed regarding surface water run-off and slurry storage. They now advised that these requirements could be removed if it were demonstrated that they were

unnecessary. They also previously advised that an Odour Management Plan should be imposed; but this was 'desirable' rather than necessary.

77 Fairhurst added that they were of the view that the granting of planning permission for Barns 1, 2 & 3 was not so unreasonable that no reasonable [planning authority] acting reasonably could have granted permission for the three applications. However they did maintain that in hindsight a carefully drawn up set of planning conditions designed to address the amenity issues in question could have been considered by the planning authority ensuring that there would have been no reason to refuse permission for the three barns.

78 Their report did also address an alternative scenario which would be to revoke the permission for the third barn, demolish or impose stringent limitations on the use of the existing two barns, and permit a replacement barn of equivalent size to all three elsewhere on the holding, away from the residents.

79 In summary it was therefore the view of Fairhurst that, although the Council's original grants of permission would not necessarily have been unreasonable, the existing and permitted developments would potentially fail to comply with the development plan for the area without the imposition of further control measures. The Council is not bound to accept that planning judgment – or that of AECOM – but due regard must be had to it when reaching the Council's own view.

80 Fairhurst found that the developments complied with the development plan in all material respects save for the amenity impacts on the neighbours on the issues of noise and odours. The issues of the principle of the development, siting, scale, visual impact, highways and ecology were not considered contrary to policy.

81 In respect of noise, in relation to Barn 1 they stated that it was:

reasonable to conclude that the proposed development could potentially give rise to noise impacts which could disturb neighbouring residents and cause unreasonable harm to amenity, contrary to Policy GD1;

in relation to Barn 2 that:

it is reasonable to consider that the proposed development, if an unrestricted use was permitted, would give rise to noise impacts potentially worsened by cumulative effects when considered in the context of Building 1. Such effects could disturb neighbouring residents and cause unreasonable harm to amenity, contrary to Policy GD1;

and in relation to Barn 3 that:

it is reasonable to conclude that the proposed development, if unrestricted use was permitted, would give rise to noise impacts made worse by potential cumulative effects when considered in the context of Buildings 1 and 2. Such effects could disturb neighbouring residents and cause unreasonable harm to amenity, contrary to Policy GD1.

82 In respect of odour, they made similar findings: that if an unrestricted use of the barns was permitted, the development would give rise to odour impacts

which could disturb neighbouring residents and cause unreasonable harm to amenity. They therefore recommended the imposition of appropriate controls.

- 83 None of these findings are unequivocal. Fairhurst's (and AECOM's) views are expressed in terms of the potential of the developments to cause unreasonable harm. It is appropriate to consider whether they actually do so, or are likely to do so in the future. Nevertheless, Fairhurst essentially conclude that in order for the developments to comply with the development plan it is appropriate to alter the fabric of the buildings, to restrict the site operations by way of noise management and animal waste plans and to impose a ceiling on livestock numbers. AECOM would go further and say that only one barn, with conditions, can be made acceptable.

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## 11. Consultation Responses

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- 84 The NPPF advises that local planning authorities should aim to involve all sections of the community in planning decisions, and accordingly the question of the Council's exercise of its powers to make revocation and discontinuance orders has been the subject of a (non-statutory) consultation exercise. A letter was despatched to the occupants of the site and those with financial interests in it, to adjoining neighbours, and to the parish council and local members together with certain statutory and internal consultees. The relevant points raised in response are set out below.

- 85 **BJS Farms'** company secretary requested financial support from the Council for professional advice in order to respond to the consultation. When asked to clarify the scope of her request, her response was:

*Because of the complexity of the planning issues that Durham County Council is considering this is not the area of expertise of anyone even connected to Mill House Farm. Once again the statement that Mill House is not in a position to enter into reasonable negotiations at this time is restated.*

- 86 Therefore the request for assistance remained unspecified. Officers responded to say that the question could be revisited following the committee's consideration of these issues.

- 87 BJS Farms Ltd responded further to say that the issue of maladministration is one for the Council alone, and that the farm did nothing inappropriate in submitting planning applications that went through due process. The company secretary stated that she would invoice the Council at an hourly rate plus travel costs.

- 88 The "**Windmill Residents**" group responded to ask the Council to identify who it considered to be the landowner and those with interests in the land, and whether or not Mr. & Mrs. Sewell had been consulted as they no longer held the title to the land. Officers responded to set out our understanding of the land interests, and to confirm that Mr. & Mrs. Sewell had been consulted. The "Residents" subsequently responded to ask who was dealing with the receivership, to whom the Council intended making any payments, whether Mr. & Mrs. Sewell were aware, and to ask why the Council had consulted Mr.

& Mrs. Sewell. Officers responded to say the Official Receiver's details were publicly available and that the other matters raised would, where relevant, be set out in and dealt with in the instant report. Various other matters have been raised by the "Residents" in correspondence and where relevant are dealt with elsewhere in this report.

- 89 The occupier of **Thornfield**, which is a property lying some distance to the south of the barns, responded to say that he looked forward to Wind Mill returning to being a peaceful and uneventful hamlet. Both sides in the saga appeared entrenched and he had chosen not to become involved. Some noise and smells are the reality of living in a rural area where the predominant agricultural activity is livestock rearing. Whatever the outcome, the land will remain as agricultural land with or without the farm buildings. In hindsight, it might have been better if the farm buildings and entrance had been constructed further to the south, and a compromise might be to re-establish the farmyard to the south of the existing buildings away from the dwellings.
- 90 The Council's **Environmental Health Officer** responded to confirm that his service had not ascertained any statutory nuisance emanating from the site, and making the following points in order to assist the planning department in its consideration of residential amenity issues:
- Aecom and Fairhurst's reports came to different conclusions, and it is appropriate therefore to take a balanced view of each report.
  - A further barn would increase the potential impact and therefore it would be pertinent to restrict its development or ensure significant conditions are imposed to reduce cumulative impacts.
  - Consideration should be given to restricting animal types.
  - A condition restricting the use of the barns for the housing of animals during inclement months and for calving and welfare needs should be considered.
  - A noise management plan could be onerous for the type of enterprise, and specific restrictions on hours of work & deliveries should be considered instead. 07.00 – 18.00 Mon-Fri and 09.00-18.00 Saturdays would be reasonable.
  - Physical alterations should be considered, but the potential expense was noted.
  - Concerns over the burning of waste and mud on the road can be dealt with by non-planning controls, which should not be duplicated.
- 91 The **Local Highway Authority** responded to say that the proposals do not raise any highways implications. The current access appears to have been improved in accordance with a condition of the permission for Barn 3 (6/2008/0256/DM). This access is acceptable from an operational and road safety point of view.
- 92 It was noted that suggestions had been received during the consultation period to move the access further south of the existing access. From a

highways perspective there would be no advantage to construction of an access at an alternative location south of the existing. Equally a new access to the south could safely operate from a highway perspective.

- 93 The council's **Ecologists** responded to say they had no comments save that survey work might be required if it is proposed to demolish any of the existing buildings.
- 94 **Durham Constabulary** responded to say they had no comments.
- 95 The occupier of **Cox House Bungalow**, who is also the Steward of **Wind Mill Chapel**, responded to complain about the mud on the road and to say that she considered any planning conditions would be ignored.
- 96 Solicitors acting for **Barclays Bank plc**, who hold a secured charge over the relevant land, responded to say that the mortgage payments were outstanding and that the bank was intending to seek possession of the land. They noted that any alterations to the planning permissions might adversely affect the value of the property and therefore the value of Barclays' security. They asked that the impact of any changes on Barclays' position was considered.
- 97 The clerk to **Evenwood & Barony Parish Council** responded to say that they supported the residents of the farm and would like to see the permissions left intact and no orders made. A second preference of conditions and physical alterations to the barns was expressed. The Parish Council would not like to see Mill House Farm having to take on any additional financial burden through no fault of theirs. The Parish Council also considered that consulting the other residents of Windmill is a flawed strategy.
- 98 Further correspondence was received from **Barbara Nicholson**, who had not been individually consulted. She is the Chair of Evenwood & Barony Parish but was writing in a private capacity. She said that the Parish Council had approved all of the previous applications, and therefore the obvious choice would be to leave the permissions as they were. Failing that, she recommended that conditions and physical alterations were appropriate, with completion of the third barn allowed.
- 99 **Councillor Heather Smith** responded on her own behalf and of **Councillor Andy Turner** to say that they were aware of the long and complex history, and had avoided taking sides in what has been a highly contentious dispute. They did not express a preference for any particular option but considered the planning committee best placed to recommend the best course of action.
- 100 The Council's **Landscape Officer** offered the following observations:
- The existing agricultural buildings have some visual impacts in the immediate area but aren't in themselves out of keeping with its rural character. Much of the current level of visual impact comes from the visual clutter of ancillary features rather than from the buildings themselves.
  - The landscape is visually open and elevated. Other locations would be likely to be more prominent in wider views, and have a greater effect on the character of the landscape being isolated and not

visually associated with other buildings as they are in their current location. This would need to be taken into account in the balance of considerations.

- As the holding is small, options for re-location are limited and the development would still be likely to be a relatively prominent feature in the visual environment of nearby residents. To improve the visual amenity of local residents to a substantial degree a move would need to be accompanied by structure planting either to the buildings in their new location or along Windmill Lane (within the holding rather than the road verge). This would take time to be effective.
- Given the ownership boundary access would still need to be taken from Windmill Lane somewhere in the vicinity of the existing access. Creating a new access further south but within the holding, which might be desirable in other respects, would be likely to require the removal of roadside vegetation to achieve the necessary sightlines.

101 A response was received from the occupier of 5 Windmill, contending that the maximum number of stock a holding can maintain is 1 adult animal per acre of land. The options outlined in the consultation letter were said to be interesting if impractical. The preferred option was the demolition of all the buildings and revocation of the permissions. The option of carrying out physical alterations to the buildings was discounted on animal welfare (airflow) grounds. Options involving the application of further planning conditions met with objection, because of the past monitoring and compliance failures. Moving the buildings elsewhere on the site was not considered to solve the problems, which included loose dogs, feed deliveries causing damage to the highway verges, waste fires, and aggravation caused to residents by the unrestricted development of the site.

102 Similar and largely corroborated responses were sent by the occupants of **Etherley House, Oak Lodge, Pit Green Cottage, Ivy House Farm** and **6 Windmill**. They raised the following points:

- The plot of about 20 acres would normally cover only 20 cattle
- The existing barns are much larger than a traditional farm on this acreage would need
- Approximately 160 cattle are housed at present by daily feeding, with a mix concocted on site with the extended use of tractors and machinery, including at night and in the early hours, rather than grazing
- The impact on residents' amenity has been devastating
- Complaints have been made about noise day & night; overwhelming foul smells' swarms of flies and rats, and the impact of lights left on all night
- The public road is covered in mud from the farm and conditions are dangerous

- The verges are destroyed by tractors or delivery lorries
- Deliveries to the site are excessive
- The Council's consideration is prejudiced by the consultation letter which set out the preferred course of action and "ruled out" other courses
- Existing planning conditions have been ignored and residents have no confidence that any additional ones will be enforced
- The amount of cattle on site means massive amounts of manure that is spread on the site on most weekends
- The stench makes it impossible to spend time outdoors
- There is no respite except to go away for the weekend
- Burning of toxic waste such as plastics, and dogs on the loose
- External consultants engaged by the Council have recommended remedial action
- If new conditions are imposed then these barns retain the potential to be used for intensive farming.
- A strategy of control by planning conditions has failed
- Even when emptied of all but 15 cattle, the noise emanating from the barns was found to be a 'borderline statutory nuisance'
- The farm has a high mortality rate and rotting carcasses are left by the gate for extended periods
- The recent attempt at soundproofing (barn 2) by replacing wooden slats with solid panels has made matters worse
- The crux of the problem is that the barns are too close to residents' homes

103 Preferences were expressed by the respondents for all the barns to be demolished, as the only way of achieving a permanent solution to the problem.

104 As an alternative, it was suggested that barn 3 should not exist; barn 2 should not be allowed to house cattle; and barn 1 should be allowed to house approximately 10 cattle in emergencies only. However it was also stated that this would not be a viable business model for the farmer.

105 Other issues raised by the residents included a contention that officers have called them 'liars' in correspondence to the LGO; that they disagreed with the process of decision-making in this case; and a litany of past incompetence by the Council.

- 106 Officers have not alleged that any residents are 'liars' although, in the light of the conviction of one of those residents on deception charges, there is some cause to doubt the veracity and credibility of her accounts.
- 107 The decision-making process in this case was decided by the Cabinet at its meeting on 14 September and there is no proposal to re-visit the process, which would in any event not be within the gift of this planning committee.
- 108 Several issues arising from the history of the site have been raised. However the issue for Members now is to consider the adequacy of the planning controls over the barns and to advise the Head of Planning & Assets on whether those controls should be altered. It should be assumed that any planning conditions will be capable of enforcement.
- 109 No responses were received from the Official Receiver, the occupants of properties at Windmill Farm, High Cox House, Springfield, Nettlebed Cottage or Nettlebed House or the Environment Agency, or from the owner of the adjoining freehold land to the south, over which BJS Farms are thought to have an agricultural tenancy.

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## **12. Assessment of Current Harm**

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- 110 The LGO acknowledged in correspondence in December 2012 that the use of the site was then "radically different" from the use between 2006 and 2010. The position then under discussion by AECOM was that the barns would house some 50 or so cattle in winter or emergency conditions.
- 111 It does not appear that the use of the barns in the recent past has been of the scale that was reported to the LGO by the residents. Currently there are said to be around 160 cattle and some sheep on the site, although officers' site visits have not identified cattle on the site in these numbers. It is unknown whether there are any 'linked holdings' to the site to which cattle can be moved without involving the cattle tracing service. Although local residents have continued to complain about noise and odours, Environmental Health officers have found no nuisances and planning officers have found nothing to concern them on recent site visits.

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## **13. Assessment of Potential Harm**

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- 112 However, it is also the case that the existing barns are not being used to their maximum potential under the current planning permissions, and the third barn has not yet been built. It is the advice of Fairhurst, and to a greater extent AECOM, that unacceptable impacts on residential amenity would result if they were to be so used.

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## **14. The preferred option**

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- 113 The Council is entitled to take into account the potential for future harm to amenity when considering whether to make any revocation or discontinuance Orders. The evidence, and the professional advice received by the Council, is



that the current planning controls on the site are such that there is a risk to the amenity of local residents if the barns are all built and used to their natural capacity. The fact that they are not currently so used does not prevent the making of an Order so to prevent harm occurring before it arises. It is however not possible to say with any degree of certainty whether any such Orders would be confirmed by the Secretary of State.

### **Option (1): Demolition & Revocation**

- 114 The first option would be to require the existing barns to be demolished and to revoke the permission for the third. Whilst this would make future monitoring of the site unnecessary, it is not an option that is supported by either AECOM or Fairhurst, both of whom accept that at least one of the barns can be made acceptable in planning terms. This option is therefore unlikely to be expedient in the interests of the planning of the area and, in the absence of a planning justification to require the site to be cleared, it is considered that it would be a disproportionate interference with the landowner's property interests and so incompatible with the landowner's Human Rights.

### **Option (2): Doing Nothing**

- 115 The main objections to making any Orders are that they are presently unnecessary, because there is no unacceptable harm resulting from the current uses of the barns, and that it would be a waste of public funds to have to pay the compensation especially when there appear to be no current prospects of the use intensifying to unacceptable levels. One option is therefore to decline to take any action at this stage, but to keep the situation under review with a view to making Orders in future if the use does unacceptably intensify.
- 116 It must be acknowledged however that this site places particularly large demands on Council resources. A decision to 'do nothing' is unlikely to lead to any diminution in the volume of complaints the Council receives. Additionally, the making of Orders, requiring confirmation by the Secretary of State, can take a considerable amount of time, which could potentially mean unacceptable uses of the site in the time required for confirmation of any future Orders.
- 117 The LGO found evidence of past harm to amenity, even if some of it was based on evidence disputed by the farmers and some of which is now in doubt after the conviction on deception charges of one of the complainants. The future ownership of the land is also in some doubt now that it appears to vest in receivers and the bank is seeking to take possession, presumably with a view to a re-sale.
- 118 Additionally, the advice from both Aecom and Fairhurst is that, if the planning position is left unchecked, the activities in the barns could increase to the extent that harm to residents' amenities is caused but which would not be subject to planning controls.
- 119 The current preferred option therefore lies somewhere in between these two extremes of clearing the site and doing nothing.

### **Option (3): Impose planning conditions**

- 120 Both AECOM and Fairhurst have recommended suites of planning conditions, albeit that AECOM consider that only one barn would be acceptable even with these, whereas Fairhurst consider that all three barns can be made acceptable.
- 121 AECOM recommended conditions to improve the visual impact of the first barn by suitable screening and material. Conditions were suggested regarding drainage. Odour-related conditions were suggested including that the building should not be used to permanently house cattle, regarding the removal of bedding, feed mixing, storage of slurry and drainage. They did not consider that it was possible to restrict the type of livestock. Noise-related conditions were also suggested including the times for loading and unloading cattle.
- 122 Fairhurst recommended, for all three barns, a noise management plan, a limitation on livestock types to sheep and cattle, a limitation on numbers, and an animal waste plan. They also suggested physical alterations to the buildings, which will be dealt with below.
- 123 Some of these suggestions are incorporated into the preferred option set out below.

#### **Option (4): Physical alterations**

- 124 Fairhurst suggested that the barns should require revised elevational treatment and access. It is considered that this is unnecessary depending on the suite of conditions that are imposed. The access arrangements to Barn 2 have already been altered, albeit without prior notification. The access now faces away from the farmyard and the northern elevation facing the yard has been closed up. This is to do what any elevational treatment measures to that barn would likely have required, although consultation responses have noted the need to maintain airflow in the buildings and it is not clear that the measures that have been taken have actually improved matters. It is also important that elevational treatment measures do not impede the free flow of air through the buildings, as animal welfare requires the provision of adequate ventilation.
- 125 One consultation response has suggested amending the access to the site so as to re-orientate the farmyard south of the existing buildings and further away from residents. This would also result in the access being re-sited to the south. Although such measures would potentially improve the impact on the residents' amenities, it is not considered that they are necessary in view of the hours of working conditions that it is proposed to impose. Additionally, a new access to the south of the barns would appear to require the use of land that is not within the existing holding, or would require the removal of existing well-established boundary vegetation.

#### **Option (5): Replacement planning permission**

- 126 One option is to require the existing buildings to be demolished (or to prohibit their use) and to grant a replacement planning permission elsewhere on the site away from the neighbours. This would have the particular advantage of eliminating complaints based on the proximity of the barns to the neighbours. However, the site levels rise significantly to the east of the existing buildings and so a replacement building would be unlikely to be as acceptable in

landscape terms. Additionally this would be a particularly disruptive measure. Although the land value is unlikely to diminish significantly, so limiting the compensation payable on that ground, there would be significant costs involved in rebuilding the barns elsewhere on the site, which would be unlikely to be outweighed by the public benefit if the use of the existing barns can be made acceptable.

### **Option (6): Revocation and Conditions**

- 127 This is the preferred option. Balancing the views of AECOM with those of Fairhurst, and taking all other consultation responses into account, it is considered that the existing two barns can be made acceptable, but not a third. It is therefore proposed to revoke the planning permission for the third barn. The alternative of serving a 'completion notice' under section 94 of the 1990 Act, which would (after a period of not less than 12 months) remove the permission without giving rise to a compensation entitlement, has been considered, but it does not appear to be an appropriate use of the power where the planning authority does not in fact wish to see the development completed.
- 128 The two existing barns should be made subject to a number of additional planning conditions. These do not include all of those matters recommended by Aecom or Fairhurst. It is considered that they should cover the following matters:
- a) A limitation on the type of livestock permitted to be housed in each of the barns. Specifically, cattle and sheep are permissible but not pigs, poultry or other farm animals. Although this will restrict the scope of the current enterprise to diversify, this restriction is consistent with the current farming practice.
  - b) A prohibition on using either of the barns for housing any livestock outside the months of November to April (inclusive) unless as a result of sickness, quarantine or new births.
  - c) Adoption of the waste management plan previously approved on appeal to apply to the continued use of both the existing barns.
  - d) A prohibition on mechanical feed mixing outside the hours of between 7.00am and 6.00pm on any day.
  - e) A prohibition on farm deliveries and removals outside the hours of 7.00am to 6.00pm on Mondays to Fridays and 9.00am to 6.00pm on Saturdays, with no deliveries or removals on Sundays or public holidays.
  - f) A prohibition on slurry without the prior approval of its storage methods.
  - g) The installation and subsequent maintenance of a drainage scheme for the barns.
- 129 With the addition of these conditions, the noise issues at the site are addressed by the limitations on animal types, the winter housing restriction, the requirement in the existing waste management plan for mucking out to be

carried out in daylight hours, and the time restrictions on mechanical feed mixing and deliveries. These conditions cover the issues that are most likely to be a source of noise that can be reasonably controlled and are therefore preferable to the noise management plan suggested by Fairhurst.

- 130 The proposed cap on animal numbers is described by Fairhurst in their addendum report (at paragraph 3.30 et seq.) as being required for animal welfare reasons. If the animals are treated adequately then they are less likely to make distress calls, and so there is a direct relationship between animal welfare and the amenity of adjoining residents. However, the existence of animal welfare regulations and supervision by Defra and other agencies would mean that planning conditions would essentially duplicate other statutory controls. They are therefore not considered to be required. The size of the barns should effectively self-regulate the cattle and sheep numbers within them.
- 131 Significant sources of odour are mucking out and the storage and spreading of manure. These issues are covered by the existing waste management plan, which it is now proposed to apply to the site rather than to rely on the building of the third barn in order to bring it into operation. The restriction on the types of livestock, and the seasonal restriction, will also address potential odour emissions. There is currently no slurry on the site, manure being collected in a bedded court system and so no need for a slurry store, but if it is to be introduced then storage arrangements will need to be approved.
- 132 Fairhurst have suggested that a drainage condition might be unnecessary, but the scope for standing dirty water after mucking out causing unpleasant odours suggests that a drainage scheme is required.
- 133 The combination of the above suggested planning conditions would mean that further physical alterations to either of the barns would be considered unnecessary.

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## **15. Human Rights**

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- 134 Article 8 (protecting private and family life and the home) and Article 1 of the First Protocol (peaceful enjoyment of possessions) to the ECHR are engaged. These are qualified rights. Interference with article 8 rights may be permissible where necessary. In all cases the interference must be proportionate to the legitimate aim pursued. In this case the proposed measures are considered to uphold the neighbours' article 8 rights and to be a proportionate interference with the landowner's property rights, and the authority is required to pay compensation resulting from the proposed interference with the development rights over the land.

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## **16. Conclusions**

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- 135 It is considered that some amendments to the planning controls relating to the land are appropriate in order to prevent future issues of noise and odours affecting the local residents' amenities. The current scale of operations at the site is not considered to have any unreasonable effects. Officers do not

consider that the existing levels of use of the barns have the devastating effects contended for by the neighbours. The measures proposed are not identical to either the AECOM or the Fairhurst suggestions, but are expected to provide an acceptable outcome that balances the concerns of the residents with the business requirements of the farming enterprise.

- 136 It is important to recognise that the agricultural use of the land itself does not require planning permission. Issues complained of such as the burning of toxic waste on the site, loose dogs on the road, rotting carcasses at the site entrance, and so on, appear to be carried out without reference to whether or not there are any barns on the site and are not within the scope of the planning authority's control. The problem of mud on the road is noted but this is not unusual in agricultural areas and the Local Highway Authority is not recommending any conditions to deal with this.
- 137 The proposed conditions relating to Barns 1 and 2 appear to be consistent with the current scope of the farming enterprise, as is the revocation of the permission for the third barn. There are no apparent plans to complete the building of that barn, with the site occupiers having previously stated that they would not do so without planning permission for a dwellinghouse on the site. There is no such planning permission.
- 138 The proposed measures will therefore restrict the scope of the enterprise to diversify or to expand significantly, but it is not anticipated that they will constrain its current operations to any unreasonable degree. They will however give the local residents the assurances that the uses of the barns in future can be constrained to acceptable levels. It is therefore considered expedient in the light of the development plan and particularly local plan policy GD1, other material considerations and the proper planning of the area to make Orders to revoke the permission for the third barn and to impose further planning conditions on the continued use of the existing two barns to achieve the proposed controls set out above.

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## **17. Recommendation**

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- 139 As noted earlier in this report, the committee's role is to make a recommendation to the Head of Planning & Assets for his decision. It is recommended that Members consider this report and state their opinion to the Head of Planning & Assets about whether or not the preferred option set out above is agreed.

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## **BACKGROUND PAPERS**

Local Government Ombudsman's reports of 2012 and 2016  
AECOM assessments of 2013  
Fairhurst assessment of 2014 and addendum of 2015  
Development plan documents

National Planning Policy Framework of 2012  
Consultation responses received