

## **Town & Country Planning Act 1990**

**Planning Appeal by:** Mr. Darren Pearce

**Location:** Field Known as Emily's Meadow,  
Opposite Marsh House Farm,  
Nr. Weobley  
Herefordshire  
HR4 8RS

**Development:** Retention of Portable Cabin Use as an  
Agricultural Classroom

**Council's Refs:** 204246

## **Appellant's Statement**

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## 1.0 Introduction

1.1 This appeal is against the decision of Herefordshire Council (“the Council”) to refuse planning permission for ‘Retention of Portable Cabin for Use as an Agricultural Classroom’ (“Classroom”). The appeal site comprises part of a field known as Emily’s Meadow’ (“the Site”), near the settlement of Weobley.

## 2.0 Chronology

2.1 The planning application was submitted to the Council on 2 December 2020 and ascribed the Council reference number of 204246. The application was refused planning permission under Council officers’ Delegated Powers on 5 February 2021 for the following reasons:

*1. The application site lies within the River Lugg sub-catchment of the River Wye Special Area of Conservation (SAC) and the nature of the proposal triggers the requirement for a Habitat Regulations Assessment to be undertaken. Under the Regulations there is a requirement to establish with certainty, and beyond all reasonable scientific doubt, that there will not be any adverse effect on the integrity of the River Wye SAC. The River Lugg sub-catchment however suffers from the effects of point source and diffuse water pollution and phosphate levels in the river have already exceeded conservation objectives. The proposal in this case would add to this through the generation of additional foul water / phosphates and the application has not provided a management solution which demonstrates there would be no pathways for the development to have an adverse impact on the integrity of the River Lugg / River Wye SAC. As a result, the LPA is unable to undertake a positive Appropriate Assessment as required by The Conservation of Species and Habitats Regulations 2017 (subject to Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019) and the adverse impact upon the integrity of the Lugg / Wye is such that*

*the proposal is contrary to Policies LD2 and SD4 of the Herefordshire Local Plan Core Strategy, the Natural Environment and Rural Communities (NERC) Act 2006 and the guidance set out at Paragraphs 174-177 of the National Planning Policy Framework.*

*2. By virtue of the restricted visibility onto the C1094 to the south of the site, the proposal has failed to ensure that a safe access arrangement is delivered which maintains the safety of the highway network and its users. The additional risk to highways safety resulting from the intensification in use of a substandard access would be severe and therefore the development is contrary to policies SS4, MT1 and RA6 of the Herefordshire Local Plan Core Strategy, policies WE02 and WE03 of the Weobley Neighbourhood Plan and Chapter 9 of the National Planning Policy Framework.*

*3. The siting and utilitarian nature of the classroom building is such that it is experienced as an incongruous feature which fails to respect the character and appearance of the rural landscape within which the site is set. The resultant harm which occurs to the character and appearance of the area is such that the proposal is contrary to policies SS6, LD1 and SD1 of the Herefordshire Local Plan Core Strategy, policies WE09 and WE013 of the Weobley Neighbourhood Development Plan and the principles set out in Chapters 12 and 15 of the NPPF.*

2.2 The Council has raised no other objections to the Proposal other than those expressed in its decision notice. Having regard to Article 35(1)(b) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 it can be reasonably assumed that the Council's decision notice clearly and precisely expresses its full reasons for refusal and all relevant policies.

2.3 Therefore, the Council raises no objection to the principle of the In this open countryside location and the effect upon local residents' living conditions. Consequently, the statement concentrates upon those

specific issues cited in the decision notice

### **3.0 Appeal Site and Locality**

3.1 The small appeal site tightly contains the Classroom. The appellant's property ("the Site") comprises a single field subdivided into paddocks demarcated by wooden posts and rails. The field rises gently to the south-west from a brook that marks the northern boundary of the field. The field has a road frontage onto the C1094.

3.2 The Classroom adjoins timber stables and hardstanding the use of which and all of the field is an equestrian following the grant of planning permission in 2019 (see below under 'Relevant Planning History'). Consequently, having regard to the Annex 2: Glossary to the National Planning Policy Framework, the appeal site comprises 'previously-developed' land.

3.3 There is a wide metal gateway in the north-east corner of the Site which serves the attendant wooden stable block, the Classroom and an informal car parking area.

3.4 The Site lies in open countryside 0.5 kilometres south-east of the village of Weobley linked by the C1094 which is a narrow lane with no footways.

3.5 The locality is not a designated landscape, a conservation area or within its setting or that of a listed building.

## **4.0 Appeal Development**

4.1 The existing single room Classroom is a flat roofed structure measuring approximately 7.5 metres long, 5.9 metres wide and 3.2 metres tall. Its walls and deep soffits are coloured dark green under a felt roof. There are windows on three of the four elevations with a door facing northwards towards the stable block.

## **5.0 Appellant's Business**

5.1 The Government's '25 Year Environment Plan' seeks to encourage children to be close to nature to benefit their health and wellbeing. Ten million pounds of funding has been made available by the Department of Education to deliver the 'Children and Nature Programme'.

5.2 This programme includes three delivery projects including the 'Growing Care Farm' Project created by Natural England in 2019 to create more opportunities for children and adults with a defined need to benefit from specialist health, care and educational services provided on Care Farms.

5.3 Care farming is the use of farming practices and offers people with defined health, social or educational need the chance to participate in a variety of farming activities for their therapeutic benefit. It is found that the combination of being in nature, part of a social group and taking part in a meaningful farming-related activities which makes this approach successful when used as part of a structured bespoke care package. This initiative aims to create up to 1.3 million places to meet this social need.

5.4 Care farming is conducted from commercial farms and smallholdings such as the appellant's smallholding. On average, sites cater for five different user types with 35 clients attending one to three times a week. The appellant's business caters for students who have been excluded from school.

5.5 Care farming provides health and social care and specialist education providers with an innovative and effective care option. Society as a whole benefits by reducing the strain on statutory services and the NHS. Most importantly, the service users benefit with improvements to mental and physical health, increased self-confidence and self-worth, reduced social isolation changing their lives for the better (see **Appendix 1**).

5.6 Up to 2020, the company operated from a commercial unit in Weobley, with students and staff being ferried to the appeal site.

However, with very little notice, its landlord required the business to vacate their premises. The company was fully committed to providing for its clients for the academic year 2020/21 and had no alternative local option but to place the Classroom on site but not before the appellant had submitted the first planning application for the Development (see 'Planning History' below).

5.7 Red Castle Training is today conducted solely from the Site and housed in the Classroom. It is run by educational practitioners to provide a range of bespoke programmes designed to suit the needs and interests of students.

5.8 The Principal of Red Castle Training, Ms. Vikki Pearce, has undertaken relevant specialist training and the company are members of 'Social Farms and Gardens' which is part of the Care Farm Project. The company anticipates that by April 2021 it will become a fully-fledged and registered Care Farm.

5.9 As a testament of the value of its service to the local community, copies of several testimonies are included in the appellant's evidence (see

**Appendix 2).** These testimonies are from present and past students, parents and allied providers.

5.10 In particular, Mr. Nick James-Williams of the Herefordshire Pupil Referral Service attests to the importance of the company to meeting the needs of a cohort of students not met in mainstream education. A supportive message from the local county councillor has also been received (**Appendix 3**).

5.11 With the implementation of a Business Travel Plan which transports students and staff to the Site together in a single journey since September 2020, the company has improved its operations.

5.12 The next academic year commences in early September and the company must agree its bookings of the new cohort of its students with its customers next in July. The Company's Service Agreement with its customers commits it to providing students with a service for as long as courses are completed.

## **6.0 Relevant Planning History**

6.1 Planning permission was granted in 2017 for the erection of a barn and hay store (application 172865/F). This structure remains on site as stables. In 2019, permission was granted for a riding arena including the change of use of agricultural land to equestrian and an agricultural building to stabling (Council reference: 191600/F).

6.2 In relation to this latter decision, the case officer concluded that the use of the existing gateway would not have “....*any demonstrable adverse impact on highways safety. The access is existing and the use of the arena for private*

*purposes only is not likely to lead to any significant intensification in its use over the current situation. No conflict with MT1 is therefore found.”*

Consequently, planning permission 191600/F included condition 3 limiting the use of the stables, arena and application site to accommodate and exercise the applicant's own horses (see **Appendix 4**). There was no requirement for the southern visibility splay from the access point to be improved.

6.3 A planning application to retain the Classroom was withdrawn by the appellant in August 2020 to overcome the case officer's concerns regarding highway safety and ecological matters (Council reference: 201432/F). No concern was raised at that time to the visual effect of the Classroom.

6.4 Amongst the consultee responses is one from the Council's Children's Services. Following a site visit by a member of staff, the Head of Additional Needs raised no objection (see **Appendix 5**).

## **7.0 Development Plan Policy**

7.1 Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that:

*“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”*

7.2 In relation to these appeals, the development plan comprises the Herefordshire Local Plan Core Strategy (CS) adopted 2015 and the Weobley Neighbourhood Development Plan (NDP) adopted, or made, in 2019.

## Herefordshire Local Plan Core Strategy 2011 – 2031 (CS)

7.3 In its decision notice, the Council cites CS Policies LD2 and SD4 in Reason for Refusal 1 (effect on the River Lugg SAC), Policies SS4, MT1 and RA6 in relation to Reason 2 (highway effects), and Policies SS6, LD1 and SD1 in relation to Reason 3 (visual and landscape effect).

### Reason for Refusal 1 – effect on River Lugg SAC:

7.4 **Policy LD2** 'Biodiversity and Geodiversity' requires development to conserve, restore and enhance the biodiversity assets of Herefordshire through the retention and protection of nature conservation sites and habitats. Development that would be liable to harm the nature conservation value of a site or species of local nature conservation interest will only be permitted if the importance of the development outweighs the local value of the site that supports important value.

7.5 **Policy SD4** 'Wastewater treatment and river water quality' requires development not to undermine the achievement of water quality targets of rivers in the county, in particular through the treatment of wastewater. Proposals will need to fully mitigate the adverse effects of wastewater discharges into rivers caused by the development.

(comment: the appellant will demonstrate the present, proposed alternative and potential alternative drainage systems would result in, at worst, a net neutral effect upon the quality of river water and upon nature conservation sites and habitats).

### Reason for Refusal 2 – highway effects:

7.6 **Policy SS4** 'Movement and transportation', amongst other things,

requires development to be designed to ensure the efficient and safe operation of the network and not detrimentally impacted.

7.7 **Policy MT1** 'Traffic Management, highway safety and promoting active travel', amongst other things, requires development to be designed and laid out to achieve safe entrance and exit

7.8 **Policy RA6** 'Rural Economy', amongst other things, permits development where they do not generate traffic movements that cannot safely be accommodated within the local road network.

(comment: the appellant will demonstrate that the Council does not contend the proposal cannot physically achieve the required southern visibility splay but that it is not possible to impose a reasonable planning condition to secure the required splay).

#### Reason for Refusal 3 – visual and landscape effect

7.9 **Policy SS6** 'Environmental quality and local distinctiveness' requires development to conserve and enhance those environmental assets that contribute towards the county's distinctiveness in particular its landscape especially those with specific designations.

7.10 **Policy LD1** 'Landscape and townscape', amongst other things, requires development to demonstrate that character of the landscape and townscape has positively influenced the design, scale and nature and site selection.

(comment: the appellant demonstrates the current structure is appropriate to its rural setting but that, if necessary, it could be clad in such a way as to reflect the design and composition of the adjoining stable building).

7.11 **Policy SD1** 'Sustainable design and energy efficiency' requires

development to create safe environments.

Weobley Neighbourhood Development Plan 2011 - 2031 (NDP)

7.12 The NDP was 'made', or adopted, on 11 October 2019.

7.13 The NDP, amongst other things, seeks by 2031 to retain, improve and upgrade service, facilities and infrastructure to meet the needs of a growth within the parish and the hinterland served by the village (first bullet point, paragraph 4.2 refers). To achieve the vision of the NDP, amongst other things, it seeks to maintain the current level of community facilities and amenities and to enhance them (first bullet point, paragraph 4.3).

7.14 **Policy WE01** supports 'positive measures' the meet the principles and policies of the NDP including the retention and enhancement where possible of community facilities and services (criterion 'a') and encourage local business opportunities and employment (criterion d).

7.15 The NDP stresses that its emphasis for "*...business and enterprise is to support existing and developing business within the Parish....*" (paragraph 8.1 refers).

Reason 1

7.16 No NDP policy is cited by the Council in this reason for refusal.

Reason 2:

7.17 **Policy WEO2** 'Protection and Enhancement of Community Facilities and Services', amongst other things, supports the retention of key services. This policy covers Weobley High School. Proposals to enhance existing or provide

new or additional community facilities and services will be supported where, amongst other things, *“access .....can be satisfactorily provided.”* (criterion ‘c’).

7.18 **Policy WE03** ‘Protection of Local Green Space’ is restricted to land designated as ‘Local Green Space’. The appeal site is not one such area of land and therefore is irrelevant in the determination of this planning appeal.

7.19 **Policy WE023** ‘Highway Design Requirements’ (not cited by the Council), amongst other things, requires proposals to ensure a safe access into the adjacent roads (criterion ‘b’).

### Reason 3:

7.20 **Policy WE09** ‘Conserving the Landscape and Scenic Beauty of the Parish’ requires the preservation or enhancement of the landscape *“..especially its important landscape features that are identified as contributing to the landscape character types...”*.

7.21 **WE013** ‘Design and Appearance – Buildings outside Weobley Conservation Area’ requires new development to achieve good standards and variety of architecture and design where there is a need to respect local distinctiveness and the traditional qualities and characteristics of the rural area.

### National Planning Policy Framework (NPPF)

7.22 The NPPF identifies the purpose of the planning system is to achieve ‘sustainable development’. The planning system has three overarching objectives (paragraph 8): economic, social and environmental.

7.23 Paragraph 11 of the NPPF identifies the presumption in favour of sustainable development.

7.24 Paragraph 80 requires 'significant' weight to be placed on the need to support economic growth taking into account both local business needs and wider opportunities for development.

7.25 Paragraph 83 requires planning decisions to enable the sustainable growth and expansion of all types of business in rural areas and the development and diversification of other land-based rural businesses.

7.26 Under paragraph 91, planning decisions should aim to achieve healthy, inclusive and safe places which promote social interaction, enable and support healthy lifestyles especially where this would address identified health and well-being needs.

7.27 Paragraph 92 requires planning decisions to provide the social facilities and services the community needs including taking into account and support the delivery of local strategies to improve health, social and cultural well-being for all sections of the community.

7.28 Paragraph 94 states it is important that a *"sufficient choice of school places is available to meet the needs of existing communities with planning authorities taking a "proactive, positive and collaborative approach to meeting this requirement and to development that will widen choice in education."*

Planning authorities should "give great weight to the need to create and expand schools through planning decisions.

7.29 Paragraph 109 states that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety or the residual cumulative impacts on the road network would be severe.

7.30 Paragraph 117 requires the promotion of an effective use of land and paragraph

118 requires them to encourage multiple benefits from rural land including through mixed use schemes.

7.31 In relation to 'previously-developed' land, paragraph 121 requires planning authorities to adopt a positive approach towards the alternative use of land which is current developed where this would help meet identified development needs. In particular, they should support proposals to make more effective use of sites that provide community services such as schools provided this maintains or improves the quality of service provision.

7.32 Paragraph 170 requires decisions to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital ecosystem services.

7.33 Paragraph 175, amongst other things, requires planning authorities to apply the following principles:

- If significant harm is caused to biodiversity, permission should be refused;
- Development outside a Site of Special Scientific Interest and which is likely to have an adverse effect on it should not normally be permitted;

7.34 Proposals leading to the loss or deterioration of irreplaceable habitats should be refused permission.

7.35 Paragraph 177 states that presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.

## **8.0 Appellant's Case**

### *Principle*

8.1 The context of this appeal is that the Council raises no objection in principle to the Red Castle Training being conducted from the appeal site at its rural location. This approach is cognisant of the important social and educational function fulfilled in the locality only by this company in the meeting the educational needs of students that have been excluded from mainstream local schools.

8.2 The Council's stance also recognises the logic of locating the business at the Site where its activities are based and given the strong Government, national and develop plan policy support for this business.

8.3 It has been demonstrated that the business is realising Government and Natural England policy in its Children and Nature Programme of which Care Farming is an important component. The Framework gives 'significant' weight to the need to support economic growth and 'great' weight to the need to create and expand schools. Red Castle Training is both a local employer and a provider of an educational service to those who do not attend local schools.

8.4 Therefore, the appellant considers that 'considerable' weight should be given to the need for Red Castle Training to continue to provide its educationally- important service from the Site.

### *Reasons for Refusal*

8.5 The Council's three reasons are specific. In its Reason for Refusal 1, the Council asserts that the proposal would generate of additional foul water and phosphates and the appellant has not provide a management solution which demonstrates there would be no pathways for the development to have an adverse impact on the integrity of the River Lugg / River Wye SAC.

8.6 In its Reason for Refusal 2, the Council's objections on highway grounds arise only from an alleged restricted visibility from the access to the south. No objection is raised to the northern visibility splay or the effect upon the wider road network.

8.7 In its Reason for Refusal 3, the Council asserts that the Classroom is an incongruous feature harmful to the rural landscape only by virtue of its siting and alleged utilitarian nature.

#### Reason for Refusal 1

8.8 The appellant accepts the principle that a material increase in phosphate levels in the River Lugg has the potential of harming the SAC. The appellant also accepts that the use of the Classroom could, if unchecked, potentially increase phosphates levels into the adjoining watercourse which has an indirect pathway to the River Lugg.

#### *current drainage arrangement*

8.9 The current drainage arrangement for the Classroom entails the use of two 'portaloo's of a standard, sealed design with no drainage onto the ground or watercourse. These portaloo's are emptied by their supplier on a weekly basis and transported to the Leominster treatment works. Presently, the appellant understands that these treatment works lack the appropriate phosphate-stripping plant to prevent phosphates from entering the River Lugg.

Therefore, there is a potential pathway between the Site and the River Lugg SAC.

8.10 However, all students attending the Classroom and staff reside in the local area. Were they to attend a school in the northern part of the county instead or to remain at home locally both of which drain to local treatment plans all with pathways to the River Lugg SAC, there would result no net reduction in phosphate levels entering the River Lugg SAC. Consequently, the current drainage arrangement has a neutral effect upon the SAC to the alternative incidence of students and staff not attending the Site.

8.11 Consequently, the use of the Classroom results in no greater phosphates entering the River Lugg SAC than would otherwise occur were the use of Classroom be required to cease.

*proposed alternative drainage arrangement*

8.12 Following the Council case officer's concerns in the first planning application over the current reliance upon the two Portaloos, the appellant investigated an alternative drainage arrangement.

8.13 The alternative system promoted by the appellant in his second planning application is that of w.c. being inserted in the Classroom and the installation of a private treatment plant connected to a drainage field within the Site. The Council has issued and adopted a Position Paper on such systems (for extract see **Appendix 6**). The Council accepts the principle of such a system subject to several criteria including the need to ensure the drainage field is a minimum of 50 metres from the nearest watercourse.

8.14 Taking into account fully this Position Paper, the appellant has calculated that it is possible to accommodate a significant drainage field within the Site. This field could cover an area of up to approximately 0.34 hectares comprising

up to approximately 2 kilometres of perforated drainage piping. It is inconceivable that a drainage field of this extent with a phosphate stripping plant, if necessary, cannot appropriately disperse the limited six hour flow of foul water arising from the weekday and daytime use of the Classroom.

8.15 In addition, if deemed necessary, such a system could include phosphate 'stripping technology to contribute to its efficacy referred to in the Position Paper.

*potential alternative drainage arrangement*

8.16 Following the Council's rejection of the 'drainage field' option in the appellant's second planning application, the appellant has investigated an alternative 'cesspool' system. Planning policy accepts a cesspool system where a private drainage system is not a feasible proposition. This system entails the installation of a tank connected to a wc which is emptied periodically. Due to the relatively low volumes of waste generated by the Classroom, the contractor advises that the tank need only be emptied quarterly.

8.17 To meet the Council's requirements, the appellant would choose only a Hereford-based contractor who would dispose of the waste to the Eign water treatment works at Hereford which includes phosphate-stripping plant and which does not drain to or affect the River Lugg SAC. This arrangement could be subject of a reasonable planning condition.

8.18 The appellant has demonstrated that the current reliance upon two, sealed Portaloo's to serve the Classroom results in a no net increase in phosphates entering the River Lugg SAC compared to the alternative of students and staff attending local schools or remaining at home. The alternative 'drainage field' system would accord fully with the Council's adopted

criteria and not result in phosphates entering the adjoining watercourse avoiding harm to the adjoining watercourse and, thereafter, the River Lugg SAC. The 'cesspool' option would not have a pathway to the River Lugg SAC as waste would be treated only at the Hereford treatment plant which has phosphate stripping equipment.

8.19 With none of these three optional drainage systems, would there occur an increase in phosphates to the River Lugg SAC nor would they harm the habitat. Consequently, the continued use of the Classroom would accord with national and development plan policy with regard to the protection of biodiversity.

8.20 There is no reason to suppose that a drainage arrangement cannot be designed to ensure that the River Lugg SAC would not be significantly harmed.

#### Reason for Refusal 2 – highway matters

8.21 The Council's only highway concerns stem from an alleged inadequacy of the southern visibility splay from the existing access and the intensification of this access.

#### *Submitted Travel Plan*

8.22 To address the issue of intensification of use of the existing site access, the appellant has formulated and implemented a Business Travel Plan since September 2020 (for a copy – see submitted appeal documents. This plan entails all students and staff being picked upon by mini-bus in Weobley and transported in a single movement to the Site in weekday mornings. In weekday afternoons, this process is reversed with all students and staff being transported from the Site to the dropping-off point in Weobley. This arrangement entails only four movements at the Site per day. Only two of

these movements would entail the mini-bus exiting the Site and using the southern visibility splay. The two other movements would entail the mini-bus having more than 43 metres for forward visibility along the lane whilst it turns into the Site from the north.

8.23 This Travel Plan has two main advantages to the appellant's business. It minimises vehicle movements at the Site and it provides greater operational control of students.

8.24 Therefore, whilst there is a greater use of the access to the Site due to the use of the Classroom, this amounts to only two mini-bus movements per weekday.

8.25 The continued application of the Travel Plan, its enforcement and periodic review can be secured by the imposition of a reasonable planning condition. From the response of its Highway Officer to the second planning application, the Council suggests that the submitted Travel Plan is unenforceable by planning condition. This is not understood by the appellant.

8.26 The appellant implements the currently informal Travel Plan to demonstrate the company can operate within its strictures. The Travel Plan identifies clearly the level and type of permissible vehicular movements which, if necessary, could be checked by the Council in the event of allegation of non-compliance being made. The appellant considers their position is supported frequently in planning decisions the Council has made in recent times on other development schemes.

8.27 To this end, the appellant suggests the following condition:

*"Within two weeks of the date of this decision, Travel Plan shall be submitted to and approved in writing by the Local Planning Authority. The measures*

*approved in the Travel Plan shall be implemented within two weeks of the date of the Council's approval shall be so maintained unless the prior written approval of the Local Planning Authority is obtained for any variation."*

#### *Southern visibility splay*

8.28 As part of the second planning application, the appellant commissioned a traffic speed survey of the volume and average speed of passing vehicles. Its findings would inform the required visibility splays that would be commensurate with the recorded average speeds having regard to the Council's adopted highway design guide (for relevant extract – see **Appendix 7**).

8.29 The findings of this survey were not challenged by the Council and showed the level of use of the lane to be very low. The appellant submitted a plan showing a potential southern splay of at least 53 metres.

8.30 In response, the Council considered northern and southern splays 43 metres in length were required. Whilst it accepts the required northern splay can be achieved it argues the required southern splay cannot. This stance is based upon the premise that the roadside hedge cannot be trimmed and retained at a height to ensure the driver of the mini-bus can look over the hedge i.e. 1.5 metres. The Highway Officer also assumes that the submitted Travel Plan (which restricts access to the Site to minibuses) is unenforceable.

8.31 The appellant submitted with the second planning application an illustration as to how the required southern splay can be achieved with the trimming of the roadside hedge to 1.5 metres. This trimming and retention of a maximum hedge height can be the subject of a reasonable and enforceable planning condition.

8.32 The appellant also submitted a series of photographs demonstrating that the driver of the mini-bus – the only vehicle that enters and leaves the Site as a result of the use of the Classroom – would be able to see over the trimmed hedge to see vehicles originating from the south.

8.33 Notwithstanding this, during the second planning application the appellant offered to the Council the alternative means of providing the required southern splay by relocating or removing and replanting the roadside hedge to behind the southern splay. This alternative means of achieving the 43 metre long southern splay required by the Council can be achieved with the modest relocation of replacement of the roadside hedge starting from the access point. (see **Appendix 8**). This too can be the subject of a reasonable planning condition which is commonly imposed by the Council to such proposals. The Council did not respond to this suggestion.

8.34 Therefore, the appellant has demonstrated that the required southern splay can be achieved and secured by reasonable planning condition either by trimming the existing roadside hedge such that the driver of the mini-bus can see, and be seen, over the hedge or by marginally relocating the roadside hedge to beyond the southern splay.

8.35 The Council's case in this regard appears to be not that the appellant is unable to physically meet its requirements within his land or upon highway land but that it is not possible to impose a reasonable planning conditions to secure and retain such a splay. This contradicts its stance that the northern splay can be so secured. The appellant has demonstrated that a reasonable planning condition can be imposed and that the Council regularly imposes such conditions to achieve its highway requirements regarding new development.

### *Other considerations*

8.36 There are further material considerations in support of the appellant's highway case.

8.37 The proposed development, entailing a policy-compliant improvement to the southern splay and only two additional vehicular movements per day, would constitute a significant net benefit in highway terms.

8.38 In granting permission to use the Site for equestrian purposes in 2017, the Council concluded the private use of this site would not result in highway harm arising from the use of the existing access and its southern splay (**Appendix 1**). The Council did not require the southern splay to be improved with the 2017 permission. Therefore, there is no reason to suppose that the Council's consideration of the highway implications of the 2017 development were so finely balanced that the modest increase in the use of the access arising from the Classroom use would now constitute an unacceptable harm.

8.39 The submitted traffic survey demonstrates the lane to be very little used for most of the time (see **Appendix 9**). The proposed southern splay relates only to northbound traffic and the survey shows there are two peaks of its use by northbound traffic: between 8am and 9 am (a weekday average of 31 northbound vehicles) and between 3pm and 4pm (an average of 21 northbound vehicles). These periods of time would coincide with when the mini-bus would exit the Site on a single occasion.

8.40 Applying these weekday average numbers, a northbound vehicle passed the Site between 8am and 9am on average once every 2 minutes or 120 seconds (that is: 31 vehicles divided by 60 minutes). On average, one northbound vehicle passed the Site every 3 minutes or 180 seconds between 3pm and 4pm (that is: 21 vehicles divided by 60 minutes).

8.41 Even if it was to be assumed that the average number of passing vehicles occurred only over half an hour within these periods, these figures would increase to only an average of one passing vehicle per 1 minute between 8.30 am and 9 am and one passing vehicle every 1 ½ minutes between 3pm and 3.30pm.

8.42 Therefore, the likelihood of the mini-bus exiting on one occasion in each period at the same time as a northbound vehicle passing the site is low. This is irrespective of the ability of the southern visibility splay being improved in accordance with the Council's requirements.

### Reason for Refusal 3

8.43 The Council's landscape objections relate only to the siting and current appearance of the Classroom.

8.44 The context of the appeal is that it lies in open countryside but within an area that is not designated for landscape purposes.

8.45 The Classroom stands to the fore of the Site but not in isolation as it forms part of a building group including the stable block. Its dark-coloured walling reduces its effect when seen from the lane. Almost all receptors are occupants of passing vehicles who partially see the Classroom from lower vantage points over a roadside hedge.

8.46 The appellant's position is that the Classroom does not appear as an incongruous element in this rural landscape by virtue of its dark colour and that it has a limited visual envelope from which it can be seen from public vantage points. Irrespective of this, there is scope to screen the structure further by additional hedging or tree planting.

8.47 However, if the Inspector agrees with the Council's stance on this matter, there is scope to clad this building to alter its shape and treatment (see **Appendix 10**). These cladding works can be the subject of a reasonable planning condition.

8.48 This cladding scheme entails timber cladding of the walling and the addition of a pitched roof to reflect the appearance of a rural building marrying with that of the adjoining stable building.

#### Other Material Considerations

8.49 The appellant has demonstrated that the principle of retention of the Classroom on the appeal site is not opposed by the Council and that it is strongly supported by Government, national and development plan policy.

8.50 Even if it were found that the development does breach planning policy in some way (which the appellant contends it does not) the appellant has identified as a significant material consideration in support of his case the company's educational service is a crucial element of the provision of education to young people in the area. The allowance of this appeal will enable students and staff to remain on the appellant's small holding which provides students with the education fit for their needs.

## 9.0 Conclusions

9.1 The Council raises three objections to the retention of the Classroom: the effect upon the River Lugg Special Area of Conservation, the adequacy of the southern visibility from the access point and its visual impact. The Council raises no other objection including the principle of the educational activity conducted at this rural site.

9.2 In response, the appellant has demonstrated that neither the current, proposed alternative or potential alternative drainage systems would result in the creation of a pathway between the Site and the River Lugg SAC. These three alternative arrangements to dispose of wastewater including phosphates would, at worst, have a net neutral effect upon the level of phosphates entering the SAC.

9.3 The appellant also demonstrates that the Council's highway case is not that the required 43 metres long southern visibility splay cannot be physically created either within the appellant's land or on highway land. Rather, the Council's case will be that it is not possible to secure and maintain the splay or the appellant's submitted Business Travel Plan by planning condition. The appellant has demonstrated the Council's assertion is wrong and contradicts its own regular reliance upon such planning conditions in the approval of new development.

9.4 Given the simple form, dark colour and limited visual envelope, the appellant has demonstrated that the Classroom does not appear as an incongruous element of this rural location harmful to the landscape. However, without prejudice to this position, the appellant has demonstrated that the building can be clad in such a way as to ensure the Classroom marries with the character and appearance of the adjoining stable building which was granted express permission by the Council in recent years partly because its

visual impact was found acceptable.

9.5 For these reasons, the appellant has demonstrated that the retention of the Classroom accords with national and development plan policy. Even if it were found that the development does breach planning policy, the appellant has identified as a significant factor in favour of the appellant's case is that the company's educational service is a crucial element of the provision of education to young people in the area. Its activities are strongly supported by Government and Natural England.

9.6 It is for these reasons that the Inspector is respectfully requested to allow this appeal.