



# Appeal Decision

Inquiry opened on 13 March 2007

Site visit made on 14 March 2007

by **Keith Turner** LLB(Hons) DipArch(Dist) RIBA MRTPI MCI Arb

an Inspector appointed by  
the Secretary of State for Communities and Local Government

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Date 25<sup>th</sup> April 2007

## 4 Appeals relating to Sidmouth Garden Centre, High Street, Sidford, Devon EX10 0NA

- The appeals are made by Mr I Barlow

### Appeal 1: APP/U1105/C/06/2023407

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is against an enforcement notice issued by East Devon District Council.
- The Council's reference is EN06/027.
- The notice was issued on 14 July 2006.
- The breach of planning control as alleged in the notice is a material change of use of the land from agricultural use to use as a hardstanding for car parking, storage of materials and display of goods for sale in relation to the adjacent Garden Centre.
- The requirements of the notice are to cease using the land as a hardstanding for car parking; remove from the land any hard surface for use for car parking; remove any stored materials and goods for sale in relation to the adjacent Garden Centre.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as varied is upheld as set out below in the Formal Decision.**

### Appeal 2: APP/U1105/C/06/2032566

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is against an enforcement notice issued by East Devon District Council.
- The Council's reference is EN06/038.
- The notice was issued on 17 November 2006.
- The breach of planning control as alleged in the notice is the carrying out of a material change of use of the land from agricultural use to use as a hardstanding for car parking, storage of materials and display of goods for sale in relation to the adjacent Garden Centre.
- The requirements of the notice are to cease using the land as a hardstanding for car parking; remove from the land any hard surface for use for car parking; remove any stored materials and goods for sale in relation to the adjacent Garden Centre.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, the enforcement notice is quashed, and**

**planning permission is granted in the terms set out below in the Formal Decision.**

**Appeal 3: APP/U1105/A/06/2024911**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is against the decision of East Devon District Council.
- The application Ref 06/0722/COU, dated 10 March 2006, was refused by notice dated 9 June 2006.
- The development proposed is the extension of garden centre.

**Summary of Decision: The appeal is dismissed.**

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**Appeal 4: APP/U1105/A/06/2031652**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is against the decision of East Devon District Council.
- The application Ref 06/2161/FUL, dated 18 July 2006, was refused by notice dated 17 October 2006.
- The development proposed is the retention of car park and storage area (revised application).

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

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**Procedural Matters**

1. The inquiry sat for 3 days on 13 to 15 March 2006.
2. At the Inquiry an application for costs was made by Mr I Barlow against East Devon District Council. This application is the subject of a separate Decision.
3. All evidence was taken on oath at the inquiry.
4. The Appellant withdrew Ground (d) of Appeal 1.
5. The Council reconsidered their position having determined the planning application which is the subject of Appeal 4 which did not include refusal on matters of highway safety. They indicated that they no longer wish to pursue Reason (c) for issuing Notice A and Reason for Refusal no.2 in relation to the application which is the subject of Appeal 3.

**Background Information**

6. The appeals relate to 2 distinct schemes for development. The first, which I shall call Scheme 1, has already been implemented and comprises extension of the garden centre into adjacent land to accommodate a general storage area, extension of the car park and an area in which there are trees in containers. The development was unauthorised. In an effort to regularise matters the Appellant submitted a planning application for it, but this was refused by the Council and this decision is the subject of Appeal 3. Following this the Council served Enforcement Notice A requiring the unauthorised use to cease and operational elements enabling it to be removed. This is the subject of Appeal 1.
7. The Appellant then submitted a second planning application which relates to part of the development carried out, namely the change of use of adjacent land to accommodate a general storage area and an extension of the car park. The area containing the trees was not part of this application. This I shall refer to as Scheme 2. The Council refused planning

permission and their decision is the subject of Appeal 4. They also subsequently served Enforcement Notice B relating to this reduced area requiring the unauthorised use to cease and operational elements enabling it to be removed. This is the subject of Appeal 2.

8. I shall deal first with the 2 appeals relating to Scheme 1. I shall then consider those pertaining to Scheme 2 so far as there are material differences.
9. An area of land at the northern edge of the site to which Appeals 1 and 3 refer, just beyond the extended car park, was used for the display of garden sheds and general storage. That element of the activity is not referred to in the Notice and it has now ceased and the land has been restored to grass. In these circumstances I consider that this use is not before me.

### **Appeal 1: Ground (c)**

10. This ground of appeal is confined to the area of the appeal site currently occupied by the trees in containers. The Appellant contends that there has been no material change of use of this land because the growing on of trees in containers should be regarded as an agricultural use.
11. S336 of the Town and Country Planning Act 1990 defines the term agriculture. Amongst other things it includes horticulture, market gardens and nursery grounds. It also includes the use of woodlands where that use is ancillary to the farming of land for other agricultural purposes. Both parties agreed with me that the definition of the use was a matter of fact and degree.
12. The facts in this case are as follows. The Appellant imports trees of various species and sizes from abroad. Most are acquired already in containers, but some are delivered without, having only a protected root ball. The latter are planted into containers at the site. The trees are then kept on the land until they are sold. This period varies, on average between 12 and 18 months according to the Appellant, though he indicated that some may be there for up to 4 years. However, all are kept on site for at least 6 months to ensure that they have not been damaged or unduly distressed by being moved. This is because they are sold with a 2 year guarantee.
13. During the time they are on the site the trees are tended as required. This can involve pruning, top dressing, watering and feeding, and possibly re-potting. This takes up about 50% of the time for one specialist staff member, though others may assist as required. The watering is automatic, though it has to be checked since the trees are valuable.
14. The trees are quite large and heavy. Consequently, machines are required to move them around the site or to lift them for re-potting. To facilitate this, hard surfaces were laid because experience proved that the machines could not operate on the land in wet conditions without some form of surface. However, the Appellant contends that this operation should be regarded as permitted development under the terms of Class B of Part 5 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.
15. The trees are advertised on the internet through the garden centre's website. However, the Appellant conceded that the information was out of date and the main reason for this was that he had never sold a tree by this means and so had not devoted time to it. He stated that all the trees had been sold from the site, with very few being as a result of members of the public browsing.

16. There is restricted public access to the area containing the trees now, though it remains unclear whether this was the case at the time the Notice was issued. However, the area has large fork lift trucks and other vehicles operating within it and so I accept that there are good reasons of health and safety for restricting access. Members of the public can enter the area if accompanied by a member of staff and notices to this effect are displayed at its entrance from the car park.
17. The matter to be determined is whether the primary use of this area of the appeal site is for the storage and display for sale of trees as the Council allege, or whether it is the growing on or cultivation as the Appellant claims.
18. The pattern of activity described by the Appellant indicates that the trees which are brought to the site are generally semi-mature, though I accept that the ages may vary. Having regard to the case law cited<sup>1</sup>, the fact that they are containerised does not, in my view, detract from consideration of cultivation taking place, especially since much horticulture uses this technique nowadays. However, they are kept on the site for two reasons. First, to ensure that they are healthy and can be guaranteed, and secondly, until they are sold. Any cultivation which takes place in the interim serves the purpose of keeping the trees healthy and saleable. I consider this to be distinct from bringing on saplings, or cultivating plants from seed or plugs to a developed state where the primary need for the cultivation is to obtain the finished plants for sale.
19. The area on which the trees are kept may be separate from the main sales area, but that does not indicate a different use. The trees are stored and maintained on the land until sold and, whilst the area has restricted access, it can and still is used for the display and sale of the trees to either members of the public, other garden centre operators, or landscaping contractors. Whilst customers may not casually browse and buy them, the primary purpose of their presence on the land is storage and display for sale. The care of the trees required in the interim is, in my judgement, incidental to that use.
20. For the above reasons I find that the use of this part of the appeal site is not agriculture. Therefore, a material change of use has taken place as alleged in the Notice. Accordingly the appeal under Ground (c) fails. It follows from this conclusion that the areas of hard standing which have been laid within this area to facilitate the use of machinery in association with the storage and display of the trees cannot benefit from permitted development rights conferred by Class B of Part 5 to Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

### **Appeal 1: Ground (a) and the Deemed Application, and Appeal 3**

#### Planning Policy

21. The appeal site lies outside the boundary of any settlement and so is situated in open countryside for the purposes of planning policy. Policy ST5 of the Devon Structure Plan 2001-2016 states that development in the open countryside should be strictly controlled. This stance is echoed in Policy ST16 relating to Local Centres and Rural Areas. The adopted East Devon Local Plan seeks, through Policy S4, to ensure that development in the countryside will only be permitted where there is a specific Local Plan policy that explicitly permits such development and where it would not harm the landscape, amenity and

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<sup>1</sup> *Purser v The Local Board of Health for the District of Worthing QBD (1887)*

environmental qualities of the area. Policy SH9 relates specifically to rural shops, garden centres, nurseries and similar retail uses. It requires that such proposals do not harm the rural character of the landscape or the amenities of the locality.

22. The site is also located within the East Devon Area of Outstanding Natural Beauty [AONB]. Structure Plan Policy CO3 requires that the conservation and enhancement of the natural beauty of such areas is given priority over other considerations. This approach is reflected in Local Plan Policy EN1.

#### Main Issue

23. The main issue to be considered under Ground (a) of Appeal 1, the deemed application and in Appeal 3 is the effect of the development upon the character and appearance of the surroundings.

#### Reasons

24. The appeal site lies adjacent to a garden centre which has been long established. The enterprise was taken over by the Appellant some 5 years ago and has developed into a thriving business. This is evidenced by the proposals for development for which planning permission has been granted. It is generally accepted that the garden centre is now more attractive than formerly. The Council also stated clearly that they were not seeking to terminate that use or business. The appeal proposals comprise an extension of that enterprise into adjacent agricultural land.
25. Local Plan Policy SH9 deals with garden centres amongst other things. It permits the conversion of existing buildings or provision of a new building in the countryside for retail use, selling goods wholly or predominantly produced on site or on adjacent land subject to provisos. The appeal development does not involve the provision of or re-use of a building. In addition, the retail sales involved on the appeal site consist of the storage, display and sale of products imported from elsewhere. For these reasons I agree with the Council that this Policy is not relevant to the appeals.
26. The other countryside policies in the Local Plan seek to restrain development generally and this reflects High Level Policy Aim 1 of the Structure Plan. Added to the framework of restraint is the designation of the area as an AONB. Paragraph 21 of Planning Policy Statement 1 [PPS1] indicates that conservation of the natural beauty of the landscape and countryside should be given great weight in planning policies and development control decisions in such areas. Local policy reflects this by placing great emphasis on preserving the character and appearance of the landscape.
27. The characteristics of the landscape were identified in some detail by the Council's expert and these were not challenged. Its essential form derives from the underlying geology. The high ground comprises the remains of a level plateau incised now by river valleys. The rock underlying the ridges has created a poor soil now colonised by heath. Beneath this, on steep slopes, is Greensand which has generated shallow sandy soils now covered with woodland. The more gentle, lower slopes have deep clay soils which have been farmed.
28. The basic structure translates into a landscape which is somewhat unusual in having woodland near the ridges, with open rolling fields beneath. The field pattern tends to follow the topography and forms a patchwork of more or less even sizes and quite small scale. The

field boundaries generally comprise hedgerows, some on Devon banks, with isolated native trees interspersed. The appeal site lies within the lower slopes.

29. The Appellant acknowledges that the surrounding landscape is important and should be preserved. However, he contends that the development carried out is not harmful to it. An analysis carried out on his behalf indicates that the appeal site is visible within the landscape from only limited viewpoints. The topography screens it in large measure from the area identified by the Council as being the zone of visual influence of the appeal site. This difference in view arises because the Council have defined the zone as being the horizon seen from within the site whereas the Appellant has taken viewpoints into the site. Both are relevant, though in the context of this development I consider the latter to be more important.
30. The viewpoints from which the site is visible from its surroundings may be limited, but they are significant. The first is from a short stretch of the B3176 which is one of the main routes into Sidmouth. It provides views down into the site, the whole extent of which can be seen. Whilst I accept that the hedges flanking this road had been recently cut when I saw them, and that in time they would grow again to partially screen these views, this is very probably an annual cycle. It also does not take into account views from vehicles larger than cars, such as coaches and buses taking people to and from the resort town. There are also similar but more elevated viewpoints from further up the valley side and, whilst they may be on less used routes, they are nevertheless accessible.
31. The second significant viewpoint is from Beacon Hill to the north-west of the site with other views being available from Core Hill. This area is popular, publicly accessible and contains public footpaths. From this elevated vantage point the setting of Sidmouth is readily seen together with the setting of the appeal site. Although seen from some distance, the site's physical separation from the edge of the town can be seen together with features within the appeal site itself. The development which has taken place is also apparent.
32. A third vantage point identified by the Appellant some way to the south-east of the appeal site was not considered to be material by the Council's expert who considered it too far away to be of consequence. In the absence of any dispute I accept that opinion.
33. From these viewpoints the character and scale of the landscape can be readily seen. The appeal site, comprising an extension to the garden centre is a somewhat alien feature. This derives from the presence of extensive hard surfaces some of which are partially covered with cars, non-indigenous tree species, and other paraphernalia being present on it. All of these are within an otherwise green setting. In addition, the expanded garden centre incorporating the appeal site has grown into an element which is out of scale with the surrounding grain of the field pattern. Also, the development has encroached on to land which is upslope from the existing garden centre. This is seen by the AONB Manager to render it more visually conspicuous and I agree.
34. I accept the Appellant's contention that these features of the site are partially screened in the viewpoints referred to above. I have also taken into account the Council's concession that with further landscaping and planting within the site, these features could be further concealed. However, merely screening a development which would otherwise be unacceptable does not render it acceptable. I consider that the development has resulted in harm to the appearance and essential character of the landscape which is of acknowledged quality and importance.

35. This impact must be considered in context. The appeal site lies close to the boundary of the AONB. Development, largely housing but including a small food superstore, has occurred within the AONB south of the A3052 extending the edge of Sidmouth northwards. Whilst this has clearly urbanised that part of the landscape, a reduced gap remains between the appeal site and that urban fringe, though I accept that this does, to a limited degree, diminish the visual impact of the appeal development in the wider landscape.
36. The appeal site has been described by the AONB Manager as being within an area having an edge of town feel, but he also stated that it remains isolated from the main settlement. This is particularly evident in views from Beacon Hill and to a lesser extent, Core Hill. Whilst the harm to the AONB remains its impact is tempered to some degree by these factors.
37. The Appellant also suggests that the harm to the surroundings is minimal and that this is evidenced by the fact that not one letter of objection has been received to the development. Whilst he concedes that many of the representations in support of his appeals address other matters, some discussion of the visual impact of the development did arise in local press coverage of the applications. I accept that this indicates the visual impact is not so great that it has given rise to any local opposition, which is unusual. This also tends to temper the extent to which visual harm to the AONB can be regarded as an overriding objection. However, the scheme must be assessed objectively in the context of planning policy and other material considerations.
38. The Appellant submitted a petition containing 1500 signatures. The text at the head of the petition makes no reference to visual impact, or to the fact that the site lies within an AONB. This is also reflected in the comments added by those who signed the petition. I could find only one specific reference to the development's visual impact, and a very small number which might be construed as commenting upon the appearance of the garden centre itself. A few referred non-specifically to there being no harm and the remainder addressed other issues. Given these facts I do not find the petition to be persuasive on the matter of visual impact.
39. Support for the development is sought through Local Plan Policy E5 which relates to rural diversification. It permits proposals to diversify and expand upon the range of traditional agricultural related economic activities undertaken in rural areas subject to 7 criteria. The Council contend that the Policy relates only to farm diversification. Whilst the word "farm" does not appear in the Policy, paragraphs 6.23 to 6.29 of the Local Plan do explicitly deal with them and paragraph 6.26 expressly refers to farmers diversifying into other activities. Whilst I accept that the Policy must be taken on its face, its purpose is clarified by the preceding paragraphs. Furthermore, I do not consider a garden centre to be an agriculture related economic activity. It may buy plants from local producers who may undertake agriculture as defined in the Act, but it is essentially a retail operation in the same way as the local food superstore, the manager of which informed the inquiry that he sought to source products locally whenever possible. I have concluded above that the area used for storing and display trees for sale is not agriculture, and for the above reasons I conclude that Policy E5 is not relevant to the appeal development.
40. The Appellant has raised a number of other matters which he considers should outweigh any harm to the surroundings. The first is the substantial level of public support. The first element of this is the petition. Whilst I accept that the number of signatories is substantial,

it is important to examine why they signed it. The headline text refers to employment, economic and social benefits and the need for an expanded car park. From the comments added it appears that the enterprise is considered to be successful in providing a good standard of service and facilities including the restaurant to which a large number of references are made. It is also regarded as an asset to Sidmouth in catering for and attracting visitors to the town. These matters are not disputed by the Council.

41. The business clearly serves the residents of Sidmouth and its wider surroundings well and is well-supported since its turnover has very significantly increased in the past 5 years. According to the Appellant, it also sources as much of its goods and materials locally as possible. In addition, it employs some 40 staff and is, therefore, along with the Town's hotels, one of the more significant employers in the area. These factors support the Appellant's view that the business is a substantial economic asset to Sidmouth. This is not disputed by the Council and I have no reason to disagree.
42. The Appellant claims that the garden centre provides some social benefits for the area. It provides a facility which is visited by those staying in Sidmouth. It attracts people from a wide area who may not have come, and many of them may go into the town. These suggestions may well be correct, but there is no substantial evidence to support them. What was confirmed by third parties giving evidence is the financial and practical support which the business gives to a number of social events and societies in the town. Whilst I accept that these are beneficial, they cannot outweigh the harm to the environment which I have identified.
43. A further issue which is covered in the petition is the need for the extension to the car park which forms part of the appeals development. Evidence presented by the Appellant indicates that the two garden centres nearest to the appeal site have significantly more car parking space in relation to sales floor area than the appeal premises. Furthermore, the figure which has been achieved at the appeal site following the development would be in line with those garden centres in terms of provision and still below the maximum standard set out for retail premises in Policy TA8 of the Local Plan.
44. Surveys carried out indicate that during the winter season, when demand is at its lowest, in excess of 60 cars park at the premises during the lunchtime period. This falls to between 20 and 30 at other times during the week and is higher at weekends. The capacity of the original lawful car park area is 55 spaces. I accept the Appellant's view that this capacity can be exceeded in low season and inevitably demand will be higher at other times. This demonstrates a need for the car park extension.
45. Since few members of the public are likely to be attracted to the other elements of the unlawful development, namely the large trees or the storage area, I conclude that the business in its unexpanded form has a need for an extension to the lawful car park in order to accommodate its customers on site. The alternative would be for them to park on the adjacent highway. Since that has no footways and limited forward visibility this option would be dangerous. In addition, the likely congestion of vehicles arriving and not being able to park, having to leave and later to return would exacerbate traffic flows into and out of the site and, given the Highway Authority's concerns about the access to the land, this too would be unacceptable.
46. I also note that planning permission has already been granted to increase the covered retail area of the garden centre within its original site by about 25%. Whilst I note the Council's

comment that the Appellant need not implement this, the fact remains he would be entitled to do so using only the current lawful car parking area. This would probably exacerbate the current demand further.

47. The Appellant also contends that, if there is inadequate parking at his garden centre, which is the only one in the vicinity of Sidmouth, customers who cannot park will either have to return later or drive to another garden centre, the nearest being Otter Garden Centre some 12 miles away along narrow lanes. The first would generate additional car trips and the latter longer ones. This would seem to be an inevitable outcome and either option would be contrary to the aims set out in PPS1 which seeks to encourage sustainable development and reducing journeys by private cars.
48. Turning now to the external storage area, this is used for keeping bulky goods. If this could not be retained the business would have to rely on smaller but more frequent deliveries. In addition to the commercial disadvantage of buying reduced quantities on each occasion, it would entail additional trips by delivery vehicles to the site. The Appellant suggests that if stock could not be stored in the present storage area it would have to be brought into the more congested existing site and this would bring deliveries into the area used for car parking. I do not accept this since he stated at the inquiry that he requires deliveries to take place outside normal retail hours. This is intended to and must obviate any conflict with car parking.
49. The Appellant contends that if the appeal development is not permitted it would have a serious adverse impact upon his business. Garden centres sell bulky goods and this necessitates customers visiting them by car. If the car park extension has to be removed then it is anticipated that turnover would fall by some 25%. This would lead to a reduced need for staff with about 10 jobs being lost. There would also be a knock on effect to the local suppliers. The loss of the storage area would result in less economic loads being delivered resulting in increased overheads and reduced profit margins on the bulk items. This would render it more difficult to compete. Since this evidence was not disputed by the Council I have no reason to doubt its veracity.
50. The development, due to its cumulative size and general appearance, has detracted from the character and appearance of the AONB to a material degree. It is therefore contrary to national and local planning policy. However, it comprises several separate and distinct uses. The car park extension and general storage area are small relative to that occupied by the trees stored and displayed for sale. This is demonstrated by the fact that Scheme 2,, which excludes that area occupies only 0.28 hectare whereas Scheme 1 covers some 0.82 hectare.
51. The car park and storage area are required to service the enterprise excluding the large trees since sales of those contribute a relatively small percentage of the turnover according to the Appellant. My finding that this is not an agricultural use means that it would become part of the retail garden centre business. In consequence, the expansion of the enterprise into agricultural land would be substantial. However, that area would appear to be severable from the remainder of the development both physically and in terms of the business. The other area to the north of the car park extension has already been returned to grass and the former storage and display use has ceased. That area too is therefore severable.
52. If these two elements were removed, the remaining development would be very much smaller and this would materially reduce its visual impact upon the surroundings. The

- garden centre overall would no longer be so expansive as to be out of scale with the surrounding field pattern and the extension would be less prominent from the surroundings.
53. The visual harm is, in any event, mitigated by the proximity of the site to the edge of the AONB and particularly because that edge has been eroded by recent and quite extensive development bringing the urban edge closer to the appeal site. Whilst it may not render it acceptable in policy terms a suitable landscaping and screening scheme would further mitigate the visual impact, especially if the area covered were very much smaller.
54. In these circumstances I consider that a reduced development would have a reduced impact upon the landscape which, subject to a suitable landscape scheme, would be outweighed by other material considerations including the fact that the garden centre is a successful business which is well regarded locally. It contributes to the local economy and its social, employment and economic benefits are not disputed.
55. For the above reasons I find that Appeal 1 under Ground (a) succeeds in relation to the areas containing the car park extension and external storage area, and fails in relation to the areas used for the storage and display for sale of trees, general storage north of the car park extension and the display for sale of garden sheds. Accordingly planning permission will be granted to reflect this on the deemed application and Appeal 3 will be dismissed.
56. In reaching this conclusion I have had regard to the issue raised by the Appellant of the permission granted by the Council at Park Farm. It was suggested that the Council had been inconsistent in their approach to the appeal development in the light of their decision in that case. I have considered the appeals on their own merits. I have also concluded that there were material differences between the proposals at Park Farm and the appeal development. First the former involved rural diversification because an active farm enterprise was involved. Second, the scheme involved the refurbishment of two listed buildings, and an extension to one.
57. The Appellant has sought to argue that his case is a matter of balancing the demands of planning policy with other material considerations. I agree with this approach. However, his proposal, in total, was contrary to policy and I found the material considerations insufficient to outweigh that and the harm which gave rise to it. In the case of Park Farm, whilst I do not have all the facts before me, it appears that it accorded with planning policy in relation to rural diversification and listed buildings, whatever the effect of the material considerations. For these reasons I do not find the fact that planning permission was granted at Park Farm assists the Appellants case.

### **Appeal 1: Ground (f)**

58. The Appellant contends that the requirement to remove the hard surfacing would be inconsistent with the lawful use of the land which is claimed in his appeal under Ground (c). However, I have found that the use of the land for the storage and display for sale of trees is not agriculture and so there are no permitted development rights to lay hard surfaces. The hard surfaces were specifically constructed to facilitate the uses in so far as they are unlawful and in the absence of planning permission they must cease.
59. The hard surfaces have materially altered the character of the land and this has had an adverse impact upon the surroundings which I have identified above. For this reason I have decided that planning permission should not be granted for the display for sale of trees. The

hard surfaces in that area would not, therefore serve any practical purpose and, if they remain their adverse impact would remain even if the use did not. In the absence of any alternative and lesser means being suggested to overcome the harm to amenity which these areas cause, I find that the requirements of the Notice are not excessive. Accordingly, the appeal under Ground (f) fails in relation to that area only.

### **Appeal 1: Ground (g)**

60. The Appellant is concerned that the excavation of the hard standing areas and sub-base on the appeal site would generate a substantial volume of material which would have to be removed from the land. This would entail appointing specialist contractors. In the current buoyant construction climate this could well take longer than the 3 months allowed. Also, removal of the material would have to be coordinated to occur outside normal business hours to avoid conflict with customer car parking because lorries carrying the waste material would have to travel through the existing lawful car park. If this were not done the business would be unable to operate effectively. Also the works would entail considerable expenditure and this would also impact upon the business.
61. I agree that there would be substantial amounts of material to be disposed of and that this would entail the use of large wagons. Whilst I accept the Council's argument that the excavation could be done during normal business hours since the appeal land is separate from that on which the business is located, I agree that the lorries would have to go through the existing authorised car park. This would be problematic during normal opening hours. I agree, therefore, that the period of 3 months would be rather short and demanding if the activity of the business is not to be unduly affected. This is an important consideration since the Council have expressly stated that they have no wish to see it cease to operate or prosper. An extended period would also lighten the financial burden of compliance which I accept would also minimise the impact upon the business.
62. These factors must be balanced against the harm I have identified to the surroundings. Whilst the harm must be removed for the long term preservation of the surrounding landscape, it is clear from the lack of objections to the development, that this matter is not contentious locally. In the short-term, therefore, the harm can be tolerated. I note that the Appellant has demonstrated a willingness to seek solutions throughout this process. I have no reason, therefore, to doubt that he would utilise an extended period appropriately. Consequently, I consider that a longer period for compliance could be given.
63. A period of 12 months was suggested by the Appellant at the inquiry. However, because the hard surfaces over the car park and storage area would not now need to be removed, the amount of work required would be less than anticipated by the Appellant. In all the circumstances I consider that a period of nine months would be a reasonable. Accordingly, the appeal under Ground (g) succeeds to this limited extent and the Notice will be varied to reflect this.

### **Appeal 2**

64. Bearing in mind the decision I have reached in relation to the use of the land for the storage and display of trees for sale in Appeal 1, I find that Notice B, which is the subject of Appeal 2, does not accurately describe the breach of planning control which has occurred. Since it covers a smaller area of land, it adds nothing to the scope or effect of Notice A.

Accordingly, I shall quash the Notice in order to avoid duplicity or uncertainty. For this reason the appeal succeeds.

#### **Appeal 4**

Planning Policy

65. The policy context for this appeal is identical with that set out in paragraphs 21 and 22 above.

Main Issue

66. The main issue to be considered is the effect of the development upon the character and appearance of the surroundings.

Reasons

67. Scheme 2, which is the subject of this appeal, comprises an extension of the garden centre into about 0.28 hectare of adjacent agricultural land and is identical to that for which I have granted planning permission in Appeal 1. The application was submitted on the premise that planning permission was not required for the change of use of that area because the Appellant postulated that it was an agricultural use and no material change of use had occurred. I have not found that to be the case. I shall, therefore, determine Appeal 4 based upon the assumption that following compliance with Notice A, that land would be restored to an agricultural field.

68. Scheme 2 also excludes an area of land to the north of the extended car park. That was formerly used for casual storage and the display of sheds. However, that land was restored to grass and has been landscaped. I shall deal with the Appeals having regard to these circumstances.

69. This development would be identical to that for which I have granted planning permission above. For the reasons already given Appeal 4 will be allowed.

#### **Conditions**

70. A condition is required to mitigate the visual impact of the development. The scheme should demonstrate how, using native species and traditional features, the structure, form and scale of the surrounding field patterns can be maintained and the integrity of the adjoining landscape as described by the Council's expert is to be preserved. Some screening of vehicles in the extended car park would also be beneficial.

#### **Formal Decision**

Appeal 1: APP/U1105/C/06/2023407

71. I direct that the enforcement notice be varied by deleting from paragraph 6 the words "*Three months*" and substituting therefor the words "*nine months*".

72. I direct that the enforcement notice be varied by the substitution of the plan attached to this decision for the plan attached to the enforcement notice.

73. I dismiss the appeal and uphold the enforcement notice as varied insofar as it relates to the land shown edged black and outside the black hatching and cross hatching on the plan annexed to this decision, and I refuse planning permission in respect of that land identified

on the substituted plan, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

74. I allow the appeal in relation to the land hatched black and grant planning permission for change of use of the land to use as a hardstanding for car parking in relation to the adjacent Garden Centre; and I allow the appeal in relation to the land cross hatched black and grant planning permission for change of use of the land to use as storage of materials in relation to the adjacent Garden Centre at Sidmouth Garden Centre, High Street, Sidford, Devon EX10 0NA, subject to the following condition:

- 1) Within two months of the date of this decision full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.

Appeal 2: APP/U1105/C/06/2032566/

75. I allow the appeal, and direct that the enforcement notice be quashed.

Appeal 3: APP/U1105/A/06/2024911

76. I dismiss the appeal.

Appeal 4: APP/U1105/A/06/2031652

77. I allow the appeal, and grant planning permission for the retention of car park and storage Area (revised application) at Sidmouth Garden Centre, High Street, Sidford, Devon EX10 0NA in accordance with the terms of the application, Ref: 06/2161/FUL, dated 18 July 2006, and the plans submitted with it, subject to the following condition:

- 1) Within two months of the date of this decision full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and circulation areas; hard surfacing materials; minor artefacts and structures (eg. furniture, play equipment, refuse or other storage units, signs, lighting etc); proposed and existing functional services above and below ground (eg. drainage power, communications cables, pipelines etc. indicating lines, manholes, supports etc.); retained historic landscape features and proposals for restoration, where relevant.

*Keith Turner*



# Plan

This is the plan referred to in my decision dated: April 25<sup>th</sup> 2007.

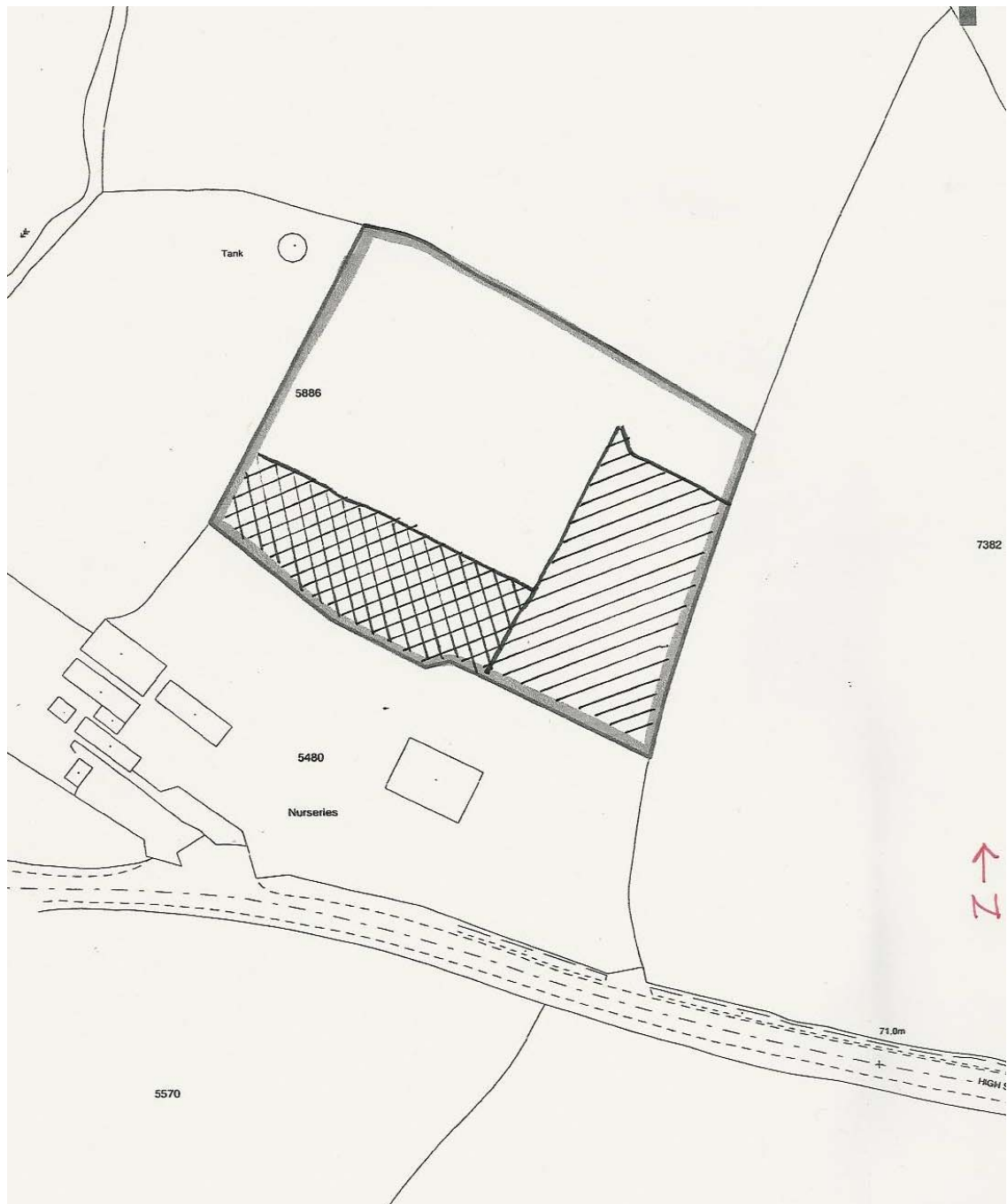
by **Keith Turner** LLB(Hons) DipArch(Dist) RIBA MRTPI MCI Arb

Land at Sidmouth Garden Centre, High Street, Sidford EX10 0NA

Reference: APP/U1105/C/2033407

The Planning Inspectorate  
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Temple Quay House  
2 The Square  
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Scale:



*Keith Turner*

## Appearances

### FOR THE APPELLANT:

Mr T Shepherd	of Counsel, instructed by Stones Solicitors, Linacre House, Southernhay Gardens, Exeter EX1 1UG
He called	
Mr G Gibson BSc(Hons) MA DipArchCon MRTPI	Chartered Town Planner, 6 Rosslyn Park Road, Pverell, Plymouth PL3 4LN
Mr I Barlow	Appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Seddon	Senior Solicitor with East Devon District Council
He called	
Mr A Carmichael	Principal Planning Officer EDDC
Mr R Cooke DipLA MLI CertArb ISA	5 Charlwood Road, Corsham, Wiltshire SN13 9UX

### INTERESTED PERSONS:

Cllr C Drew	41 Temple Street, Sidmouth, Devon EX10 9BA
Cllr P Sullivan	Sidmouth Town Council, Woolcombe House, Sidmouth EX10 8BB
Cllr G Gibbings	30 Harcombe Fields, Sidford EX10 9QW
C Taylor	Chair Sidmouth Chamber of Commerce, C & C Electrical, Bradway, Sidmouth EX10 8TL
C Shepherd	4 Springfield, Membury, Axminster, Devon EX13 7AB
E Haslam	7 Curey Mews, Exeter EX2 4TB
D E Borough	Goombe Farm, Salcombe Regis, Sidmouth EX10 0JM

## Documents

- 1 Statement of Common Ground
- 2 Letter of notification of the Inquiry and list of those notified
- 3 Report on Purser v The Local Board of Health for the District of Worthing
- 4 Plan showing the boundary of the East Devon AONB in vicinity of the appeal site
- 5 Copy of explanatory text to Local Plan Policy E5
- 6 Revised plans substituting Appendix I of Mr Gibsons evidence
- 7 Copy of letter, dated 27 September 2006, from Mr Gibson to the Council
- 8 Copy of letter, dated 8 February 2007, from Mr Gibson to the Council
- 9 Supporting statement
- 10 Statement made by Cllr C Drew
- 11 Copy of Council's Rule 6 Statement for Appeal 3
- 12 Copy of Council's Rule 6 Statement for Appeal 4
- 13 Set of 4 illustrative plans showing possible landscaping proposals
- 14 Bundle of documents and photographs pertaining to the application for development at Park Farm
- 15 Explanatory text and Structure Plan Policy ENV3
- 16 Closing submissions on behalf of the Council
- 17 Closing submissions on behalf of the Appellant
- 18 Extract of report on Great Portland Estates plc v Westminster City Council