IN THE MATTER OF:

BRANDON WOOD CLAY PIGEON SHOOT

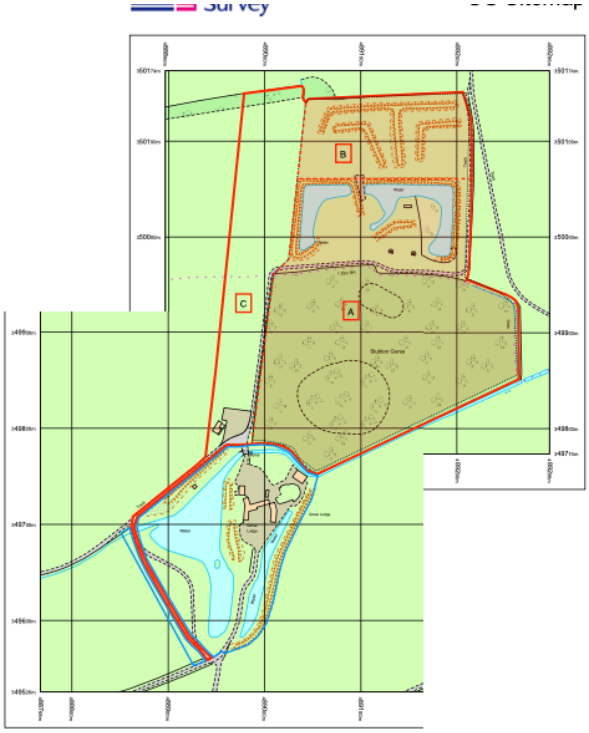
OPINION

A. INTRODUCTION

1. I am instructed by Richard Buxton Solicitors on behalf of Brandon Wood Clay Shoot Residents' Association ("**the RA**") in relation to the use of land at Brandon Wood for the purposes of a clay pigeon shoot ("**the Shoot**"). In particular I am asked to advise as to the lawful "fallback" use of the land.

B. BACKGROUND

2. In setting out the background to this matter, I have found it helpful to refer to the location plan, which has been submitted with the current application. A copy of this plan is reproduced below. I have referred to the whole area of land covered by the red line on the plan as "**the Site**". Within the Site are labelled three separate areas of land, which I have referred to below as **"Area A**", "**Area B**" and "**Area C**".



3. On 23 April 1995, the local planning authority ("**the Council**") granted planning permission (SK95/0761/70/30) ("**the 1996 Permission**") for the change of use of woodland to clay pigeon shooting at Stubton Gorse, Stubton. The location plan submitted with the 1996 Permission showed the red line boundary covering Area A only. Indeed, I do not understand it to be in dispute that the 1996 Permission as granted only covered Area A.[1]

4. The 1996 Permission was granted subject to conditions. Conditions 1 and 2 stated as follows:

> *1.This permission shall be for a temporary period of not more than 3 years commencing on the date of this Notice.*
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> *2. This permission shall only be carried out in strict accordance with the details submitted by the appliance to the Local Planning Authority by letters dated 24 July and 12 September 1995. There shall be no variation from those details without the express permission of the Local Planning Authority.*

5. The letter of 24 July 1995 ("**the 1995 Letter**") includes a number of relevant statements which I reproduce below:

    a. "*The existing clay pigeon shoot*[2] *is situated partly within the wood, Stubton Gorse, and partly on open ground to the north, as shown on the plan*"

    b. "*When the enterprise is fully established it is anticipated that there will be a maximum of 50 days clay pigeon shooting*"

    c. "*[W]e would wish to emphasise that the use would be limited to group bookings not a public pay and enter enterprise*".

6. The contents of the 1995 Letter were also referred to in the officer report which accompanied the decision to grant the 1996 Permission.

7. Subsequently, in 2000, after the expiry of the three year period permitted by the 1996 Permission, a further application for planning permission was made to continue the use of Area A for "*clay pigeon shooting*". That application was granted (S00/0471) ("**the 2000 Permission**"). The 2000 Permission was subject to a condition which stated as follows:

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[1] See §83 of the Applicant's Planning Statement for the Current Application.
[2] Area A had previously been used for the purposes of clay pigeon shooting pursuant to permitted development rights.

*This permission shall only be carried out in strict accordance with the details submitted by the applicant to the Local Planning Authority by letters dated **25 July** and 12 September 1995. There shall be no variation from these details without the express permission of the Local Planning Authority*

8. It will be apparent from the emphasis above (not in the original) that the date of the letter referred to in the 2000 Permission differs by one day from the date of the 1995 Letter referred to in the 1996 Permission. This appears to have been an error since no letter dated 25 July 1995 appears on file. It would appear that the error arose between the drafting of the officer report in support of the 2000 Permission and the grant of the Permission itself, since the report contains a proposed condition bearing the correct date, i.e. 24 July. I am instructed that, unusually, the planning register for the 2000 Permission contains a second decision notice on which the date of the letter has been corrected by hand to read 24 July. It is worth recording at the outset that the Council had no power to issue this amended decision notice and so it is effectively a nullity.

9. The 2000 Permission was accompanied by a location plan. I have not been able to obtain a copy of this plan, but as far as I can tell, this covers Area A only.

10. In 2004, planning permission was granted for an extension of an existing building and for the erection of "*noise reduction bunding*" (S04/1289) ("**the 2004 Permission**"). The register contains a copy of a plan dated 18 August 2004, which I assume accompanied the application ("**the 2004 Plan**"). The 2004 Plan appears to show the northern part of Area A, but then extends north to encompass Area B. Bunds are to be situated in both Area A and Area B; however, the 2004 Plan only shows shooting butts in Area A. Aside from the bunds, Area B is otherwise shown to be grass. The application form which accompanied the 2004 Permission is on the Council's online planning register. I note that this states that the whole site (i.e. Areas A and B) was "*presently being used for clay…*". It is relevant to note that the 2004 Permission followed an unsuccessful attempt in 2003 to apply for planning permission for the same development, plus an amendment to the 2000 Permission to increase the number of shooting days (S03/1093/71).

11. I have accessed historical aerial imagery on Google Earth. This suggests that in 2001 bunds had been erected in the northern part of Area A. Area B remained an empty field. However, by 2005, bunds had also been erected in Area B.

12. In 2007 a planning permission was granted for the erection of a 4m high earth bund on the Site. However, I have not been able to access any details relating to that permission (S07/1582).

13. In 2005 planning permission was granted for the use of Area C and other land to the west of the Site for the change of use for training of off-road driving (S05/0869/71) ("**the 2005 Permission**").

14. In 2007 an application was made for the *"variation of planning approval S00/0471 (increase in shooting days to a maximum of no more than 120 days per year)"*. This was granted subject to several conditions (S07/1581) ("**the 2008 Permission**"). One of these conditions provided that the 2008 Permission would be valid only for a 15 month period. The plans submitted with the application for the 2008 Permission appear to include the whole Site. The plan entitled *"Permitted Areas of Shooting"* states that clay shooting is to be permitted in Areas A and B, but not C. It is my understanding that various pre-commencement conditions were not complied with and that the 2008 Permission was not lawfully implemented. In any event, the 2008 Permission has long since expired.

15. Since this time there have been other applications to expand the shooting operation on the Site, but these have either been withdrawn or refused. There have also been attempts by the Council to enforce against various breaches of condition in relation to the 2000 Permission and material changes of use of Areas B and C. However, the notices have either been withdrawn or declared a nullity.

16. Importantly, as far as the planning history of the Site is concerned, there was a lengthy gap in shooting activity between 2012-2016 when the Site became overgrown. The shoot resumed in 2017.

17. In 2022 retrospective planning permission was granted for the erection of a single storey clubhouse and building associated with clay shooting ground use and surfacing of a car park area in gravel (S18/0078) ("**the 2022 Permission**"). The site location plan clearly shows that the red line boundary of the 2022 Permission only covers a small area of land to the south of Area C and not the remainder.

18. In August 2025 a new application for planning permission was submitted for the use of land as a shooting ground (up to 106 days per annum) (S25/1468) ("**the 2025 Application**"). A planning statement has been supported with that application ("**the**

Planning Statement") on behalf of the applicants ("**the Applicants**"). The Planning Statement alleges that:

a. The 2000 Permission is a permission for clay pigeon shooting on Area A with no enforceable restrictions;

b. Shooting is permitted on Areas B and C for up to 28 days each per year pursuant to permitted development rights;

c. Areas A and B have been used for shooting since 2005. Area C has been used for shooting – although the Planning Statement does not say for how long.

d. The Council has agreed that the Site as a whole may be used for up to 106 days of shooting without planning permission, being 50 days for Area A and 28 days each for Areas B and C.

C. ANALYSIS

19. As noted above, I have been asked to provide advice as to the lawful "fallback" use of the Site. I understand that this is of some importance since one of the justifications which has been promulgated for permitting the 2025 Application is that, without it, the fallback position would allow shooting to take place on the Site for up to 106 days per year with no controls on Areas B and C – or even for an unlimited number of days on Area A. If this analysis is incorrect then it significantly undermines the case for the 2025 Application.

The current use of the Site

20. In establishing the use of land for planning purposes, the starting point should be the planning unit. Guidance on the identification of the planning unit was provide by Bridge J in ***Burdle v SSfE*** [1972] 1 WLR 1207 at 1212 as follows:

> *First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. That proposition emerges clearly from G. Percy Trentham Ltd. v. Gloucestershire County Council [1966] 1 W.L.R. 506 , where Diplock L.J. said, at p. 513:*
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> *"What is the unit which the local authority are entitled to look at and deal with in an enforcement notice for the purpose of determining whether or not there has been a 'material change in the use of any buildings or other land'? As I suggested in the course of the argument, I think for that purpose what the local authority are entitled to look at is the whole of the area which was used for a particular purpose, including any part of that area whose use was incidental to or ancillary to the achievement of that purpose."*

> *But, secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.*
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> *Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.*

21. The whole Site is in single ownership and so can be regarded as a single unit of occupation. If it is correct that it is all used for shooting or purposes ancillary to shooting then then the whole Site should be regarded as the planning unit. I am instructed that the current use of the Site is well in excess of the 50 day per year limit imposed by the 2000 Permission.

22. In my view the current use of the Site is unlawful for the reasons I will set out below. Indeed, I do not understand the Planning Statement to make a positive case that the current use of the Site is lawful and I also note that the most recent enforcement appeal was not contested on that basis. The unlawful use of land cannot amount to a fallback for the purposes of determining a planning application: ***R (Widdington Parish Council) v Uttlesford District Council*** [2024] JPL 133. Accordingly, it is necessary to focus on what the lawful use of the Site is, that is the use to which the land would revert in the event of successful enforcement action by the Council. To establish this, it is necessary to examine each area individually.

The lawful use of the Site

Area A

23. At present, the use of Area A is governed by the terms of the 2000 Permission. This is the only current valid planning permission for Area A. As I have indicated above, there is a dispute about whether the 2000 Permission effectively imposes any limits on the shooting that can take place.

Does the 2000 Permission contain enforceable restrictions?

24. This is primarily a question of interpreting the 2000 Permission. I should say that, on this issue, I have had the opportunity to review the opinion of Horatio Waller, dated 18 March 2022. I agree with the conclusions that he reached on this issue. My summary reasons for this are as follows.

25. A helpful summary of the legal principles which will apply to the interpretation of a planning permission was provided by Steyn J in ***R (Gallagher Ventures Ltd)) v SSHCLG*** [2023] 1 P&CR 11:

> *4. The legal principles to be applied in determining this claim were common ground. First, the proper interpretation of a planning permission is a matter of law for the court: Barnett v Secretary of State for Communities and Local Government [2009] EWCA Civ 476; [2010] 1 P. & C.R. 8 , per Keene LJ at [28]. It is not a matter of planning judgement where the court would start by deferring to the decision maker: UBB Waste Essex Ltd v Essex CC [2019] EWHC 1924 (Admin) , per Lieven J at [25].*
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> *5. Secondly, the court must determine whether regard should be had to any material beyond the planning permission itself, applying the approach described by Keene J in R. v Ashford BC Ex p. Shepway DC [1999] P.L.C.R. 12 at p.19C to 20D, which has frequently been cited with approval since. For the purposes of this case, the relevant principles are:*
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> *i) The general rule is that in construing a planning permission which is clear, unambiguous and valid on its face, regard may only be had to the planning permission itself (including the conditions, if any, on it and the express reasons for those conditions): Ashford , per Keene J at p.19C-D; R. (Menston Action Group) v City of Bradford MDC [2016] EWCA Civ 796 , per Lindblom LJ at [11].*
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> *ii) The planning permission may incorporate by reference the application. It will only do so if some words sufficient to inform a reasonable reader that the application forms part of the permission appear in the operative part of the permission, showing that the words govern the description of the development permitted. Any document that is properly to be regarded as incorporated by reference is intrinsic to the planning permission and the court should have regard to it when determining the meaning of the planning permission. See Ashford , per Keene J at p.19D-G.*
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> *iii) If there is an ambiguity in the wording of the permission, it is permissible to look at extrinsic material to resolve that ambiguity. Extrinsic evidence may be documentary (e.g. the relevant planning officer's report), but it is not confined to documentary evidence: Wood v Secretary of State for Communities and Local Government [2015] EWHC 2368 (Admin) , per Lindblom J at [43] .*
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> *6. Thirdly, the court should ask itself what a reasonable reader would understand the words to mean when reading the planning permission as a whole. If any documents are incorporated by reference, a holistic view should be taken, having regard to the planning permission and the relevant parts of any intrinsic documents. This is an objective exercise in which the court will have regard to the natural and ordinary meaning of the relevant words, the planning purpose, and common sense. See Trump International Golf Club Scotland Ltd v The Scottish Ministers [2015] UKSC 74; [2016] 1 W.L.R. 85 , per Lord Hodge at [34], London Borough of Lambeth v Secretary of State for Housing, Communities and Local Government [2019] UKSC 33; [2019] 1 W.L.R. 4317 , per Lord Carnwath at [16]-[19], and UBB , per Lieven J at [55].*
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> *7. The reasonable reader will have some knowledge of planning law, and understand the role of the planning permission, conditions and any incorporated documents. If an interpretation flies in the face of the planning purpose or intention of the permission, where this is reflected in the permission and/or intrinsic documents, then common sense may well indicate that that interpretation is not correct. See UBB , per Lieven J at [52] to [53].*
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> *8. Fourthly, even where there is an ambiguity rendering it permissible to have regard to extrinsic material, a relatively cautious approach to reliance on such material - particularly evidence that is not in the public domain - may be warranted, having regard to the context, an aspect of which is that a planning permission is a public document which may be relied on by parties unrelated to those originally involved, and planning conditions may be used to support criminal proceedings: see Trump International , per Lord Carnwath at [65]-[66], Lambeth LBC v SSHCLG , per Lord Carnwath at [18], and UBB , per Lieven J at [56] to [57]. In particular, the court should be*

extremely slow to determine the planning purpose by reference to documents which are not incorporated, particularly if they are not in the public domain: UBB , per Lieven J at [57].

9. Fifthly, under the planning regime, a landowner is entitled to make as many applications for planning permission for the development of the same land as they ****220*** *wish, even though the applications may be mutually inconsistent. The planning authority must deal with any such applications made. However, by proceeding with one development, the development authorised in another permission may be rendered incapable of being implemented. For a development to be lawful it must be carried out fully in accordance with any final permission under which it is done, failing which the whole development is unlawful. So if a development for which permission has been granted cannot be completed because of the impact of other operations under another permission, that subsequent development as a whole will be unlawful. See Singh v Secretary of State for Communities and Local Government [2010] EWHC 1621 (Admin) , per Hickinbottom J at [14] to [21] (summarising the case-law in Pilkington v Secretary of State for the Environment [1973] 1 W.L.R. 1527 , Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment [1985] A.C. 132 and Sage v Secretary of State for the Environment, Transport and the Regions [2003] 1 W.L.R. 983); and Hillside Parks Ltd v Snowdonia National Park Authority [2020] EWCA Civ 1440; [2021] J.P.L. 698 , per Singh LJ at [58] to [62] and [67].*

26. It is clear to me that the 2000 Permission incorporates a document purporting to be a letter dated 25 July 1995 by reference. This immediately opens the gateway for consideration of extrinsic material. A reasonable reader of the 2000 Permission would search for the document. The fact that no document bearing that date exists would alert a reasonable reader to an obvious error or ambiguity in the Permission. The authorities cited above suggest that any such error or ambiguity can and should be resolved by consideration of extrinsic material. It would not be at all difficult for anyone viewing the planning register entries associated with the 1996 Permission and indeed the 2000 Permission (particularly the officer report) to identify that there is a letter bearing the date 24 July 1995 and that this is obviously the letter to which the relevant condition of the 2000 Permission refers. In these circumstances, I have little hesitation in concluding that a court would be prepared to correct the mistake in the 2000 Permission by construction and that the 2000 Permission should be interpreted as referring to the 1995 Letter: see ***Newark & Sherwood DC v SSCLG*** [2013] EWHC 2162 (Admin).

27. Having established that the 2000 Permission should be interpreted as if referring to the 1995 Letter, a further question arises as to whether that Letter actually contains any enforceable restrictions. In my opinion, the only reason why this would not be so is if the condition referring to the Letter and the contents of the Letter are invalid for uncertainty. Such invalidity will only arise in extreme cases of uncertainty: ***Fawcett Properties Ltd v Buckinghamshire CC*** [1961] AC 636. I do not view that high bar as having been reached here. The 1995 Letter refers to shooting on a *"maximum of 50 days"*. This obviously refers to 50 days per year: a reasonable reader would assume this and I think it is put beyond doubt by the reference to permitted use for *"28 days in the year"* earlier on in the Letter.

The reference to the site being *"limited to group bookings not a public pay and enter enterprise"* is also sufficiently clear to be understood.

28. In conclusion, I consider that the 2000 Permission contains the restrictions set out in the 1995 Letter and that those restrictions are enforceable.

Is the lawful use of Area A still governed by the 2000 Permission?

29. This will be so unless either a subsequent planning permission has been implemented or a breach of the 2000 Permission has become lawful by the passage of time.

30. As for subsequent permissions, although I note that the 2008 Permission established a more extensive use of Area A, this was either not implemented or has expired with the land reverting to its previous lawful use, i.e. under the 2000 Permission.

31. As for the passage of time, pursuant to s.171B of the Town and Country Planning Act 1990 ("**TCPA**") a material change of use of land or a breach of a condition will become immune from enforcement action (and therefore lawful) after a period of 10 years starting with the date of the breach. The breach relied upon must have been continuous during that period: ***Thurrock BC v SSfE*** [2002] JPL 1278. It is my understanding that the restrictions imposed by the 1995 Letter have been systematically breached in recent years. However, the complete cessation of shooting for approximately four to five years in 2012-16 before resumption in 2017 means that no continuous breach for a period of ten years could conceivably be established.

32. Accordingly, in my opinion, the lawful use of Area A is still governed by the 2000 Permission.

Area B

33. As I understand it, Area B was historically in agricultural use.

34. As I have explained above, it is fairly clear that Area B is outside the area covered by the plans approved under the 1996 and the 2000 Permissions. The extent of a planning permission is a matter of interpretation although it will *"normally"* be ascertained by reference to the site as defined on the relevant site plan: ***R (Ariyo) v Richmond upon Thames*** [2024] EWCA Civ 960, §22. The lawful use of Area B was therefore probably unaffected by the 1996 and 2000 Permissions.

35. The 2004 Permission permitted the erection of bunding on Area B. It appears from the aerial imagery that additional bunding has been subsequently erected, this was substantially completed well over four years ago and, in my view, is therefore immune from enforcement action pursuant to s.171B TCPA. Prior to amendments in 2023 this imposed a four year immunity period for material changes of use. This has since changed to 10 years, but transitional arrangements are likely to apply in this case.

36. In my opinion there are two potential scenarios which follow from the 2004 Permission as far as the lawful use of Area B is concerned.

37. **Scenario A**. The 2004 Permission appears to have been for operational development only. It did not expressly permit any change of use of Area B from agricultural use to use for clay pigeon shooting. However, the contents of the application form refer to the whole site (including Area B) being in use "*for clay*". The plans and the bunding suggest that the intention was that Area B be used for a purpose ancillary to the lawful use of Area A. It follows from this that one possibility is that the 2004 Permission had the effect of extending the planning unit covered by Area A into Area B. If this was the case then the lawful use of Area B would be the same as Area A. That use has to be determined by reference to the 2000 Permission and so would, in my view, be covered by the same restrictions as set out above. Indeed I am instructed that the application for the 2004 Permission was accompanied by a note from the applicant which stated, "*we have applied for planning permission previously, however, this time we are omitting the extension of days and opening hours…*".[3] I have not personally seen this note, but it would appear to further support the view that the use of Area B was intended to be governed by the same restrictions as Area A.

38. **Scenario B**. An alternative hypothesis is that the lawful use of Area B remained agricultural. If so, it could in theory have been used for shooting for up to 28 days per year pursuant to permitted development rights – specifically Sch.2, Part 4, Class B of the Town and Country Planning (General Permitted Development) Order 2015 ("**GPDO**"), which permits the use of land for any purpose for not more than 28 days in total in any calendar year, subject to conditions and limitations which are not relevant in this case. Any use above and beyond this would be unlawful unless immune from enforcement

[3] The previous application is likely to be a reference to application S04/0345 which was similar to the 2004 Permission

action. For the reasons given above, this is inconceivable due to the long hiatus in use between 2012-2016.

39. It is difficult to be sure which of these scenarios is correct. To some extent this involves questions of planning judgment, but in addition I do not have all of the details of the 2004 Permission, which would assist. However, on balance, I tend to prefer Scenario A. The 2004 Permission authorised permanent physical changes to the land which was intended to be ancillary to the use of Area A for shooting.

40. If Scenario B is correct, though, it is worth saying a little more about the permitted development rights.

    a. First, it is necessary to establish what land the permitted development rights apply to. There is no case law on this, but the (authoritative) Planning Encyclopedia states as follows:[4] "*It is possible that an owner may seek to use up the full annual permission on one part of his land, and then shift to another part and start again. If the permission is read literally, then a move merely to an adjacent field would suffice. But it is likely that the courts would apply the familiar doctrine of the planning unit, and allow only the one exploitation of rights on the one unit.*" I am inclined to agree with this analysis. If it is correct, it will be important to consider what the relevant planning unit is during the time when Area B can be used for shooting pursuant to the GPDO. This is a question of fact and degree. However there are good reasons for concluding that the relevant unit is the Site as a whole (or at least Areas A and B). Applying the principles from ***Burdle*** (above), it is clear that (i) the Site is a single unit of occupation; (ii) whilst shooting is occurring on Area B under the GPDO there is no functional separation between Areas A and B; and (iii) there is no physical separation – I am instructed that there is in fact no physical boundary between Areas A and B. If so, then the GPDO will permit up to 28 days *across the whole Site*, rather than 28 days for each area. Area A already has permission for 50 days' use. The terms of the 1995 Letter make clear that this *includes* the 28 day permitted development use. Thus, on this analysis, whilst the GPDO may permit the use of Area B for shooting for up to 28 days per year, that does not have the effect

[4] Paragraph 3B-1137.5.

of permitting the Site to be used for shooting for an *additional* 28 days above and beyond that which is already permitted under the 2000 Permission.

b. In any event, in order to make use of the permitted development rights it must be possible to return the land to its permanent use once the temporary use has ceased: see ***Ramsay v Secretary of State*** [2002] where the court considered the question of whether physical changes to land to allow its temporary use for racing pursuant to permitted development rights made it impossible to revert back to agricultural use. Thus, shooting would only be permitted on Area B if and to the extent that it is possible to return the land to agricultural use *before* the expiry of the 28 day period. I am instructed that shooting on land can give rise to lead contamination from spent pellets, which may make it difficult or impossible to use the land for agriculture. If this is the case then either the land cannot be used at all for shooting (notwithstanding the theoretical availability of permitted development rights) or the land will have to be cleared and this will need to be done *before* the expiry of the 28 day period meaning that, in reality, fewer than 28 days could actually be spent shooting. For the avoidance of doubt, it is no answer to say that Area B is already so contaminated by lead that it cannot be reverted to agricultural use. If the use of Area B for shooting is unlawful because it exceeds or contravenes permitted development rights, then any enforcement notice would and should require the land to be restored.

41. In conclusion, either:

a. Area B has a lawful use for clay shooting but subject to the restrictions imposed on Area A by the 2000 Permission; or

b. Area B has a lawful use for agriculture and can only be used for clay shooting pursuant to permitted development rights provided that:

i. The shooting does not exceed 50 days in total across the whole Site; and/or

ii. Those rights are only exercised to the extent that Area B can be restored to agricultural use within 28 days. In practice this may mean that no shooting at all is possible on Area B or that the full 28 days cannot be allowed.

Area C

42. I understand that Area C was originally in agricultural use. The 2005 Permission permitted the use of the land for the training of off-road drivers. I do not know whether this Permission was implemented. If it was not, it may well have been abandoned since there is no evidence of off-road driving on Area C and no suggestion that it has been so used for a considerable time. If it has been abandoned, it will be in nil or agricultural use. It does not particularly matter either way for the purposes of this opinion.

43. What is clear, however, is that, save in respect of the clubhouse and car park in the very south (which are covered by the 2022 Permission), there is no planning permission which permits the use of Area C for clay shooting. In addition, the reasons given in respect of Area B there is no prospect of any use of Area C for shooting having become immune from enforcement action.

44. Accordingly, the only way in which Area C could be used as such is pursuant to permitted development rights, as with Area B under Scenario B described above. However, the same limitations apply to this. Thus:

    a. If, at the time it is being used for shooting pursuant to the GPDO, Area C is part of the same planning unit as Areas A and/or B then shooting is only permitted for 28 days across the whole Site and that 28 days is included in the 50 day allowance provided by the 2000 Permission; it is not an *addition* to that allowance. As with Area B, good reasons for concluding that the relevant unit is the Site. Applying the principles from ***Burdle*** (above): (i) the Site is a single unit of occupation; (ii) whilst shooting is occurring on Area C under the GPDO there is no functional separation between Areas A and C; and (iii) there is at best limited physical separation – I am instructed that gates permit people to move between Areas A and C and furthermore those shooting will likely park at the car park and use the clubhouse which is situated in Area C, suggesting some permeability.

    b. In any event, shooting can only take place on Area C under the GPDO if and to the extent that the land can be restored to its previous use before the end of the 28 day period.

c. In conclusion, Area C does not have any lawful permanent use for clay shooting. It can only be used for clay shooting pursuant to permitted development rights provided that:

i. The shooting does not exceed 50 days in total across the whole Site; and/or

ii. Those rights are only exercised to the extent that Area C can be restored to agricultural use within 28 days. In practice this may mean that no shooting at all is possible on Area C or that the full 28 days cannot be allowed.

Conclusion

45. In my opinion, there are two possible answers to the question of what is the lawful use of the Site? They depend on whether scenario A or scenario B is preferred in relation to Area B, although the outcome is much the same. They are as follows.

46. If scenario A is preferred then Areas A and B have a lawful use for clay shooting, but subject to the limitations (including the 50 day maximum limit) imposed by the 2000 Permission and the 1995 Letter. Shooting would be permitted on Area C for up to 28 days per year, but this would not be *in addition to* the 50 day maximum and/or only if and to the extent that Area C can be restored to its lawful use within that 28 day period.

47. If scenario B is preferred then only Area A has a lawful use for clay shooting, subject to the limitations (including the 50 day maximum limit) imposed by the 2000 Permission and the 1995 Letter. Shooting would be permitted on Areas B and C for up to 28 days per year, but this would not be *in addition to* the 50 day maximum and/or only if and to the extent that Areas B and C can be restored to their lawful use within that 28 day period.

48. It follows from this that, in my view, the Council's current position as to the fallback for this site (as articulated in the Planning Statement) is likely to be incorrect. The Council wrongly assumes that the GPDO would allow an additional 28 days of shooting for each of Areas B and C. In my view the Site should be treated as one planning unit for the purpose of establishing the extent of the permitted development rights. Even if that is incorrect, the 28 day permitted development is a maximum and only possible if the site concerned can be restored to its lawful use within that time. This may not be possible at all due to lead contamination; alternatively it may mean that time would need to be set

aside to clear the site within the 28 day period. The Council will need to investigate these matters and reach a judgment. It may conclude that site clearance is not practicable or economically viable. Any uncertainty as to this will necessarily reduce the weight that the Council can give to any fallback position in the planning balance: ***Widdington*** (above).

The effect of any assurances given by the Council

49. Finally, I consider that it would be helpful to address the effect of any assurances which may have been given by the Council as to what development it would be prepared to permit on the Site. As a matter of public law, local planning authorities cannot fetter their discretion of pre-determine applications for planning permission. The Planning Statement seems to hint that the Applicants may have some kind of legitimate expectation that the 2025 Application should be granted. If this is the case, such an argument is misplaced. The TCPA establishes a statutory code, which includes provision for consultation and public participation in the planning process. It is for this reason that the concept of legitimate expectation has extremely limited application in planning law: ***Henry Boot Homes Ltd v Bassetlaw DC*** [2002] EWHC 546 (Admin), §148.

D. CONCLUSION

50. I have set out my conclusions as to the lawful use of the Site above. I have nothing to add as currently instructed. However, please do not hesitate to contact me if I can be of further assistance in this or any other matter.

BEN FULLBROOK
LANDMARK CHAMBERS
26 September 2025