Appeal Decisions

Inquiry held on 30 September and 1, 2 & 8 October 2009
Site visit made on 8 October 2009

by Phil Grainger BA(Hons) MRTPI

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

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Decision date: 24 November 2009

Appeal A Ref: APP/G1630/X/09/2102416
Manor Farm, Prescott, Gotherington, Cheltenham GL52 9RE

• The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
• The appeal is made by Mr D Martin and Mrs M Tarling against Tewkesbury Borough Council.
• The application ref: 09/00071/CLE is dated 26 January 2009.
• The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
• The use for which a certificate of lawful use or development is sought is use for the shooting of shotguns for more than 28 days per year. (See also paragraph 1.)

Summary of Decision: the appeal is dismissed.

Appeals B, C & D Refs:
APP/G1630/A/08/2090654 (appeal B)
APP/G1630/A/08/2090653 (appeal C)
APP/G1630/A/09/2102429 (appeal D)

Manor Farm, Prescott, Gotherington, Cheltenham GL52 9RE

• The appeals are made under section 78 of the Town and Country Planning Act 1990 against refusals to grant planning permission.
• The appeals are made by Mr D Martin and Mrs M Tarling against decisions of Tewkesbury Borough Council.
• The appeal B application ref: 07/00708/FUL, dated 10 May 2007, was refused by notice dated 23 May 2008.
• The development was described as follows: retention of clay pigeon shooting grounds including target shooting with shotguns together with ancillary mobile stands and traps, 1.8m high screen fencing and car parking in farmyard. (See below.)
• The appeal C application ref: 08/00843/FUL, dated 12 June 2008, was refused by notice dated 29 July 2008.
• The development was described as the retention of two acoustic shooting sheds serving shooting grounds.
• The appeal D application ref: 09/00077/FUL, dated 28 January 2009, was refused by notice dated 19 March 2009.
• The development proposed is the erection of 2 no. acoustic shooting sheds serving shooting grounds.

Summary of Decisions: the appeals are dismissed

Preliminary Matters
1. The oral evidence given to the inquiry in connection with factual matters in dispute was given on oath.
2. The appellants have proposed alterations to the description of the use for which an LDC is sought (appeal A) to make it more detailed and precise. At the
Inquiry it was confirmed that they wished the description to be as set out in Mr Goodwin’s proof (at para. 3.16) which differs from that included in the Statement of Common Ground. Moreover, in the light of evidence given to the Inquiry by Mr Martin the second and third paragraph of the description set out in Mr Godwin’s proof were withdrawn. The description as finally proposed by the appellants is thus as follows:

The use of the land at Manor Farm, Prescott for mixed agricultural and shooting uses for more than 28 days each year as detailed below

For organised shooting parties of up to 8 persons for shooting of clays on up to 2 evenings in each week, June to August, and alternate weekends limited to the area hatched black¹

For organised shooting parties of up to 8 persons for rough shooting of rabbits, foxes, pigeons and other small birds, and squirrels for sport on up to one evening each week, June to August, and every alternate weekend

For agricultural use, specifically, but not limited to, grazing of cattle and/or sheep.

3. I have dealt with appeal A having regard to the appellants’ final description. In doing so I have taken into account that whichever description is used the Council consider that an LDC should not be granted.

4. Turning to appeal B, matters have again moved on. It is no longer intended to use moveable stands and traps. Instead all shooting would take place from within the existing sheds, which are the subject of appeal C, or the proposed replacement sheds (appeal D). It was also agreed at the Inquiry that the 1.8m high screen fencing that had been erected would be removed (and this has been done). As a result of these changes the appellants propose that the description of the appeal B development should be:

The retention of clay pigeon shooting grounds including car parking in farmyard.

I have dealt with appeal B on the basis of this revised description.

5. It was also agreed at the Inquiry that appeals B, C and D were intimately linked. There would be no logic in allowing appeals C or D if I did not also allow appeal B. Moreover, no evidence has been put forward that without the noise attenuation provided by the sheds that are the subject of appeals C and D the appeal B development would be acceptable. I have therefore dealt with those three appeals together and on that basis. However, before doing so I have dealt with appeal A as this provides the context and any certificate granted would represent a fallback position to be taken into account in considering the acceptability of the other appeals.

**Appeal A**

**Background**

6. Manor Farm comprises a house, with its associated residential curtilage, together with a few fields, most but not all of which are included within the appeal A site. It is at the end of a minor unclassified road which continues as a bridleway through Manor Farm.

7. I have been provided with no evidence as to how Manor Farm was used before it was bought by Mr and Mrs Tarling in 1986. However, I was told that since

¹ See Plan A
then it has not been a working farm. The fields were initially let to a local farmer for the grazing of cattle and sheep, but this ended in about 2000.

8. Mr John Tarling, the late husband of one of the appellants, was a keen shooter and the evidence put to the Inquiry indicates that part of the reason for the Tarlings’ buying Manor Farm was that he would be able to shoot in the fields that went with it. In this shooting he appears often to have been accompanied by, at least, his family and friends.

9. Mr Martin, who is the Tarlings’ grandson, has lived at Manor Farm since a young child, and is now himself a keen shooter. As he grew older and especially as Mr Tarling became ill, Mr Martin took a more active role in the shooting. It seems to be he who introduced the raising of pheasants and organised (as opposed to ‘rough’) pheasant shooting from about 2003 onwards. However greater changes occurred after Mr Tarling’s death in 2005.

10. Previously, although Mr Martin had discussed with Mr Tarling the possibility of establishing a shooting business at Manor Farm it seems that little if any progress was made on this. In Mr Martin’s own words ‘John obviously loved shooting more than the idea of running a business again and so he really did nothing about this.’ It appears to have been only after Mr Tarling became ill that Mr Martin agreed with Mrs Tarling that they would now try to set up a business. It is clear from Mr Martin’s own evidence, and consistent with the complaints that were received by the Council, that after Mr Tarling’s death shooting increased greatly. In particular a gun club and shooting school were established although the former has now ceased.

11. There seems to be no dispute that the current activity amounts to a use of land for which permission is required and has not been granted and which, in itself, has not continued long enough to have become lawful. What is open to doubt is whether the shooting that took place before 2005/06 amounted to a material change of use (and had continued long enough to have become lawful) and, if so, whether that use has been supplanted by the more recent uses.

12. In considering these matters I have noted that of all those who gave evidence at the Inquiry only Mr Florent and Mr Martin himself had personal and detailed experience of the shooting over any lengthy period of time. I have had regard to the evidence of others who live in the area and/or use the bridleway that passes through the site, but their knowledge of what shooting went on is likely to be less complete. Although they were not tested by cross-examination, I have also taken into account the statutory declarations made by others, in particular Mrs Tarling, the co-appellant, and Mr Best. Mrs Tarling is not a shooter, but clearly has a long knowledge of the site. As for Mr Best, he was a friend of the late Mr Tarling who shared his love of shooting and seems to have shot frequently on the land.

**Inspector’s reasoning in respect of appeal A**

**The planning unit and related matters**

13. The appeal A site is all in the same ownership and includes most, though not all\(^2\), of the land that comprises Manor Farm, including the house. This is the unit of occupation. That said there is a distinct difference between the area

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\(^2\) Some peripheral areas appear to be unsuitable for shooting and never to have been used for such purposes. They were excluded from the application site.
immediately around the house, ie the gardens and former farmyard, and the fields that make up the rest of the appeal site.

14. I have taken into account that there are some functional connections between the two areas. The yard that is within the curtilage of the house is used for the parking of vehicles by those taking part in the shooting. The house also appears to provide toilet facilities for shooters and instructors. Moreover, in the early days of the shoots at least, refreshments for those taking part were provided in the house. In addition, I saw that one of the buildings within the farmyard is used for storing shooting and mowing equipment.

15. Nevertheless, there is in my view a very clear difference in the character and use of the two areas and for the most part they are clearly defined. The house, gardens and most other nearby land and buildings have a use that is essentially residential. Since it has the necessary physical and functional separation I conclude that this area forms a separate planning unit in use as a dwellinghouse. Moreover, it is consistent with the applicants’ case, which was based around an application for a mixed use for agriculture and shooting, to regard the rest of the unit of occupation as a separate planning unit and the one to which the LDC appeal should relate.

The situation up to 2005

16. In considering what happened in the fields I have had regard to the comments of several local residents and others that no shooting occurred at Manor Farm until about 2005/06. I have also taken into account that the bridleway running through the farm gives a greater opportunity for local people to observe what has gone on than would be the case in some areas. Nevertheless, the observations would be transient or, in the case of those living nearby, at a distance. Moreover, in rural areas it is not unusual to hear the sound of shooting and at a moderately low level it may have passed relatively unnoticed and/or not have been associated specifically with Manor Farm.

17. For these reasons, I do not consider that the evidence of local residents and riders is necessarily inconsistent with that of Mr Martin and others who say they took part in the shooting and/or observed it. Having had regard to the entirety of the evidence, I am satisfied that, on the balance of probabilities, shooting of some sort took place. However, the question remains as to whether it amounted to a material change of use.

18. I have taken into account that, as I was told often at the Inquiry, shooting is far from uncommon in the countryside. Rough shooting is frequently incidental to an agricultural use and I have no doubt that many farmers practise it to some extent. The level of shooting may vary depending, amongst other things, on the amount of pleasure that the farmer or landowner derives from it. However, essentially it is derived from a mix of factors including agricultural need and benefit, interest and land ownership. In this case, whilst rough shooting may have had some agricultural benefit it seems to me that the driving force behind the shooting that took place up to about 2005 was the pleasure that Mr Tarling found in it. That the shooting included clay targets, which seems to have no agricultural benefit, supports that view.

19. So too does the evidence put forward by Mr Martin and many of those who supported him. I consider that in its totality this points very strongly to the shooting being primarily a hobby/recreational activity undertaken mostly by Mr
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Tarling, as the landowner, together with his family and friends. Mr Martin himself states in his declaration ‘John would shoot approximately every other weekend (when he would invite family and friends to join him)’ and on at least one evening during every week ……. whenever friends or family would pop into see him. [My emphasis]. Mrs Tarling’s statement makes similar points. She says that those participating in weekend shoots were ‘usually family and friends’ whilst in the week Mr Tarling shot in the same area ‘whenever friends or family would pop round’. One of those friends was Mr Best whose declaration makes a similar point: ‘The shooting was very much a friendly gathering, usually up to 5 to 8 friends’.

20. Mrs Tarling also comments that: ‘One of the main reasons for choosing this property [ie Manor Farm] was because of the many acres of rough hilly land that came with it and which was perfect for shooting. We did not run Manor Farm as a working farm. It was our home and a place for John to enjoy shooting’. Taking all this into account I consider that there is a very strong connection between the Tarlings’ home, their ownership of the adjoining fields and the shooting that took place. That they lived next to the fields was a convenience and no doubt encouraged the shooting activity.

21. I have taken into account that on the evidence I have heard and seen, on occasions groups of people who were not family or friends were also involved in the shooting. Initially, Mr Tarling was running a business elsewhere and it appears that colleagues and clients occasionally came for a day’s shooting. Sometimes this seems in effect to have been a reward for them and/or their custom but the evidence is that on other occasions they paid for the privilege. I have also noted that Mr Florent said that he would sometimes bring groups of 8 people from London for a days’ shooting. Nevertheless, I have seen and heard no evidence that clearly indicates that such shooting parties took place on more than 28 days per year; the firmest figure put forward is in Mr Martin’s declaration, where he states that approximately 15 clay shoots per year were run for paying customers. This was in my view a temporary use of the land.

22. Taking account also that it was agreed by Mr Martin that Mr Tarling took a conscious decision not to set up a shooting business I conclude that the shooting that took place up to about 2005 was essentially a hobby/recreational activity. It was undertaken mainly by Mr Tarling, his family and friends and was closely connected with Mr Tarling’s occupation of Manor Farm. In essence, he seems to have looked on the fields that he owned as a place where he and his family and friends could enjoy a hobby and gain pleasure.

23. Mr Martin’s acceptance during cross-examination that it was ‘fair’ to say that up to 2005 shooting was ancillary to occupation of the house seems to support such a conclusion. That said, I do not expect Mr Martin to be familiar with the way that the term ‘ancillary’ is used in a planning context and I do not regard his comments as decisive. Nevertheless, it seems to me that it gives an indication of the nature of the shooting and the way that it was viewed that is consistent with it being a hobby/recreational use – in essence an incident of land ownership.

24. I have taken into account that from about 2000 no part of Manor Farm has been used for agricultural purposes. However, the section 191 regime does not require uses to be subsisting at the time that an application is made, at least if
they were already lawful and had not subsequently been abandoned or replaced by another use. In this case, the cessation of the agricultural use does not appear initially to have been accompanied by an increase in shooting and until 2005/06 at least I consider it appropriate to regard an agricultural use remaining extant, albeit dormant in the post 2000 period. That the grass was being kept down by mowing rather than grazing did not alter the essential character or appearance of the fields. Neither did the intermittent shooting, which until 2003 at least seems to have remained at a level and of a nature consistent with that which had previously co-existed with grazing.

25. Having had regard to all this, I consider that as a matter of fact and degree prior to the changes that occurred in 2005/06 the fields within the appeal A site had an agricultural use. The shooting that took place was a hobby/recreational use incidental to Mr Tarling’s ownership of the land and occupation of the nearby house. Such shooting is not particularly uncommon on suitable land within the countryside and whilst shooting may have occurred more frequently on this site than many others this is a reflection of Mr Tarling’s interests. It did not change the fundamental character or appearance of the land or have significant planning consequences, as the lack of complaints from those living nearby or using the bridleway confirm. I conclude that the shooting was simply incidental to the ownership of the land and did not amount to a principal use either in its own right or, with agriculture, as part of a mixed use.

26. In forming this view I have taken into account that some semi-commercial shooting took place. However, this seems to have been limited, probably **de minimis**, and not to have materially affected the overall character of the site. Moreover, even if this shooting were to be regarded as materially different to hobby shooting the evidence put to the Inquiry does not demonstrate that on the balance of probabilities it took place on more than 28 days per year.

The changes that occurred in 2005/06 and their implications

27. Given my conclusion in paragraph 25, what has happened more recently is of limited relevance to the determination of appeal A. However, it is worth noting that it is accepted that substantial changes in the use of the site occurred in 2005/06 following the death of Mr Tarling.

28. It was at this point that, as Mr Martin makes clear in his declaration, he agreed with Mrs Tarling that they would try to establish a shooting business. Moreover, whilst that need not necessarily be decisive in determining whether a material change of use has occurred, in this case it was accompanied by both a marked increase in the amount of shooting that took place and a change in its nature.

29. Mr Martin himself put it to the Inquiry that in 2006 there was a quick increase in the level of shooting amounting to a 'step change'. At this time he allowed a gun club to be established and set up a shooting school. This now employs up to 5 people in addition to himself. This is a very different arrangement to that which had occurred previously. As far as I am aware Mr Tarling never formally employed anyone to help organise or conduct the shooting (though I have taken into account Mr Florent’s comment that at times he was ‘conned’ into helping out).

30. It was also in 2006 that the fields were advertised as ‘new’ shooting grounds. In addition, it seems to have been at about this point that the physical appearance of the site also changed with the introduction of structures some of
which may have been mobile but which included others that in planning terms
would be regarded as permanent (albeit some have now been removed).
Furthermore, it was at about this time that the Council started to receive
complaints from local residents and users of the bridleway.

31. In my judgement, all this points to there being, in about 2005/06, not only a
marked increase in shooting activity but also a material change in the character
of the site. I consider that, as a matter of fact and degree, these changes were
so great that they amounted to a material change of use from that which had
gone on before. This is entirely consistent with my conclusion that the shooting
prior to 2005/06 was essentially a hobby/recreational activity incidental to Mr
Tarling’s ownership of the land and occupation of an adjoining dwelling.

32. There is disagreement between the parties over whether the 2005/06 changes
brought to an end the use that took place before, or whether hobby shooting
continued alongside or as part of the shooting school and, initially, the gun
club. I have some doubts as to whether, in particular, hobby shooting of clay
targets could have survived as a clearly distinguishable entity. However, given
my conclusion that the shooting that took place before 2005/06 did not amount
to a primary use little turns on this point.

Conclusions in respect of appeal A

33. For the reasons given above, I conclude that Manor Farm is appropriately
regarded as two planning units: the residential area and the fields adjoining
that area. Looking at the fields, I consider that, on the balance of probabilities,
shooting took place on more than 28 days per year during the relevant period.
However, prior to 2005 this shooting was essentially a low key
hobby/recreational activity. It did not amount to a material change of use
either to a shooting use on its own (as originally applied for) or as part of a
mixed shooting/agricultural use (as promoted at the Inquiry). I therefore
conclude that the Council’s deemed refusal to grant a certificate of lawful use
or development in respect of the shooting of shotguns for more than 28 days
per year was well-founded and that the appeal should fail. I will exercise
accordingly the powers transferred to me in section 195(3) of the 1990 Act as
amended and dismiss the appeal.

Appeals B, C and D

Main Issues

34. In respect of these appeals the main issues are as follows:
   i. the effect of the development on the character and appearance of this part
      of the countryside which is within the Cotswolds Area of Outstanding
      Natural Beauty (AONB);
   ii. taking any such effects into account, whether the development complies
       with national and local policy regarding AONBs;
   iii. the implications for users of the local bridleway and footpath network,
       especially the bridleway that runs through Manor Farm;
   iv. the effect on the living conditions of local residents; and
   v. if there would be harm to any of these interests, and conflict with any
      development plan policies that deal with them, whether there are any other
      material considerations, including any fall back position and the scope for
      imposing conditions, that indicate that permission should still be granted.

Inspector’s Reasoning
Introduction

35. In considering these issues I have taken into account that the developments before me have two distinct effects: noise generated by shooting and the visual impact of the structures associated with that use. The significance of these effects differs between the issues. In particular, issues iii and iv are concerned primarily with the effects, if any, of shooting noise. This also has the potential to affect the character of this part of the AONB, but any effect on its natural beauty will relate primarily to the visual impact of the shooting infrastructure.

36. The three appeals also differ in the degree to which they give rise to these distinct effects. In particular, appeal B, as modified at the Inquiry, now includes no permanent infrastructure and its direct effects relate to noise. That said, there seems to be no dispute that, to reduce the effect of noise on the living conditions of local residents, acoustic sheds are required. Accordingly, allowing appeal B would give rise to a need for such sheds and these would have some visual impact. That impact would be greater in respect of the larger sheds forming the appeal D scheme than the existing sheds (appeal C). I consider therefore that it would be illogical to allow appeal B if neither the appeal C nor the appeal D developments are acceptable. I shall therefore start by looking at the effect of these sheds on the character and appearance of the area.

Effect of the acoustic sheds

37. The appeal site is located in the countryside a short distance to the southeast of the hamlet of Prescott. It lies in a valley that is itself located within an embayment in the Cotswolds scarp slope. The predominant land use in the locality is grazing. Within this area are some small woodland areas as well as hedgerow and other trees, and I found the area generally to be very rural and attractive, as might be expected in an AONB.

38. The buildings associated with the nearby speed hill climb course detract from this but the climb is a long-established feature and in any event these buildings are not readily visible from most of the valley. As for the valley itself, its appearance is affected by the overhead electricity line and pylons that run up it. These are alien features that are harmful to the natural beauty of the area. Fortunately they are partly obscured by trees. However, I consider that the presence of these harmful structures makes it all the more important that further intrusive features are avoided. Although valleys and lower slopes may have more capacity for change than the more exposed parts of the scarp face, this particular valley has, in my judgement, little capacity left before its natural beauty would be very seriously harmed.

39. The two existing sheds measure about 11m by 6m and are roughly 3m high. They have a mainly wooden finish with a monopitch felt roof. The Council suggest that, in public views, they resemble stables, whereas the appellants consider that they look like small barns.

40. There are several existing small barns or stables scattered around the area. However, whilst they have not fundamentally affected its natural beauty, they are not attractive features and I do not consider that they have set a precedent that it is necessarily desirable to follow. Their presence does not, in my view, justify adding similar buildings without good reason.

41. The existing acoustic sheds, and those forming the appeal D proposal, would not look like traditional Cotswold buildings, but would have the appearance of
modern utilitarian structures. Buildings of this sort do not, in my judgement, represent high quality design well-suited to this important and sensitive context. Such structures do not contribute positively to the countryside even if they are increasingly common features of it.

42. In my judgement, even the existing sheds detract, albeit modestly, from the natural beauty of the area. Moreover, the impact of the appeal D sheds would be appreciably greater as they would be a little over twice as high as well as being both longer and wider (15m by 9m). The effect of the sheds is exacerbated as they are not closely related, physically or visually, to the main complex of buildings at Manor Farm.

43. Although the topography and vegetation mean that views of the sheds are intermittent, the effects that I have described will be obvious to those using the bridleway along the valley. In particular, the shed nearest the bridleway is clearly visible from it and the larger shed forming part of the appeal D scheme would be even more prominent. The views are brief, but when heading north there is one point where the nearest shed is seen almost directly ahead and not far below the ridgeline. This shed would, at the present time at least, be difficult to miss.

44. I have taken into account that a belt of trees and shrubs has recently been planted between the bridleway and the shooting ground. These further reduce views of the sheds and I have allowed for them to become a more effective screen if they are left to grow. Even so I consider that it would be many years before the larger appeal D shed would be completely screened in the view I have just described and it would be close to if not breaching the skyline. In any event views around the edge of the planting would remain.

45. In addition, the planting includes a significant number of evergreens such as pine and laurel. These are not typical of this part of the Cotswolds and, in my judgement, the latter have a rather suburbanising effect. Taking this into account, I do not share the appellants’ view that this planting enhances the character of the area; on the contrary I consider that it detracts from it. Furthermore, without the uncharacteristic evergreen plants the sheds would be more visible, at some times of the year at least.

46. More distant views of the sheds are limited to parts of another bridleway in an elevated position on the east side of the valley. These are distant views and this bridleway is also affected by other structures that are much closer to it. Normally I would not expect sheds of the size of the existing ones to have a significant effect on views from this bridleway. That said, when shooting is taking place, it is likely that the noise will draw attraction to the shooting grounds and the structures on it. I conclude that even in these distant views there would be some harmful impact on the natural beauty of the area, especially with the larger appeal D sheds.

47. Taking all this into account I consider that the sheds that form the appeal D scheme would have a moderate and harmful impact on the landscape. That is particularly undesirable in an area that has the highest degree of protection for its natural beauty and where those experiencing the effects are likely to be sensitive recreational users. I conclude that these buildings at least would be contrary to the thrust of national advice on AONBs, as well as Policy NHE4 of
the Gloucestershire Structure Plan and Policy ENV3 of the emerging Regional Spatial Strategy which will replace it.

48. Moreover, whilst the effect of the existing sheds is more modest it would still, in my view, be negative. In addition, whilst genuine barns might facilitate continuation of traditional agricultural practices, which contribute to the character of the Cotswold countryside, these sheds would have no such benefit. On the contrary, they would be associated with, and facilitate, a use of the land that, certainly in its current form, is not traditional or characteristic. Taking all this into account I have reservations about the acceptability of even these buildings and consider that they too are not fully compliant with AONB policy.

The effect of shooting noise on the character of the area

49. Turning to other effects of the appeal developments, I have taken into account that shooting is not an unusual activity in the countryside. Indeed, whilst I have concluded that there had not, prior to 2005/06, been a material change in the use of Manor Farm there seems no doubt that some shooting took place there frequently.

50. In assessing the impact of the appeal B development I have therefore had regard to the possibility that such use could resume or continue. However, that would be subject to the shooting not constituting a material change of use. In my judgement that is likely to be the case only if it has no serious implications for the character of the area (or local residents / bridleway users).

51. Turning to the effects of the noise generated by the appeal B development, the appellants’ acoustic expert Mr Seller has estimated noise levels on the bridleway could be in the high 70s (dB). This and the actual recordings made at Wickfields Farm suggest that shooting will be heard over a substantial area including the much of the valley and the higher ground to each side. The area affected will be greater than that from which the sheds can be seen. Much of this is a matter of common sense that was borne out by my own experiences during my accompanied visit, as well as the evidence of at least one horse rider. Moreover, taking into account the predictions for Wickfields Farm, I consider it unlikely that larger acoustic sheds that are the subject of appeal D would materially alter this situation.

52. I have taken into account that in the more distant locations visited whilst shooting was taking place, the party generally stopped to listen when shots were fired. However, that is not to say that we would not have heard them had we continued walking. Moreover, shooting during the visit was limited to 4 shots at relatively wide intervals. It did not represent in its intensity the shooting that would occur in practice, but was audible nevertheless. In any event, my experience is that those walking in the countryside do stop from time to time and it is likely that they would then, if not before, become aware of the shooting, which, once noticed, is likely to be hard to ignore.

53. That is especially so as the area is in my judgment otherwise a quiet one (with the possible exception of the 40 days when events take place on the nearby motor car hill climb course). I have taken into account the view of the appellants’ landscape advisor, Mr Cook, to the contrary. However, that does not tally with my own experiences.
54. I did not find the light aircraft to which Mr Cook referred to be particularly intrusive. Indeed I did not always notice them until they were pointed out and only once in my visits did a more noisy aircraft intrude. As for the buzz of the electricity cables, this can be intrusive when standing underneath them, but from most of the valley, if it is heard at all, it is difficult to distinguish from the noise of running water or wind in the trees.

55. Moreover my own, subjective, assessment accords with the readings made by the acoustic experts for each side. It is agreed that at Middle Hill Farm, further down the valley and arguably closer to other noise sources, background noise levels are in the 32–39 dB range. These are below national background noise levels, markedly so at the bottom of the range. Indeed, I note that, rather at odds with the evidence he gave to the Inquiry, Mr Cook’s own landscape character assessment describes the valley as ‘peaceful’ and ‘calm’. I agree and fail to see how those characteristics could survive shooting taking place on up to 6 hours a day for 250 days a year.

56. In my view this is important because ‘tranquillity’ and other intangibles can contribute significantly to the character of an area. Moreover, in this case the Cotswold Conservation Board’s AONB Management Plan states that tranquillity is one of the AONB’s significant attributes. I accept that noise is only one of the factors that contribute to a feeling of tranquillity. Even so I do not consider that an area that experienced shooting as frequently as the appellants propose could continue to be regarded as tranquil.

57. I have taken into account that noisy activities may not be equally harmful in all parts of the AONB. In particular, I have had regard to Mr Cook’s reference to such an activity being allowed on appeal near Castle Combe. However, having myself dealt with an appeal there I consider that the conditions are very different to those at Manor Farm. Unlike Prescott, Castle Combe is, and is well known to be, a generally busy and noisy locality.

58. Taking all this into account my conclusions regarding noise are as follows. Allowing appeal B would have a significant and harmful effect on the tranquillity and character of this part of the AONB. I consider that this would be seriously at odds with the aims of national advice and local policy on such areas. In forming this view I have noted that Local Plan Policy RCN4, whilst generally permissive even in AONBs, does not support open air recreational developments that detract from the quiet enjoyment of the countryside.

59. Moreover, it is common ground that the shooting use that is the subject of appeal B would require the provision of acoustic sheds. Those that are the subject of appeal C have an effect on the natural beauty of the area that is minor but harmful. Given that their purpose is to facilitate a use that is itself harmful I consider that there are serious objections to them. As for the sheds that are the subject of appeal D, these are larger, have a greater impact on the natural beauty of the area and are even less acceptable.

60. I conclude that any combination of the developments before me would cause serious harm to the character and appearance of this important and sensitive area that has the highest priority for the protection of its natural beauty. Whilst the developments may not directly affect any of the key characteristics identified by the Countryside Commission, there would be a very noticeable loss of tranquillity, an increase in built development (especially with the appeal
D sheds) and the introduction of uncharacteristic planting. Taken together the
effects would be significant and would conflict with the aims of national and
local policy on AONBs and with the Cotswold Conservation Board’s Management
Plan. These are, in my judgement, very serious objections to all three appeals.

Effect on users of the bridleway

61. Turning to the effect of shooting noise on horse riders and walkers, the
bridleway along the valley runs very close to the shooting grounds. Even
though shooting is now confined to the stands in the acoustic sheds, it is clear
that anyone on the nearby part of the bridleway when shooting occurred would
experience high noise levels. This was confirmed when shooting took place
during my site visit and is consistent with the estimates of the appellants’
acoustic advisor that noise levels from shooting in the nearest shed would be in
the high 70s dB. Moreover, I am satisfied that noise levels would remain high
even with the larger acoustic sheds that are the subject of appeal D.

62. In fact, on the nearest parts of the bridleway I found the noise of shots loud
enough to be disturbing, even though I was waiting for them. It was very
different to the background shooting noise that is not unusual in rural areas
and I consider it very likely that horses, that might not be expecting such
noise, would be startled by it. I accept that not all horses are frightened by
shooting, or at least can be trained to tolerate it. However, it seems to me
unrealistic to expect that in practice a high proportion of horses using this
bridleway would have been so trained or indeed would be capable of it.
Moreover, a bolting horse poses an obvious danger to its rider and other
bridleway users as well as itself. Taking all this into account it is not surprising
that some riders no longer use the bridleway.

63. I do not doubt that others are not put off. However, the potential for problems
to occur if shoots take place near to bridleways seems to be generally
recognised. Indeed various guidance advises that in such circumstances
warnings should be put up and the appellants have done so. At such times
notices are posted on both approaches to Manor Farm advising bridleway users
to use the ‘walkie-talkie’ sets provided to warn the shooting instructor of their
presence so that shooting can be halted whilst they pass through.

64. Some riders suggested at the Inquiry that the system does not always work.
This is disputed by the appellants, but I see no reason not to believe the
evidence of Mrs Hosken, given on oath, that she was thrown from her horse as
a result of unexpected shooting whilst she was using the bridleway. In any
event, whatever the precise details of that and any other incidents, I consider
that the relationship between shooting on the appeal site and the bridleway is a
problematic one where there is a very real risk of conflicts arising. Even if the
walkie-talkie system is effective, it seems inevitable that horses and riders will
be well within earshot of the shooting before a warning can be given. Taking
this into account there are potential problems of controlling horses with one
hand whilst holding the walkie-talkie with the other.

65. I have had regard to the possibility that, if permission were granted, an
automatic warning system could be installed. However, even if that were
practicable, in my view it would be far from a complete solution. Whatever
system is used there seems to be potential for confusion to arise if more than
one individual or group approaches the shooting ground at about the same
time. Moreover, bridleways are today used primarily for leisure purposes and even if the risk of horses bolting could be completely eliminated, the evidence to the Inquiry and my own experiences make it abundantly clear that the proposed shooting would greatly reduce the pleasure of using this one.

66. Many users are likely to find it unpleasant and stressful to have to approach the site through areas where shooting is audible, then operate a warning system (or rely on an automatic one working) so that shooting stops, before passing alongside the shooting fields hoping that it will not restart. Moreover, shooting would be heard on other bridleways on both sides of the valley and on the scale proposed is likely, in my judgement, to detract, at least modestly, from the pleasure of their use also. In addition, despite the restrictions proposed, these effects could occur for up to 6 - 7 hours a day on potentially about 250 days per year.

67. In reaching these conclusions I have had regard to the other instances drawn to my attention of bridleways passing close to shooting grounds and where in several cases noise levels are reported to be higher than at Manor Farm. In some cases the number of shooting days is also greater but this is not always so and in any event the appellants’ suggested conditions would permit a considerable increase in shooting from past levels. Moreover the circumstances of some of the other sites are very different to those at Manor Farm. In particular the noise and general environment in west London, where one of them is located, will be very different. That said, two of the sites are in the Cotswolds, not far from the appeal site, and I have looked at these.

68. When I did so shooting was taking place at the Chatcombe site. As at the appeal site, but to an even greater extent, I found many of the shots startling even though listening to them was the purpose of my being there and I would expect them to have a significant effect on many horses. Whilst it is certainly an example of a shooting ground and bridleway existing side by side I have no evidence that the bridleway is in practice well used by horses and my experience did nothing to suggest that the co-existence is a happy one.

69. As for the site at Westfield, this seems to be used on no more than about 28 days per year. Even so, a permissive bridleway/path has been provided so that riders and walkers can keep away from the shooting grounds (through which they would otherwise have to pass) at shooting times. Again this is hardly indicative that shooting and riding can coexist happily.

70. My knowledge of these sites has therefore done nothing to reduce my concerns regarding the use of the appeal site for shooting or alter my conclusion that this would detract severely from the pleasure that riders and others could obtain from the adjoining bridleway and has the potential to cause accidents. It is not necessary for me to agree that this is, as the Council suggested, tantamount to obstructing the bridleway to conclude that this is undesirable and conflicts with the aims of Policy RCN9\(^3\) of the Tewkesbury Borough Local Plan. This is a further serious objection, at least to appeal B.

Effect on the living conditions of local residents

\(^3\) Policy RCN5, referred to in one of the Council’s decisions, has not been ‘saved’. However, Policy RCN9, whilst directing noisy sports away from settlements also advises that they will only be permitted where they do not significantly affect the enjoyment of, amongst others, those using public rights of way.
71. Turning to the effect that shooting has on local residents, both sides consider that, although it is not formal planning policy, the best advice is provided by the document entitled ‘Clay Target Shooting: Guidance on the Control of Noise’ [the ‘Guidance’] produced by the Chartered Institute of Environmental Health. I understand that Mr Seller, the appellants’ acoustic expert, helped to draft and edit parts of the Guidance.

72. At the Inquiry, Mr Seller made clear that at the time the Guidance was being prepared he had not been aware of the existence of shooting schools and suggested that had he known of them he would have defined ‘major shoots’ differently. That said, there is no doubt that the current activity at the appeal site falls within the definition given in the Guidance for a major shoot; indeed it does so comfortably.

73. In respect of major shoots, the Guidance offers various advice. Amongst other things, it indicates that planning permission should not normally be granted if the mean Shooting Noise Level (SNL)\(^4\) exceeds 55dB where the background noise level is less than 45dB. In this case there is no dispute that the background noise level at several nearby dwellings is well below 45dB.

74. Before looking at the SNLs that do or are predicted to occur, it is worth noting that the Guidance also advises that a buffer zone of at least 1.5km in the general direction of shooting and 1km in the rearward arc is desirable. These distances are applicable to open land where there are no significant sound reflecting media. The circumstances at the appeal site are rather different but it is not obvious that within the valley noise will be less than on open ground. In any event, the Guidance goes on to suggest that even where substantial topographical features intervene separation distances (to dwellings) of less than 1km in a forward direction should not normally be allowed except under very special circumstances. [Original emphasis.]

75. In this case, the dwelling at Wickfields Farm is in a generally forward direction and is agreed to be only 700-750m from the shooting sheds. In addition, the house known as Middle Hill Farm is only about 350-400m away, albeit in a rearward direction. Moreover, part of its curtilage is no more than about 300-350m from the sheds and has a direct line of sight to one of them. From this it is clear that even if the intensity of shooting at Manor Farm is below that which Mr Seller envisaged for a major shoot, there are also dwellings much closer than the Guidance suggests would be acceptable for such a shoot.

76. Turning to SNLs, Mr Seller recorded a level of 58.6dB in the lane outside Middle Hill Farm in May 2009. This is after various measures had been introduced to reduce noise levels, including use of lower velocity cartridges, moving the shooting stands further into the sheds and discontinuing the use of the end stands. Prior to the introduction of those measures the Council had recorded SNLs of 66dB close to the house and up to 72dB within its curtilage.

77. Also before the mitigation measures had been introduced Mr Seller had recorded an SNL of 82dB at Wickfields Farm. I have taken into account that this seems to have been in conditions favourable to noise transmission. Even so, Mr Seller estimates that with the current arrangements the SNL at that location would be in the order of 62dB, and about 59dB if the larger sheds the

\(^4\) This is defined as the logarithmic average of the 25 highest shot levels, over a 30 minute measurement period, after correcting, where necessary, the recorded noise levels to allow for residual noise.
subject of appeal D were provided. In respect of Middle Hill Farm he predicts that the larger sheds would reduce SNLs to about 52dB.

78. Inevitably predictions can be subject to error and that may be particularly so in cases like the appeal site where the topography is complicated and the shots have a distinctive echoic quality. The Guidance notes that valley sides can reflect the sound of gunfire and cause echoes and there seems to me a real possibility that this is happening in this case. This may both increase noise levels along the valley and make the new sheds less effective at reducing noise in a rearward direction (ie towards Middle Hill Farm) than has been predicted, especially as this seems to be based on what has happened on more level sites. My concerns are heightened as it does not seem to have been clearly established what the noise is reflecting from. All of this suggests to me that the predictions should be treated with some caution.

79. Be that as it may, even at 52dB the predicted SNL at Middle Hill Farm would be up to 20dB above background noise levels suggesting that shots would be heard very clearly. Moreover, 52dB would be the level close to the house; parts of the garden would, it is estimated, experience levels up to 6dB higher. Mr Seller disputes the relevance of this but in my view it is not unreasonable for the occupiers of a house to expect to be able to enjoy their garden in a reasonable degree of peace and quiet. An exception might be made for parts that are put to little or no recreational use, but having seen the garden of Middle Hill Farm, it is clear that the ‘lawn’, where many of the Council’s noise readings were taken, is one of the more open and sunny areas. I would expect it to be used recreationally and I consider that the occupiers are entitled to be able to do so without experiencing high noise levels.

80. In any event, the levels discussed above assume that the appeal D sheds are built, despite the adverse impact that I consider they would have on the natural beauty of the area. Without them, SNLs at Middle Hill Farm would exceed the 55dB level that the Guidance suggests should be the maximum for a major shoot. As for Wickfields Farm the predicted SNLs would exceed 55dB level even with the appeal D sheds.

81. I have had regard to Mr Seller’s view that as this is a shooting school a higher SNL of about 60dB would be acceptable. However, the present activity meets the Guidance’s definition of a major shoot and 60dB is a higher level than was suggested even by the appellants’ original acoustic advisors. Mr Seller’s justification seems to be that the number of shots and the duration of shoots are lower than at major shoots that are not schools. However, his own paper (co-authored with Wright and Ling) found no conclusive evidence for a link between the number of shots and community annoyance. In any event, there would be nothing to prevent the number of shots rising from recent levels. On the contrary, if the business succeeds an increase could be expected in both the number of shots and the hours of shooting and I note that the conditions suggested would allow substantial increases.

82. Furthermore, whilst Mr Seller’s experience is extensive, his conclusions in this instance do not fit well with the views of many local residents. Moreover, I have no reason to believe that the concerns of those residents are anything other than genuine. I have had regard to the suggestion that they have been made more sensitive to gunshot noise by the shooting that formerly occurred...
on Tuesday evenings when the gun club was in operation. However, the impact of noise cannot be measured solely by decibel levels; its nature and the associations that go with it can also be important. In any event, even using the appellants’ figures it appears that, within the curtilage of some dwellings, noise from the shooting is within the range (55-65dB) at which annoyance can start to occur. In these circumstances if residents find the shooting disturbing that does not seem to me to constitute abnormal sensitivity.

83. I have noted that the conditions proposed by the appellants would, amongst other things, prohibit shooting at some of the more sensitive times, including evenings and Sundays. However, shooting would still be permitted on up to 6 hours on every Monday, Tuesday, Thursday and Friday and for up to 7 hours on Saturdays (Bank Holidays excepted). This exceeds the hours that the Guidance suggests may be appropriate where justified complaints have been received or are expected and represents, potentially, many hours of shooting each week, which it would be natural for Mr Martin to wish to maximise. In my view it is not realistic or reasonable to expect local residents to plan their activities around this.

84. I have also taken into account the appellants’ concerns regarding some of the Council’s figures and methodologies. However, I have found nothing that would seriously affect the conclusions I have drawn, which are based to a large extent on the appellants’ own figures. For the reasons set out above I consider that continued use of the shooting grounds with the existing sheds (ie the development that comprises appeals B and C) would have a serious harmful effect on the living conditions of some local residents contrary to the aims of Local Plan Policy EVT3.

85. Moreover, whilst the larger appeal D sheds should reduce noise levels, I have doubts as to how effective they would be in the specific circumstances of this site. That said, even if they are as successful as the appellants predict I consider that some harm to the living conditions of at least a few local residents would still arise. In any event, I have serious concerns about the visual impact of these sheds and I am not convinced that they represent a satisfactory way forward.

The fallback position

86. I have taken into account that if permission is not granted a degree of hobby/recreational shooting could still take place at Manor Farm, as occurred up to about 2005. However, the evidence put to the Inquiry suggests that such shooting would have little impact on the character of the site or those living, riding or walking nearby. Accordingly this does not materially affect my conclusions.

87. I have also taken into account that, by virtue of Class B of Part 4 of the Town and Country Planning (General Permitted Development) Order, shooting of a more intensive and harmful nature could take place on up to 28 days per year. However, the appeal site is no different in that respect to most other parts of the countryside and it does not necessarily follow that exercising these rights would cause significant harm. Indeed, the fact that such temporary use is ‘permitted development’ could be taken as indicating that it is not expected to cause serious harm in most cases. Moreover, other procedures would exist if in
practice such an operation were to cause a statutory nuisance and the Council could also seek to remove permitted development rights.

88. In addition, permitted development rights are not always exercised and it is not self-evident that a successful business could be operated on such a limited basis. Whilst some shoots do seem to operate under the 28 day rule, the thrust of the appellants’ evidence was that they would need many more days.

89. Be that as it may, I have taken into account that if shooting did take place at Manor Farm under the 28 day rule there would be no control on shooting hours. Moreover, SNLs could be markedly higher than at present and there need be no warning system on the bridleway. In contrast, if the appeals were allowed conditions on these and other matters could be imposed. Despite this, given the many more days on which shooting could take place, I consider that, on balance, a shooting business based on the appeal developments would be materially more harmful than one relying on permitted development rights. Taking all this into account the mere possibility of such a fallback position materialising does not alter my conclusions.

Other matters and overall conclusions

90. I have had regard to all other material considerations raised including the encouragement given in national advice and local policy to farm diversification. This is not directly relevant to these appeals as Manor Farm is not a working farm, but I have taken it into account as an indication of the importance attached to maintaining a viable rural economy. However, I do not consider that this is sufficient to outweigh the concerns that I have identified relating to the main issues.

91. I have also taken into account that policies for AONBs do not rule out the provision of open air recreational uses, including shooting. However, that is subject to them not detracting from the attractiveness of the area. In this case, the visual impact of the appeal developments is harmful (though minor if the existing sheds are retained). Moreover, the effect that shooting noise, on the scale proposed, would have on the character of the locality is in my judgement very significant and seriously harmful, much more so than the shooting which is common in many parts of the countryside. In my view the developments are contrary to the overall thrust of AONB policy.

92. Shooting noise would also detract from the pleasure, and potentially the safety, of those using the adjoining bridleway and harm the living conditions of some local residents. The number of residents affected may be small and I accept that clay target shooting is a use that is likely to require a rural location. However, when all the above matters are taken into account it is, in my judgement, abundantly clear that this part of the AONB is not a suitable location for shooting on the scale proposed. The potential fallback positions are insufficient to alter my conclusion.

93. As the Guidance notes ‘the decision on where to locate a shoot will probably be the most important decision taken’. I agree and whilst conditions could help mitigate some of the effects of this shoot that does not alter my fundamental conclusion that this is the wrong location to set it up. Indeed the need for conditions on matters such as the type of cartridges that can be used could be seen as lending support to the conclusion that this is the wrong location.
94. I conclude that the shooting grounds as they currently exist (ie with the development that forms appeals B and C) cause unacceptable harm and could not be made acceptable by replacing the existing shooting sheds with the ones that are the subject of appeal D. Moreover, the appeal D sheds would cause appreciable harm to the appearance of the area, whilst there would be no point in permitting the appeal C ones if appeal B does not succeed. For the reasons set out above and having taken all other material considerations raised into account I conclude that all three appeals should fail.

**Formal Decisions**

I dismiss appeal A, appeal B, appeal C and appeal D.

_P Grainger_

INSPECTOR
DOCUMENTS handed in at the Inquiry

1 Notification letter and circulation list
2 Mr Reddaway’s statement
3 Wing Commander Summers’ statement
4 Mr Claridge’s statement
5 Notes of Prescott Parish Council meeting 25/3/09, submitted by Mr Dean (Chair)
6 Letter from Jane Stanton-Cole and Angus Cole of Middle Hill Farm
7 Letter from Veronica Chapman (horse rider)
8 Analysis of Mr Rock’s measurements, submitted by the appellants
9 Statutory declaration by Mr J Harkness, submitted by the appellants
10 Details of application relating to shooting grounds at Westfield, submitted by the Council
11 Extract from the Landscape Institute’s ‘Guidelines for Landscape and Visual Impact Assessment’, submitted by the Council
12 Extract from the Landscape Institute’s ‘Guidelines for Landscape and Visual Impact Assessment’, submitted by the appellants
13 Extract from CPRE campaign document (regarding tranquillity), submitted by the appellants
14 Suggested conditions, submitted by the appellants
15 Suggested conditions, submitted by the Council
16 Statement of Common Ground (general)
17 Statement of Common Ground – Acoustics
18 The Council’s closing submissions
19 The appellants’ closing submissions

PLANS submitted at the Inquiry

A Revised plan to accompany appeal A, submitted by the appellants
B Revised plan to accompany appeal B, submitted by the appellants
C Coloured plan to go with Doc 13, supplied by the appellants
D Plan produced by the Inspector and tabled at the Inquiry indicating a possible curtilage boundary for Manor Farm
APPEARANCES

FOR THE APPELLANTS: Ms A Bennett of Charles Russell LLP (agents)

She called

Mr D Martin
Mr G R Godwin  DipTP MRTPI
Mr J Seller  BSc MSc
Mr A Cook  BA(Hons) MLD MLI MIEMA CEnv

Appellant
Director, Pegasus Planning Group
Managing Director, John Seller Associates Ltd
Partner, Pegasus Planning Group

FOR THE LOCAL PLANNING AUTHORITY: Mr P Cairnes of Counsel

He called

Mr P M Smith  BA(Hons) BSc(Hons) DipDBE MRTPI
Mrs E A Hosken
Mr G A Rock  BSc MSc MIOA
Mr J W Lane  MIPRWAM

Consultant Planner
local resident and rider
Independent Noise Consultant
Principal Rights of Way Officer, Gloucestershire County Council

INTERESTED PERSONS:

Mr W Reddaway of the British Horse Society
Wing Commander R G B Summers local resident
Mr R Claridge local resident
Mr M Dean Chair of Parish Council
Mr G Hill local resident
Ms L Stephens horse rider
Ms E Chugg horse rider
Ms S Mustow local businessman
Mrs B Voce walker
Mrs S Took horse rider
Mr S Purves horse rider
Mr D Florent shooter
Mr C Reid House and Shooting Master, Cheltenham College

Ms S Knightly-Brown horse rider
Ms G Lavers horse rider
Mr R G Cooper horse rider
Mr D Jones local resident
Ms E Rutledge horse
Ms C Deacon horse rider