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Our Ref: HW/178786/002

Your Ref:

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Also by email to
Sam_Grant@bathnes.gov.uk

2 December 2024

Dear Sir

**Our client: Stephen Willcox
Fry's Bottom Colliery**

We refer to your email dated 28 October 2024 attaching draft Enforcement Notices. We set out below our client's responses to the drafts.

1. Enforcement Notice- 23/00023/UNDEV/OD1
The Weigh Bridge Building

The breach of planning control asserted in this draft notice is that our client has constructed a dwelling house. Nothing could be further from the truth here and, in fact, the works carried out by our client relate to the renovation of an existing storage building. As such, the Council's assertion that the building is not substantially complete is fatally flawed.

To explain, the former Weigh Bridge Building ("WBB") was built in 1756 and used for the weighing of coal in the carts drawn by horses. To our client's knowledge from his own research this use continued up until the railway siding was constructed in 1863. This building was then used to house the pit ponies used in the mine as was the former stables to the rear of this building.

Our client worked on the farm adjacent to the WBB and the farmer used to store hay in what was the WBB, and the pit pony shed. Our client recalls that when he

was working on the farm (from 15 years old), the WBB was two storeys high, and the higher level was accessible by external staircasing to the side.

Our client purchased the land in 1995. Between 1995-6 an extension which was then timber framed was added by our client on foundations to the north. This served two purposes. Half was utilised for the cutting up of logs in connection with Fry's Bottom Timber. The remainder was used for a tack and feed store for the two horses belonging to our client's daughter. The horses were stabled in the pit pony shed attached to the rear of the WBB.

See enclosed photos of the WBB.

As a result of a break-in around 2004, the extension was made more secure, and blocks were installed under the existing roof structure in 2005/2006.

A container was placed at the rear for tack and feed. Hay remained to be stored in the area behind the sliding doors and a horse was stabled. The enclosed photograph was taken in 2009.

By 2013 the lower half of the original section of the WBB became used by trial bike riders visiting the site to book in and out, and also as an office for our client's business, Property Search UK, thereby triggering business rates on these premises.

The upper story of the WBB was restored in keeping with what had been constructed in 1756.

Mr Rob Warren (BaNES Enforcement) came on to site in 2015 in respect of a separate building, known as the tin shed. During his visit he was aware of the works on the WBB, noted the works, and took no further steps in relation to it.

In 2017 works to increase the storage at WBB above the tack room (distinct from the original brick building) took place. This involved the construction of an upper storey, which was substantially completed by 2019.

As to the draft enforcement notice it is alleged that the works to the WBB have not been substantially completed. Our client disagrees. Our client understands that the Council's position is that it is not substantially complete by reference to dwelling.

Our client didn't undertake the works of renovation to convert or use the WBB as a dwellinghouse. The purpose was to increase storage; office use; and to assist with

the administration of the trial bike riding events. The business rates liability reflects the Council's treatment of non-residential use.

Although historically it is believed the WBB provided residential accommodation, , the WBB is not a dwelling, and our client asks the Council to revise their opinion in so far as the treat it is a dwelling.

Our client acknowledges that in 2023 an application for planning in principle (PIP) was lodged with BaNES by our client seeking permission in principle to convert the building comprising the WBB (and its extensions) into a residential dwelling. This was not an application to secure retrospective permission for a dwelling but to explore whether permission to convert the buildings for future use as a dwellinghouse would be available.

Our client's ecologist has confirmed the WBB as a bat roost.

The Council's draft notice requires our client to 'demolish the buildings on the land and remove all resultant materials from the land, except for the stables'.

This would result in the destruction of an important habitat for bats that roost in the building and forage into and around the site. It would also require the removal of a building of historic listing and interest, recognised by the South West Heritage Trust ref; No 61712, managed by Somerset Council and Bath and North East Somerset Council. Company No 09053532, Charity No 1158791. We submit that it would not be expedient to issue a notice if it requires destruction of protected habitats and a building of historic / heritage interest.

2. Enforcement Notice-23/00023/UNDEV/OD2
Construction of non-agricultural storage building and engineering operations.

The above draft notice alleges that without planning permission, our client has constructed a non-agricultural storage building and without planning permission has imported material and carried out engineering operations on the land.

Our client obtained planning permission **[99/02213/AGRN]** to erect a forestry building in 1999, in the location shown with an A.

Our client has submitted two planning applications for the Forestry drying and storage of logs, the first application ref no 21/04150/FUL was refused under delegated powers, a number of reasons were given one mainly that our client no longer ran a forestry business, and the main use of the land was a change of use to trial bikes use.

The second application giving permission to have a forestry building (no ref; 22/03198/FUL) was permitted on 13/01/2023. The decision notice attached several conditions, including Condition 1, concerning matters pertaining to a Wildlife Protection Enhancement Scheme. Condition 1 was discharged **[23/01555/COND]**, however, the further development originally prohibited by it on the permission has not been carried out yet, despite the discharge of the ecology report. This is because there is a need to comply with further conditions, the costs of which are prohibitively expensive, requiring a further c. £32,000 in addition to the c. £40,000 already invested in the building. However, as it stands, the partially constructed building is lawful as per the existing consent.

During the construction of the forestry building, hard standing was laid. This was before 2003 and is beyond enforcement by virtue of the passage of time.

Construction of the building commenced in January 2021 to further facilitate the use of the site for forestry.

The roof was installed in 2023-2024. The building has been used for storage of equipment ancillary to the forestry works.

It is a forestry building; it will continue to be used for forestry.

It is accepted that our client has permitted an individual to store non-forestry equipment in the building on a temporary basis. However, our client is taking steps to bring that occupation to an end and invites the Council to halt issuing an enforcement notice at this time in view of the efforts our client is taking to restore this building, as approved, to full forestry use. Our client anticipates that the equipment will be removed within 9 months.

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The second application giving permission to have a forestry building **[22/03198/FUL]** was permitted on 13/01/2023. The decision notice attached several conditions. The ecology discharge condition was met **[23/01555/COND]**, however, the further development prohibited by Condition 1 on the permission has not been carried out yet, despite the discharge of the ecology report. This is because there is a need to comply with further conditions, the costs of which are prohibitively expensive, requiring a further c. £32,000 in addition to the c. £40,000 already

invested in the building. However, as it stands, the partially constructed building is lawful as per the existing consent.

Further, a felling licence was issued on the 7th June 2022 and expires on 7th June 2027, there was a two-year delay in the start of felling and this operation has not fully started and could well require to be extended for a further 3 years.

As to the alleged breach by importation of materials, levelling of the area commenced in 1996-7 and a hardstanding area created by using crushed bricks from demolition. It is lawful, due to the passage of time.

The hardstanding area has been managed and maintained by our client since, with materials lain on top of the original brick base. The hardstanding has not been extended since at least 2005. Engineering operations have therefore not taken place in respect of this area of hard standing since before 2005.

See below photographs of the site from 2005 to present day and the aerial photos supplied

3. Enforcement Notice-23/00023/UNDEV/0D3 **Construction of tracks and dams.**

This draft notice alleges that without planning permission our client has imported material and carried out engineering operations in the form of constructing access tracks and the constructions of dams in a water course.

Our client does not understand the Council's complaint is in relation to tracks or precisely which tracks are claimed to be unlawful. With the exception of 1G1 (shown on the appended plan), the forestry tracks on the site have been in place since 1997, and these have been maintained and upkeep with approved recycled material. They are lawful and necessary.

Our client invites the Council to clarify by reference to the appended plan which track/tracks the draft enforcement notice relates to. The tracks facilitate the felling operation on site. Large machinery needs to access the woodland, and therefore require appropriate infrastructure to carry their weight. It is proposed that the track identified on the plan below 1G1 will cease to be operational and reinstated to natural land when the tree felling licence (including any extension) expires.

However, to regularise the position in respect of 1G1 our client will submit an application for temporary permission to retain track 1G1, whilst the felling licence is in place.

In respect of the dams, our client is unclear as to why the Council takes issue with them. The Environment Agency have been made aware of the dams and they do not have any concerns with the dams in situ, nor the materials used to construct them.

Our client's ecologist has identified that the wildlife around the ponds which have formed contains protected species under the Habitat Regulations, such as newts.

Removing the dams will put the protected habitats at risk and so should the Council require it, our client is willing to submit an appropriately framed application for planning permission for the retention of these conservation ponds.

4. **Enforcement Notice-23/00023/UNDEV/COU1**
Mixed use

The draft notice alleges that without planning permission, the site has changed from forestry to mixed use, consisting of forestry, open air storage, a waste transfer site and associated structure. However, this allegation fails to take into account the history of the site.

The area identified by the Council was the former Fry's Bottom colliery yard site (started in 1756), which was levelled in 1996-7 to create a hardstanding for storage.

Our client submits that the area the subject of this draft enforcement notice has been used for the storage of caravans, vehicles, shipping containers and other items for more than 10 years. The use complained of is therefore lawful.

Our client submits that the site is not operated as a waste transfer site, and the Environment Agency concurs. Our client has held a waste exemption licence for the site since 1995. Originally it was wrongly addressed for the benefit of Poacher's Pocket. However, this administrative error has since been corrected and registered to Fry's Bottom (WEX381044).

Our client intends to submit a certificate of lawfulness for the mixed use the subject of the draft enforcement notice, save for waste transfer site, which is not applicable.

5. **Enforcement Notice-23/00023/UNDEV/COU2**
Change of use from forestry to mixed use

This area of spoil from Fry's Bottom Colliery coal shaft (1756-1906) was levelled in 1996-7 to create a hard standing for storage and our client obtained permission to erect a forestry building in 1999. Separately, a tin shed has been in situ since 1995.

Our client submits that the area of land that is the subject of this draft is solely used for forestry. Any ancillary use for open air storage; and firewood production is lawful. As the area is attributed solely for forestry use, the motorbike trials that have previously taken place within this area (and this area alone) benefit from the permitted development rights discussed in earlier correspondence with the Council. That said, in the light of the Council's 28 October correspondence, such use has ceased.

Our client's position is that the site is not operated as a waste transfer site, and the Environment Agency concurs. Our client has held waste exemption licences since 1995. Originally the licence referable to this site, was wrongly addressed for the benefit of Poacher's Pocket. However, this administrative error has since been corrected and registered to Fry's Bottom (WEX381044).

Our client intends to apply for a certificate of lawfulness in respect of the above uses except for motorbike trials practice. In respect of the motorbike trials, an appeal of the planning decision will follow.

Conclusion

As a result of the above and the steps that our client has confirmed he will be taking in respect of certificates of lawfulness and planning permission, our client submits that it would not be expedient to issue any of the draft notices that the Council has provided (an unusual step for the Council to have taken in our view). As such, our client would welcome further discussions with the Council to enable the allegations that are levelled at him to be resolved outside of formal action and in line with the BANES Council's Local Enforcement Plan (December 2022).

As a first step, our client would welcome the opportunity to meet with you with his planning agent to discuss the points raised above and agree the actions needed by our client to resolve any concerns the Council may have. Our client considers this preferable as an approach for both sides, rather than having to engage at this stage in either judicial review proceedings concerning the expediency of issuing any notices and/or expensive and time-consuming appeals to PINS. It is hoped that BANES will agree with this approach and engage further with Mr. Wilcox.

PORTER
DODSON

Yours faithfully

Porter Dodson LLP

Porter Dodson LLP

Photos of site to present day
Aerial images
Tracks plan



9/24/24, 8:23 PM

IMG_8466.jpg









Weigh Bridge Building



General front view from the south-east



General front view from the north-east



General rear view from the south-west



General rear view from the north-west

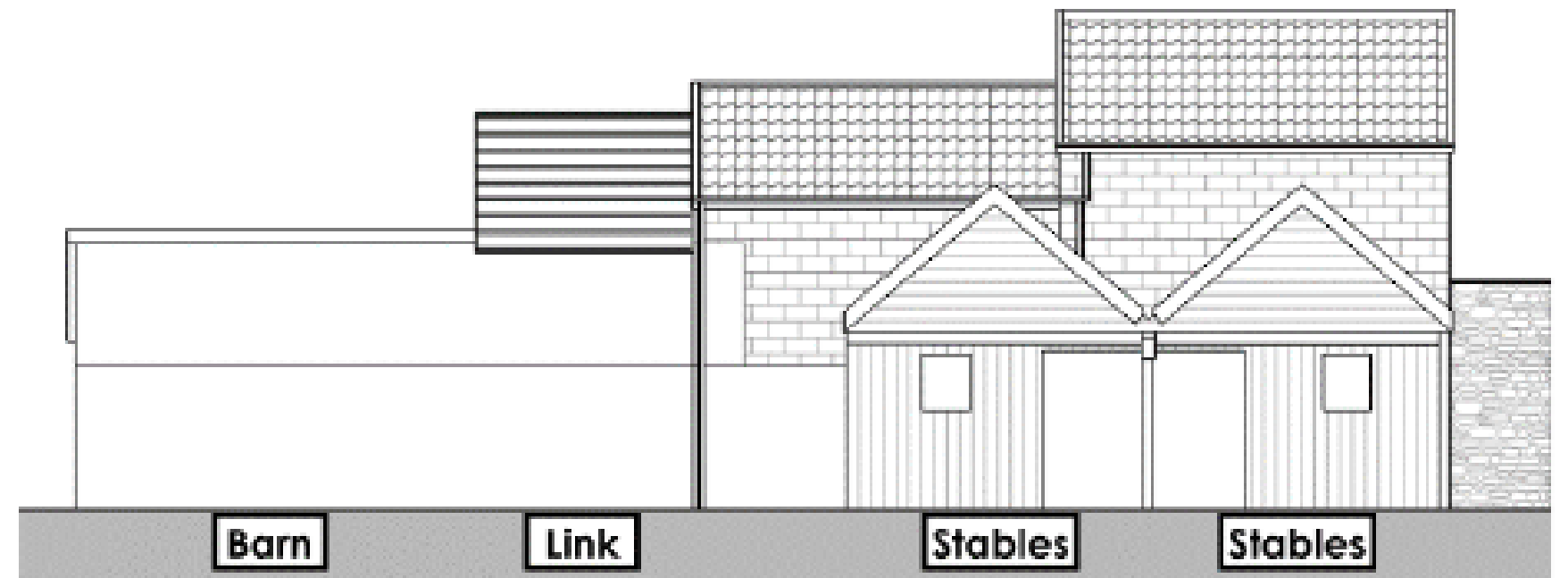


Link: Front elevation

Marked-up ground floor plan identifying main elements of building



Front (east) elevation with element references added



Rear (west) elevation with element references added

For reference only - plan showing buildings compromising WBB

12/2001

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Aerial Photo - 2001

Google Earth

Imagery Date: 1/1/2001 51°20'28.78" N 2°31'57.89" W elev 139 m eve alt 266 m

6/2005

Aerial Photo - 2005

© 2024 Infoterra Ltd & Bluesky

Google Earth

1985

Imagery Date: 6/7/2005 51°20'30.95"N 0°00'10.00"W

8/2016

N

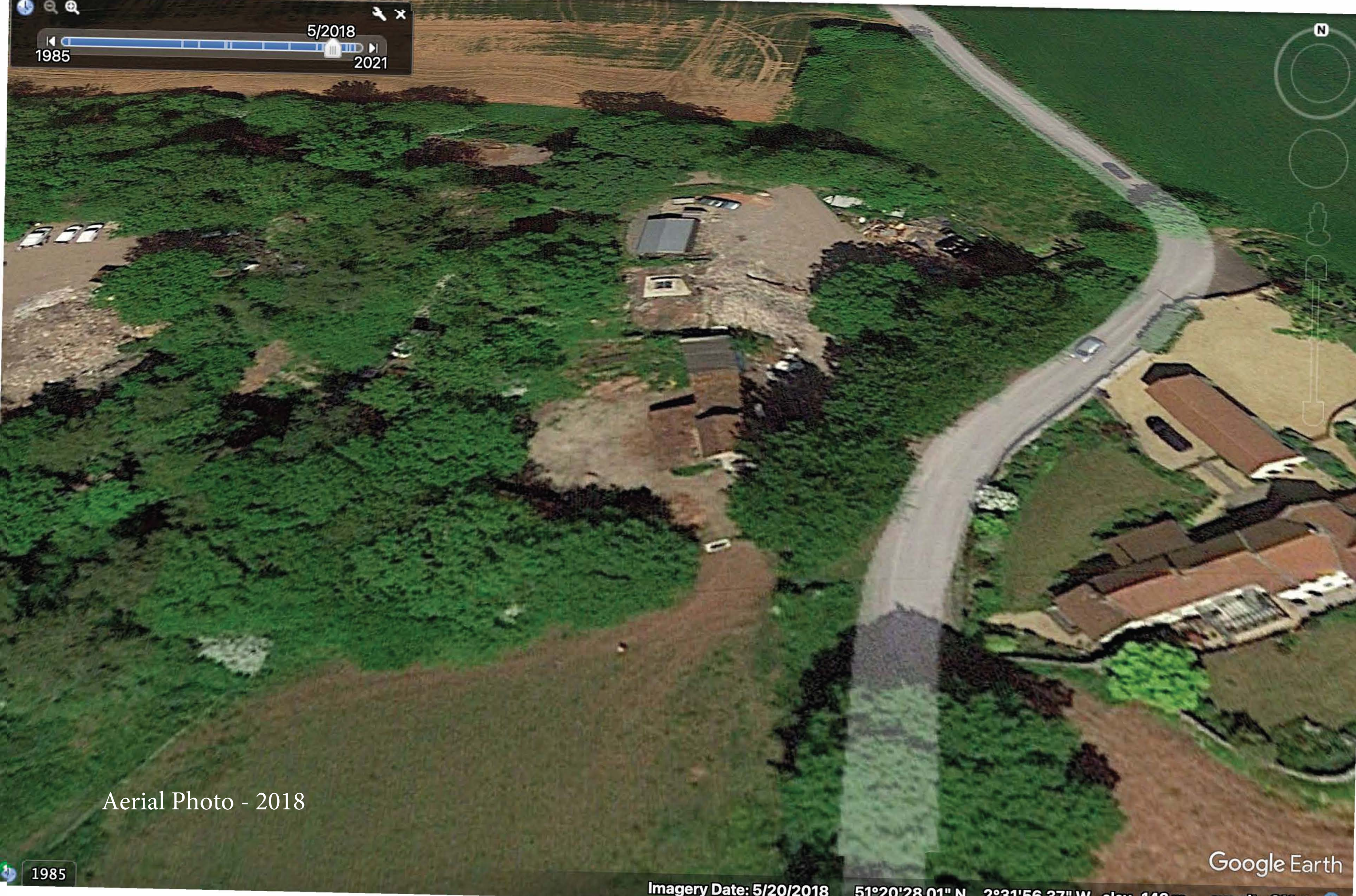
Aerial Photo - 2016

1985

Google Earth

Imagery Date: 8/15/2016

51°20'29.31" N 2°21'52.66" W



5/2018
1985 2021

Aerial Photo - 2018

Google Earth

Imagery Date: 5/20/2018

51°20'28.01" N 2°31'56.37" W elev 140 m

4/2020

N

Aerial Photo - 2020

1985

Google Earth

Imagery Date: 4/23/2020

51°20'29.19" N

2°31'55.05" W

elev: 141m

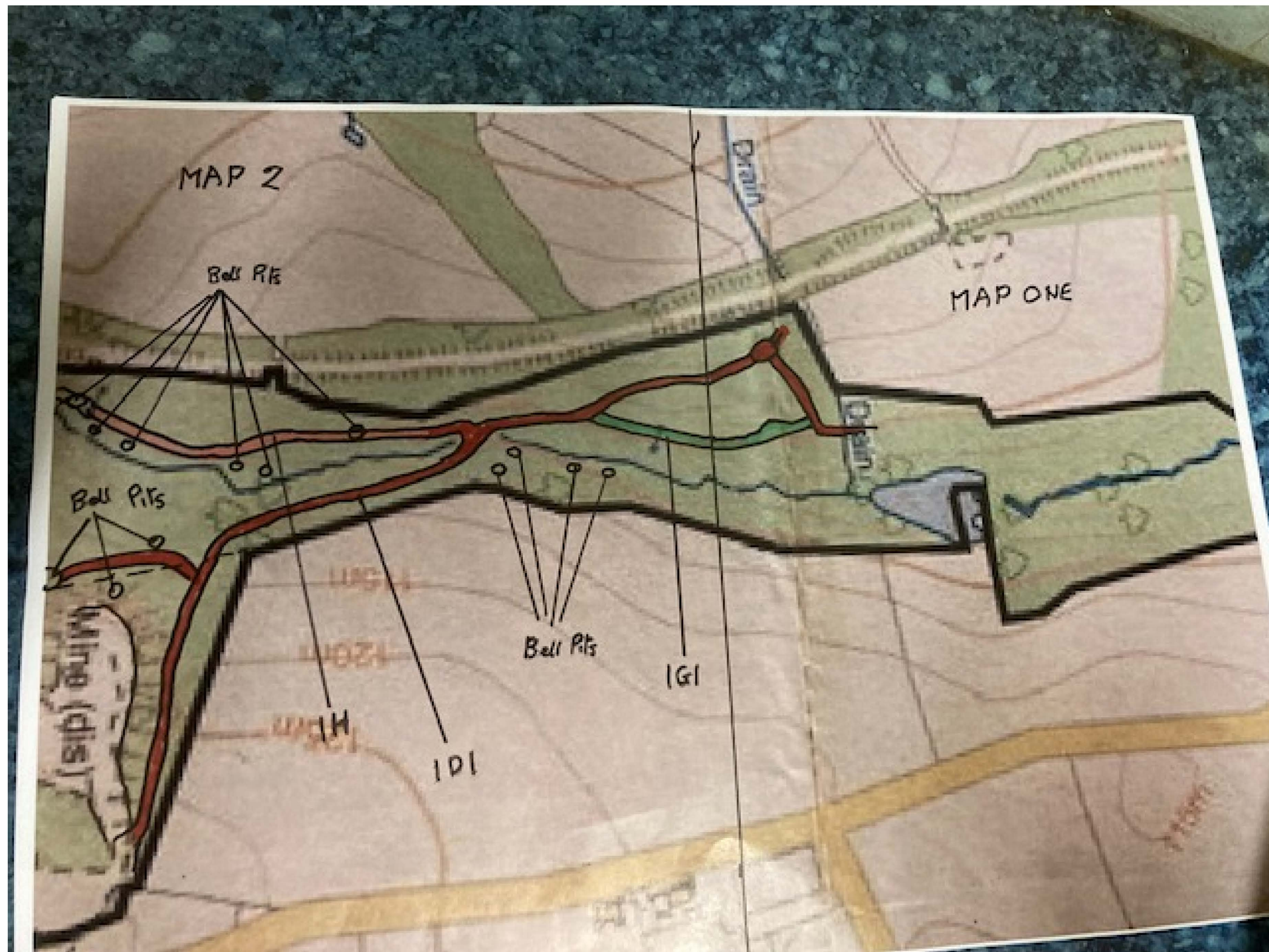
street view

4/2021

Aerial Photo - 2021

Google Earth

Imagery Date: 4/22/2021 51°20'27.48" N 2°31'55.09" W elev 143 m eye alt 266 m



Plan Showing Track 1G1



Yard at Fry's Bottom Wood



██████████ – View of yard at Frys Bottom Wood. ██████████ by
██████████ on 6 July 2005. ██████████



[redacted] yard at Frys Bottom Wood, [redacted] on
[redacted] on 6 July 2005 [redacted]



[REDACTED] - General view of yard at Frys Bottom Wood, [REDACTED] h
taken by Christopher J. [REDACTED] on 6 July 2005 [REDACTED]