

The investigation of a complaint by Mrs B against Carmarthenshire  
County Council

A report by the Public Services Ombudsman for Wales

Case: 201002343

## **Contents**

Introduction	1
Summary	2
The complaint	4
Investigation	5
Relevant legislation	6
Background & main events	6
Information obtained from VOSA	72
Mrs B's evidence	73
The Council's evidence	93
Evidence of the Retired Planning Inspector	140
Professional advice	146
Analysis and conclusions	147
Recommendations	166
Appendix 1:	169
Appendix 2:	180
Appendix 3:	186
Plan	

## **Introduction**

This report is issued under section 21 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as Mrs B, her partner as Mr R, and their neighbours as Mr and Mrs T.

## **Summary**

Mrs B complained that the Council failed to take enforcement action in respect of the use of the neighbouring farm for haulage and equine related activities and the erection of a large board and the placing of a removal lorry adjacent to their boundary. She also claimed that its decision to allow the development of an agricultural shed was perverse. She complained further that the Council was unreasonable when it applied its Persistent Complainants Policy to her and her partner and was aggrieved about the way in which her partner was referred to in an internal email.

Her complaint was partially upheld. The Ombudsman concluded that there had been a failure to take account of photographic and video evidence provided by Mrs B, information provided by their surveyor, and information available from the Traffic Commissioners about the licensing of the neighbouring farm as a heavy goods vehicle operating centre. He also concluded that the Council's decision in respect of the large board was inappropriately influenced more by the conduct of Mrs B and the neighbouring occupiers (with whom she was in dispute) than material planning considerations, and that the Council had shown a lack of objectivity in relation to her concerns. However, the Council's decision in respect of the removal lorry was one it was entitled to take. But the process by which it allowed the agricultural storage shed was flawed in that the Council had held reservations about the agricultural need for large sheds on the holding and had relied on advice which related to an earlier cattle shed proposal and which was stated to be opposed to a general storage type of shed. The Ombudsman also concluded that the Council failed to comply with its own procedures when it applied its Persistent Complainants Policy to Mrs B and her partner, and failed to respond adequately to her further complaints in which she raised new issues. However, the Ombudsman did not conclude that the reference to Mr R in the internal email pointed to maladministration.

The Ombudsman recommended that the Council should address the enforcement issues arising from the haulage related uses at the neighbouring farm, ensure that the concerns identified in the report are brought to the attention of its Members, and give consideration to

adopting a mechanism whereby enforcement matters could be considered or called in by its Planning Committee in appropriate cases. He further recommended the Council to use its best endeavours to persuade the neighbouring occupier to remove the large board which is now immune from enforcement action, and pay £2,500 to Mrs B, and a further £1000 if the Council is unable to secure the removal of the board within 6 months. Finally, he recommended the Council to review its planning and enforcement procedures, including its procedures for liaising with the Traffic Commissioners in appropriate cases, and to ensure by means of appropriate awareness training that its revised Persistent Complainants Policy was actually complied with.

## **The complaint**

1. Mrs B complained on behalf of herself and her partner Mr R about the use of the neighbouring property (referred to in this report as “White Farm”) as a haulage yard for the parking of heavy goods vehicles (“HGVs”) and associated activities, and for a commercial equine business without planning permission. She complained that Carmarthenshire County Council (“the Council”):

- having determined in 2004 and 2006 that the main use of White Farm was for equine and haulage related purposes, was perverse when it subsequently allowed the development of 2 sheds (in January and November 2008) on the grounds that they were needed for agriculture;
- failed to take enforcement action in respect of the haulage and equine related activities, and the placing of a blue removal lorry and the erection of a large board adjacent to their boundary;
- failed to take her complaints seriously, and that its officers wrongly accused her of making unfounded and malicious complaints, of conducting a vendetta against the neighbouring occupiers (“Mr and Mrs T”), and of falsifying evidence; and
- was unreasonable when it applied its Persistent Complainants Policy to her and Mr R.

2. Mrs B is also aggrieved that Mr R was described as being “threatening to neighbours” in an internal email dated 16<sup>th</sup> January 2008.

3. Mrs B said that as a consequence, their residential amenities have been adversely affected since 2004, they have been unable to establish a cattery business as they had planned, they were prevented from pursuing their concerns with the Council effectively, they incurred legal and other expenses and suffered financial losses, including a reduction in the value of their property as a result of the unauthorised development on White Farm. They also suffered stress related health problems.

## **Investigation**

4. Mrs B had earlier complained to my predecessor (in 2005) and then to me (in 2009) about what she saw as the Council's failure to take action in respect of alleged unauthorised development on White Farm. These complaints were not investigated, as it appeared on the basis of the information then available that the Council had not acted improperly from an administrative or procedural point of view. However, Mrs B's current complaint was accompanied by new evidence which appeared to indicate that haulage related uses were taking place at White Farm. This included the decision on a planning enforcement appeal relating to other land at White Farm issued in November 2010 in which the Planning Inspector commented that the licensed operation and use of the yard and buildings at White Farm as a haulage depot, storage of related items and HGV maintenance area, combined with the keeping of horses was not an agricultural use of the existing buildings and open yard. The Council was, therefore, notified that the investigation would include a review of the actions taken by the Council in response to Mrs B's concerns since 2004.

5. I obtained comments and copies of relevant documents from the Council, the Vehicle Operator Services Agency ("VOSA"), the Planning Inspectorate, and the British Cattle Movement Service. One of my investigating officers inspected the Council's relevant planning, public protection and complaints files. However, these did not include any file kept by the relevant Complaints Officer (as he had passed away prior to Mrs B's complaint being submitted, and the Council said any file he may have kept could not be located). Interviews were conducted with relevant Council officers and Councillors, and the Planning Inspector (now retired) who determined the appeal referred to in paragraph 4 above. Another Councillor provided written responses to questions. A former Council officer ("Officer F") declined to cooperate with the investigation, but attended for interview after being served with a witness summons. The investigating officer also visited Mrs B and Mr R at their home to discuss their complaint, and took photographs which I have seen. Finally, a telephone interview was conducted with Mrs B's surveyor. Whilst I do not refer in the report to every detail or document considered, I am satisfied that nothing of significance has been omitted.

6. I have also obtained specialist planning advice, a copy of which is attached to this report as Appendix 2.

7. Mrs B and Mr R, the Council, VOSA, and other persons interviewed were given the opportunity to see and comment on a draft of this report. VOSA, the former Planning Inspector and Mrs B's surveyor had no comments to make, and the report has been amended as appropriate to reflect comments received from Mrs B and Mr R, the Council and Officer F.

### **Relevant legislation**

8. Information about the need for planning permission, including permission where a material change in the use of land has occurred, "permitted development rights" granted under the Town and Country Planning (General Permitted Development) Order 1995 ("GPDO"), unauthorised development and the enforcement of planning control together with information about the licensing of heavy goods vehicles is included in Appendix 1 attached to this report. Appendix 1 also includes information about the Council's relevant policies and procedures, including its procedures for dealing with persistent complainants.

### **Background and main events leading to the Complaint**

#### **Background**

9. White Farm is shown edged red on the attached plan and includes a quarry. White Farm also includes other land not shown on the plan. The property occupied by Mrs B and Mr R (which they purchased in December 2003) is shown edged blue. The access to their property is by means of a lane or drive over land (shown hatched black) which is part of White Farm.

10. Information on the Council's files indicated that Mr and Mrs T purchased White Farm in 2001. They bred horses on a commercial basis. Mr and Mrs T also undertook certain works to their property. This included improving the drive and forming a turning area (so that Mrs T could turn her four wheel drive vehicle whilst towing a horse box).



11. Mr and Mrs T also operated a haulage business which was not related to agriculture. The business included a number of tipper lorries marked with the name of their haulage business. Mr T also operated a recycling company. Until December 2005, White Farm was a licensed operating centre for 1 HGV operated by the recycling company.

12. In May 2004 the Council wrote to the local Community Council who had expressed concern that a lorry business was being operated at White Farm. The Council said that it had received complaints about the alleged use of White Farm as a haulage yard since July 2001, and that it had explained to the complainants (who included the former occupiers of Mrs B's property) that the use of one HGV vehicle operating from the farm did not constitute a change of use, but that as the allegation was that four HGV lorries were parked at White Farm, "that would be a different matter" and would be investigated further. The letter stated that photographic and documented evidence collected by one complainant appeared to suggest that there was a change of use as a number of lorry movements were observed. (According to the Council's files, the evidence included a schedule of lorry activity at White Farm over 3 months to the end of 2001. The schedule also identified several weekends when between 1 and 5 lorries were washed down and serviced at White Farm. Photographs taken in January 2002 showed a number of commercial HGVs on the site. A planning contravention notice<sup>1</sup> was served on Mr and Mrs T in April 2002.) In its letter to the Community Council, the Council explained that its enquiries established that Mr T owned and operated an HGV vehicle which was parked at the farm when not in use, that he also owned a HGV livestock/horse lorry, and a lorry with a manufacturer's branded lifting gear which he used for transporting bales of hay around, and that the parking of additional HGVs at White Farm over the Christmas period of 2001/02 was an isolated case and would not happen again. The letter indicated that White Farm was the licensed operating centre for one HGV, and that although White Farm was the contact address for the haulage business, the licensed operating centre for up to 5 HGVs was at another location. The letter contained the Council's explanation that no breach of planning

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<sup>1</sup> See paragraph 11, Appendix 1

control had been identified which warranted enforcement action, and that it was not minded to take the matter further. Other correspondence indicated the Council's view that the volume of traffic and type of vehicles entering and exiting White Farm was reasonable for a medium to large sized farm in rural Carmarthenshire.

13. The Council's files indicated that the former occupier of Mrs B's property had informed the Council that he had been approached in an aggressive manner by Mr T. The Council's files also contained a page from a business directory website indicating that the haulage business at White Farm was open "Mon – Sun: 7am-7pm".

14. Mrs B and Mr R purchased their property in December 2003.

#### The development of agricultural sheds at White Farm

15. On 8<sup>th</sup> April 2004, Mrs T submitted a prior notification under the GPDO in respect of an agricultural implement store/hay shed. Following notification by the Council that a planning application was required, Mrs T submitted a planning application for the proposed shed, but this was refused by the Council on 18<sup>th</sup> August 2004. It was refused on grounds that there was insufficient justification for the proposed development due to the lack of agricultural activity at the farm unit, and that it was excessive in terms of mass and scale in proportion to the size of the unit (26.7 hectares) and the scale of agricultural activity then taking place on the unit. The Planning Officer's report stated that the unit was being used for the stabling/keeping of horses, that there appeared to be very little evidence of the prolonged keeping of livestock, and that the farming activity comprised hay making and a land reclamation scheme. It also said that the unit was a base for 2 lorries, that the existing sheds/outbuildings on the unit were not being used for agriculture, and that the existing dutch barn was being used for "fixing/repairing associated with the lorry business". The report referred to the applicant's intention to stock 20 beef cows on the unit and stated that the existing buildings were sufficient for the storage of hay bales and agricultural implements on the unit. It said:

“The Authority considers that as the unit at present is only being used for stabling/keeping of horses together as a base for a lorry business, there is insufficient justification for the shed due to the lack of agricultural activity on the holding”.

16. On 22<sup>nd</sup> February 2005 and following an appeal against the Council’s decision, planning permission was granted for the shed by the Planning Inspectorate subject to a condition that its use be restricted to agricultural purposes. The Planning Inspector’s report referred to the presence of 2 commercial tipper wagons on the holding unconnected with agriculture, and noted that these and 2 earth moving machines were not included in the items to be stored in the proposed building. The report contained the Inspector’s view that the unit was used primarily for the keeping of horses, that the main agricultural activity was haymaking, and that the existing buildings were not suitable to store large farm implements or a significant amount of hay. This shed is referred to as the “First Shed” in this report and shown on the attached plan. (At interview, Mrs B said it has been used for the stabling of horses since it was erected).

17. On 29<sup>th</sup> April 2005, the Council received a complaint from Mrs B to the effect that the First Shed had not been sited in the correct position. In an email sent to the Enforcement Officer (Officer D) on the same day, the Planning Enforcement Manager (Officer F) said “The silliness continues. [Mrs B and Mr R] are adamant the building is in the wrong place. If you can check it as discreetly as possible and let me know, I would be obliged”. The Council’s files do not indicate what other action was taken, but a handwritten note stated that it was “not expedient – 30/06/05” to take action. There is no indication that Mrs B was notified of the outcome until 21<sup>st</sup> November 2007 when she was advised that there was no breach of planning control in relation to the use of the shed or its dimensions and construction. (Further information about the Council’s letter dated 21<sup>st</sup> November 2007 appears in paragraph 107 below).

18. On 15<sup>th</sup> August 2006 Mr and Mrs T’s planning agent submitted a planning application which proposed a further agricultural building to be

erected adjacent to the existing First Shed. The covering letter indicated that it would be used to provide shelter for their existing stock of cattle. Mrs B objected to the application on a number of grounds, including the lack of agricultural activity on the holding. (Her letter also referred to haulage related activity at White Farm, referred to in paragraph 95 below).

19. Photographs taken during a site visit on 14<sup>th</sup> September by planning officers showed the First Shed being used for the storage of the horse lorry, a quad bike, a tractor, agricultural implements, bales of hay and animal bedding, and horse drawn carriages. The photographs also depicted other agricultural equipment stored outside the shed. (Other photographs taken on this occasion are referred to in paragraph 96 below).

20. The planning application was refused by the Council's Planning Committee on 28<sup>th</sup> September 2006 on the grounds that there was insufficient justification for the proposed shed due to the lack of agricultural activity. The size of the holding was stated to be 42.5 hectares. Officer B's report on the application stated that although 4 head of beef cattle had been brought onto the holding and that a total herd of 30 was proposed, there was not any justifiable need for a further agricultural shed of the size proposed, and that a number of the existing buildings were not being used for agriculture. It said that the main use of the First Shed was for the storage of implements and the parking of a tractor and horse transport lorry. The report also contained references to the uses taking place on the holding. In the first reference, the primary use of the site was described as equine and the secondary use as a lorry base/agricultural business. The second reference described the primary uses of the site as equine use and use as a lorry base, and that the scale of farming enterprises on the holding was clearly secondary to the main uses. The report also referred to the size of the proposed shed and continued:

“The Authority considers that the siting of an additional large shed at this location in relation to the lack of agricultural activity taking place at the farm unit represents an undesirable development in

the open countryside and would be considered detrimental to the locality's visual amenity and rural setting".

21. Meanwhile, on 19<sup>th</sup> September 2006, the Senior Development Control Officer had sought advice from the Council's Property Services on the agricultural justification put forward in support of the application. He stated his view that at the time of the recent site visit, there was little evidence of any agricultural activity and that the primary use of the site was equine. An Estate Surveyor (Officer C) replied stating his initial view, based on the information which accompanied the application, that there was insufficient agricultural activity to justify a further building. However, on 28<sup>th</sup> September, following a meeting on site with the applicant's agent, he advised that he would support the proposal provided that the building was specifically designed to accommodate cattle, and was "not of a general storage design such as the [First Shed]". In his email, he referred to the Applicant's intention to build up the herd of cows to a breeding herd of some 20-30 cows.

22. At interview, Planning Officer B explained that by the time this email was received, it was too late to remove the application from the agenda of the Planning Committee and/or change the recommendation to one of approval. He said he advised the Applicant's agent informally that a new application for a similar proposal was more likely to be recommended for approval. However, no further planning application was received. Officer C said at interview that he was unaware that the application was refused.

23. On 13<sup>th</sup> December 2007, the Council registered a prior notification under the GPDO for a hay and implement shed of similar size and on the same site as the shed which had been refused planning permission in September 2006. Mr and Mrs T's agent's covering letter said that it was to be used to store farm implements "which are currently being stored in the open" and hay and other food stuffs, and that the "existing outbuilding" would provide shelter and accommodation for his client's expanding herd of cattle. The Estate Surveyor was not consulted on the proposal. Mrs B objected to the proposal on 2<sup>nd</sup> January 2008 saying that the primary business being operated from White Farm was the

haulage business “where a vast number of lorries are kept and operated from”, and that it had never been used for agriculture. She referred to the 4 bullocks on the farm and said that decision to allow the First Shed on appeal was not reasonable. She asked that the application be refused or placed before the Planning Committee.

24. On 7<sup>th</sup> January 2008, the Council determined that planning permission was not required and that the proposed development could proceed under the GPDO. This shed is referred to as the “Second Shed”. Planning Officer B’s report (under delegated powers) stated that the siting of the proposed shed was acceptable and related well to the existing complex of buildings associate with White Farm, and that the Authority did not agree with the objections and concerns expressed by Mrs B. The report contained no other reference to any assessment of the impact of the proposed shed on neighbouring property, or of any agricultural justification for the proposed shed. (At interview, the Head of Planning Services, Officer L, said that there would have been an assessment of the impact of the proposed shed. Planning Officer B said that the advice of Officer C given in respect of the earlier planning application was a material consideration, and that he was satisfied that agricultural justification for the additional shed had been proven. Officer L said that Mr and Mrs T had provided convincing evidence of their intention to build up a herd of cattle at the time of their appeal in respect of the First Shed, and, in September 2006 (when their planning application was being considered), had convinced Officer C of their intention in this regard. Officer C said that he was not aware of the GPDO notification in respect of the Second Shed, and would not have supported the development of a general purpose agricultural shed as there were sufficient such buildings serving the needs of the holding. He also said that if the cattle numbers had remained at 4, the applicants had not demonstrated an intention to develop the herd, and that would have constituted a lack of functional need for an additional shed.)

25. Mrs B wrote to the Council on 14<sup>th</sup> and 18<sup>th</sup> January 2008. She referred to quarrying operations taking place on White Farm, and claimed that incorrect procedures had been followed in that the Council should have sought a planning application for the proposed use of the

First Shed for cattle as it was located within 400 metres of her cottage. She asked what the First Shed had been used for, and said that after 3 years, the herd of cattle still numbered only 4 animals and that this should have been a material consideration when the GPDO determination in respect of the Second Shed was made.

26. According to an email dated 17<sup>th</sup> January 2008 to an Environmental Health Officer, Planning Officer B visited White Farm to establish what works were taking place. His email indicated that Mr T was excavating part of the site, and quarrying part of the rock face to level an area of land adjacent to the area where the Second Shed was to be sited, in order to provide access to the sheds. The email indicated that Mr T gave assurances that the excavated material would be used in the formation of foundations for the new shed. The email contained the Officer's view that the quarrying works were permitted by the GPDO as being required for agricultural purposes. In the email, the Officer stated that the excavation/quarrying works were probably causing a disturbance to Mrs B, but the works were temporary and likely "to cease in the coming days". (Further information about action taken by the Public Protection Department in respect of quarrying noise appears in paragraph 115 below).

27. The Council's Director of Regeneration & Leisure replied to Mrs B's correspondence on 28<sup>th</sup> February 2008. (By this time, the Council had implemented its Persistent Complainants Policy in respect of Mrs B and Mr R – paragraph 120 below refers, and the Director was the nominated point of contact with them). In his reply, the Director explained that the First Shed was subject to an agricultural condition which did not prevent its use for livestock, and that no change of use was involved. His letter also stated that previous site inspections by planning and enforcement officers "have proven claims that the said building is not being used for agricultural purposes". (The Head of Planning at interview, when asked whether this statement was correct, said it reflected statements in earlier planning reports about the use of the shed). The Director's letter continued:

“Regardless of the size of the herd, on closer inspection of the farm holding at the time of the notification application, it was evident that there was a need for additional storage at the farm holding owing to the amount of hay and agricultural implements/machinery being stored out in the open”.

28. The Director also explained that the recent quarrying works were deemed to be permitted development and that it was not expedient to request a planning application. His letter contained no reference to the earlier advice obtained from the Estate Surveyor.

29. According to information obtained from the British Cattle Movement Service, 4 male cattle were brought onto the holding in March 2006. One was removed in December 2007, 2 in April 2008, and the last on 5<sup>th</sup> September 2008.

30. On 19<sup>th</sup> September 2008, the Council received a planning application in respect of a replacement agricultural building. The supporting documents indicated that the proposed building was to replace the existing dutch barn. Mrs B and Mr R objected. Their concerns included the agricultural justification for the proposed building, and its scale and siting. Planning Officer B’s report on the application said that the existing barn was used as a workshop for the repair and maintenance of agricultural machinery and vehicles, which was accepted as common practice on working farm holdings. The report referred to the justification for the proposed shed, and stated that “on closer site inspection it was noted that the land is being used for the grazing of livestock and horses ... [and] that the two existing sheds are being used for the storage of agricultural machinery/implements and also hay and animal feed”. The report stated further that the proposed shed related well to the existing farm complex and would not adversely affect the amenities of Mrs B’s property. Following further representations by Mrs B, an addendum report was prepared which stated that only horses had been seen in the fields adjacent to the farm complex. The application was approved on 18<sup>th</sup> November 2008, following a site visit by Members of the Planning Committee, subject to



conditions, including a condition which restricted its use to agricultural purposes. (“Third Shed”).

31. Meanwhile, on 9<sup>th</sup> October 2008, the Planning Officer B wrote to Mr and Mrs T’s agent to say that the Second Shed as built was 6 metres longer than had been approved under the agricultural notification procedure. The Officer advised that a planning application would be required to regularise the situation. No planning application was submitted and the files do not indicate that any other action was taken. (At interview, Officer B said there was a discrepancy in the way the shed had been built, but even if it was too big, his recollection was that it did not materially alter the impact on neighbouring properties or the principal justification for it.)

32. Mrs T died suddenly in December 2008.

33. On 15<sup>th</sup> January 2009, the Council’s Director responded to correspondence from a consultant engaged by Mrs B. In his letter the Director referred to the development of the 3 sheds at White Farm. In relation to the First Shed he said:

“Continuous site inspections undertaken by the Authority’s Planning Officers and Enforcement officers have proven previous claims that the said building is not being used for agricultural purposes to be unfounded”.

34. In relation to the Second Shed he said:

“Again it is acknowledged that whilst the Authority did express concern for the need for a second shed to be built at this location ... that application was ultimately refused. However regardless of the size of the herd and the levels of agricultural activity taking place at the farm unit, that same shed was permitted to be built under the farm holding’s permitted developments rights as stipulated in the [GPDO]”.

35. In relation to the Third Shed, he said:

“ .... It is considered the nature of this application is materially different to that of previous applications in that consent was sought for a ‘replacement building’ rather than a new agricultural building. Hence the need to demonstrate agricultural justification was not a material consideration in the determination of the application ...Regardless of the above, it was noted that agricultural machinery/vehicles and fodder/hay bales were being stored outside. As such, the Authority is satisfied that there was a proven need for this shed at this location. It was also accepted that the dutch barn was falling into a state of disrepair and the need for a replacement building was warranted. On closer inspection of the inside of the said building it was noted that the shed was being used as a workshop for the repair and maintenance of agricultural machinery and vehicles, which it is accepted is common practice on working farm holdings”.

36. He concluded by saying that the grant of planning permission for the replacement shed did not “represent a turnaround” by the Council.

37. The Council’s files indicated that Mrs B sent emails to the Director in which she sought information about the type of agriculture the Council had “claimed” to be taking place at White Farm. On 12<sup>th</sup> March 2009 the Director wrote to Mr R and said that most farms were a mix of arable and livestock, and that in the absence of any planning expediency to investigate, there were no grounds to do so. On 17<sup>th</sup> March 2009, Mrs B wrote to the Director, and said there was no agriculture at White Farm. She said that haulage, scrap and equine, industrial and commercial businesses amounted to a change of use and that planning permission was required for any buildings, roads and alternations on farmland. Her letter continued:

“A few items used for maintaining land for an equine business, dotted around a haulage/scrap yard, could never qualify as agricultural, as you should be aware. Its (sic) preposterous. Agriculture means farming and farming is arable or livestock. Agriculture is nonexistent at [White Farm]. There has never been

agriculture at this unit. [The Head of Planning Services] and indeed yourself have always known this to be so”.

38. Mrs B said that the 4 bullocks which had been brought on to the holding had been “despatched long ago”, and that for “these monstrous sheds to be even considered, agriculture should have been proven, with agriculture being the main source of income”. She asked for an explanation as to why “these enormous sheds” were ever allowed to be erected within 50 metres of her home.

39. In a further letter dated 13<sup>th</sup> March 2009, Mrs B said that the Council had refused to provide any evidence of agriculture at White Farm since 2001, yet had persisted in attempting to justify the grant of planning permission for the sheds under the guise of agriculture. She said:

“One of your own planning officers wrote two damning appraisals regarding the absence of agriculture, with recommendations that these sheds be refused”.

40. On 5<sup>th</sup> May 2009, the Director wrote to Mrs B regarding alleged breaches of planning control at White Farm. He said that he had already explained the Council’s position with regard to the use of the agricultural sheds at White Farm, and saw no need to expand further. Mrs B replied on 14<sup>th</sup> May 2009. She said that the Council’s claims of “agricultural and [White Farm] being a ‘working farm’ have never been substantiated...” whereas “Haulage, equine on a large scale, scrap metal, all visibly evident, are on record, with strong unequivocal evidence supporting claims ... not that filmed evidence has ever been of interest to this department. ...” She said that the Council should take enforcement action to secure the demolition of the sheds. A manuscript note attached to the letter on the Council’s files indicated that a response would not be sent as “issues contained have been covered previously”.

Mrs B's complaints about haulage and equine related activities at White Farm, the blue removal lorry and the erection of a large board on the boundary adjacent to her cottage

41. Mrs B said the initial contact she and Mr R had with the Council during 2004 was by telephone, and that she discovered there had been earlier complaints about haulage related activities at White Farm when they inspected the Council's planning files. On 24<sup>th</sup> November 2004, following a meeting with the local Member of Parliament and their ward member (Councillor 3), they sent a list of "illegal activities" taking place at White Farm to Councillor 3. These included:

"At least 7 lorries at any one time parked on site as well as plant machinery, dumpers, JCBs, rusting metal containers, piles of aggregate as well as other [company's] lorries ... plant machinery used on site ... quarrying at various times ... roadway created in field for lorries to travel back-forth ... lorries & plant machinery parked on field for weeks during summer months ... barn now operates as garage/workshop over weekends & evenings ... All kinds of other lorries visit site ... a working industrial site has now been created ..."

42. Correspondence on the Council's files indicated that Mrs B's concerns were discussed at a further meeting between their MP's caseworker, Councillor AAA and the Planning Enforcement Officer (Officer D) on 23<sup>rd</sup> December 2004. On 6<sup>th</sup> January the MP's caseworker wrote to Officer D and asked for information about activities taking place at White Farm. These included activity in one of the buildings in the yard "... possible lorry repairs – can be ongoing 7 days a week", and whether planning was required for the horse ménage<sup>2</sup> and "horse walker" in the yard.

43. On 14<sup>th</sup> January 2005, Mrs B submitted a "diary of disturbance/noisy events" to the Council. This referred to "industrial and lorry operations site (sic), operating without planning consents at [White Farm]" and listed occurrences between 14<sup>th</sup> December 2004 and 1<sup>st</sup>

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<sup>2</sup> An arena for schooling horses

January 2005. The diary referred to loud workshop noise, noise from lorries being driven around the site and on and off the site; noise from the use of a jackhammer to quarry stone for prolonged periods, noise from lorry engines being revved and noise from a “dumper rumbling back & forth, JCB loading lorry and further clearing of quarry”. In the diary Mrs B said that the effect on them was “exceedingly stressful and debilitating ... Can’t bear to be outside ... Our quality of life is zero at the moment”. A note at the foot of the diary said “We have photographic and sound evidence. Our neighbour is unapproachable and is prone to violence”.

44. There is no record of any visit by Officer D to Mrs B and Mr R in January, but the Officer said he made an unannounced visit to White Farm on 18<sup>th</sup> January 2005, and that his letter dated 24<sup>th</sup> January to the office of the local MP contained the details. In his letter, he said that he saw 2 commercial HGVs parked in the vicinity of the quarry, as well as a horse transporter and a lorry fitted with “hi-ab” lifting gear used for moving big bales from one location to another. His letter also stated that “no evidence existed to suggest that lorry repairs were taking place in any of the farm yard buildings”, and that his inspection of the “only building capable of being used for the servicing of HGV vehicles” indicated that “although it was equipped with a substantial pit, no specialist equipment/tools/machinery required to service such vehicles were to be found”, and that the building was in a clean and tidy condition. In his letter, the Officer also said he had seen evidence to indicate that Mr and Mrs T’s commercial haulage vehicles were serviced and maintained at an offsite location. His letter contained the address of the licensed operating centre for the lorries (which was elsewhere), and continued:

“a. It would be acceptable to park up to two [commercial] lorries at the farm at any one time.

b. It would be acceptable for a lorry to receive minor mechanical/electrical attention at the farm provided that it is on an occasional basis and was undertaken by [Mr T] himself”.

45. His letter also referred to a portacabin at White Farm which was allegedly being used for commercial purposes linked to the haulage business. He said that although it was being used for some operations linked to the haulage business, it was primarily used as a “base for [Mrs T] to carry out her various hobbies” and that “consequently, no planning permission [was] required”. His letter also contained details of recent planning applications and GPDO determinations. These included determinations in respect of levelling off land at the top of the quarry and the importation of topsoil and subsoil. In relation to equine related developments, he said that planning permission was not required for the “horse walker” and that although planning permission should have been obtained in respect of the ménage, its impact on the amenity was not significant and no further action was considered necessary.

46. Meanwhile, on 6<sup>th</sup> January 2005, a surveyor wrote to the Council’s former Planning Enforcement Manager (Officer F) on Mrs B and Mr R’s behalf. In her letter she referred to an earlier telephone conversation and said:

“From the information I have been provided with it would appear that there is in fact very little agricultural activity on this farm other than the making of hay or haylage<sup>3</sup> and grassland management to support the horses kept on the site. Furthermore the use of the buildings and yard areas have changed from agricultural to commercial haulage, plant hire, waste management, aggregate and quarry products, lorry workshops etc. and we question whether or not consent for Change of Use had been sought or granted for these activities”.

47. In her letter, she directed the Officer to Mr and Mrs T’s website in respect of the haulage business which in her view “clearly demonstrate[s] the type and scale of operations at [White Farm]”. She asked the Council to confirm the planning position at the property. There was no reply to the letter, but Officer F subsequently attended a

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<sup>3</sup> Fodder for horses made from grass

meeting with Mr R and their surveyor on 3<sup>rd</sup> May 2005. (More information about this meeting is contained in paragraph 62 below).

48. In January 2005, the Traffic Commissioner's inspectors commenced an investigation into a complaint that White Farm was being illegally operated as an HGV operating centre. (More information about this investigation is contained in paragraph 184 below).

49. On 21<sup>st</sup> January 2005, Mrs T wrote to Mrs B and Mr R and informed them of her intention to install 2 gates on the lane providing access to their property to ensure the safety and well being of her animals when being moved between the fields on either side of the lane. Mrs T said that gates would be padlocked and that keys would be provided. Works to install the gates and a "heavy duty enclosure along the access road" were undertaken shortly afterwards. Mrs B complained to the Council about the gate in March 2005, and Planning Officer D confirmed (in his letter dated 13<sup>th</sup> April 2005) following an inspection that the gates were permitted development, and advised her to seek legal advice if she considered that her private legal rights had been affected.

50. Meanwhile, on 30<sup>th</sup> January 2005 Mrs B wrote to the Council and complained of its "refusal to stop the illegal commercial and industrial activities that have been allowed to flourish at [White Farm]." She referred to intimidatory action by Mr and Mrs T in erecting gates with padlocks and narrowing the driveway making it difficult for emergency services and other visitors to access their property.

51. On 13<sup>th</sup> February 2005, Mrs B wrote again to the Council about its response to the MP's caseworker. She said there should have been a more in depth investigation which should have included a meeting with her and Mr R. She said that since the date of the Planning Officer's site visit, they had been threatened and intimidated by Mr and Mrs T. She said that part of the farm had developed into an "oversized lorry park with sometimes up to ten or eleven lorries together with plant machinery in use regularly ..." and that Mr and Mrs T's haulage business website included a map directing potential customers to White Farm. She asked what monitoring activities were taking place. The Council replied on 23<sup>rd</sup>

February saying that its stance in relation to alleged breaches of planning control which had been investigated remained unchanged and that information about the source of complaints had not been disclosed to Mr and Mrs T.

52. Following a further letter from Mrs B dated 26<sup>th</sup> February, Planning Officer D said (in his letter dated 3<sup>rd</sup> March 2005) that the Council was minded not to take the matter further unless “clear, unambiguous proof (including photographs if possible)” was provided supporting her allegations. The Officer confirmed that Mr and Mrs T had not been forewarned of his visit on 18<sup>th</sup> January 2005.

53. On 23<sup>rd</sup> March 2005, Mrs B wrote again to Planning Officer D. She said that illegal operations were continuing and that she had noted “as many as 10-11 lorries parked at any one time, plus plant machinery”. She also said that the garage/workshop was in use on a regular basis for servicing and repairing HGVs, particularly at weekends and some evenings. She said she had “clear, unambiguous evidence” supporting her claims, “but to present it to you at this time would only jeopardize our safety even further” and that she would produce it at the appropriate time. In another letter of the same date, she said it was for the Council to monitor the haulage related activities at White Farm at the times it occurred, so as not to put themselves at risk. The Council’s files did not contain this second letter, and Mrs B said she did not receive a reply. (At interview, Mrs B said she had been filming activities at White Farm by means of video cameras fixed on her property. More information about the video recordings is contained in paragraph 69 below.)

54. On 24<sup>th</sup> March 2005, Mrs B sent a copy of the diary of disturbance/noisy events to the Council’s Public Protection Department. (More information about action taken by the Council’s Public Protection Department appears in paragraph 109 below).

55. Meanwhile, Mrs B’s surveyor recorded that on 7<sup>th</sup> February 2005, she drove past the licensed operating centre used by Mr and Mrs T’s haulage business, and saw one lorry which she believed was owned by them which she then followed to White Farm. The surveyor said she



was also informed by the owner of the operating centre that Mr and Mrs T were not using it for all their commercial vehicles, but that occasionally a lorry was parked there. On 24<sup>th</sup> March, Mrs B's surveyor telephoned the former Planning Enforcement Manager who suggested a meeting after a proposed meeting with Mr and Mrs T in April. Her note indicated that during the call, the Planning Enforcement Manager said he would need convincing that more than one or two lorries were being parked at White Farm, and that she informed him of the outcome of her enquiries at the licensed operating centre. He asked that she confirm this in writing. There is no indication she did so, but following a further telephone conversation on 21<sup>st</sup> April 2005, she attended a meeting with Mr R and the Planning Enforcement Manager on 3<sup>rd</sup> May – paragraph 62 below refers.

56. On 31<sup>st</sup> March, the Planning Officer D visited Mrs B in connection with her complaint about the gates and enclosure. According to his note, Mrs B said she was on her way out and that he had not made an appointment. He said he only needed five minutes of her time to explain the situation concerning her access “but she was not prepared to listen”. He explained to Mrs B that “we did not operate on an appointment basis but would return again at a later date”. Mrs B told him “to visit on Monday”, accused him of having a “bad attitude”, and her vehicle was still at her property when he left White Farm about 20-25 minutes later.

57. Mrs B referred to the officer's visit in her letter dated 5<sup>th</sup> April 2005 to the Planning Enforcement Manager, when she referred to the intimidation by their neighbours and said that Officer D should have realised that the unannounced arrival of a complete stranger would cause her alarm and distress. She said he was “impolite and hostile”.

58. Meanwhile, on 7<sup>th</sup> March 2005, Mrs B wrote to the Council and complained that Mr T had parked a large removals lorry in the field immediately adjacent to her property. Officer D visited White Farm on 8<sup>th</sup> March 2005. According to his notes, he spoke to Mrs T and advised her that despite being used as an animal food storage container, it should be moved. The note indicated that Mrs T agreed. On 21<sup>st</sup> March 2005, Officer D wrote to Mr and Mrs T and informed them that failure to

remove the lorry within 28 days may result in formal enforcement action being taken against them which could ultimately lead to a prosecution in the Magistrates Court.

59. On 11<sup>th</sup> March 2005, following the grant of planning permission for the First Shed on appeal (paragraph 16 above refers), Mr and Mrs T submitted a prior notification under the GPDO in respect of their proposal to excavate a small area of quarry in order to erect the new shed. On 30<sup>th</sup> March 2005, Mrs T notified the Council that they were preparing the area and would be using a lorry to move material about on the farm, but would not commence excavations until they had consent. She also referred to the “constant harassment and invasion of privacy from [Mrs B and Mr R]” who she said were photographing them every time they moved, and said she now knew where Mr R was working. The Council notified Mrs T on 5<sup>th</sup> April that planning permission was not required.

60. On 11<sup>th</sup> April 2005 Mrs B wrote to the Council to ask what action was being taken to secure the removal of the removal lorry. On 14<sup>th</sup> April, the former Planning Enforcement Manager (Officer F) sent an email to the Officer D in which he said:

“I am still getting copies of various correspondence concerning this site. Someone is going to get injured or worse if this carries on. Have you spoken to [Mrs T] about us undertaking a [site visit]? It is clearly within their power to take the heat out of this situation, and I am not sure if at present they are operating from the site wholly to the letter of the law. If they will play ball, we will play ball with them. Do you think this is the best way forward?”

61. The Council’s files indicated that on 21<sup>st</sup> April 2005, Officer F, Planning Officer D and an Environmental Health Officer first visited Mrs T and then Mrs B (who was accompanied by a friend). According to the Environmental Health Officer’s notes, Mr and Mrs T although aggrieved at the nature of some of the complaints, were “open to dialogue” and appeared to be prepared to consider taking certain action which would diffuse the situation. They also confirmed that recent quarrying activity

had finished. The note indicated also that Mrs B and Mr R agreed to stop filming. The file indicated that Officer F informed both parties that he would write to them in an attempt to mediate. (He did so, on 3<sup>rd</sup> June 2005 – paragraph 65 below refers).

62. On 3<sup>rd</sup> May 2005 Officer F attended a meeting with Mr R who was accompanied by his and Mrs B's surveyor. There were no notes of the meeting on the Council's files. (Officer F said that his letter dated 3<sup>rd</sup> June 2005 contained a summary of what was discussed – paragraph 65 below refers).

63. Mrs B and Mr R said that Mr R produced photographs of White Farm at the meeting. Copies of these photographs were provided to the investigating officer. One photograph is dated as having been taken on 15<sup>th</sup> February 2005 and depicts 5 commercial HGVs including one with Hi-ab lifting gear. The other photographs were not dated, but some predate the siting of the removal lorry adjacent to Mrs B's boundary (March 05). Some of these photographs depicted up to 7 commercial HGVs (including the Hi-ab lorry) parked at White Farm, together with other lorry parts. Mrs B said the photographs also showed vehicle servicing and maintenance activity. Mr R said that at the meeting he also offered video recordings of HGV activity at White Farm to the former Planning Enforcement Manager, which he declined to view. (More information about the video recordings appears in paragraph 69 below).

64. Mrs B's surveyor made brief notes of the meeting. These do not refer to photographs or the video footage. She noted that the former Planning Enforcement Manager advised Mr R to keep a written log and that the Council would investigate if a pattern emerged. (During a telephone interview, she said she believed that Mr R, who came to the meeting with lots of papers and photographs, would have produced photographs during the discussion, including photographs which Mrs B had taken, but she could not be certain given the passage of time. She said she could not be sure whether Mr R offered the video footage to the former Planning Enforcement Manager at the meeting, but said that the former Planning Enforcement Manager would have been made aware of the footage. She said she believed that her information about the

licensed operating centre would have been mentioned at the meeting. The former Planning Enforcement Manager, Officer F, said at interview that he did not recall being shown photographs during the meeting or being offered video footage of HGV activity, but that even if such material had been offered, it would not have proved anything in that it would not have indicated activity over a period of time and would not, in itself, have justified enforcement action. He said he did not recall Mrs B's surveyor saying she had established that the licensed operating centre was not being used by Mr and Mrs T.)

65. In his letter dated 3<sup>rd</sup> June 2005 to Mrs B and Mr R, Officer F said it was evident that the current situation was causing stress and distress to both parties, and it would be in the interests of all concerned if a solution to the perceived problems was found. He said that the Council's letter dated 24<sup>th</sup> January 2005 to the MP's caseworker (see paragraph 44 above) set out the Council's position, and that the only substantive change had been the grant of planning permission for the First Shed on appeal, and the GPDO consent in respect of quarrying activity to make up the floor levels for the new shed. His letter also stated that each complaint had been investigated, and that no breach had been identified, or in the case of a minor technical breach, it was not considered expedient to take further action. He also said that the Council's Public Protection Department had not identified any statutory noise nuisance. He proposed that Mrs B and Mr R cease their "alleged surveillance" of activities at White Farm and the frequent reporting of those activities which had been investigated by the relevant authorities. He said that Mr and Mrs T had agreed to move the lorry when the storage facility provided by the new shed was available. He also proposed that they increase the width of the access way between the "motorway style barriers" and to keep the gate open except when the area was being used for the temporary containment of animals. In this connection, he referred to concerns expressed by the Fire and Rescue Authority about the unsatisfactory access for fire appliances and to Mrs B's mobility difficulties which had been exacerbated by the positioning of the barriers and gates.

66. He sent a similar letter to Mr and Mrs T. He also sent copies to the Fire and Rescue Authority.

67. Meanwhile, on 26<sup>th</sup> May 2005, the Council's legal officer (Officer K) sent an email to the Planning Department in which he said he had reviewed a complaint from Mrs B in which she alleged that nothing had been done despite "overwhelming evidence" to stop her neighbours Mr and Mrs T from running a haulage business from their premises at White Farm without planning permission. The email indicated that Mrs B's vendor had not disclosed previous problems with the neighbours. In his response, the former Planning Enforcement Manager said:

"We have had a right outing with this woman. In essence she picked a fight with the adjoining property owners who happen to own the land over which her access to her property travels. As normal in such disputes, common sense goes out of the window and they have been popping at each other, and trying to use max aggravation. I visited the site with [Planning Officer D and an environmental health officer] at end of April and spoke to both sides, and said that I would write as an independent person to try and mediate in the dispute. I am close to doing that now but it is not easy. The occupants of [White Farm] appear to be amenable to this course of action, but [Mrs B] and her partner [Mr R] are extremely difficult people to deal with – they do not see any point of view other than their own...."

68. On 2<sup>nd</sup> June 2005, Mrs B wrote to the Council's Chief Executive regarding what she referred to as the failure of planning officers to take action in relation to illegal activities on White Farm. The Council's files indicated that details of the Council's complaints procedure were sent to Mrs B. The Chief Executive replied initially (on 6<sup>th</sup> June) indicating that he was obtaining information from Planning Services. However, on 14<sup>th</sup> June, he advised her that as she was proceeding with a complaint to the Ombudsman, the Council would not be proceeding with the internal investigation into her complaint. Nevertheless, the Head of Planning Services arranged to visit Mrs B on 12<sup>th</sup> July 2005 (paragraph 74 below refers). Mrs B did not pursue her complaint further with the Council, and

was notified of my predecessor's decision not to investigate her complaint on 15<sup>th</sup> July 2005.

69. Mrs B's video footage appeared in a current affairs television programme which was broadcast on 16<sup>th</sup> June 2005. The Council's files indicated that the Council declined to give an interview to the programme makers but provided a written response which included copies of correspondence sent to the MP's caseworker in January 2005 and to Mrs B and Mr R on 3<sup>rd</sup> June 2005.

70. The television programme showed information about the earlier complaints made by the former occupiers of Mrs B's property, other neighbours and the Community Council. It also showed timed and dated video footage of lorry movements filmed by Mrs B in February and March 2005 as follows:

- 3 commercial HGVs were shown leaving within a short time of each other prior to 7 am on 26<sup>th</sup> February (a Saturday);
- 4 were shown leaving within a short time of each other prior to 7 am on 28<sup>th</sup> February (a Monday);
- 3 were shown leaving within a short time of each other prior to 7 am on 1<sup>st</sup> March (a Tuesday);
- 2 were shown leaving within a short time of each other prior to 7 am on 2<sup>nd</sup> March (a Wednesday);
- 1 was shown leaving prior to 7 am on 4<sup>th</sup> March (a Friday);
- 2 were shown leaving within a short time of each other prior to 7 am on 5<sup>th</sup> March (a Saturday);
- 1 was shown leaving prior to 7 am on 14<sup>th</sup> March (a Monday).

71. The commentator stated that the Council was aware of the footage but had not used it. The programme depicted Mr and Mrs T's refusal to be interviewed. There was mention also of the Council's "mediation attempt". Officer L, in his subsequent letter dated 13<sup>th</sup> May 2008 to the Head of the Planning Division at the former Welsh Assembly Government said that the "clip on the [television programme] showed the same lorry giving the impression of a constant movement of lorries".

72. Meanwhile, on 30<sup>th</sup> June 2005, Officer F responded to correspondence from Mrs B's solicitors, and requested any evidence which identified the alleged "clear continuing breach of planning control ... as opposed to a past, temporary or intermittent breach or the occasional parking of lorries at [White Farm] other than those which would normally be associated with an agricultural holding ..." There was no record on the Council's file of a response from the solicitors, but Mrs B had written to the Council expressing the view that both Planning Officer D and Officer F should be suspended. She referred to further acts of intimidation by her neighbours and that Mr T had informed her that the "war had just begun".

73. On 7<sup>th</sup> July 2005, Mrs T wrote to the Council's Head of Planning and said that she had assumed that it was Mrs B and Mr R who had complained about her, having observed them "hiding behind hedges with a video camera constantly aimed at [her] property". She invited Council officers to visit to discuss the allegations.

74. On 12<sup>th</sup> July 2005, the Head of Planning (Officer L) visited White Farm. According to his notes, he observed a large number of coloured horses and donkeys. He also observed the following vehicles on site:

"lorry in garage (to be renovated) – owned by [Mr T]"  
2 lorries in quarry (1 x [lorry with branded lifting gear], 1 x tipper)  
1 lorry outside large shed (with [lorry with branded lifting gear])  
Horse transporter (for show horses) and animal transport lorry in new shed, along with 1 trailer and 1 piece of agricultural machinery.

Whilst on-site, [1 of Mr and Mrs T's commercial haulage lorries] arrived with top soil".

75. Officer L then visited Mrs B and Mr R. Also at the meeting were a councillor (attending on behalf of the local Assembly Member) and an administrative officer. According to the notes of the meeting, Mrs B and Mr R provided a list of what they believed to be outstanding breaches of planning control at White Farm. These included the operation of the

haulage business when there could be 10-11 lorries parked on the site at any one time; substantial lorry maintenance on site; the presence on site of an office for the haulage company, and the non removal of the removal lorry in the field adjacent to their property. Mrs B and Mr R wanted the Council to take enforcement action against Mr and Mrs T in respect of these matters and said that they considered the Head of Planning Services, the former Planning Enforcement Manager and the Planning Enforcement Officer to be personally responsible for the situation in which they (Mrs B and Mr R) had found themselves. They said they had been intimidated by the occupants of White Farm and believed they would be hurt. They also said that Officer F and Planning Officer D had acted unprofessionally in that no effort had been made by them to collect evidence. The note recorded Mrs B as saying that she had photographic and video evidence and logs of activities at White Farm. The note also indicated that Officer L said that he would not look at past investigations by enforcement officers as this was being done by the Ombudsman.

76. On 20<sup>th</sup> July 2005, Officer L wrote to Mrs B and Mr R. He confirmed that he would not be looking at her claim that earlier investigations of alleged breaches of planning control were inadequate as this matter had been referred to the Ombudsman. His letter contained a summary of the continued unauthorised uses and activity alleged by Mrs B and Mr R, and he said he would review the position as to any continued breach.

77. Correspondence on the Council's Public Protection files indicated that the Environmental Health Officers referred Mrs B and Mr R's concerns about their neighbour's actions to the Council's Anti-Social Behaviour Coordinator. On 10<sup>th</sup> August 2005 the Head of Planning (Officer L) attended a meeting with one of the Council's legal officers (Officer J), the Anti-Social Behaviour Coordinator, and a police officer. According to Officer J's notes, the meeting discussed a number of allegations of anti social behaviour made by Mrs B and Mr R against Mr and Mrs T. The note states: "Mostly civil complaints to police – some allegations of harassment – noise from lorries at 6am – some verbal abuse – number of frivolous/possibly malicious complaints". The note



indicated that earlier complaints in 2001 had been investigated, that much of the lorry traffic related to the operation of farm/improvement/changes and authorised quarry activity, and that all complaints since 2004 had been looked at, and that up to 2 lorries connected with the haulage business were allowed on the farm at any one time. According to the note, there were insufficient grounds on which to take further action against Mr and Mrs T. (At interview, Officer J said his recollection was that the comment “frivolous/possibly malicious complaints” was made by the Police Officer rather than by either Officer L or the Anti-Social Behaviour Coordinator.)

78. On 18<sup>th</sup> August 2005, Mrs B wrote to the Head of Planning Services to keep him “updated with activities at [White Farm]. She said that 5 lorries continued to operate from the farm. These did not include the horse box or the removal lorry parked next to her cottage. She said that Mr and Mrs T had located pigs and chickens in pens under the bedroom window of her home, which she said was “vindictive”. She referred to the Council’s earlier correspondence in 2001 which stated “only one lorry to be used at [White Farm] four would not be acceptable”. In a further letter dated 24<sup>th</sup> August 2005, Mrs B said that “running a haulage business with eight/nine lorries” without planning permission was a breach of planning regulations and that she had provided “more than enough evidence to support this fact”. She requested a response in relation to list of unauthorised activities she had provided at the meeting on 12<sup>th</sup> July.

79. The Head of Planning replied to Mrs B’s letters, and a further letter dated 6<sup>th</sup> September 2005, on 29<sup>th</sup> September. He said he had reviewed both the history of investigations into activities and development at White Farm, and the present position, and that his letter was intended to be a comprehensive response. He said that the various matters referred to in his earlier letter dated 20<sup>th</sup> July 2005 had been properly investigated, that detailed responses had been provided to her, and that the Council would accept the Ombudsman’s recommendations in the event of any maladministration. He said he remained of the view that activities at White Farm were not of a scale and character that made enforcement action justified or expedient. His letter continued:

“I do not accept that only one lorry can be kept at [White Farm]; lorries are required for different purposes, including personal interest. Lorries at [White Farm] have an agricultural justification, hobby, personal transport and related to the haulage business. Lorries have also been involved in delivering materials to [White Farm] which add to the lorry related activity”.

80. He said that the lorry parked in the field was used for the storage of hay and fodder. His letter continued:

“ .... Indeed, there can be an argument there has been a change of use to the parking of a lorry for this corner of the field. There is case law on the question of whether some moveable or temporary agricultural structures are operational developments in terms of Section 55 of the Town and Country Planning Act 1990. General advice on the subject concludes that each case must be determined on its merits. I would be interested to hear your adviser’s view on whether a moveable structure (albeit a lorry) which is used to store hay and fodder is development”.

81. Mrs B and Mr R and their solicitors pursued their concerns with the Council in further correspondence between 11<sup>th</sup> October and 15<sup>th</sup> November 2005. In his responses, Officer L said he did not accept that there was a haulage business at White Farm, and that the lorries at White Farm were there for a variety of reasons, one being that as a lorry owner/driver, one/two may be kept at the driver’s premises. He also provided responses about Mrs B’s complaints about the installation of a drainage pipe by Mr T in the field next to her property (namely that it was agricultural and did not require planning permission), and replacement of an extension to a shed (namely that it did not raise any adverse amenity objections and that it was not expedient to take any action). In his letter dated 1<sup>st</sup> November, Mr R said he had informed the former Planning Enforcement Manager at the earlier meeting that he had video and camera evidence, and said “to date we are still recording up to 5 [haulage] lorries leaving and returning on a daily basis”. He invited Officer L to visit and “view past and present ‘clear and unambiguous evidence’ for yourself which should then enable you to confirm the true

facts and take the action required to cause ... the illegal activities at [White Farm] to cease forthwith". His correspondence enclosed a list of "illegal activities" at White Farm. These included the operation of a haulage business and industrial site without planning permission, quarrying to extend the operating area for HGV related activities, the removal van parked by their boundary and the erection of a large board on the fence adjacent to their cottage. He also sought an explanation of Officer L's decision not to view the video evidence which had been offered to him during his visit on 12<sup>th</sup> July 2005. In its further responses, the Council (Planning Officer D) invited Mr R to complete further noise/nuisance monitoring logs as a record of activity at White Farm rather than use video evidence "the collection of which has caused some friction with your neighbour". The Planning Officer D also advised Mrs B's solicitors that the Council had never requested that "directed surveillance" be carried out and that such surveillance would not have been necessary in relation to the earlier planning investigations. The letter continued:

"What has been discussed is the recording of activity that allegedly directly impinges on their living conditions by way of noise/disturbance. By definition, this would only relate to recordings of activities that directly affect them, and the use of surveillance techniques would clearly not be necessary or appropriate".

82. (Further information about the completed logs received by the Council's Planning Department on 1<sup>st</sup> March 2006 appears in paragraph 89 below).

83. Meanwhile, on 19<sup>th</sup> October 2005 the Council received a complaint from Mrs B that "a large wooden board approx 2 m wide x 2 m high" had been fixed to an existing 6 ft high fence directly facing their bedroom window. She said that it prevented light to their windows and "obscures our CCTV camera". (The window affected is one of 2 windows in the bedroom. Mrs B explained that they had fixed the CCTV camera to their property and directed it towards the pen which housed 2 pigs immediately adjacent to their boundary following an incident in which pig

faeces had been thrown through their bedroom window. The pigs had been given the same names as Mrs B's and Mr R's first names. They said they did not operate the camera, but hoped that its presence would serve as a deterrent to what they regarded as further intimidation by Mr and Mrs T.)

84. The Council's files contained photographs taken of the board on 26<sup>th</sup> October 2005 from White Farm. Planning Officer E said he did not visit Mrs B or make any assessment of the board from her property.

85. On 1<sup>st</sup> November 2005, the Head of Planning Services (Officer L) wrote to Mrs B and said that the privacy board required planning permission as it was in excess of 2m height. His letter continued:

"I do note, however, it has been positioned in front of a CCTV camera that has been attached to your house. These developments are clearly the result of the on-going disagreement between you and your neighbour. I do not consider it in the 'public' interest to pursue any action for the submission of applications for either development".

86. At interview, Officer L explained his view that planning permission was required for the CCTV camera, as it did not constitute permitted development under the GPDO. He said that it was reasonable to assume that the objective of the installation was to "spy" rather than for security as stated in the GPDO.

87. On 9<sup>th</sup> November 2005, Planning Officer B noted telephone calls from Mrs B, and then Mr R. In her call, Mrs B referred to floodlighting at White Farm, and was advised that permitted development rights potentially applied, but her concerns would be referred to the enforcement section. The note indicated that Mrs B then criticised individual officers and the Council generally, and that the Officer explained that the Council was aware of the nature of her relationship with her neighbours. Mrs B then began making accusations against the Council, and terminated the call on being advised by the Officer that he was only concerned with the floodlighting matter and did not have the

time to listen to her complaining about the Council. In the note of the call from Mr R, Mr R claimed that the Officer had insulted Mrs B. The note continues:

“I informed him that I was merely trying to explain that I was aware of the poor relationship between her and [Mr and Mrs T] and that she was ‘straying’ from the point – in that she was complaining about everything. Mr R then starts making allegations/accusations against [the Head of Planning Services] and the Enf Officers. I advised him to contact the Ombudsman if he was aggrieved by the LPA actions. I informed him that I wasn’t going to tolerate any accusations now being made i.e. crookedness in the LPA. I terminated the phone call”.

88. On 8<sup>th</sup> December 2005, Mrs T’s application for a variation of her HGV operating licence, to include White Farm as an operating centre for 2 vehicles, was allowed at a public enquiry held by a Traffic Commissioner. This brought to 3 the number of HGVs licensed to be operated from White Farm. At interview, Council planning officers said they were unaware of the variation, or that White Farm had become authorised as a licensed operating centre for 3 HGVs. (More information about the events leading to the grant of the variation is contained in paragraph 184 below).

89. On 1<sup>st</sup> March 2006, the Council’s Planning Department received the noise/disturbance logs (dated 15<sup>th</sup> January 2006) completed by Mrs B. A note on the log by Mrs B indicated it was a “retrospective” record of disturbance/noisy events “from 03 – end 05”. It recorded incidents between December 2003 and June 2004, and then between August and September 2005. The entries between 2004 and early 2005 indicated specific and dated incidents of noise and disturbance from the use of “heavy duty plant machinery”, welding and workshop noises, lorry maintenance and power hosing activities at weekends, lorries being loaded, use of cutting and drilling machinery, quarrying noise and lorry movements, indicating “lorries go out each & every day up to nine”. A manuscript note indicated that the log had been completed from entries in Mrs B’s diaries. The 3 entries in August and September 2005 related

to the arrival of pigs at White Farm, “malicious & inane chatter to pigs” who had been given the same names as Mrs B and Mr R, the use of “threatening language” by their neighbours, and the removal of the pigs in October 2005. A note stated: “most of these activities witnessed by photos, sound and video” which had been offered to Officer F and Officer L, but had been refused.

90. On 9<sup>th</sup> March 2006, Officer L forwarded the logs to the Council’s Public Protection Department. His memorandum stated that he had informed Mrs B that there were no planning issues that warranted further investigation. “However, the matter of excessive noise from the animals that are kept on the land and the use of equipment may warrant assessment under the Environmental Health Legislation”.

There is no record of a letter being sent to Mrs B from the Planning Department in response to the completed logs. (Further information about action taken by the Public Protection Department appears in paragraph 109 below).

91. Meanwhile, on 7<sup>th</sup> February 2006, Mrs B was convicted of assault on Mrs T, but her conviction was subsequently quashed on appeal when the Crown Prosecution Service declined to proceed. According to the note of the proceedings made by Mrs B’s solicitor, Mrs T admitted that she did not have planning permission for the haulage business which she was running from White Farm.

92. A further 3 programmes were broadcast by the television company between February and June 2006. In the second of these programmes, the Chair of the Council’s Redevelopment Committee (Councillor 1) was interviewed and said:

“Parking of 2 lorries doesn’t constitute running a business. Should they park 3 there, obviously they would have to apply for planning permission. But having said that, obviously they have an Operator’s Licence issued by the Traffic Commissioners to keep 2 lorries at the farm”.

(Councillor 1 confirmed the transcript at interview). The programme stated that Mr and Mrs T had been given a licence to keep 3 HGVs at White Farm.

93. The programmes also depicted unpleasant exchanges between Mrs B and Mr R and their neighbours including a confrontation on 16<sup>th</sup> October 2005 in which Mr T asked Mr R how his job (as a driver) was going, and Mr R replying to the effect that if he was 20 years younger he would take Mr T's head off, adding that he was too old. The footage also showed Mr T towing Mrs B's car up the access way from where she had parked it to prevent the gate being closed, and a further confrontation on 27<sup>th</sup> December 2005 after Mr T had locked gates across the access way, apparently preventing Mrs B and Mr R from leaving their property. Mr R asked Mr T to open the gate, but Mr T pushed a piece of paper in Mr R's face (he was filming at the time) such as to push him backwards. Mr R accused Mr T of assault/hitting him in the face. Two property valuers were interviewed and made comments about the effect on the value of Mrs B's and Mr R's property of the dispute with the neighbours regarding the access way and the pigs.

94. On 16<sup>th</sup> March 2006 Mrs B submitted a complaint to the Council in which she alleged that the use of the First Shed had been changed to commercial purposes in connection with the use of White Farm as a haulage and industrial yard. The complaint was registered and a file opened. Apart from indicating a need for a "routine site visit" the file does not indicate the outcome of the complaint. However, according to a site history prepared by the Council, "no breach identified 05/07/06".

95. Mrs B, in her further letters to the Council dated 18<sup>th</sup> July and 10<sup>th</sup> August 2006, said she had not received a response to her complaint. She also asked that the Council secure the removal of the large board, and claimed that she was entitled to erect a security camera to protect the rear of their property, and that their neighbours had "enough cameras guarding themselves, together with cameras watching/spying on our every move". Planning Officer E replied on 16<sup>th</sup> August 2006 indicating that the alleged unauthorised use of the shed, the parking of the lorry adjacent to Mrs B's boundary and the large board, were among

the planning issues being reviewed, following which the Council would respond in detail, he anticipated by the end of August. (By that time, the Council had received and was considering the planning application in respect of the Second Shed – paragraph 18 above refers). In her further letter dated 21<sup>st</sup> August 2006, Mrs B asked that her completed nuisance log (referred to in paragraph 89 above) be addressed, and stated her view that White Farm was not being used for agriculture, but for haulage. On 11<sup>th</sup> September 2006, Officer E informed Mrs B that the Head of Planning Services and other officers would be carrying a review on site in the next few days and the outcome of the inspection would be confirmed in writing to Mrs B.

96. The Council's files indicate that the Head of Planning Services and Planning Officers B and E undertook a site inspection at White Farm on 14<sup>th</sup> September 2006. The visit was by appointment. Photographs taken by Planning Officer E included photographs taken inside the First Shed. (These are referred to in paragraph 19 above). The photographs also showed 1 of Mr and Mrs T's named commercial lorries parked in the yard, a low loader and separate trailer, 2 or 3 lorry backs and small shipping containers, some of which were being used for storage, a compressor and other items such as discarded vehicle wheels and tyres.

97. On 20<sup>th</sup> October 2006, Mrs B wrote to the Council to request a response to her earlier correspondence regarding "various breaches of planning" which she listed. These included the removal lorry parked next to her cottage, the large board, the installation of CCTV and the use of floodlighting at White Farm, and the non-agricultural use of the First Shed.

98. On 15<sup>th</sup> February 2007, and following an email from Mrs B, Planning Officer A wrote to Mrs B in relation to the lorry parked by her cottage and the large board. He said the lorry was used for the storage of hay and fodder, and explained his view that as it was a "temporary structure" it was outside the scope of planning control, and that no breach of planning control had occurred. In relation to the large board (which he referred to as "screening board"), he said it required planning permission. In his letter he quoted extracts from TAN 9, and continued:



“I have considered the location of the board, its purpose following the erection of a CCTV camera at your property and its height above the permitted 2m threshold and I have concluded that in this case it is not in the ‘public interest’ to pursue any formal enforcement action. The enforcement case in relation to this matter is therefore closed.”

99. The letter, which was signed by the Head of Planning Services (Officer L), contained no reference to other complaints. The board is still in place, and Officer L said that it is now immune from enforcement action.

100. The Council’s files contained no indication of a substantive response regarding the use of the First Shed, until the Council wrote to Mrs B on 21<sup>st</sup> November 2007 when it said that its inspection of the barn had confirmed no change of use from the permitted agricultural use to the commercial operations of Mr and Mrs T’s haulage company. (More information about the Council’s letter of 21<sup>st</sup> November 2007 appears in paragraph 107 below).

101. In the meantime, on 2<sup>nd</sup> April 2007, Officer L responded to correspondence from the local Assembly Member. He enclosed a copy of a letter which he said had:

“recently [been] sent to [Mrs B] in relation to a long list of complaints that she and [Mr R] have made in respect to the activities of their neighbours. The letter outlines, in detail, why no action is considered appropriate in these cases. My officers have investigated each and every complaint made by [Mrs B and Mr R] and they have taken considerable steps to try and resolve the dispute which has developed”.

102. He said that relations between the parties had deteriorated to the point that the Council’s Planning Division had been drawn into the dispute, and that his role was to take a considered view on each planning complaint in the light of relevant Government guidance and the individual circumstances of the case, and that “invariably with

enforcement cases, one of the parties may feel that they have been treated unfairly and are unhappy with the final outcome. The letter continued:

“I cannot, in all reality, continually use resources in what has developed into a vendetta and I have failed to identify any unauthorised development where enforcement action is justified in terms of the public interest”.

103. He also said that efforts had been made to mediate between the parties, but “given the quasi-judicial nature of planning enforcement and lack of cooperation with this regard, I fail to see how I can contribute any further”. (According to the Council’s file, the enclosed letter relating to the “long list” of complaints was the letter dated 15th February 2007 referred to in paragraph 98 above).

104. On 20<sup>th</sup> April 2007 Mrs B wrote to the Officer L in which she refuted the “assertions” he had made in his letter to the Assembly Member. She said:

“Your officers have never investigated our claims that [White Farm] was, and still is, being used as an operation centre (sic) for heavy goods haulage vehicles [by Mr and Mrs T’s haulage company] as was clearly shown on their web site at that time. This was denied by yourselves when we advised you of these activities... Their operating centre was [at another location] as you and your officers kept pointing out to us. However, at no time, did anyone from your department visit that address. Had they done so, they would have been told by the owners, as indeed were we, that [Mr and Mrs T’s haulage company] did not operate from there...The photographic evidence obtained by us AT YOUR REQUEST [Mrs B’s emphasis] and additional camcorder evidence shows many vehicles leaving [White Farm] in the early mornings and returning at various times in the evenings. This continued over a very long period and is unequivocal evidence, supported by many complaints from various local people and the community council, dating back to 2001, (see planning office file.) The menacing acts and threats emanating

from our neighbours towards us, is at best exceptionally disturbing and at worst positively terrifying... A previous owner of [Mrs B's property] experienced similarly threatening behaviour and tried to convey this to you in letters advising you of the threats made toward himself and his wife. He made his concerns known with regard to the illegal activities of this haulage company... The vendetta, to which you refer, is the one truthful account of what is taking place. It has been, and still is, a most spiteful and vicious vendetta continuously waged against US, not vice versa, as you would suggest. Friends, family and various sections of the media have voiced the view that never before have they witnessed a case being condoned by a planning department that is so clearly in denial”.

105. In her letter Mrs B referred to the offer of mediation Officer F's letter dated 3<sup>rd</sup> June 2005 and said “it insults anyone's intelligence”. She said his letter was not an attempt to make peace by agreement, but a proposal that she and Mr R “capitulate by making no further complaints and in exchange [Mr and Mrs T] MIGHT widen the driveway they so maliciously narrowed.” She also referred to the removal lorry parked close to their cottage, and asked why the Council had failed to secure its removal. In relation to the large board, Mrs B said that it had been necessary to record the behaviour of Mr and Mrs T because they had thrown mud and faeces at and through their bedroom window which was within 2 metres of the pig enclosure, and that when the pigs were present, Mrs T talked to them, addressing them by Mrs B's and Mr R's first names and making “veiled threats of a serious nature e.g. ‘[Mrs B's first name], if you poke your nose into business that doesn't concern you, you will get hurt you silly little pig'...” Mrs B's letter continued:

“You were aware of this and, still you excused their behaviour by allowing the board to remain in situ. I reiterate that a vendetta of mammoth proportions is taking place for which you and your officers bear a great deal of responsibility and should be seeking to redress ... I must remind you that you have been offered the opportunity to view evidence. Evidence which you requested and required us to gather so that you could make informed decisions

with regard to [White Farm] activities. You declined the officer, as did [the former Planning Enforcement Officer]...”

106. The Council acknowledged Mrs B’s letter on 23<sup>rd</sup> April 2007 and said a response would be sent within 15 working days. Mrs B sent further letters to the Council on 31<sup>st</sup> May, 4<sup>th</sup> June and 23<sup>rd</sup> July 2007 requesting a response but no response was sent until 17<sup>th</sup> August 2007, by which time the Council had applied its Persistent Complainant’s Policy to communications from Mrs B and Mr R. In its response dated 17<sup>th</sup> August 2007, the Council’s Director of Regeneration and Leisure said that all complaints had been fully investigated with the conclusion that no breach of planning control had taken place. His letter contained no further details, and he advised Mrs B that all further correspondence should be addressed to him. (Mrs B said she believed that her letter of 20<sup>th</sup> April 2007 led to the Council’s decision to apply its Persistent Complainants Policy in their case. More information about the use of the PCP is contained in paragraph 120 below).

107. On 21<sup>st</sup> November 2007, the Director sent a “final statement” on planning enforcement cases at White Farm to Mrs B. The letter referred to a number of complaints which the Council had investigated. These included the parking of the removal van, complaints about the use of the First Shed, and the large board. The letter stated that no breach of planning control had occurred in relation to the lorry, as it was a temporary structure being used in conjunction with the agricultural use of the land, and in relation to the First Shed, that no change of use to the commercial operations of Mr and Mrs T’s haulage company had taken place. The Director’s letter also said that a technical breach of planning control had occurred in relation to the large board, but the Council had concluded that “the matter would not unacceptably affect public amenity and it is inappropriate to undertake formal planning enforcement action”, and referred to the earlier letter dated 15<sup>th</sup> February 2007 (see paragraph 98 above). In the letter, the Director advised them to submit any further information or evidence which would assist the Council in justifying formal enforcement action by letter addressed to him. The letter contained no reference to White Farm being licensed as an operating centre for 3 HGVs.

108. Mrs B's further correspondence with the Council in 2009 and 2010 about what she regarded as the unauthorised use of White Farm for haulage and non agricultural activities is referred to in paragraph 145 and following paragraphs.

#### Action taken by the Council's Public Protection Department

109. The Council's Public Protection files indicate that on 30<sup>th</sup> December 2004, and following a complaint of noise from "industrial activity" at White Farm, an Environmental Health Officer visited Mrs B's property and observed a mixture of heavy plant machinery at White Farm which was not operational at the time. In January 2005, the Council installed sound monitoring equipment at Mrs B's property, which detected "isolated incidents of dog barking, with some noise from what appeared to be agricultural machinery/vehicles". Mr R stated that noise had not been a problem during the monitoring period.

110. A second sound monitoring exercise was carried out between 1<sup>st</sup> and 8<sup>th</sup> February 2005 following further complaints of noise from vehicle movements and dogs barking. In an email dated 9<sup>th</sup> March to Officer F, the Environmental Health Officer said that the evidence from the recent noise monitoring exercises "strongly suggests that [Mrs B] has taken steps to provoke the dogs into barking". On 14<sup>th</sup> the Environmental Health Officer wrote to Mrs B and Mr R, and informed them that there was insufficient evidence of a noise nuisance, and that the audio record strongly suggested that the dogs at White Farm "were being encouraged to bark by yourselves by the rattle of a window...." The Officer said that any evidence obtained from the exercise could not be relied upon. In her letter dated 15<sup>th</sup> March 2005 Mrs B said that she had opened the window to show that insignificant noise caused the dogs to react and bark for substantial periods of time.

111. In September 2005, the Council's Environmental Health Officer investigated Mrs B's complaint of noise from pigs which were located in a pen on White Farm adjacent to her bedroom window. The Officer concluded, following a home visit at 7 am, that the noise from pigs was not a statutory nuisance. The Officer also made a written assessment of a video recording of the pigs and other activity at White Farm made by

Mrs B between 11<sup>th</sup> August and 24<sup>th</sup> September 2005. The Officer concluded that dog barking, based on the video date, was excessive on occasions, and that a further monitoring exercise would be required to establish the level of noise disturbance from the pigs (which appeared to be at feeding times) prior to 7am. However, the file indicated that the pigs were removed in November 2005.

112. In July 2006, following a further period of sound monitoring, the Council issued an abatement notice to Mr and Mrs T in respect of noise nuisance from dog barking. The notice required them to abate the nuisance within 21 days. The file indicated that the Council subsequently undertook directed surveillance (having obtained authorisation under RIPA<sup>4</sup>) following further complaints of dog barking after the 21 day period had expired, but no dog barking was detected. (Mrs B explained that Mrs and Mrs T had got rid of the dogs, namely 3 Rottweiler's).

113. In March 2007, Mrs B and Mr R complained of nuisance from cockerel crowing during the night, and submitted a noise disturbance log. The cockerels were located in a pen on White Farm by the boundary adjacent to her cottage. The Council, following a period of noise monitoring, served an abatement notice on Mrs T on 2<sup>nd</sup> May 2007. The abatement notice was not complied with. Following a period of further monitoring, including directed surveillance under RIPA, the Council commenced a prosecution against Mrs T, and on 5<sup>th</sup> June 2008 she pleaded guilty at the magistrate's court and was fined £500. According to the Council's file, the Council's application for a criminal anti-social behaviour order<sup>5</sup> to be made against Mrs T was not granted as Mrs T gave an undertaking to remove the cockerels. A press release issued by the Council indicated that Mrs T had accepted that harassment had been caused and apologised. Officer J reported on the outcome of the proceedings to the (new) Anti Social Behaviour Coordinator, who in her response asked if any reason had been given for the refusal to grant the criminal antisocial behaviour order. In her email dated 5<sup>th</sup> June 2008 she referred to an earlier decision not to

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<sup>4</sup> Regulation of Investigatory Powers Act 2000 – see Appendix 1, paragraph 30

<sup>5</sup> Under the Crime and Disorder Act 1998

pursue a “stand alone” antisocial behaviour order “as there were so many malicious complaints made by [B] and [R] that it would have been impossible to police and therefore defeat the object of making it ...” (At interview, Officer J said he assumed the reference to “malicious complaints” related to the comments made at the earlier meeting in August 2005 – paragraph 77 above refers - as that was the only time he could recall that consideration had been given to making a standalone application for an anti social behaviour order).

114. Meanwhile on 7<sup>th</sup> August 2007, an officer in the Public Protection Department wrote to Mrs B about her complaint of potential light nuisance arising from floodlights at White Farm. The officer explained that White Farm was a licensed operating centre for 3 HGVs, and was, therefore, exempt from action regarding light nuisance under the Environmental Protection Act 1990<sup>6</sup>.

115. In January 2008 Mrs B complained of noise from quarrying activity at White Farm. (By this time, the Council had determined that Mr and Mrs T’s proposed Second Shed did not require planning permission, and a site visit by Planning Officer B had established that excavation and quarrying works were being undertaken to level land adjacent to the site of the proposed shed (paragraph 26 above refers). On 2<sup>nd</sup> April 2008, an Environmental Health Officer, following contact with Mrs T, wrote to Mrs B to inform her that further excavation works would be taking place at White Farm in connection with the foundations for the shed. The works, which would be completed in a few days, would take place between 8 am and 6pm (perhaps with some tidying up to 7pm), and there would be no work on Sunday. The letter stated that the work was likely to give rise to noise, but that the proposed hours of work were appropriate to limit the disturbance.

116. On 10<sup>th</sup> July 2008, the Assembly Member wrote to Planning Officer B on Mrs B’s behalf to say that quarrying works had recommenced at White Farm. The local ward councillor (Councillor 3) also contacted the Planning Enforcement Section in respect of the same issue. An

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<sup>6</sup> Statutory Nuisance (Miscellaneous Provisions)(Wales) Order 2007.

environmental health officer visited White Farm on 11<sup>th</sup> July, when Mrs T explained that the works were required to facilitate access to the new shed, and to remove an area of rock face. She said the works was likely to last one week, and there would be no work on Sunday.

117. The Council's file indicated that Mrs T's proposal was acceptable. However, noisy activity continued, and following a noise monitoring exercise, the Council served an abatement notice on Mrs T on 21st July 2008. The notice required her to abate the noise nuisance within 24 hours. Correspondence from Mrs T dated 23<sup>rd</sup> July indicated that the timescale for complying with the notice was extended by 10 hours because the quarrying equipment had broken down. Mrs T made a further request for an extension on similar grounds on 4<sup>th</sup> August, and said she was not "doing this in order to antagonize the only neighbours that complain about us..." However, the Council established that a statutory noise nuisance existed. Consideration was given to bringing a prosecution against Mrs T, but on 10<sup>th</sup> September 2008, Officer J advised that a prosecution was unlikely to succeed as there was evidence to indicate that Mr and Mrs T had a reasonable excuse for not complying with the notice. At interview, the Council's Public Health Services Manager (Officer G) said that the quarrying activity had also ceased.

118. Other information on the Council's files indicated that Mr and Mrs T obtained retrospective consent from the CCW<sup>7</sup> on 10<sup>th</sup> July 2008 in respect of the excavation of the rock outcrop.

119. The Council's files indicate that Mrs B made a further complaint about dog barking noise at White Farm in February 2009. She was sent a noise log to complete, but this was not returned.

#### The application of the Council's Persistent Complainants Policy ("PCP") in Mrs B's and Mr R's case

120. The Council's files showed that Mrs B was sent details of its complaints procedure in June 2005 when she complained about the

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<sup>7</sup> Countryside Council for Wales – see Appendix 1 paragraph 23



failure of planning officers to take action in relation to illegal activities on White Farm. However, she did not pursue her complaint, referring a complaint instead to the Ombudsman. She was notified of the Ombudsman's decision not to investigate her complaint on 15<sup>th</sup> July 2005 (paragraph 68 refers).

121. There is no record that Mrs B pursued further complaints under the Council's complaints procedure until January 2010 (see paragraph 158 below). There is no record of any meetings between the Council's planning officers and Mrs B and Mr R after August 2005.

122. Mrs B said she believed that her letter dated 20<sup>th</sup> April 2007 (referred to in paragraph 104 above) prompted the Council to apply its PCP in her case.

123. The Council's planning files contained a note dated 3<sup>rd</sup> July 2007 which listed 12 complaints about White Farm since April 2005. The note said that these matters had been investigated with the conclusion that no breach of planning control had been carried out by Mr and Mrs T, and that no formal enforcement action had been required. The note also said that the Council had received "some 32 letters/faxes from the Complainants [Mrs B and Mr R] since April 2005 in relation to the various matters outlined above", and that Officers L, F, Planning Officers A, D and E had been involved. A schedule listed 31 letters from Mrs B between 3<sup>rd</sup> February 2005 and 5<sup>th</sup> June 2007, and one letter from the Assembly Member. Planning Officer E confirmed that the schedule was prepared at the time consideration was being given to the use of the PCP.

124. The original version of the referral form completed by the former Departmental Complaints Office dated 5<sup>th</sup> July 2007 was not available for inspection during the investigation. However, a copy (on the file kept by the Chief Executive's Principal Executive Officer) contained a summary of the background leading to the referral. It said that in addition to planning officers, environmental health officers, legal officers and the Chief Executive had been involved in complaints. It referred to Mrs B's complaint to the Ombudsman in 2005 and said "since receiving

notification from the Ombudsman, over 30 letters have been received ... regarding matters at [White Farm]”. It also referred to regular telephone calls from Mrs B, and that she had been in contact with the media, Assembly Member, Assembly Government, and that the current affairs television programme “showed the complainants’ version of events in June 2005”. The form further stated that Mrs B had lodged formal complaints against police officers involved with the dispute.

Documents, including correspondence, emails, notes of telephone calls and reports were stated as being attached, and reference was made to storage box files containing information about Mrs B and Mr R’s complaints and correspondence between them and the Planning Department. The referral form stated that Mrs B and Mr R had exhausted the Council’s corporate complaints procedure and that the Ombudsman had not investigated their complaint. It also indicated by means of a ticked box that there had “been a meeting with the customer to discuss the particular concerns”. It continued:

“Numerous site meetings have taken place since 2005. The complainants have refused to allow the Enforcement Officer for the area nor (sic) the Enforcement Manager into their property since June 2005. A meeting was held on 12<sup>th</sup> July with [a councillor on behalf of the AM, Officer L, and an administrative officer]. The notes are attached for information”.

125. The copy form indicated that it had been signed by the former Complaints Officer.

126. No documents, correspondence, notes or reports were attached to the copy referral form inspected during the investigation. The schedule of correspondence from Mrs B (referred to in paragraph 124 above) indicated that 10 letters pre- dated 1<sup>st</sup> April 2005, and that 14 had been received since July 2005. 4 of the letters since July 2005 were specific complaints about alleged unauthorised development, and 3 were reminders requesting responses to earlier correspondence. The schedule did not include Mr R’s letter dated 1<sup>st</sup> November 2005 or correspondence from solicitors instructed by Mrs B.

127. The referral was considered by the Departmental Representative (Officer H) on 20th July 2007. The referral documentation contained a “determination” that the referral should be dealt with under the PCP, that contact from Mrs B and Mr R “should be directed to and accepted by only ..... [name] Director of Regeneration and Leisure”, and that the means of contact should be by letter only. The determination was subject to a review being held on 1<sup>st</sup> November 2007. (Officer H confirmed at interview that he signed the original determination). Email exchanges on 2<sup>nd</sup> August indicated that public protection officers were dealing with noise complaints which had been found to be fully justified and that ongoing contact with the Complainants was at an appropriate level given the circumstances. The exchanges indicated that the action taken under the PCP was limited to planning matters.

128. On 17<sup>th</sup> August 2007, the Director of Regeneration & Leisure wrote to Mrs B and Mrs R. His letter stated:

“As the Director responsible for Regeneration and Leisure, which includes all planning matters, I am fully aware of the variety of complaints that you have made against my officers relating to [White Farm]. These have been investigated fully with the conclusion that no breach of planning control has taken place. This has been vindicated by the Ombudsman. As a consequence, I would respectfully request that any further **planning related** correspondence regarding [White Farm] come directly to myself and I will deal with them accordingly.”

129. The letter contained no reference to the Council’s PCP, or that Mrs B and Mr R could appeal. Mrs B said she was not aware that the PCP had been applied in her case until she received the Director’s further letter dated 28<sup>th</sup> February 2008 (referred to in paragraph 139 below). She said the Council had not prior to July 2007 informed her and Mr R that it, for example, found their manner of communication unacceptable or warned them of its intention to apply the PCP in their case if they did not alter their conduct. (At interview, Officer H said that the former Complaints Officer was having daily phone calls with the Complainants and is sure that he would have warned them. However, the Council has

not produced any files, electronic records or emails in which the Complaints Officer's contact with Mrs B and Mr R was recorded. There is no indication in the records inspected to indicate that a decision was made to depart from the practice advised in Step 2 of the PCP procedure by not warning Mrs B and Mr R).

130. Mrs B replied to the Director's letter on 22<sup>nd</sup> August 2007. She asked why she had not received a reply to her letters of 20<sup>th</sup> April 2007 to the Head of Planning Services and her subsequent reminders dated 31<sup>st</sup> May, 4<sup>th</sup> June and 23<sup>rd</sup> July 2007. She requested a response and information about the "agriculture which takes place at [White Farm]". There was no reply to this letter until 21<sup>st</sup> November 2007 when the Director set out the Council's "final statement" regarding planning enforcement issues at White Farm (paragraph 107 above refers).

131. Meanwhile, there were email exchanges between officers (including the former Monitoring Officer) regarding requests by Mrs B for information under the Freedom of Information Act 2000. An email dated 12<sup>th</sup> November 2007 from the former Planning Enforcement Manager (Officer F) said:

"I have been concerned for a considerable period of time as to the way this woman operates. There is no doubt in my mind that if we do not proceed in the way she feels we should, she will attempt to 'punish us'. What is happening at the moment is a clear form of harassment of officers, as she realises the work/time implications to those officers is considerable, which adds significantly to the workload/stress levels of those officers. The complaints come so thick and fast that it becomes confusing as to what you are dealing with, and she is always looking for the 'slip up' or statement which may be mis-interpreted, however minor the issue may be. I thought the whole purpose of branding her a malicious complainant, or whatever the term is, was a way of putting a stop to this. All it appears to have achieved is the complaints come via a different direction. The apparent work implications remain. She spends 15 minutes writing a letter (and enjoying herself, because she literally has nothing better to do), and a whole army of Council

workers seem to spend days trying to reply. This just cannot go on”.

132. There is no information to indicate that a review of the case under the PCP took place on 1<sup>st</sup> November 2007. Mrs B and Mr R remained subject to the Policy until February 2011. (Further information about reviews of their status under the PCP held in January and August 2008, March and September 2009 and May 2010 appears in paragraphs 134, 143, 146, 156 and 170 below).

133. In January 2008, quarrying operations commenced at White Farm (paragraph 25 above refers) and Mrs B and Mr R said they had contacted Councillor 2, who is the Member for the neighbouring ward for additional support. On 16<sup>th</sup> January 2008 Councillor 2 sent an email to one of the Council’s Legal Officers (Officer K) and the Council’s former Monitoring Officer in which she referred to having received a number of telephone calls from Mr R, and requested advice. She stated that Mr R “phoned at least once a day and has tirades against the Planning Department and the Council. He is frequently on the phone for a long time and is not complementary about anyone ...As well as this he is becoming a nuisance caller. I’ve heard he has been threatening to neighbours, so I am worried ....” In a further email she said she was under the impression that Mr R had been told that he could only deal with the Director by letter and asked if the restriction could be extended to all members of the Planning Committee. Other email correspondence on 17<sup>th</sup> January 2008 indicated that the ward member, Councillor 3 had also contacted the Legal Officer with a “similar problem”, and whilst not wanting to take the matter forward, wanted to know what the options would be.

134. The Council’s files contained an unsigned “Case Review by Departmental Representative” document dated 24<sup>th</sup> January 2008. It contained the recommendation that the PCP continued to apply on the grounds that:

“[Mrs B and Mr R] are continuing to pursue previous unfounded allegations and they are also raising new allegations, which are

being investigated. Correspondence to the Planning Department is of high volume, which is still consuming large amounts of time that is disproportionate to the magnitude of the issues raised. .... As well as this correspondence with the Authority, Mr R is now contacting both his ward councillor and a councillor outside his ward with the same allegations. It was agreed at the review meeting, that the Councillor would also be covered under the persistent complainants policy. As such the councillors can now refer both [Mrs B and Mr R] to write to [The Director] in accordance with the persistent complainants policy”.

135. Officer I said there was a meeting on 24<sup>th</sup> January 2008 to review the Complainants’ status under the policy at which she was present, and that the “Case Review” document was the only record of the meeting. She said she could not recall who else was present. However, according to an email dated 7<sup>th</sup> December 2010 from the Council’s Information and Data Protection Officer to Mrs B, “a formal meeting was not convened”.

136. On 29<sup>th</sup> January 2008, the Council’s Chief Executive wrote to Mrs B and Mr R. In his letter, he reminded them of the letter they had “received in August 2007, notifying [them] that all correspondence with the Authority must be in writing and addressed to [name], Director of Regeneration”. The Chief Executive then said that he was aware that there had been “numerous” calls to the Councillor of a neighbouring ward. His letter continued:

“I would like to inform you that, as the matters you raise are outside Cllr 2’s ward she is therefore unable to advise and comment further. I am also aware that you have also contacted other officers via telephone. The Authority will deal with and respond to any new issues raised, but I reiterate, all correspondence to all staff and Councillors in relation to this case must, as requested, be sent in writing to [name] Director of Regeneration and Leisure who will deal with them accordingly. Staff are already aware and will be reminded of the means of communication available to you.”

137. The Chief Executive also notified Mrs B and Mr R that requests for information under the Freedom of Information Act 2000 and other legislation should be directed to the Council's Information & Data Protection Officer. (Officer I said the Chief Executive's letter was sent to Mrs B and Mr R as a result of what had been agreed at the review meeting on 24<sup>th</sup> January 2008). The letter did not indicate the means by which (apart from communicating with the Director) Mrs B and Mr R could access other Council services.

138. Meanwhile, on 18<sup>th</sup> January 2008, the Assembly Member wrote to the Minister for Sustainability & Housing on behalf of Mrs B and Mr R. He said that matters had reached a point where the Council had deemed his constituents as "serial complainants", that Mrs B and Mr R were unable to make contact except by writing to the Director, and that Mrs B's correspondence "was not being answered within the timescale" and that being unable to contact the Council by telephone was making matters very difficult. In his letter he referred to development which had taken place at White Farm, and asked the Minister to intervene. On 25<sup>th</sup> February 2008, Mrs B also wrote to the Minister. She referred to her rights under the European Convention on Human Rights, and asked the Minister to bring pressure to bear on the Council to establish an independent public inquiry into their concerns about the Planning Department. On the same day, the Council's Director of Regeneration & Leisure wrote to the Assembly Member and advised that he was not in a position to meet with Mrs B as a decision had been taken that because of the time and resources that had already been used in her case, the Council was only prepared to deal with her in writing through himself. He said that the decision had not been taken lightly.

139. On 27<sup>th</sup> February 2008, the Director responded to correspondence from Mrs B dated 18<sup>th</sup> January and 13<sup>th</sup> February 2008 in which she had said that the Council was "trying to silence" her and that it was her "democratic right, as a resident of the county and a taxpayer to be able to contact anyone [she] deems necessary" within the Council regarding matters which affected her property and decisions made by the Council. In his letter, the Director said:

“There are instances however where the behaviour of a small number of individuals pursuing complaints cause this Council and public authorities generally serious difficulties because of their refusal to accept the responses which they receive, and sometimes even when responses come from independent agencies such as the Ombudsman. Such behaviour can cause disproportionate demands on Council time to the detriment of other service users, and it can also amount to harassment of officers and members. The Council in common with many other public authorities have therefore found it helpful to adopt a persistent complainants policy in order to manage these situations. Unfortunately, as has been explained to you, it has become necessary for this policy to be applied to you. It does not mean that the Council will not look into concerns which you raise – they will continue to do that – but it does mean that if you wish to contact the Council, you should do it through me.

In the past and in particular recently you and your partner have persisted in contacting a number of Councillors, including Councillors who have no responsibility for the matters which you raise, sometimes making telephone calls every day and often many times during the course of the day. They have complained to the Chief Executive about this conduct. This is in effect a form of harassment which is viewed very seriously, and only confirms why it is necessary for the council to deal with you in this way...”

140. (Mrs B said this letter was the first indication they had that the PCP had been applied to them.)

141. Subsequent correspondence from the Assembly Member and Mrs B’s solicitors challenged the Council to substantiate its claims about “harassment of Councillors”. On 15<sup>th</sup> April 2008, the Director replied to Mrs B’s solicitors. He referred to the use of the PCP and said that this did not prevent Mrs B and Mr R from speaking to the Council about matters of concern. He also said that Mrs B and Mr R were fully aware of the telephone calls they had made (to councillors) and that “several members” had contacted his office with their concerns. He continued:



“The fact of the matter is your clients were fully aware of the terms of the persistent complainants policy. Unfortunately, they chose to ignore that policy and undertook to make a number of telephone calls to Councillors, including councillors not responsible for the matters alleged. The basis of my reference to harassment was clearly explained and it was a factual statement supported by the information I was receiving directly from the members on the receiving end of your clients’ calls. I do not consider these remarks to be defamatory in any sense, and your clients by their actions were clearly demonstrating why it was necessary for the persistent complainants policy to be applied them...”

142. On 13<sup>th</sup> May 2008, Officer L wrote to the Head of the Planning Division at the former Welsh Assembly Government. His letter contained a list of the complaints about alleged unauthorised activities at White Farm, which the Council had investigated with the conclusion that no breach of planning control had taken place and that no formal enforcement action had been required. His letter also referred to the Council’s action in invoking its PCP in Mrs B’s and Mr R’s case on the basis that it had received some 32 letters/faxes from Mrs B and Mr R since April 2005 in relation to the matters which had been investigated.

143. On 22<sup>nd</sup> August 2008 a PCP review meeting was held. According to the minutes, the Director, the former Complaints Officer, the Departmental Representative, the Principal Executive Officer and the Anti Social Behaviour Coordinator attended. The minutes stated that the level of contact from Mrs B and Mr R on planning matters had decreased ... but that correspondence is being focussed elsewhere including Community Safety via the Anti Social Behaviour Coordinator and on lobbying officials within WAG”.

144. The minutes indicated that the restriction on Mrs B’s and Mr R’s contact with the Council was to be extended to other departments including Community Safety, but that Mrs B and Mr R would not be informed of their continuing status under the policy “based on the fact that previous correspondence relating to the PCP ... has attracted complaints relating to human rights issues from the recipients.”

145. On 19<sup>th</sup> February 2009 Mrs B wrote to the Council's Chief Executive. She said that the Council had labelled them persistent complainers to "bully, frighten and suppress, in the hope that awkward questions would cease..." Her letter contained a summary of the "offences" committed against them by Mr and Mrs T and said that the Council "by ignoring the abuse and assaults inflicted upon us, have condoned and encouraged [Mr and Mrs T's] actions, and are, therefore complicit". She then referred to the intimidating and upsetting effects of other actions by Mr and Mrs T. These included the removal van parked within feet of their cottage windows and the "ugly board" close to their bedroom window. She said that the Council had actively engaged in denying them the right to live peacefully and had never offered them any form of support or help, but instead had shown condescension, disrespect, and had actively engaged in a smear campaign against them. She said the Council's failures amounted to "misconduct and misuse of public office i.e. malfeasance ...." Her letter did not specifically ask the Council to take any action. (At interview, Mrs B said her letter was not a formal complaint, but to make the Chief Executive aware of their position having been made subject to the PCP.) The Director replied to Mrs B's letter on 5<sup>th</sup> March 2009 – paragraph 148 below refers).

146. A further PCP review meeting was held on 5<sup>th</sup> March 2009. The Director, Complaints Officer, Departmental Representative, Head of Planning Services, Principal Executive Officer, Public Protection Services Manager and Senior Solicitor attended. The minutes indicated that contact from Mrs B and Mr R with regard to planning and public protection complaints had increased, and that the Director had received emails "which was not in line with the method of communication stipulated within the PCP". It was agreed that the use of the PCP "would be broadened further to cover the whole Authority" and that "to avoid further rhetorical correspondence from the parties concerned ... [the Council] would not be notifying the parties concerned of their continuing status under the policy. It was agreed that matters relating to the parties concerned are somewhat unique and therefore an exception is justifiable in the circumstances". The minutes said that this was based on the fact that previous correspondence to Mrs B and Mr R relating to the PCP had

attracted complaints relating to human rights issues from them. The minutes continued:

“However, a letter to remind the complainants of the terms of the policy would be drafted and sent to the complainants. This letter will also state that emails and telephone calls in relation to complaints will no longer be accepted by the Authority. Due to the quantity and nature of the emails, measures will also be taken to block their email address”.

147. The minutes also recorded the decision that the Council’s Public Protection Officers would continue to investigate current noise complaints in relation to dogs barking, but further enquiries would be channelled through the single point of contact (namely the Director of Regeneration and Leisure).

148. On the same day (5<sup>th</sup> March 2009) the Director wrote to Mrs B and Mr R. He referred to her letter dated 19<sup>th</sup> February 2009 to the Chief Executive, and to a number of recent complaints she had made to officers across the Authority including planning enforcement, land drainage, antisocial behaviour, public protection and the legal department. He said that all correspondence regarding any complaints across the Authority must be by letter and addressed to him, and that “emails and telephone calls in relation to complaints will no longer be accepted by the authority”. He said that any letters which did not raise any fresh complaints would not be acknowledged or responded to. His letter continued:

“I am satisfied that all officers within the Authority have investigated your complaints about your neighbours professionally and thoroughly over the previous five years and we do not accept your suggestion of malfeasance in public office. The matters which you raise in your recent letter have indeed already been investigated. I also understand that your neighbour has recently lost his wife and although this is unconnected with the complaints you have made, I feel that this does need to be taken into

consideration when officers are investigating any new complaints made about your neighbour...

We are sad to hear that the long standing problems you have experienced with your neighbour have not been resolved. Your views and perceptions of the Authority is also regrettable. I would like to reassure you that both you and your neighbour have been treated with parity. It is unfortunate that matters have not dissipated and that we have to adopt such a robust approach to your complaints”.

149. (The file indicated that Mrs B had sent emails to the Director in which she sought information about the type of agriculture the Council had “claimed” to be taking place at White Farm. Information about the Director’s response dated 12<sup>th</sup> March 2009 appears in paragraph 37 above. At interview, Officer I said that the intention at the review meeting on 5<sup>th</sup> March 2009 was to block email access to officers, and that there was never any intention to block access to Councillors.)

150. In a further letter dated 13<sup>th</sup> March 2009, Mrs B said she questioned the lawfulness of the Council’s action in denying her access to Councillors. She said that far being persistent vexatious complainants, she and Mr R had legitimately pursued the Council in order that their questions over dubious decisions and failures were answered truthfully.

151. On 1<sup>st</sup> April 2009, Mrs B wrote an email to the Director and requested a copy of the Council’s PCP. (Mrs B’s note on a hard copy of the email said it was sent by fax “my emails had been blocked!”). Mrs B repeated her request for the PCP by further letters dated 6<sup>th</sup> and 7<sup>th</sup> April 2009. On 16<sup>th</sup> April 2009, the Director wrote to Mrs B and explained that the Council’s PCP was in line with statutory guidance to local authorities on complaints handling issued by the Ombudsman. On 28<sup>th</sup> April 2009, and following a further request (on 18<sup>th</sup> April 2009), the Council sent Mrs B a copy of the PCP. The letter said that her status under the policy was subject to review. He said “This does not affect your right to access Council services and these can be accessed by normal means”.

However, all correspondence regarding any complaints across the Authority must be by letter and addressed to him. (Mrs B said that she was unable to access services as she had been advised that no one from any department should communicate with them).

152. Officer I said that on becoming aware that the restriction on emails was affecting Mrs B's right to contact councillors, she contacted the Council's IT Department on 21<sup>st</sup> July 2009 to ask that emails from Mrs B and her agent's email addresses to Councillor 3 be allowed. The IT officer replied the same day indicating that the Councillor's email address was excluded from the "global blacklist rule", but that there was no way to test except by checking whether an email to the Councillor had been received. In her response Officer I said she would contact the Councillor to check for correspondence. She said she then left the Council to go on secondment, and assumed that the measures taken by the IT Department were successful. Mrs B was not notified that the restriction on emails was not intended to prevent her from emailing councillors, and the restriction remained in place until April 2010 (paragraph 169 below refers).

153. Meanwhile, on 4<sup>th</sup> and 9<sup>th</sup> June, Mrs B wrote to the Director regarding unauthorised development on another part of White Farm. The Director replied on 10<sup>th</sup> June 2009 stating that action by the Planning Enforcement Division was "proceeding as per policy". (At interview, the Head of Planning Services said the Director's letter related to unauthorised development on another part of White Farm. The Council's files showed that in July 2009, Mr T submitted a planning application seeking retrospective consent for unauthorised development on another part of White Farm, which included the formation of hard standing for parking and storage of agricultural vehicles and implements. Planning permission was refused by the Council on 10<sup>th</sup> September 2009).

154. On 11<sup>th</sup> and 16<sup>th</sup> June 2009 Mrs B wrote again to the Director in which she referred to "further industrial work" being carried out on White Farm adjacent to the sheds. In her letters she said the intention was to create a further hard standing which would result in additional flooding to

her land. She asked whether planning consent had been sought, and offered video evidence. She said that Officers B and E, who had been contacted on their behalf by a friend, had said that they were unaware of the works at White Farm, and she claimed that the Director, who was their only point of contact, had failed to pass on their concerns. On 22<sup>nd</sup> June, Mrs B sent an email to the ward member (Councillor 3) asking him to investigate. On 11<sup>th</sup> August 2009 the Assembly Member sent copies of Mrs B's letters to the Council. The Council in its response dated 13<sup>th</sup> August 2009 to the Assembly Member said it had replied to Mrs B's letters on 17<sup>th</sup> June 2009. However, Mrs B said she received no response and the Council has not produced a copy of the letter dated 17<sup>th</sup> June 2009. (At interview, Officer L said that Mrs B's letter of 11<sup>th</sup> June 2009 related to the use of material quarried from White Farm to lay tracks elsewhere on the holding including the site on which the Council took enforcement action. The Director said he did not recollect Mrs B's letters of 11<sup>th</sup> and 16<sup>th</sup> June 2009, but agreed they related to development in the yard at White Farm adjacent to the sheds. He was unable to say whether Mrs B had received a specific response to that correspondence. However, in its comments on the draft report, the Council produced a copy of a letter dated 18<sup>th</sup> June 2009 which it said was its response. In the letter, the Council's Director informed Mrs B that the contents of her letters had been referred to the Planning Department and acted upon where appropriate, and that the position in relation to the "enforcement case" was as stated in his letter dated 10<sup>th</sup> June 2009.) Mrs B's complaint to the Chief Executive in January 2010 about the Director's alleged failure to respond to her correspondence is referred to in paragraph 158 below refers.

155. Mrs B's solicitors wrote to the Director on 23<sup>rd</sup> June, 11<sup>th</sup> August and 15<sup>th</sup> September 2009. They referred to the Council's use of the PCP and said the Council should not ignore their client's legitimate complaint regarding recent construction works at White Farm. They requested details of any planning applications which had been submitted and the Council's investigations into their clients' recent complaints. The correspondence was referred to the Council's Legal Officer (Officer K) who replied on 17<sup>th</sup> September 2009. He said the Council had replied to Mrs B on 10<sup>th</sup> June 2009 (paragraph 153 above) refers. His letter

contained no reference to Mrs B's concerns about works near the sheds at White Farm. Mrs B's solicitors replied to Officer K's letter on 22<sup>nd</sup> October 2009. They said that Mrs B and Mr R were concerned that the new area of hard standing was being used to store the agricultural implements when it was for that purpose that planning permission for the sheds had been justified. They said that their client had photographic evidence that the sheds were being used for stabling numerous horses which they said was in breach of the conditions of planning permission. Their letter also said that Mrs B had video evidence of approximately 9 or 10 different lorries and haulage vehicles entering and leaving the site on a daily basis and was concerned that the large number of haulage vehicles coming in and out of the site suggested that the land was used more as a haulage business than a working farm. They said that the Council had been asked to specify the type of agriculture which was being carried on at the farm which had led them to conclude that there had been no breach of any planning permissions, and asked that the agricultural use which takes place on the farm be confirmed. The Council's files contained no response to this letter.

156. Meanwhile, on 30<sup>th</sup> September 2009 a further review of Mrs B's and Mr R's status under the PCP was held. The minutes indicated that there continued to be a high level of contact regarding planning matters from the complainants or from people representing them. It was agreed that the Council would continue to enforce the PCP, and that correspondence from Mrs B and Mr R in relation to previous complaints would only be acknowledged.

157. Mrs B wrote to the Chief Executive and Officer K on a number of occasions between November 2009 and April 2010. She asked for the names of all the councillors who had allegedly complained of harassment by her and Mr R. She said that the Council's claim that she and Mr B had "persisted in contacting a number of councillors" was untrue, and that she had been informed by the Assembly Member that Councillor 2 had not made any complaint. She asked that the Council substantiate its claim. Officer K referred to the Chief Executive's letter dated 29<sup>th</sup> January 2008 in which reference had been made to numerous calls being made to Councillor 2. He did not initially refer to any other

councillors, but subsequently (in March 2010) said that Councillor 2 and another Councillor (who was not named) had expressed concerns. Mrs B claimed that the Council had overlooked her complaints about unauthorised activities at White Farm. She denied that she was a persistent complainant and said that the Council, in implementing the PCP in their case, had failed to comply with the policy in that it had not notified them of its decision or sent them a copy of the procedure. Officer K said that the PCP was lawful and reflected statutory guidance issued by the Ombudsman, and that Mrs B had been informed of the decision to apply the PCP “back in August 2007”.

158. Meanwhile on 26<sup>th</sup> January 2010, Mrs B wrote to the Chief Executive complaining that the Director had not replied to her correspondence dated 11<sup>th</sup> and 16<sup>th</sup> June 2009 in which she had referred to new engineering works at White Farm adjacent to the sheds “which she referred to as “illegal buildings”. She said these sheds were not being used for farming purposes, and that the PCP required that “new issues” would be dealt with impartially.

159. On 7<sup>th</sup> February 2010 Mrs B submitted a further complaint to the Chief Executive saying she had evidence of White Farm “being illegally used as a haulage and scrap depot” over a five year period which the Council had refused to view, and had accused them (in the television programme) of doctoring the evidence. She said the First Shed was not being used for the storage of agricultural implements but to stable horses in connection with a commercial business, and that the Council, when approving the Second Shed which had been proposed as an agricultural implements store, failed to establish why the agricultural implements were not being stored in the First Shed. She said instead, the Council had accused them of making unfounded allegations and, despite her “irrefutable” evidence, insisted that White Farm was a working farm. She enclosed with her letter recently filmed video evidence of White Farm “being used as a haulage depot, scrap yard, and commercial horse dealing business”. Her letter also enclosed copies of pages from Mr T’s equine website. These indicated that horses were bred and sold at White Farm and included photographs of horses taken in the First Shed. Mrs B’s letter said that her evidence



showed that there was “no sign whatsoever of any agriculture, only haulage and scrap and a commercial equine business”.

160. The Council’s files indicated that the Chief Executive informed Mrs B that her complaints were being discussed by relevant officers and that a response would be sent shortly. Planning Officer E prepared a summary of the video footage submitted by Mrs B which included the dates and times of HGVs entering and leaving White Farm on 11 days between 4<sup>th</sup> and 28<sup>th</sup> January 2010. The footage and the Officer’s summary depicted 111 HGV movements and 3 movements involving a small pick up van/lorry as follows:

- Monday 4<sup>th</sup> January 2010 (18 movements, including a lorry loaded with scrap cars leaving);
- Tuesday 5<sup>th</sup> January (18 movements including an empty flatbed lorry leaving & a lorry with high sided sheeted trailer arriving);
- Wednesday 6<sup>th</sup> January (2 movements);
- Friday 8<sup>th</sup> January (1 movement, scrap cars on lorry arriving);
- Wednesday 13<sup>th</sup> January (36 movements, including an empty flatbed lorry leaving);
- Sunday 16<sup>th</sup> January (1 movement, scrap cars on lorry arriving);
- Friday 22<sup>nd</sup> January (6 movements).
- Monday 25<sup>th</sup> January (4 movements including a lorry with scrap cars arriving);
- Tuesday 26<sup>th</sup> January (8 movements including a lorry with scrap load leaving);
- Wednesday 27<sup>th</sup> January (13 movements including a lorry with cab only arriving and an articulated lorry leaving);
- Thursday 28<sup>th</sup> January (7 movements).

161. The majority of the HGV movements were by vehicles belonging to Mr T’s haulage company. The times of their movements did not appear to contravene the environmental conditions attached to the Operator’s Licence.

162. The DVD recording also depicted quarrying activity, footage and commentary (by Mrs B) about agricultural implements stored outside the

sheds, and commentary about noise from metal cutting, grinding and banging. In the commentary Mrs B expressed her belief that scrap vehicles which she had seen being brought onto White Farm were being taken apart in the Second Shed. The recording also depicted footage shot on Sunday 24<sup>th</sup> January with specific comments about maintenance work on a lorry outside the sheds. Further footage shot on Saturday 30<sup>th</sup> January depicted horses in one of the sheds and several commercial haulage vehicles.

163. Officer L said he viewed the video footage and made an unannounced visit to White Farm on 16<sup>th</sup> February 2010 when he took photographs. There were no notes of the visit on the file. The photographs depicted agricultural implements stored outside one of the sheds, horses inside a shed and a tracked “hymac” machine in the quarry area. The photographs also depicted 10 HGVs (one of which appeared to be a horse transport lorry, a milk float or similar, discarded vehicle parts, tyres, lorry container backs, shipping containers and skips. Officer L said he also observed a lorry in the third barn which had replaced the dutch barn. He said he saw nothing more than what he had seen in the past and there was nothing in his view which evidenced a material change of use to a haulage depot.

164. On 15<sup>th</sup> March 2010 the Chief Executive replied to Mrs B’s complaints. He said that her complaint about the Director was unfounded. He said that the Director had provided a response with the advice that the “Planning Enforcement Section was proceeding as per policy”.

165. In his letter, the Chief Executive also said that no evidence of car scrapping or haulage operation was found at White Farm. His letter contained no reference to the equine activity shown in the photographs. He said that any letters which did not raise new complaints would not be acknowledged or responded to. (The Council has not provided copies of the Director’s correspondence referred to in the Chief Executive’s letter).

166. In her response dated 22<sup>nd</sup> March 2010, Mrs B described the Chief Executive’s letter as “utter waffle” and said he had deliberately refused

to address her two complaints. She maintained she had not received a reply from the Director to her correspondence, and that the filmed evidence showed a haulage yard, unauthorised use of sheds, HGVs, a heavily used quarry, scrap cars entering the site, numerous scrap vehicles, but no agriculture. She said that she had, that day, filmed evidence of “at least 5 haulage vehicles parked to the rear of the sheds, plus two on front yard, in addition plant machinery, another JCB in quarry area which has recently been in use, scrap materials, together with acetylene gas bottles on site”. She referred to filmed evidence of haulage activities dating back to 2005 and said that to deny such filmed evidence was to display “fanaticism, prejudice and bigotry”. She requested a full report on her complaints. There was no immediate reply to her letter, but on 25<sup>th</sup> May 2010 (following a further review of the PCP – paragraph 170 below refers), the Chief Executive wrote to Mrs B and said that the Director would remain as her single point of contact with the Council.

167. On 24<sup>th</sup> March 2010 Mrs B sent copies of her complaint correspondence to a number of councillors. She re-sent the information on 12<sup>th</sup> April 2010 indicating she had problems with emails. She said she did so following advice from an Assembly official. One councillor replied and said that as it involved “complicated and drawn out legal issues” he had been advised not to respond.

168. On 12<sup>th</sup> April 2010, a senior Assembly official sent an email to the Head of Planning Services requesting a reply to her earlier letter dated 22<sup>nd</sup> May 2009, in which she said that Mrs B had claimed that their rights were being infringed by the Council’s refusal to allow them access to an elected representative. Officer K replied on 13<sup>th</sup> May 2010, stating that the Council had no alternative but to treat Mrs B and Mr R as vexatious complainants and apply the Council’s PCP to them in August 2007. He stated that the PCP did not prevent them from making contact with their elected representatives “although I have to inform you that there were issues in this regard previously”.

169. Meanwhile, on 23<sup>rd</sup> April 2010, an officer in the Chief Executive’s department asked for the email restriction on Mrs B’s email address to

be lifted. Her email indicated that “legal” had confirmed that the Council could not stop members of the public having access to their elected representative. On 24<sup>th</sup> April 2010, the Chief Executive wrote to Mrs B and said that a restriction had “unintentionally been placed on all emails that come in to the Local Authority” from Mrs B’s email address. He said it was not the Council’s intention to prevent her from having contact with any elected member and that the restriction had been lifted with immediate effect.

170. The restriction on emails from Mrs B’s email address was referred to as being “unlawful” at a further meeting to review Mrs B’s status under the PCP on 4<sup>th</sup> May 2010. The minutes also indicated that complaints were now being directed to the Chief Executive rather than the Director. The minutes referred to the outcome of the investigation of Mrs B’s complaint about White Farm and said that nothing new was indicated. In relation to the video footage submitted with the complaint, the Head of Planning (Officer L) was reported as saying “it was clear that the tape had been wound forward over a large period to show [lorries coming in and out of the farm in succession]”. It was agreed that the footage would be referred to the Police to check for evidence of editing. Officer L was also reported as saying that “cars were being dismantled at the farm, however, there is an operator’s licence in place that allows for this to happen. Although there were lorries on the farm along with agricultural machinery. There was nothing to indicate that lorries were being repaired on site”. He also said that the lorry use was not at a level which required planning permission. (A subsequent email dated 7<sup>th</sup> December 2010 indicated that the video footage was not in the event referred to the Police, as although it had been “edited to show a constant flow of traffic to and from the property, it had not been tampered with ...” At interview, Officer L said that the video footage submitted by Mrs B was only a snapshot of lorry movements over a few days and did not indicate a sustained pattern of increased lorry movements over a longer period. He said he did not recall making the statement about there being scrap lorries at the farm, and believed this comment may have related to the unauthorised development on another part of White Farm. He also believed that the reference in the minutes to the dismantling of cars being authorised by the site operating licence was incorrect. Officer

K, who was present at the meeting, said the minutes do not reflect how he would have used the term “unlawful” in relation to the restriction on Mrs B’s email. He said he had earlier advised that such a restriction in certain circumstances could be argued to be potentially unlawful).

171. In an email to colleagues dated 16<sup>th</sup> August 2010, Officer L reported on a meeting he had attended with the Welsh Audit Office in which Mrs B’s case was mentioned. The email stated:

“The view was expressed [by Audit Officials] that there was a prima facie case of a business being operated from the site based on the latest DVD and given the address on the lorry company’s website as [White Farm]: on the latter point [Officer L] indicated that the operational base was at [another location] and showed the Traffic Commissioner’s reports which records the operating centre [at the other location]. As for the DVD [Officer L] expressed some doubt on the credibility of [Mrs B and Mr R] as witnesses they had ‘doctored’ evidence when recording noise for a dog barking complaint previously and the continuity in the DVD was suspect with lorries departing at high frequency ... It was also pointed out that this ‘evidence’ was gathered days after [Mrs T] has passed away! Nevertheless the site was visited ... and the photographs that were taken were shown at the meeting, they showed horses, agricultural machinery, horse box and lorry, bedding material and no evidence of a scrap business in operation ... they seemed satisfied that this was a case of a neighbour dispute that had escalated”.

172. On 3<sup>rd</sup> December 2010 the Chief Executive wrote to Mrs B in response to 4 letters in which she had asked for information about her status under the PCP. He confirmed that the last review had taken place on 4<sup>th</sup> May 2010, that she continued to be classed as a persistent complainant, subject to an imminent review. On 28<sup>th</sup> January 2011, it was agreed at a further review meeting that Mrs B and Mr R be “removed from the [PCP] register”. The minutes stated that the original reasons for the application of the policy had not been evident over the

preceding 6 months. The Director notified Mrs B and Mr R of the decision on 1<sup>st</sup> February 2011.

173. Meanwhile, on 25<sup>th</sup> November 2010, the Planning Inspectorate issued its decision in respect of two planning appeals relating to unauthorised development on the other part of White Farm. The decision letter indicated that the Inspector made an inspection of the yard and buildings complex at White Farm (adjacent to Mrs B's property) in connection with Mr T's claim that the development was reasonably necessary for agricultural purposes. The decision letter said (at paragraphs 24 to 27):

"I observed that the main activities on the land appear to be grazing and keeping of some 20 to 30 coloured horses, including a row of stables and an enclosure within the second steel building to accommodate several more horses, the storage of a tractor with a few implements and about 10 HGV vehicles, including lorries, vans and an oil tanker in the second building and yard area. In addition, there is much visual evidence of lorry maintenance, with many lorry wheels and tyres, and the storage of other vehicle items in the open yard area. From the visual and documentary evidence in this appeal it appears that the appellant's main business activities are horse showing/trading and HGV haulage. Agricultural activity appears limited to horses grazing, production of a hay crop for horse fodder and some drainage improvement works [on the other part of the farm].

Both of the modern large barns were erected for agricultural purposes, but their current use appears to be largely related to horses, vehicles and haulage activities. There were approximately ten HGV vehicles on the site at the time of my visit, but not all were in operational use. During the inquiry, copies of 2 VOSA licences were produced to show that [White Farm] is an operational base for six lorries and five trailers owned by two different haulage companies. I understand that the Appellant also operates haulage and scrap metal businesses at other licensed vehicle operating centres [in another area].

The licensed operation and the use of the yard and buildings as a haulage depot, storage of related items and HGV maintenance area, combined with the keeping of horses, is not an agricultural use of the existing buildings and open yard. This appears to be in contravention of the conditional planning permissions for the buildings and may be unlawful without further planning permission for an apparent change of use.

It demonstrates to me that there is very little genuine farming activity at [White Farm] and that other, possibly unauthorised, commercial activities are occupying the land and the buildings reserved by planning conditions for agricultural use....”

174. The decision letter also recorded Mr T’s statement that “he will do as he likes with his own land”. The Inspector said “I take this to mean that there is little intention to be restrained by ... a conditional approval”. (At interview, the Inspector (now retired) said that Mr T gave evidence at the inquiry on oath. According to the Inspector’s notes, Mr T stated he was operating the haulage business from the Farm. A transport consultant who gave evidence on Mr T’s behalf said that there could be 5 vehicles parked at White Farm and that planning permission was not required. Planning Officer E said he recalled Mr T saying that he had been parking up to 5 lorries at White Farm for over 10 years, and that on the occasion of the Inspector’s site visit, White Farm fitted the description of a haulage yard although some of the HGVs were not in use. Planning Officer B said he informed the Inspector of the Council’s view that the parking of 2 HGVs at White Farm was acceptable, and said he could see why the Inspector made the comments he had in his decision letter about the use of the holding as a haulage depot).

175. On 1<sup>st</sup> December 2010, Officer L wrote to Mr T’s planning consultant and referred to the Inspector’s comments and to ongoing complaints about the activities at the complex. He said that on the basis of what had been said at the inquiry, the Council intended to proceed with enforcement action on the basis that non-compliance with agricultural conditions had occurred, and the use of land for the storage of lorries, lorry parts and other non-agricultural vehicles without planning

permission. The letter sought comments within 21 days. No enforcement action was taken, but the Council subsequently (in November 2011) granted planning permission for the change of use of agricultural land to mixed use for equine stabling/agricultural land (paragraph 181 below refers).

176. Meanwhile, on 20<sup>th</sup> December 2010, Officer L responded to the senior Assembly official who had referred to the Inspector's decision letter. He said that a single visit did not provide a conclusive picture of the overall use of the site, and that the Inspector's conclusion was different to that of the Inspector who had determined the earlier appeal in 2005 (paragraph 16 above refers). He also said that whilst there may be evidence of a business involving horses, it may not be in the public interest to take enforcement action.

177. On 14<sup>th</sup> February 2011, Mrs B sent a lengthy email to Officer L, the Chief Executive and other officers. She referred to her complaints since 2005 and the Inspector's decision, and said that the Council had "orchestrated a systematic and prolonged attack upon [their] honesty and integrity", that senior officers had engaged in "corrupt practice" and had conducted themselves "shamefully and without conscience", that "corruption has to be taking place, or is it racism?", and that the "use of vengeful and malicious smear campaigns [was] ... acceptable amongst senior officers". She asked for the lorry and large board to be removed from their respective positions by her boundary, and for other scrap which had been parked near her entrance to be removed. She also asked that the sheds be removed. The Chief Executive replied on 21<sup>st</sup> February. He said that no new matters of complaint had been raised which required action.

### Subsequent events

178. In March 2011, the Council established from VOSA that White Farm was the licensed operating centre for 2 HGVs operated by Mr T's haulage company. In October 2011, the Council further established that it was also licensed as an operating centre for an HGV operated by Mr T's recycling company.



179. On 3<sup>rd</sup> August 2011, and following a complaint by Mrs B that Mr T was exporting freshly quarried material from White Farm, the Council served a PCN on Mr T. Planning Officer A said at interview that he established that the quarried material was being used to surface tracks on another part of White Farm, and that it would have been necessary for the material to have been transported along the public highway from the quarry to the other part of the farm. He said no breach of planning control was involved. He said that he saw 3 or 4 lorries parked in the quarry area, and was told that they had been taken off the road, and were for sale. He saw another lorry which displayed the logo of Mr T's recycling company and was in obvious use.

180. On 10<sup>th</sup> October 2011 Mr T pleaded guilty to failing to comply with the enforcement notice relating to the unauthorised development of the other land at White Farm. A conditional discharge for 2 years was imposed and he was ordered to pay costs. He had complied with the enforcement notice a few days prior to the hearing. The Council said he had failed to attend earlier hearings in September, and a warrant had been issued for his arrest with bail attached.

181. On 10<sup>th</sup> November 2011, the Council granted planning permission for the change of use of agricultural buildings at White Farm to mixed use for equine stabling/agricultural and parking of equine vehicles, together with the retention of a lean-to stable building at White Farm. The consent related to the First Shed and the Third Shed (which had replaced the former dutch barn), and was granted subject to a condition which required the Council's approval of a site waste management plan. The planning officer's report on the application referred to the Council's earlier concerns regarding the low level of agricultural activity on the holding when it refused consent for the First and Second Sheds. It stated that the Planning Inspectorate, in granting planning permission for the First Shed had, however, accepted that sufficient agricultural justification had been provided by the applicant. In relation to the Second Shed, the report stated: "the Head of Corporate Property did subsequently offer his support to the application and the said shed was built under the provisions of the [GPDO]". The report contained no

mention of the Planning Inspectorate's decision letter issued in November 2010.

### **Information provided by VOSA on behalf of the Traffic Commissioner**

182. VOSA confirmed that White Farm is named as an operating centre in 2 Operator's Licences. The first, issued on or before 1999, related to Mr T's recycling company, and was varied in March 2003 to authorise the use of White Farm as an operating centre for one HGV but no trailers. The licence also authorises the parking of 10 HGVs and 15 trailers at another site elsewhere.

183. The second operator's licence was issued in March 2001 to the operator of the haulage company (Mrs T), and authorised the parking of 5 HGVs and 2 trailers at another site in the locality. It was varied in December 2005 to allow the parking of 2 HVGs (but no trailers) at White Farm. The variation was granted subject to "environmental conditions". These prohibited vehicle movements before 6.30 am or after 7 pm on Mondays to Fridays, before 6.30 am or after 1pm on Saturdays, and no vehicle movements on Sundays or Bank Holidays. The vehicles were restricted to a weight of 32,000kgs, and no maintenance of vehicles at the operating centre was permitted save routine, minor repairs and or emergency repairs.

184. The variation of the Operator's Licence in December 2005 came about following an investigation by VOSA/Traffic Inspectors into a complaint received in January 2005 via the local MP that White Farm was being illegally operated as an operating centre. Observations had indicated that on 10<sup>th</sup> March 2005, no vehicles were parked at the designated operating centre, but 4 appeared to have been parked overnight at White Farm. A Traffic Examiner and a Vehicle Examiner had also attempted a site inspection at White Farm in January 2005 when Mr T was verbally abusive. Subsequently, Mrs T applied for a variation of the haulage company's operator's licence to add White Farm as an operating centre for 2 vehicles. In her correspondence, Mrs T referred to harassment by her neighbours (Mrs B and Mr R). The application was advertised and Mrs B and Mrs R submitted objections.

A senior vehicle examiner visited both Mrs T and the neighbouring occupiers, Mrs B and Mr R. The application was heard at a public inquiry in December 2005. Mrs B and Mr R attended. There was no attendance or representation from or on behalf of the Council.

185. Both licences were reviewed at a public inquiry in April 2010 which was concerned with disciplinary matters. These included the failure by the licensed operator (Mr T) to disclose a relevant conviction (common assault in June 2007), Mr T's conduct towards a Traffic Examiner in January 2005, certain roadworthiness matters, failure to comply with licence undertakings and that the licence holder may no longer be of good repute. The licences were confirmed on Mr T giving a number of additional undertakings and a formal warning was issued to the haulage company with regard to its future conduct as an operator.

### **The evidence of Mrs B, Mr R and their surveyor**

#### What Mrs B and Mr R said

186. Mrs B and Mr R said that when they purchased their property (December 2003), there was a dwelling, a dutch barn, another stone building (used as a stable), a cowshed and a portacabin at White Farm. The portacabin was later removed when the cowshed was converted to an office and tack room. Soon after they moved into their own property they observed several heavy goods vehicles parked on the site now occupied by the sheds. 5 lorries were marked with the name of Mr and Mrs T's haulage business and there were three other lorries together with 2 trailers. They were awoken early in the mornings by the sound of cars arriving and then 4 or 5 lorries being started up and driven away. These would return between 5 and 7 pm. Another 2 or 3 lorries would be driven away and returned during the day.

187. Mrs B said that details of Mr and Mrs T's equine business comprising the breeding, showing and selling of horses have appeared on their neighbour's website for several years. There are up to 30 horses on the holding at any one time, as well as a number of donkeys. Mrs B said she has no objection to the use of the holding for equine purposes. However, she claimed that the Council is inconsistent when it appeared to accept in their neighbour's case that horse related activities

were sufficient justification for agricultural sheds, but not so, in other cases when it came to applications for agricultural dwellings.

188. They said that soon after moving in, Mr and Mrs T introduced themselves and informed them that the former owner of Mrs B's property had complained about the haulage business. Mr T informed them that he had told the former owner to "F\*\*\* off". Mrs B said they later believed this remark was intended as a warning. They said that Mr and Mrs T, it seems on becoming aware of their complaints to the Council about the haulage related activities, then harassed and intimidated them over the next few years.

189. Mrs B said that when they applied for planning permission for the cattery (during 2004), they asked Planning Officer B about the haulage related activities on White Farm. It was as a result of his comments (in which he asked how they were getting on with their neighbours ) that Mrs B inspected the Council's planning files and discovered that a previous owner of their property (not their vendor) and 3 other neighbours had complained to the Council since 2001 about the haulage related activities on the holding. They were also advised by the Countryside Council for Wales and an organisation which advises landowners that there had been problems with the use of the neighbouring property. One of the neighbours informed them that he had been approached by Mr and Mrs T in a very threatening manner on the forecourt of a petrol filling station because he had complained. They said another former owner of their property had also complained about noise. However, the person from whom they purchased their property did not disclose the existence of any problems or difficulties with the use of White Farm or its occupiers.

190. Mrs B and Mr R said that during 2004, their contact with the Council about the activities on White Farm was by telephone, and they were made to feel that they were making it up. They said the Council also claimed not to have the resources to monitor out of hours lorry movements (namely before and after the normal working day). Mrs B said she then approached their local Member of Parliament, who wrote to the Council on their behalf. She said by this time she was scared of

her neighbours because of their threatening and intimidating behaviour. They said the Council's former Enforcement Manager (Officer F) visited them in 2005 and informed them that their neighbour's haulage operating base was elsewhere, and that the Council could not take any action unless there was evidence. He suggested that they take photographs but Mrs B said she informed him that they would make video recordings of the haulage related activity. They did so in 2005 and during telephone calls to Officer F, and at a meeting at which their surveyor was present, offered him the footage, but he refused to view it. He did not give any reasons. During that meeting (in May 2005), their surveyor had also said she had spoken to the owners of Mr and Mrs T's licensed operating centre and established that it was not being used by Mr and Mrs T. They offered the footage to Officer L also, but he likewise refused to view it, without saying why. They wrote to the Council on several occasions during 2005 about the number of lorries being operated from White Farm.

191. Mrs B said that the only time Officer L visited them was on 12<sup>th</sup> July 2005. She said that at the meeting they explained their view regarding the non-agricultural HGV and equine related activities taking place on the holding. They also mentioned the blue lorry. However, the Head of Planning quoted planning law and said he would look into it and get back to them. They are dissatisfied with the response contained in his letter dated 29<sup>th</sup> September 2005. They consider that his statement that the lorries had "agricultural justification, hobby, personal transport and related to haulage business" was foolish and flippant as it was difficult to see how an HGV could be used for personal use, except possibly to drive to one's place of work. It was similarly foolish and flippant of the Council to view the portacabin as a "hobby shed", as when they first met their neighbours, they were invited into the portacabin, and saw no evidence of any hobby or recreational activity. It was clearly an office used in connection with the haulage and equine businesses.

192. Mrs B said the Council was unreasonable when it failed to take effective action in respect of the large removals lorry which their neighbours had parked close to their boundary in March 2005. If it was genuinely being used for storing animal feed, then it is more likely to

have been placed near the yard where the horses were, rather than at the bottom of the paddock (which slopes down from the yard) adjacent to the boundary with their cottage. Mrs B said that if the holding was no longer being used for agricultural purposes, then there was no basis for the lorry remaining in its present position outside planning control.

193. The Council was similarly unreasonable when it decided it was not expedient to take enforcement action in respect of the large board (which the Head of Planning later described as a “privacy board”) erected on the boundary adjacent to their bedroom window. Mrs B said Council officers did not visit to inspect the board from their property or to assess its impact on their residential amenities. In her view, the Council was unreasonable when it failed to do that. Its decision was not in the public interest as it set a precedent for any householder, seeing a security camera on a neighbouring property, to erect a large “privacy board” without obtaining planning permission. Furthermore, Mr T had 11 security cameras located around his property, which seemed an excessive number, and they felt they were reasonably entitled to install one at the back of their property (which they did not operate) following the pig faeces incident. They said they have removed the security camera, and the pigs ceased to be kept on the holding about 2 or 3 years ago. However the board remains.

194. They said they did not object to the planning application in respect of the First Shed as they were scared of the neighbouring occupiers. However, they were informed by Planning Officer B and their local councillor (Councillor 3) that it would be refused. They agreed with the Planning Officer’s concerns about the size of the proposed shed and his assessment that there was insufficient agricultural activity on the holding to justify the new shed. They said that the shed was erected soon after planning permission was granted, and has been used for stabling horses ever since. Stalls have been erected inside. They observed this on one occasion when the large shed doors were open, and they took photographs. Their neighbours’ equine website also shows photographs of horses taken inside the shed. They said that at the planning inquiry held in September and October 2010, Mr T informed the Inspector that

the First Shed was used for horses, and that he did not sell the hay cut on the holding but used it for the horses.

195. They said they objected to their neighbour's planning application in respect of the Second Shed, and agreed with the Council's assessment that there was insufficient agricultural activity on the holding to justify the grant of planning permission. By this time (September 2006), 4 head of cattle had been brought onto the holding and the Officer's report said there was little evidence of the prolonged keeping of livestock on the land. However, they said the report was incorrect when it referred to the holding being used as a base for 2 haulage lorries, as up to 10 lorries were being operated from and parked there. In their view, the primary use of the holding was (and remained) the haulage related business, followed by the equine use, and that the only agricultural activity on the holding was (and remained) the cutting of hay and the making of haylage to provide winter feed for the horses. They also disputed the statement in the Officer's report regarding the use of the First Shed for the storage of implements and the parking of a tractor and horse transport lorry, as it was being used for the stabling of horses.

196. Mrs B said that the Council's subsequent decision in January 2008 to allow the development of the Second Shed under the GPDO represented a complete "U" turn from its earlier decisions in 2004 and 2006 that there was insufficient agricultural justification for the 2 sheds. She said there were no grounds on which the Council could reasonably determine that there was sufficient agricultural activity on the holding to justify the Second Shed being allowed under the GPDO. The haulage and equine uses had continued as the main uses on the site and there was no additional agricultural activity. The First Shed was still being used for horses, and there was, therefore, no scope for it to be used for cattle as had been represented by the applicant when giving notification of the proposed Second Shed. The other long stone building had been converted into stables and the dutch barn was being used for the maintenance of the lorries, and had a large maintenance pit for that purpose. Even the presence of the 4 bullocks (until December 2007 when Mrs B said they were removed from the holding) would not have made a difference, as the Council had already taken this into account

when it initially refused planning permission for the Second Shed. In their view, nothing had changed to warrant such a “U”-turn and the Council’s decision was unreasonable. They said that the Council’s letter dated 28<sup>th</sup> February 2008 in which it explained its understanding of the need for greater storage at the farm was wrong. The Council’s letter referred to large amounts of hay and agricultural implements being stored out in the open. This was incorrect, because their neighbours made haylage (as distinct from hay), which is wrapped up in plastic covered bales and is always stored in the open. Furthermore, their neighbour had chosen to use the First Shed for non agricultural purposes, (namely the stabling of horses) rather than for the storage of agricultural implements.

197. They were also aggrieved that the Council had refused their request for the matter to be considered by the Planning Committee. They said they were not aware that under the Scheme of Delegation to officers, there was scope for matters delegated to officers to be brought to the attention of the relevant committee, for example, in exceptional cases.

198. Mrs B and Mr R said that as far as they could tell, the Second Shed was used in connection with the haulage and scrap business operated by Mr T. Prior to the planning inquiry at the end of 2010, they could hear the sounds of machinery and cutting equipment being operated in the shed, and had observed oxy-acetylene cutting equipment in their neighbours’ yard. They had also seen lorries loaded with cars stacked on top of each other being driven onto the holding. However, they have not heard such sounds since the planning inquiry. They said that the sheds, by virtue of their size, location at an elevated level above their cottage, and their appearance have an adverse effect on their amenities.

199. Mrs B said that the Council’s decision to grant planning permission for the Third Shed (which replaced the dutch barn) was also inconsistent with its earlier assessments in 2004 and 2006 that the level of agricultural activity on the holding was insufficient to justify the development of agricultural sheds. By this time (November 2008),



nothing had changed to increase the agricultural activity on the holding, and the cattle had been removed from the holding. The Planning Officer's report on the application was incorrect and misleading about the purposes for which the First and Second Sheds were being used. Had officers looked inside the sheds, they could not have mistaken their use for horses and other non agricultural purposes. Mrs B said that the Third Shed is used for lorry maintenance, and the garaging of a horse transporter lorry.

200. Mrs B said the Council has never explained to them what it considered to be the agricultural activities taking place on the holding which warranted its description as a "working farm" and justified the development of the Second Shed and planning permission for the Third Shed. Instead, the Council avoided the issue. She had pursued the matter further with the Director of Regeneration and Leisure in December 2008 and early 2009 but felt she was being fobbed off.

201. At the planning inquiry at the end of 2010, Mr T, in his evidence on oath said he had been operating either 5 or 6, or 6 or 7 heavy goods vehicles from the holding for 10 years, and this was confirmed by another witness who gave evidence on his behalf. Mr T also admitted that he bred and sold horses for profit and that the cutting of hay was for the horses only. He also said in his evidence that he could do what he liked. Mrs B said that this evidence was confirmation of everything she had been complaining to the Council about, and that the activities and operations being conducted on the holding had not changed by the time of the Inspector's site visit. There had been no intensification of the haulage related uses over what officers had seen prior to that date, for example, a Council planning officer had visited and seen 6 lorries in 2002 and then served a PCN on their neighbours. There had been complaints since 2001, and the Council had been referred to their neighbours' business websites regarding the non agricultural businesses being carried on and to Mrs T's statement during court proceedings that the haulage business did not have planning permission. The Council had also been offered their own filmed footage of lorry movements. Mrs B did not consider, therefore, that Council officers could claim that they were not aware of the scale of the haulage and equine related activities

or that these activities had, for example, intensified in the months prior to the planning inquiry.

202. They said they had also contacted their Assembly Member and officials at the Welsh Assembly Government because they were not making any progress with the Council. They also contacted the Traffic Commissioners in 2005, and again in 2011 when she asked if they could assist in relation to a security light on White Farm which shone directly into their bedroom. The Traffic Commissioners were unable to assist however, the security light is no longer being activated.

203. Mrs B said she approached the media in the summer of 2005 because she and Mr R felt they were being accused of making unfounded complaints by the Council, and because of their neighbours' threatening and violent behaviour. They felt that if this was exposed in a public way, their neighbours would back off. They offered their filmed footage of haulage activities to the Council prior to the programme being broadcast.

204. By the time of one of the later broadcasts (June 2006) the Traffic Commissioners had issued an HGV operator's licence which authorised the operation of 3 lorries from the holding. So, on the basis of Councillor 1's statement in the programme (to the effect that the operation of 3 or more lorries was deemed to be a business and a change of use), a material change of use had occurred, but the Council did not take any action.

205. They are aggrieved at the claims made by the Council's Head of Planning (Officer L) that they falsified the filmed footage which appeared on the television programme and the later footage which they filmed in 2010 and sent to the Chief Executive. The claim was first made in Officer L's letter dated 13<sup>th</sup> May 2008 to the Head of the Planning Division at the Welsh Assembly Government, and prompted the producer of the programme to write to the Assembly official objecting to the implied claim that the programme had breached the Broadcasting Code by misrepresentation or deception. The claim in relation to the later footage was made at the PCP review meeting in May 2010, when

Officer L also said that the footage should be sent to the Police to see if it had been tampered with, but may not have then told the officers who had heard the statement that the footage had not been tampered with. He made a similar claim at a meeting with officials from an external body in August 2010. Mrs B and Mr R claimed that his statements about the footage being doctored is a lie, because each segment shown was timed and dated. The footage was filmed on a CCTV camera which lays down the information onto a hard drive and cannot be meddled with. They said he also lied when he claimed at the meeting in August 2010 that they had filmed the footage only days after the death of their neighbour. Mrs T had died in December 2008, and they did not film any footage until September 2009 which they subsequently sent to the Council.

206. They said that Officer L could not have been mistaken when he said this. In their view, this comment when taken together with his other comments about them, indicated that he appeared to want to discredit them. He was not being impartial and appeared to be bending over backwards to help their neighbours. By making these claims, they felt that the Council was besmirching their characters.

207. They said they resumed filming the lorry movements in and out of the holding in March 2010 after the Chief Executive had discounted the footage sent to him in February 2010, but did not send it to the Council. They did not think there was any point as it would be rejected again however, they presented it to the Inspector at the public inquiry later in the year.

208. They said that the intimidation and harassment by their neighbours commenced soon after they contacted the Council in 2004 about the haulage related activities on the holding. The harassment and intimidation included interference with their use of the access way to their property over which they have a right of way in a number of ways. This ranged from whistling or calling out to them in a taunting or ridiculing way, to chain locking the gate across their access way and being verbally and physically abusive when asked to unlock it. Mrs B said that on the advice of a police officer, she purchased a camcorder to film these incidents. She had also been advised by a member of the

Crown Prosecution Service to have a camera available to record incidents of anti social behaviour. In January 2005, their neighbours erected motorway style crash barriers and gates on the access way, which they locked. Mrs B said this action caused her to become unwell, and she was unable to leave the property for several weeks. She said they eventually secured the reinstatement of their access way by means of a civil action against their neighbours, but this took 3 years to come to court, and was settled on the day of the hearing at their neighbours' request.

209. Other incidents which they found intimidating included throwing the contents of their rubbish bags (which had been put out for collection by the Council) along their access way, placing sheep's skulls in trees. Mr and Mrs T also followed Mr R to his place of work and photographed him. He said he felt threatened, as he was a driver and the photograph could have been used to cause him harm. Mr T has a number of previous convictions, including 5 convictions for assault, the latest of these was in February 2008 when he was convicted of assaults on 2 women. Mr T frequently burned tyres at night, and there was an incident in which a driver (who had delivered a load of tyres to White Farm) dropped his trousers and indecently exposed himself when he saw he was being filmed by Mrs B.

210. Mrs B said that the Council's officers (Officers F and L) were aware of these incidents. She said that she had contacted the Council's Anti- Social Behaviour Coordinator for help during the summer of 2005, but the notes of the meeting on 10<sup>th</sup> August 2005 appeared to trivialise their complaints by including a comment she had made about the removal of trees. In her comments on the draft report, Mrs B said Officer L failed to inform the meeting of Mr T's history of violence or of the threats made to the previous owners of their property. Had he done so, and had the frightening incidents of harassment and intimidation which they had earlier reported to the Ant-Social Behaviour Coordinator been discussed at the meeting, it is possible that further consideration might have been given to obtaining an anti-social behaviour order against Mr and Mrs T.

211. She is aggrieved at the claim recorded in the notes of the meeting that she made “frivolous/possibly malicious complaints”. She believed that Officer L made the comment about “frivolous/possibly malicious complaints” because he also accused them of doctoring video evidence, and because a police officer had informed her that he had been assured by Officer L that her complaints were completely without foundation. They are also aggrieved at the claim that they made malicious complaints, as recorded in an email dated 5<sup>th</sup> June 2008 between the new Anti Social Behaviour Coordinator and the Legal Officer (Officer J). The Council has not produced any record as to what “malicious” complaints they are alleged to have made. They said that either they (Mrs B and Mr R) were lying when they made allegations about unauthorised activities on their neighbours’ holding, or Council officers were lying when they said they had investigated and found no such activities taking place, despite the history of complaints dating back to 2001, their neighbours’ business haulage and equine websites, their own video footage which the Council refused to look at and which then appeared on the current affairs television programme, their neighbour’s admission during court proceedings regarding the use of the site for haulage operations without planning permission, and finally their neighbour’s admissions during the recent planning inquiry regarding the haulage and equine related uses on the holding.

212. They said they experienced very little harassment after Mrs T died in December 2008. However Mr T continued to operate his haulage and related businesses from the holding and to keep horses.

213. Mrs B and Mr R said they were wrongly accused of pursuing a vendetta against their neighbours by Officer L when he referred to the existence of a vendetta in his letter dated 2<sup>nd</sup> April 2007. They said the Council never substantiated this claim. They had not pursued a vendetta, but were the victims of a vendetta being waged against them by their neighbours because they had complained about their operations on the holding. In support of this view, they pointed to the admission made on behalf of Mrs T during court proceedings that the cockerel nuisance amounted to harassment. They are also aggrieved that Mr R was accused of being threatening to neighbours in an email from

Councillor 2 dated 16<sup>th</sup> January 2008 which appears to have been sent after a discussion with Officer L. Mr R said he has never threatened anyone, other than to tell Mr T (during an exchange regarding the access way which featured in the television programme) that if he was 20 years younger, he would take his head off. They accepted that the comment could be interpreted as a threat, but was qualified by the reference to Mr R's age (he is 75 years old), and he was driven to it by provocation.

214. Mrs B and Mr R said the Council's Environmental Health Officers took up their complaints about the dog barking nuisance. However, they said Officer L was unreasonable when, in reporting on a meeting in his email dated 16<sup>th</sup> August 2010, he accused her of doctoring the dog barking evidence gathering exercise without informing those at the meeting that a statutory nuisance was subsequently recorded. Mrs T was also successfully convicted in respect of nuisance from cockerel noise. Mrs B said their neighbour had undertaken quarrying operations on the holding on and off from the outset, and it had always been a nuisance. There was a major quarrying episode in January 2008 when Mr T was using the quarried stone to lay a concrete surface for the Second Shed. They did not know that the Council's persistent complaints policy had been applied to them at that stage. Mr R had telephoned the Planning Officer B who said he could not discuss it, and referred him to the Council's Director of Regeneration and Leisure. They contacted the Council's Environmental Health Officers, and at their request, completed a log of the quarrying. The quarrying activity then ceased, but was resumed in July/August 2008, when the Council served an abatement notice. Since that time, Mr T has from time to time, resumed quarrying operations. They said that White Farm is in a designated Site of Special Scientific Interest and Special Area of Conservation, and that Mr T should, therefore, notify the CCW of quarrying operations. However, CCW then informed them that it was a matter for the Council, who informed them that it was permitted under the GPDO. Mrs B said that apart from haymaking, there was no other agricultural activity taking place on the holding, and quarrying is not necessary for haymaking. It was to raise the level of the land on which to erect the sheds, and to create additional hard standing. In so doing,

they increased the height and slope of the bank which rises from their boundary up towards the sheds.

215. Mrs B and Mr R said the Council's Persistent Complaints Policy should not have been applied to them in the first place, and when it was, the Council failed to comply with the Policy. In their view a persistent complainant is a person who constantly complains about all manner of things without validity. In their case, they had complained about the operations on the neighbouring property and the Council's failure to deal with them, and had provided evidence in support of their complaints which the Council had ignored. They maintained that their complaints were valid in that they had put forward evidence which showed there had been a history of haulage related activities taking place on the holding since 2001. The portacabin was an obvious indication that the haulage operation was being run from the site, as the drivers would arrive on the holding in their private vehicles, gather at the portacabin, prior to driving off in the lorries. Their neighbours' equine and haulage websites had also indicated the nature of the business operations on the site. It was also obvious that horses were kept in the First Shed, and for the Council to say its officers had visited and seen no sign of unauthorised activities in that shed was, in their view, unacceptable. They said they did not keep, for example, a log of lorry movements because it was such common knowledge that the haulage business was being operated from the site. They also said that as their word had not been accepted and their photographic and filmed evidence refused, it was unlikely that any written logs would be accepted as the Council could have suggested (as they did in relation to the filmed evidence) that they were falsifying the evidence.

216. They said they had persisted with their complaints because of the Council's continuing failure to take action with regard to the illegal activities being carried on the holding. Their action in persisting did not make them unreasonable complainants. Everyone has a right to complain under the Human Rights Act. This was not a right to complain and tell lies, but a right to complain that something was genuinely wrong and should be put right where the Council had powers to take action.

217. Although the PCP was applied to them in July 2007, they did not know of it until February 2008. They said that as of July 2007, they were not aware of the Council's complaints procedure, and did not recall having made a formal complaint about the Council's failure to take action in respect of White Farm. The Council had not, prior to July 2007, informed them that it found their manner of communication unacceptable, or warned them of its intention to apply the Policy in their case. Mrs B said that when she received the letter dated 17<sup>th</sup> August 2007 from the Director of Regeneration and Leisure informing her that all planning related correspondence was to be sent to him, she believed initially that her correspondence was finally being taken seriously and that the Director was dealing with it personally because of the seriousness of her concerns. However, that proved not to be the case. Mrs B said they had not been notified of procedures relating to the PCP as claimed by its legal officer (Officer K) in his letter of 3<sup>rd</sup> March 2010. Nor had they received a letter from the Council's Chief Executive in August 2007 as claimed by the officer. The only letter they received in August 2007 regarding their communication with the Council was from the Director of Regeneration and Leisure, but this contained no reference to the Council's PCP.

218. Mrs B said that the statement in the Policy referral form to the effect that they had refused to allow enforcement officers access to their property since 2005 was untrue and would have misled the officers who decided to apply the Policy in their case. The only meeting referred to in the Policy referral form was the meeting on 12<sup>th</sup> July 2005 to discuss their complaints about unauthorised activities on the neighbouring holding. There was no other meeting at which they were warned of the Council's intention to apply the Policy to them if they did not, for example, modify their behaviour. The first they knew that the Policy had been specifically applied to them was when they received the letter dated 27<sup>th</sup> February 2008 from the Director of Regeneration and Leisure in which he referred to their efforts to contact Councillors and said that this could amount to harassment. This letter also referred to a previous explanation having been given for the Policy being applied to them. However they had not received any such earlier explanation, and the Council's response to their Freedom of Information request did not



produce an earlier letter which may have been sent, but which they had not received. They said they were horrified when they received the letter. They did not know whom they were alleged to have harassed. It could only have been a reference to Mr R's attempts to telephone Councillor 2 about the quarrying noise in early 2008. They had contacted Councillor 2 because their local councillor was not returning their calls. She also lived locally and was, therefore, aware of what was going on at White Farm. They were not aware that she had made a complaint and saw nothing in the material produced in response to their Freedom of Information request to indicate that anyone had complained. They did however see a heavily redacted email dated 16<sup>th</sup> January 2008 from Councillor 2 in which only the top line of text was revealed, and eventually (after 2.5 years) obtained an unredacted version, but only after Mr R made a Freedom of Information request. They used their telephone records from which to make a record of the occasions when they called her number and when they had spoken to her. As of the date of the email, Mr R had only spoken to Councillor 2 on 3 occasions over a period of 2 weeks. They said that Councillor 2 in her contact with them, had been very pleasant, helpful and supportive. She had given no indication that she was unhappy about their calls and had even agreed to visit them. Mrs B and Mr R said that when the Council accused them of harassing councillors, they understood the Council to be saying that because the PCP had been applied to them, they should not even have been contacting Councillors. However, the Council had never informed them that they should not contact councillors. They had also been advised both throughout and at this time (early 2008) by officials in the Welsh Assembly Government's Planning Division to contact their councillors.

219. In addition to not being told that the Policy had been applied in their case, they were not told, for example, they could appeal. It was not until they had made 4 requests did the Council send them a copy of the Policy. The Policy stated that they should have been informed and given reasons for the decision to apply it in their case. Had they been told, they would have asked for an explanation, and refuted the Council's claim that they had made "unfounded accusations".

220. Mrs B and Mr R said that although the Council's Policy required its application in individual cases to be reviewed every 6 months, as far as they could establish the first review was not held for 13 months. Furthermore, conscious decisions were made not to inform them of the outcome of reviews. At some stage, they became aware that the restriction on communications with the Council was extended from planning matters to all Council matters. The Council said it would only address "fresh issues", and that anything else which had been referred to in the past could not be raised again. They believed that the decision to block emails from their email address to all Council departments, officers and members was made at one of the review meetings. Subsequently, after a challenge by Mrs B, the Council was advised that this was illegal. The Council then informed them (by means of the letter dated 24<sup>th</sup> April 2010 from the Chief Executive) that the blocking of emails was "unintentional" implying that it was an accidental error. Mrs B believed that the Council was being dishonest to describe it as an error, when information she had obtained under the Freedom of Information Act indicated that the action had been deliberate. Email is an accepted medium in which to communicate with the Council. Furthermore, the Council had no right to interfere with their right to communicate with their elected members. As a consequence of the Council's action to block their emails, they had to write and post letters to the Council.

221. The purpose of their letter to the Chief Executive in February 2009 was to make him aware of their position having been made subject to the Policy. They then complained to the Chief Executive in 2010, sending him new video footage of lorry movements from their neighbour's holding. However, the Head of Planning had said he could not see any new evidence, and informed them that they were still subject to the Policy. They received a brief letter from the Council in February 2011 informing them that the Policy no longer applied to them.

222. Mrs B and Mr R said it was demeaning to be made subject to the Policy, and it made them feel very vulnerable. Their neighbours could carry on with activities which they had found disturbing and distressing. However, they (Mrs B and Mr R) could not say a word, as they had been

prohibited from making complaints to the Council. They had to use their friend to help them obtain information, for example, in relation to the GPDO determination of the Second Shed. He had also helped to pursue other matters on their behalf. When Mr T started to make the hard standing in 2009, Mrs B wrote to the Director of Regeneration and Leisure (on 11<sup>th</sup> June ), heading her letter "Fresh Issues". In her view, further engineering works were taking place and she asked if these required planning permission. However, the Director ignored her letters, and she eventually complained to the Council's Chief Executive about the Director's failure to address these new issues. Mrs B said she did not know what the Chief Executive was referring to in his letter dated 15<sup>th</sup> March 2010 when he said that the Director had previously provided her with a response regarding alleged construction works on White Farm as she had not received anything from the Director in response to her latest concerns. She considered, therefore, that the Chief Executive's letter was misleading. She had raised a fresh issue because her neighbour was laying a new large area of hard standing on which to store his agricultural implements. He already had 2 sheds, neither of which was being used for agricultural implements (but for horses and the haulage associated operations), and he needed the extra space for his agricultural implements.

223. Mrs B and Mr R said they have the benefit of a covenant in their title deeds which should have protected them from obnoxious noise or nuisance. However, they felt there was very little chance of succeeding in legal action to enforce the covenant because the Council would have supported claims by their neighbours to the effect that they were making unfounded and malicious allegations. However, they felt that the Planning Inspector's report supported their claims.

224. They said they were not able to build the cattery as planned and have, therefore lost the opportunity of earning an income from this means. Even though they obtained planning permission, they were unable to build up the necessary funds after Mr R had to give up lucrative work in England to support Mrs B during the harassment and intimidation by their neighbours. Although he has part time work in the area, this is not as lucrative. They also had to use their savings to

pursue the civil case against their neighbours regarding the right of way. They also felt that potential customers would have been intimidated by their neighbours who filmed people coming and up down their drive. They did not apply for planning permission to convert the barn for bed and breakfast use, but the Planning Officer was supportive, indicating that such an application was unlikely to be refused. They also incurred legal fees in retaining solicitors to write to the Council on their behalf after the PCP was invoked, as they felt that the Council might have been more inclined to respond truthfully to a solicitor's letter than it had to them.

225. Mrs B and Mr R said the effect of their neighbours' threatening and intimidating actions and the Council's failures to take their concerns seriously was catastrophic. They both suffered health problems for which they received medical treatment, and Mrs B was unable to leave the property for a while. They felt very isolated as well as exhausted and drained after what has been an ongoing battle over 7 years which affected their own personal relationship as well as wider relationships. They said they were advised by valuers retained by the television programme that the value of their property had been significantly reduced by the unauthorised activities on the neighbouring property. They felt that their property was unsaleable, and that they could neither afford to sell it, nor remain.

#### Mrs B's comments on the draft report

226. Mrs B said that the statements of the Officers gave a very clear picture of 2 officers (namely Officer F and Officer L) directing operations and misleading others. She said Officer F's comments at interview demonstrated prejudice against both her and Mr R. His obvious contemptuous attitude towards them showed a total lack of objectivity, and that it would be reasonable to assume that his opinions and conspicuously held feelings about Mrs B would have been passed onto other officers. This in turn would have coloured their judgement and objectivity when dealing with matters pertaining to White Farm, making it impossible for her and Mr R to be treated fairly by other officers.

227. Mrs B said that derogatory remarks made about her by Officer F cast a slur on her character, and she refuted many of his claims, including the claim that she had reported her neighbours to an animal charity. She also refuted his claim that she was already in dispute with Mr and Mrs T by the time she complained to the Council about their haulage operations. She said the dispute about the access way would not have occurred had the Council, knowing the history of complaints and intimidation by Mr T towards the previous occupiers of their property and his violent and volatile nature, met them during 2004 to discuss their concerns and monitored and taken appropriate action in respect of Mr T's activities without insisting that they first lodge a formal complaint. Mrs B said she was living on her own at the property at the time, and on becoming aware of Mr T's violent reputation, had avoided any form of confrontation with her neighbours and was frightened to complain. She said she should not have been expected to have monitored Mr T's activities herself, and believed this to be the Council's responsibility in view of the information it held about him and the operations on White Farm. Such monitoring during evenings and weekends could have been achieved quite easily over a two or three week period, as at that time, the yard and the quarry area were clearly visible from the road. Mr and Mrs T had been outwardly friendly towards them during 2004 and there were no altercations until early 2005 when Mr and Mrs T interfered with their right of way and carried out further acts of intimidation. She said they did so in response to her MP's letter to the Council in November 2004. Had the Council taken action earlier in 2004, Mr and Mrs T would not have assumed that complaints had been made by her and Mr R, and would not have interfered with their right of way, or directed other forms of harassment against them. She said Officer F's attempt at mediation was not reasonable as it required her and Mr R to refrain from complaining about the activities which were affecting their quality of life, and therefore, favoured White Farm.

228. She said that Officer L also failed to act impartially in that he chose to believe Mr and Mrs T, accused Mrs B and Mr R of lying, and influenced all other officers who came into contact with them. This included the Director of Regeneration and Leisure whom she said could not be regarded as objective, as he took direction from Officer L. She

also believed that Officer E would have handled matters in an even handed objective and competent manner if Officer F and Officer L had allowed him to do so. She said she did not accept Officer L's claim that he had not accused her of "making a vendetta" as he had failed to display impartiality over the years. She denied that she had verbally attacked Officer L at a public meeting. She said the Council should have had procedures in place to safeguard individuals in exceptional circumstances such as theirs.

229. Mrs B said she did not recall making any communication by letter or telephone with the Complaints Officer (as claimed by Officer H). She also denied that she had verbally abused any officer, saying that there would have been a record had she done so. She said that if the concerns raised by Councillor 2 were serious, then the Council would have dealt with it as harassment and completed Form ADOR1 referred to in its PCP<sup>8</sup>. Mr R would then have been informed of the claim and given a right of reply.

### **Mrs B's and Mr R's surveyor**

230. The Surveyor said she was employed as a rural practice surveyor by a private association of land and business owners during 2005 and 2006. She said that before writing to the former Planning Enforcement Manager (Officer F) in January 2005, she had established that White Farm was a licensed operating centre for one HGV. She did not receive a substantive reply from Officer F, but had a telephone conversation with him on 31<sup>st</sup> January 2005 in which he said that the enforcement officer had visited White Farm and found nothing wrong, and that Mr and Mrs T had a registered haulage depot at another location.

231. According to her notes, either she or lawyers (to whom Mrs B and Mr R had been referred for advice) had advised Mr R to visit the operating centre referred to by the Council, and someone at the site said that one lorry was occasionally parked there. She also made her own enquiries of the owners of the operating centre and established that occasionally a lorry was parked there.

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<sup>8</sup> See Appendix 1, paragraph 37

232. She visited Mrs B and Mr R and was able to see White Farm from the upstairs windows. It was evident that they were very frightened of their neighbours, and she became concerned about their wellbeing. Mr R had informed her that Traffic Commissioners investigating White Farm had been threatened by Mr T.

233. Following two further telephone conversations with Officer F on 24<sup>th</sup> March and 21<sup>st</sup> April 2005, she attended a meeting with him and Mr R at the Council offices. She gained the impression that everyone, including Council officers, were terrified of Mr T. She believed that Mr R would have produced photographs of White Farm during the meeting (including those sent to her by the investigator) but could not be certain after this interval of time. She confirmed having seen the photographs before, and in her view, they indicated that lorry related uses involving more than 2 lorries were taking place on the site. Some of the photographs showed 3 or 4 of Mr and Mrs T's branded lorries. In her view, and based on her experience there was very little agricultural activity at White Farm. It was primarily being used for horses and lorries.

234. She confirmed she had seen the video footage shot by Mrs B and Mr R, but could not be certain that it was offered to Officer F at the meeting. She is sure, however, that the Officer would have been aware of the footage. She believed that her information about the operating centre referred to by the Council would have been mentioned at the meeting, but could not recall if Mr R had said he had visited it.

### **The Council's Evidence**

235. In its comments on the complaint, the Council said it had investigated Mrs B's complaints received over time and provided responses and explanations as to why formal enforcement action was not pursued. In view of complaints by Mrs B, it was not possible for one officer to have conduct of all matters, and different officers were involved. The Council also said that the Inspector, in his decision dated 25<sup>th</sup> November 2010 was wrong in referring to the uses he observed as being "unlawful", as a use does not become unlawful until enforcement action is taken.

### Planning Officer A

236. Planning Officer A is the Council's Minerals and Waste Planning Officer. He was the author of the letter to Mrs B dated on 15<sup>th</sup> February 2007 (about the parking of the removal lorry and the large board) which was signed by the Head of Planning Services. He said he probably wrote the letter in the absence of the former Planning Enforcement Manager, and that the letter was a re- communication of the Council's position in these matters to Mrs B. He did not think he had made the decisions referred to in the letter himself.

237. He did not believe he had ever met Mrs B and there had not been an occasion when she refused him access to her property. He did not recall any involvement in White Farm issues during 2008 to 2010, although he may have signed correspondence in the absence of the relevant manager. He visited White Farm in August 2011 following a complaint that quarried material from White Farm was being exported off the holding. He said he spoke to a site manager who had provided an explanation for the HGVs on the site and there was an ongoing enforcement matter which the Head of Planning Services was looking at.

### Planning Officer B

238. Planning Officer B was involved in the applications relating to the development of the three sheds at White Farm. He said his concern was to assess the agricultural justification for the First and Second Sheds, and did not, therefore, see the need to assess the extent of haulage activity. However, had he seen say 10 lorries or clear evidence of something over and above the generally accepted level of the parking of one or 2 vehicles in connection with the haulage business, he would have alerted his enforcement colleagues.

239. He said he has never seen horses stabled in the First Shed on his visits since 2004. He does not recall seeing horses in the shed during the site visit with the Planning Inspector in October 2010, but horses may have been there. He has always been confident that the shed was used for the storage of feed or hay in connection with the grazing of horses on the land. He said that when he assessed the proposal for the Second Shed, the primary uses on the site were, as stated in the report,



equine and the lorry business, although there was some agriculture in connection with grazing and the production of hay. He said he has been consistent in saying that the lorry base was a use on the unit, and in relation to whether it was a primary or secondary use, that he has consistently seen 1 or 2 lorries parked at the unit over the years. The storage of fodder, which is an agricultural activity, has also been consistent.

240. He said the former dutch barn had a pit, and was capable of being used for the repair and serving of HGVs. Mr T had a vintage lorry which appeared to be his pride and joy. It was not unusual for a farm to have a pit or other facilities for the servicing or repair of farm vehicles or vehicles used in connection with the farm. The dutch barn may have been rather small for some of his larger lorries. He understood that Mr T had 3 other operating centres and a contract for the maintenance of his lorries elsewhere.

241. Planning Officer B explained that the assessment of development proposed in a GPDO notification is based on a factual evaluation of whether it complies with the limitations specified in the GPDO, and does not include an assessment of its impact on the amenities of neighbouring occupiers.

242. He said when the GPDO notification in respect of the Second Shed was received (December 2007), a material consideration was the advice from the Estates Officer in his email dated 28<sup>th</sup> September 2006 to the effect that he supported the shed proposed in the earlier planning application provided it was specifically designed for the accommodation of cattle. He was satisfied, therefore, that agricultural justification had been proved. The proposal was supported by the Council's Property Services Section, and potentially the earlier planning application could have been approved.

243. He said that when the planning application for the Third Shed (which replaced the dutch barn) was considered, the Second Shed was being used for the storage of hay and the horse lorry. He saw no signs of heavy vehicle maintenance at that point.

244. He said he was not aware at the time of the public inquiry in October 2010 that White Farm had been licensed as an operating centre for 3 HGVs since December 2005. He said it was difficult to say how an application for haulage use at White Farm involving 4 or 5 lorries would be determined. White Farm is not an ideal location for a haulage operation, but there are other examples of sites in the area used for haulage purposes, including a similar site nearby involving 15 or 20 lorries. Were planning permission to be granted, it would be subject to conditions.

#### Officer C

245. Officer C was an Estates Surveyor in the Corporate Property Section of the Council's Resources Department. His duties included providing advice on planning applications involving development on agricultural land and he did so in relation to the proposed cow shed at White Farm in September 2006. He said that during his visit, he inspected the First Shed and this was being used to house machinery, fertilizer and straw. He said he was informed it was also used for the storage of hay at times. He said he supported the proposal on the basis of the applicant's proposal to build up the herd of cattle. It was necessary for the building to be specifically designed to accommodate cattle in order to ensure adequate ventilation, as young cattle can be prone to pneumonia. Older cattle may also have respiratory problems caused by poor quality hay or silage if there is insufficient air circulation. It was also beneficial for cattle sheds to be designed to include provision for the testing, dosing and injecting of cattle in safe circumstances for the workers concerned and/or a good system of loading/unloading the cattle for transportation. A shed of a general storage design such as the First Shed would not be adequate. He would not have supported the application if no cattle were proposed, as without cattle there would be no need, and there were sufficient general storage buildings available to the applicants.

246. He said he had no more involvement and was not aware that the planning application was refused. He would not have supported the proposed hay and implement store which was allowed under the GPDO,

as there were sufficient such buildings serving the needs of the holding. He also said there was insufficient functional need if, by the time of the GPDO notification (December 2007), the applicants had not demonstrated an intention to develop the herd beyond 4. He said it might be possible for the First Shed to be adapted for the accommodation of cattle provided the ventilation was sound.

247. He said he could not recall, during his visit to White Farm in September 2006, seeing any transportation vehicles or anything indicating a haulage business, and there were no notes on his file to indicate the same. He recalled mention being made during his site visit to the effect that one of the applicants worked off site.

#### Planning Officer D

248. Planning Officer D was a planning enforcement officer and was involved in complaints about White Farm between April 2002 and 2005. He did not recall the log of vehicle movements and activity recorded by the previous occupier of Mrs B's property at the end of 2001. He visited White Farm in April 2002 but did not see any evidence of lorry movements which had been suggested by the complainants.

249. He said he was "taken off the case" in 2005 because of allegations by Mrs B that he was getting "close" to the occupier of White Farm. He said the allegation was totally unfounded. He had nothing in common with Mr T and his only contact was in connection with the planning enforcement issues and another occasion when he witnessed Mr T being violent towards someone and he intervened to physically restrain him. He would like an apology from Mrs B.

250. He said his visits to White Farm in 2005 were unannounced. During his visits he did not observe the number of vehicles parked on the site as depicted in the photographs taken by Mrs B in 2005 and shown to him at interview.

251. He said he investigated the alleged operation of a haulage business from White Farm. There was a small portacabin, which had a computer, printer and fax machine. There were framed photographs of

horses and carriages on the walls. He formed the opinion that the portacabin had a dual use, as Mrs T's hobby room, and also to direct the lorries from one location to another. Faxes about haulage related work would be received and Mrs T would contact the drivers of the lorries and direct them from one job to another. In his view, the operation had no detrimental effect on the local amenity, as lorries were only being directed from the farm, and were not calling at the farm.

252. He said he was not aware of the investigation by the Traffic Commissioners in early 2005 or that Mr T was verbally abusive towards Traffic Inspectors, but was not surprised. Officers were aware that Mr T had a "short fuse" and could present as intimidating. Mrs B could also be intimidating in a different way.

253. He said the Council received circulars periodically from the Traffic Commissioners in which new applications for operator's licences and variations were published. If Mrs T had applied for a variation to add White Farm to her haulage company's operator's licence the Council would have advised her that she needed planning permission to park lorries, and the Council would have looked at the planning issues. He was not aware that White Farm was added to Mrs T's licence as an operating centre for 2 more HGVs in December 2005 bringing the total to 3 HGVs. In his view, this would have rung alarm bells.

254. He said that when he referred to "clear, unambiguous proof (including photographs) if possible" in his letter dated 3<sup>rd</sup> March 2005 to Mrs B, he meant dated photographs showing parked lorries, possibly vehicle registration plates, although he acknowledged this could be difficult. It was Mrs B's decision to shoot video film of the lorry movements into and out of White Farm. The only footage he saw was in the current affairs television programme in 2005.

255. He said he never visited Mr and Mrs T's other licensed operating centre in the area. He drove past White Farm on a few occasions between 2002 and 2005 whilst on other enforcement work, but did not observe any significant changes of use of the land or farm yard area or

any increase in HGV lorry parking or servicing which gave him cause for concern.

256. He said he never saw inside the removals lorry which was parked by Mrs B's boundary in March 2005 and Mr T never explained why he put it there. He did not believe it served an agricultural purpose at the time, but it would be quite easy to use it for agricultural purposes such as the storage of hay, and that as it is a moveable object, it would be difficult to enforce against. He tried to diffuse the situation by writing to Mr T to ask him to remove the lorry. He also said that the former Planning Enforcement Manager went beyond the call of duty to try and resolve matters when he visited both parties in April 2005 and tried to mediate. However, it had become apparent that there did not appear to be the will on the part of either Mrs B or the occupiers of White Farm to resolve matters.

#### Planning Officer E

257. Planning Officer E undertook planning enforcement work until 2008. He said that when a complaint of alleged breach of planning control is received, officers carry out a number of "back office" checks about the site to check whether there is a relevant site history, whether other complaints have been received or whether there are other enforcement issues which may be relevant. Site visits are recorded by photographs or written notes.

258. He became involved in complaints about White Farm towards the end of 2005, and his involvement in relation to matters such as the lorry which had been parked close to Mrs B's boundary and the large "privacy" board and the pig enclosure was directed by either the former Planning Enforcement Manager or the Head of Planning Services. This was because Mrs B had written to a number of different Council officers as well as to the Police and the Fire Service. The only time he met Mrs B was in relation to the appeal relating to another part of White Farm in 2010. She has never refused him access.

259. He said he did not visit Mrs B's property in relation to either the privacy board or the lorry, and said he was able to form an assessment

of the impact of the privacy board from the White Farm side of the boundary. Mrs B had fitted a CCTV camera on the wall of her property by her window, and the board shielded White Farm from the camera. He recalled seeing the pigs in the pen on the White Farm side of the boundary and was aware that the pigs had been given the same names as Mrs B and Mr R. He had spoken to Mr T at the time and his view was that both parties were displaying childish behaviour. He believed that if the board required planning permission, it would be refused, and that it may now be immune from enforcement action.

260. He acknowledged, in relation to Welsh Government guidance contained in Tan 9, that in theory, the key issue would be the impact on the residential amenities of a neighbouring property which merited protection in the public interest, irrespective of the conduct of the parties. In this case, matters had become very personal between Mrs B and Mr T and there were other things taking place at the time, such as the works to Mrs B's access way and her action in recording video footage of vehicles coming and going from White Farm. The question of whether to take enforcement action was discussed, but the Head of Planning Services made the decision that it was not expedient to take enforcement action.

261. Planning Officer E said he observed the lorry from a point near the White Farm buildings, and recalled seeing bales inside it in October 2005 when one of the rear doors was open. He said Council officers asked Mr and Mrs T if there was any chance of moving it, but they said "no". The lorry question did not go away and Mrs B raised it again over the years. He said he discussed the planning status of the lorry with the former Planning Enforcement Manager and the Head of Planning Services but they concluded there was no breach of planning control.

262. He said he made a number of site visits to White Farm over the years with either the Planning Enforcement Manager or the Head of Planning Services in connection with the use of the sheds on White Farm. He observed a variety of agricultural equipment in the First Shed, such as a tractor, flail mower, agricultural sprayer tractor attachment and a chain harrow. He said he did not see horses stabled in the First Shed

prior to December 2008 (when Mrs T died), but saw some animal feed being stored and some portable animal pens stacked against the wall of the shed and some erected as animal enclosures in the shed. He has seen horses being stabled in the shed on the last 2 or 3 occasions he visited during early 2010.

263. He said that the Council's position was that the parking of 2 HGVs at White Farm was acceptable. He did not believe he was aware that Mrs T applied in 2005 to add White Farm to the haulage company's licence as an operating centre for 2 vehicles. Although the licensing of a site as an operating centre does not obviate the need for planning permission, the matter was being dealt with by the Head of Planning Services and the former Planning Enforcement Manager. In his view, the history of complaints, including those by Mrs B and the authorisation of White Farm as an operating centre for 3 HGVs could have indicated that a change of use was taking place.

264. He said he was not present at the meeting with Mr R and the Surveyor on 3<sup>rd</sup> May 2005. He did not recall seeing the photographs shown to him at interview (being photographs which Mrs B said she had taken during 2005). He had not seen on his visits to White Farm as many commercial haulage vehicles as are depicted in the photographs, but his visits were made during the week and the photographs may have been taken at a weekend. He also understood that Mr T bought and sold vehicles on a regular basis. He said that if he had seen these photographs he would have asked if a fair point was being made by Mrs B in terms of a possible breach of planning control at White Farm, and made further enquiries, for example, by means of a PCN to establish the facts, even if the lorry parking was limited to weekends. However, the Head of Planning Services and the former Planning Enforcement Manager came to a different conclusion on the question of what activities were taking place on the holding, whether haulage/equine or agricultural.

265. He said he did not see any video footage shot by Mrs B in 2005, but saw footage of lorry movements on the current affairs television programme in 2005. He viewed the further footage provided by Mrs B in

2010. He was not saying that footage was doctored, but had concerns about the footage in terms of the actual numbers of lorry movements, and believed it may have been edited to show an obvious amount of traffic. He was also concerned that it depicted a flat bed lorry entering and leaving White Farm loaded with scrap cars, and he believed that Mr T was capable of driving vehicles backwards and forwards into White Farm just to inflame the situation. In his view, the footage, even though it was only a snapshot of activity taken over a few days, indicated the possibility that a material change of use to haulage may be taking place, and, given the history, should be pursued further. He discussed his concerns with the Head of Planning Services who concluded that the footage did not indicate a breach of planning control.

266. He said that although the disturbance /noise log submitted by Mrs B in January 2006 contained information about specific types of noise and activity, officers were assuming that White Farm was a working farm and that some of the activity recorded in the log could be attributed to that. The presence of agricultural equipment was a factor in the officers' assessment that it was a working farm. Although planning permission was refused for the First shed on the grounds of insufficient agricultural activity, White Farm could still be a working farm even with a low level of agricultural activity.

267. Planning Officer E said that it was his intention to respond to Mrs B on the outcome of the review of planning issues at White Farm referred to in his letter dated 16<sup>th</sup> August 2006. However, a full response was not sent to her until November 2007 when the "final statement" was sent to her by the Director of Regeneration and Leisure. He said there was a "host" of issues being considered during that time and communication between all parties, including the Council had broken down even though the Council had tried to mediate. He could have prepared a response, but ultimately, the Head of Planning and the Director were managing the Council's responses to these issues.

268. He took the photographs during the visit to White Farm in September 2006. He agreed with the Senior Development Control Officer's assessment that there was very little traditional agricultural



activity. He did not see inside the former dutch barn on this occasion, but saw inside it subsequently. He saw tools and machinery for the maintenance of large vehicles in the barn, and although he has never seen HGVs being serviced at White Farm, gained the impression that Mr T had the equipment needed to carry out some servicing and maintenance on such vehicles. The heavy duty compressor depicted in one of the photographs could, in addition to powering a jackhammer, possibly be used for general works to HGVs such as cleaning and shot blasting.

### Officer F

269. Officer F was the Planning Enforcement Manager prior to leaving the Council's employment on 31<sup>st</sup> March 2008. He was the line manager for the enforcement officers, and had plenary powers under the Council's scheme of delegated authority to make decisions on whether enforcement action was expedient in individual cases. His line manager was the Head of Planning Services.

270. He said that enforcement is a difficult part of the planning process because of the constraints of the legislation and the difficulty of obtaining accurate information relating to potential breaches of planning control. Although he allowed officers the freedom to visit sites and make assessments, he would involve himself in more difficult cases and made decisions when the "buck stopped" with him. He believed that the Ombudsman's investigation should not have been instigated given the passage of time as it would not be possible to make definitive decisions on what did or did not occur over such a prolonged period of time. The matter had already been considered by the Ombudsman's office on two earlier occasions, and the decision based on an opinion given by the Planning Inspector in 2010 was "ludicrous", as the Inspector's comments referred only to a state of affairs which existed at the time of his site visit and did not suggest that any possible breach was of long standing. He also said that any evidence provided by the Complainants was unreliable as Mrs B had been "caught" attempting to influence noise nuisance readings which would have led to legal action against her neighbours. Furthermore, the Council, when clear evidence of a breach of planning control existed took immediate action and there are no

grounds to suggest that it would not have taken action when appropriate. He also said he viewed the Ombudsman's investigation as an investigation of his own personal competence.

271. He said that by the time Mrs B first complained to the Council about haulage related uses at White Farm, she was already in dispute with Mr and Mrs T. Mrs B and Mr R had moved to the area from England and the access to their property was owned by Mr and Mrs T. Occasionally Mr and Mrs T moved horses from the fields on one side of the access to the other. Mrs B had reported animal welfare concerns to an animal charity in relation to the movement of horses from one side of the access way to another. He understood that Mr and Mrs T then made alterations to the access way to address these concerns. He said that once a dispute has developed, common sense "goes out the window", and this was the context in which the Council became involved in complaints about haulage related uses taking place at White Farm. He said that Mrs T appeared to have a clear understanding of the planning position, and he did not believe that prior to her untimely death in December 2008, she would have allowed the haulage business to have developed to the extent that it was unauthorised in planning terms.

272. He said he could not recall earlier complaints made by the former occupiers of Mrs B's property, and did not recall seeing a log of HGV related activity completed at the end of 2001. He said the log (shown to him by the investigator) indicated an issue which he expected would have been followed up, but it was difficult to comment after such a prolonged period of time, and the decision that it was not expedient to take enforcement action may have been made verbally at the time. Nor did he recall whether he was aware that the former occupiers had complained of being threatened by Mr T after they complained.

273. He recalled the Council's letter sent in January 2005 to the office of the local MP who had passed on a complaint by Mrs B. White Farm was a small holding and it was to be expected that heavy vehicles or lorries might frequent the holding for some reason or another. Mr T ran a haulage business and it was not considered unreasonable for him to have one or two lorries parked up at the Farm overnight. He did not

believe that Mr T crossed that threshold. He did not recall whether White Farm was, at that time, licensed by VOSA as an operating base for one vehicle, but recalled that the operating centre for the haulage company's lorries was elsewhere.

274. He said he did not recall being contacted by Mrs B's surveyor. He recalled attending a meeting with Mr R and another person at the Council's offices, but could not say if the other person was their surveyor.

275. He said he visited White Farm unannounced on a number of occasions during 2005. He believed he visited with Planning Officer D and the Head of Planning Services, and inspected the buildings. The large new shed which had been permitted on appeal, had been erected. There were a number of vehicles, mostly of a farming nature, vehicle parts and some agricultural implements. He said that evidence of the significant parking of lorries over a sustained period would have tipped the balance indicating that a change of use had occurred. Had he seen such evidence he would have taken action. However, he never saw anything at White Farm which tipped the balance. In planning law there is a significant difference between lorry use/parking at a site taking place either occasionally or for a short period of time (which is referred to in planning and environmental health investigations as an "intermittent breach"), and the prolonged actionable usage of the site for such purposes. He attempted mediation between Mrs B and the neighbouring occupiers in order to get some resolution and recalled writing to both parties on 3<sup>rd</sup> June 2005.

276. He said he did not recall being shown photographs during the meeting with Mr R and their Surveyor. He said (on being shown the photographs taken by Mrs B in 2005) it was not possible to say how long the lorries shown in the photographs had been there, and they could have been there for just one day. He said he did not recall seeing the lorry backs shown in the photographs. The photographs showed the vehicle which Mr T had been using for quarrying, which was not unusual on an agricultural holding. Mrs T had said she wanted to improve the property because it was her home.

277. He said that as Mr and Mrs T had accused Council officers of harassment, he drove past the site on one occasion outside working hours, as it was possible to see the site from the road without upsetting anyone. However, he did not see anything untoward. Had he observed an obvious breach of planning control which was clear and unambiguous, he would have authorised enforcement action.

278. He said he could not recall if he was offered video footage of HGV activity at the meeting with Mr R and their Surveyor. Had he been offered it, he would have said that it did not prove anything, in the sense that it would not, in itself, justify enforcement action as it was only a snapshot of what was happening on one particular occasion, and did not indicate activity over a period of time. This was why complainants were asked to complete nuisance logs. If this established a pattern of unauthorised activity, then there would not have been a problem in arranging for officers to undertake additional out of hours surveillance on an occasional basis. He said he had, in other cases when necessary, undertaken enforcement investigations at weekends and during the evening.

279. He said he did not recall their Surveyor saying she had made enquiries of the owners of the Mr and Mrs T's licensed operating centre and established that it was not being used by their commercial HGVs. He said he was sure that the Council had made enquiries of VOSA. In his view, VOSA should not grant an operating licence in respect of a site until planning permission had been granted. He said that had the Council been informed that Mr and Mrs T's haulage vehicles were not being parked at the licensed operating centre but apparently at White Farm, the Council would have investigated. He said that even if Mr and Mrs T had been tempted to park more lorries at White Farm, they would have realised that the game was up once the Council became involved. He said he thought that Planning Officer D had visited the licensed operating centre and that Mr and Mrs T's lorries were there at that time, but the fact that Mr and Mrs T's lorries were not there did not mean that they were at White Farm.

280. He said that Mrs B was a “complete nutcase” and that one had to take everything she said with a pinch of salt, and that the Ombudsman’s investigation was a waste of public money. He again referred to the fact that the Council had caught her deliberately trying to falsify noise nuisance readings. He said Mrs B’s schedule of noise disturbance completed in January 2005 did not indicate evidence of haulage operations at White Farm. It referred to jackhammer noise. Quarrying on an agricultural unit for agricultural purposes is permitted development. The schedule did not specify the types of lorries at the Farm or what they were doing. A JCB vehicle or dumper truck moving around did not make it a haulage yard. Mr T might have been moving materials or fodder, such as manure or silage around the site. The revving of engines could be anything. Mr T was entitled to maintain lorries if used for agricultural purposes as ancillary to the enjoyment of the holding.

281. He said that the disturbance log submitted in January 2006 was also concerned mostly with noise. However, vehicle movements did not necessarily mean that the site was a haulage yard, just as the playing of loud music does not necessarily mean that a disco is being operated. White Farm was a small holding, and vehicles moving about and some noisy activities are not unusual in a farm operation. Mrs B had a “twee” or romanticised idea of the countryside as being about sky larks and primroses. However, it is a working environment. He said officers did look at her concerns, and he remembered asking if they were satisfied that no unauthorised activity was taking place. He recalled his email of 14<sup>th</sup> April 2005, and asked Planning Officer D to look again at the activities taking place at White Farm. Council officers were trying to chart a very difficult course within the law between 2 neighbours who were not getting on. Mrs B claimed the Council had clear evidence on which to take action, but in his view it didn’t. However, the Council took action when it had evidence on which to do so, for example, in relation to the unauthorised development on the other land at White Farm. He said there are no grounds to suggest that the Council did not undertake adequate investigations, essentially by visiting the site and independently witnessing relevant activity rather than take the word of

Mrs B/Mr R and their paid representatives, or would not have taken action where appropriate.

282. He recalled seeing the current affairs television programme featuring Mrs B and White Farm in 2005. He said no assessment was made of the footage of lorry movements depicted in the programme. He said that had the level of activity alleged in the programme been taking place, then the Council would have expected to have seen some other evidence of it. He said he had no comment to make on the claim in the Council's letter to the Welsh Assembly Government's Planning Division that the footage was "doctored". He said a "one off" tape of video footage would not have formed the basis of enforcement action, but could have been used as background information. However, officers never saw anything similar on their visits. He said that the Council's position, as stated in January 2005 was that the parking of up to 2 HGVs on the holding was acceptable, as it was necessary to have a cut-off point.

283. He said that he was not aware that Mr T had been aggressive and abusive towards the Traffic Commissioner's Inspectors, but believed he had been convicted of GBH. He said he had never been intimidated personally by Mr T and that Mrs T was a calming influence. Her letters were cogent and rational. He said he could not recall if he was aware that Mrs T had applied to add White Farm to the haulage company's operating licence. But even if she did, this would not have granted planning permission for the use of White Farm as a lorry park. The Traffic Commissioners did not require evidence of whether planning permission was needed. The fact that Mrs T had permission from the Traffic Commissioners/VOSA did not mean that planning permission was not required if they decided to park additional HGVs there. However, Council officers never saw evidence that Mr T was actually parking 3 HGVs at the Farm even though it was an operating centre for 3 HGVs.

284. He said the Council had considered whether the haulage business was being operated from White Farm, given that the Farm was the registered address of the haulage company, that it was, apparently, a

licensed operating centre for 3 vehicles, and given that (according to Planning Officer D) lorry drivers were being directed by telephone from the Farm from one location to another. However, the question was whether there was an impact on amenity and whether it constituted a change of use. Someone using a telephone to operate a business did not constitute a change of use. The Council had accepted that White Farm was the “registered office” for the business, where paperwork was done, but this did not amount to a change of use in planning terms. It would have been a different situation if the lorries were frequently coming to the premises, but nothing would have given officers greater relief than to have taken enforcement action if it could have done so, in order to get Mrs B “off their backs”. He considered it was a credit to the integrity of officers that they were not intimidated by the threats and pressures imposed by Mrs B/Mr R into taking action where it was not considered appropriate. He said he could not recall the planning report of September 2006 which referred to the primary uses on the site as being equine and the lorry base. He believed it was an incorrect comment based on a “snapshot” assessment of the planning officer and went beyond what the officer was in a position to say. However, it was typical of Mrs B/Mr R to try and pit one officer against another, often where one officer may make an innocent statement, not appreciating the full facts of the case, and where the matters are not directly related to their involvement.

285. He said the Council was looking all the time for unequivocal evidence of its own that a change of use had occurred, and officers had visited the site. He would have been surprised if the alleged haulage activities at the Farm had not been discussed with VOSA, perhaps informally. Lorries parked up at the Farm at weekends, would have been seen by officers when they drove past out of hours, and would not have been missed. He did not consider that obtaining authorisation under RIPA for covert surveillance would have been appropriate for monitoring lorry movements. He did not consider that any weight should be attached to any statement under oath by Mr T to the 2010 planning inquiry that he had been using the farm for 10 years as a base for 5 or 6 lorries. The late Mrs T had been the site operator and would have had a clearer idea of what had been going on.

286. He said his only concern in relation to the removals lorry parked by Mrs B's boundary was whether it required planning permission. It was referred to in his "mediation letter". He said he thought Mr T put the lorry there because they were being filmed (by Mrs B), and it blocked their view. However, if it was being used for storage in conjunction with the existing use of the holding, then planning permission was not required. He believed officers would have seen inside the lorry at some stage, and when Mrs T was alive, she would have made sure it was being used for storage. He said the Council would have preferred the lorry not to have been parked in that position. But the whole White Farm issues were taking up far too much officer time. He asked why Mrs B started arguing with someone who owned her access way, and said it appeared from anecdotal evidence that she had bullied and harassed people throughout her life.

287. He said he was aware that the large board had been erected on the boundary adjacent to Mrs B's property, but by this time, the Head of Planning had become involved in White Farm issues. The only reason why it needed planning permission was because it exceeded 2m in height and if it was considered to be a means of enclosure, which he considered was an interpretation open to challenge. It was a technical breach of planning control, but it was a privacy board and the presence of the CCTV camera on Mrs B's property was relevant. In relation to the question of whether it was expedient to take action, both sides were taking a "pop" at each other, and it was not in the public interest to get involved in a neighbour dispute. That was a view the Head of Planning was entitled to take as a professional planner.

288. He said he met Mrs B and Mr R on several occasions in 2005, but meetings became counterproductive because Mrs B appeared what he considered to be unstable and would burst out crying. He said he had always tried to do the right thing, but because he did not agree with Mrs B, she burst out crying. She never refused him access, but he decided that further meetings would not be helpful. He understood that she had made official complaints against approximately 27 of the 34 police officers who had attended at her property, although he could not



remember the precise numbers. He wondered if these were the actions of a stable person.

289. He said he was not involved personally in the decision to apply the persistent complainant's policy to Mrs B and Mr R, but he might have been asked for his views. If he was asked, he would have said that she was taking up such an inordinate amount of officer time that it was considered necessary to break the cycle. However, officers would take action if there was fresh evidence of a change of use taking place. He said he could not remember if the former complaints officer had any direct contact with Mrs B or Mr R.

290. He said he was antagonistic about the Ombudsman's investigation, given his two earlier investigations which had not found a case to answer. He said the investigation was a waste of Council officer time and resources which could be better spent. He said his objectivity as a planning officer was not compromised by the manner and content of Mrs B's communications. Enforcement was the aspect of planning administration which caused the most aggravation and litigation. It required the law to be interpreted "on the hoof", and could be dangerous. However, he said he was extremely principled and would never desist from taking action on the basis of some other ulterior motive, for example, because an officer was being intimidated. In such cases, if enforcement action was justified, it might be appropriate, to use process servers, as he has in other cases. He was always looking for some evidence which tipped the balance and indicated a change of use at White Farm, but never saw it. However, he authorised enforcement action on the other part of White Farm. He took the job on knowing he would have to deal with difficult people, and would never have allowed any negative feelings about Mrs B to have impacted on his professional judgement on whether to take enforcement action. He said he recalled his email dated 12<sup>th</sup> November 2007, the content of which was consistent with his earlier statement that nothing would have been easier than to have taken enforcement action just to get Mrs B off his back. However, in the absence of any unequivocal evidence, such action would have been unprofessional. Mrs B was punishing officers for having the audacity to argue with her and not do her bidding, and

continued to do so by getting the Ombudsman to investigate her complaint. However, the Council did take action in relation to unauthorised development on the other part of White Farm where clear evidence of a breach existed. He said he was aware that Mrs B/Mr R had made several complaints about activities at White Farm to a national animal charity and to the CCW, but to his knowledge these complaints were investigated by these independent bodies but grounds for taking action were never identified.

291. In relation to the summary of Mrs B's complaint, he said he never accepted that the main use on White Farm in 2004 and 2005 was haulage. He said Mrs B was the main perpetrator of the breakdown in relations with her neighbour, and the neighbour dispute is the main cause of any impact on her amenity. He did not accept what Mrs B said about the cattery business, and said that the claimed inability to develop the business was due to legal difficulties connected with the private right of way over the neighbouring property in that she might not have the legal right to use the access way for a business. She nevertheless blamed the Council for problems with the access way which it had not caused. In relation to the claimed diminution in the value of her property, he said this flowed from the dispute with the neighbours and, in relation to the claimed stress, that Mrs B should "join the club". Everybody has been stressed in their dealings with Mrs B. She had been convicted of assaulting Mrs T. She also harassed and intimidated officers of the Council if she did not get her way. It would only take a few people like Mrs B to render the whole enforcement system ineffectual.

292. In his comments on the draft report Officer F said he considered the references to his involvement to be biased and lacking in any evidential basis. He said that he and Officer L acted with integrity in not being intimidated by Mrs B, and refuted the suggestion that his and Officer L's professionalism was inappropriately influenced by their "dislike" of Mrs B. He said "she is sly, devious and a bully, but that would not have impacted on my evaluation of the planning situation of the site, nor would it have influenced any other of the officers involved". He also commented that the draft report contained conclusions which challenged decisions made by officers instead of looking at whether the

decisions were appropriately arrived at. He referred to the investigation as a “worthless process”. Officer F’s comments are reproduced in full at Appendix 3.

### Officer G

293. Officer G was the Council’s Public Health Services Manager. He said most investigations of complaints of alleged statutory nuisance are conducted overtly. Letters are sent to both parties, namely the complainant to say that their complaint will be investigated, and to the alleged perpetrator saying that there has been a complaint which will be monitored. In some cases, environmental health officers are deployed out of hours if this is necessary, for example, to supplement evidenced gathered by noise equipment.

294. He said that video footage shot by a complainant submitted in support of a nuisance complaint (such as the footage provided by Mrs B in relation to the pigs kept by her boundary) would be considered. The next step would be to check the validity and reliability of the footage. It may not necessarily be relied on as evidence (although legal advice would be sought), but it would be looked at to see if it indicated some evidence of a possible nuisance which the environmental health officers would follow up in accordance with their written procedures. He said that the Council’s Environmental Health Service has not obtained RIPA authorisation to undertake covert CCTV surveillance, but such surveillance may be relevant in the investigation, for example, of alleged fly tipping.

295. He said that environmental health officers established that White Farm was a licensed operating centre for 3 HGVs in August 2007 by contacting VOSA. These enquiries indicated that 2 operators were licensed to operate from White Farm, namely Mr T and Mrs T. He did not know if the Planning Enforcement Officers were aware of this.

296. He said Environmental Health were not directly involved in the decision to apply the PCP to Mrs B. At that time, officers were pursuing enquiries into alleged dog barking and cockerel nuisance, and contact with Mrs B was at an appropriate level. There was further contact in

2008 regarding complaints about stray dogs, rat infestation and dog barking. He was asked to prepare a schedule of complaints before attending a meeting in March 2009 to review the use of the PCP. It was agreed at the review meeting that contact between the Council and Mrs B should be via the Director of Regeneration and Leisure. However, the Director was happy for the Environmental Health Officers to continue to deal with Mrs B directly in relation to a complaint made in February 2009 about noise from dog barking and the removal of rubble. Mrs B was asked to complete a nuisance log, but she did not do so, and the file was subsequently closed. He said that when Environmental Health was asked to prepare the schedule of complaints, he was aware of the history. Mrs B was demanding. That is not by itself unusual, but the dispute between her and her neighbours was unpleasant. He attended the review meeting in September 2009, but this time, the case on the complaint about dog barking and rubble removal noise had been closed, and he did not recall contributing much to the meeting. He did not attend the review meetings in May 2010 or February 2011, having asked earlier whether he needed to be present. He had other commitments, and his apologies should have been recorded in the minutes. He had nothing to add and understood the outcome of the meetings to be that contact would continue to be limited via the Director. He said he has not had any direct contact with either Mrs B or her partner.

#### Officer H

297. Officer H was the nominated Departmental Representative for the purposes of the Council's PCP at the time it was applied to Mrs B and Mr R. He said his role was to ensure that the Complaints Officer had followed the proper procedures in relation to the PCP. In the case of Mrs B and Mr R, matters had also been dealt with by the Head of Planning, and it was decided that the Director of Regeneration and Leisure would be the single point of contact for the Complainants. He said he recalled a long discussion with the Complaints Officer at the time of the referral, and had "sight of any notes the Complaints Officer would have kept of any telephone calls, discussions or meetings with the Complainants, as the Complaints Officer would have kept records of such contact". He said he had also discussed the matter with the Head of Planning because applying the PCP in a particular case was a major

step to take. The matter had also been discussed with the Head of Planning and the Director at departmental meetings.

298. He said that the claim in the referral form that over 30 letters had been received from the Complainants may, in addition to the schedule of correspondence prepared by the Planning Department, have included other correspondence with the Environmental Health Department, which the Complaints Officer would have been aware of. In relation to the claim that the Complainants had refused to allow either the Enforcement Officer or the Enforcement Manager into their property, he said that if an attempt had been made to visit the Complainants and access had been refused, that is a refusal. He said he imagined that the Complaints Officer would have informed the Complainants that consideration was being given to applying the PCP, but he cannot be sure that they were warned. Even if this was not done, however, the decision was still in line with the Policy as things had got to a stage where Officers could not reason with the Complainants. He understood that meetings were being refused at that time. He said that Step 2 of the PCP was guidance and not mandatory, and that the revised Policy now incorporates new procedures which require a written warning to be sent.

299. He said that if he had any doubts about the evidence or whether there had been a warning, he would have challenged the Complaints Officer. At that time the Complaints Officer was receiving a lot of communication from Mrs B which Officer H said had included verbal abuse. He was also comfortable with what he had been told by the Head of Planning.

300. He said he was surprised that Mrs B and Mrs R were not specifically informed in August 2007 that the PCP had been applied to them, and assumed that the decision would have been notified to them by the Complaints Officer. It was not a requirement of the PCP that the outcome of review meetings should be notified to complainants (although it is a requirement of the revised policy). It was felt in Mrs B's and Mr R's case that such notification would not help as any letters which were sent seemed to antagonise the situation. This was so when they were notified of their removal from the register of persistent

complainants. The Council received lots of letters from Mrs B in which she was very critical of the Council and revisited old issues which the Council felt had been resolved within the regulations and rules it worked to.

301. He said that at no time was Mrs B refused access to the Authority, and in fact had she had direct access to a Director which was very rare. He said he was asked to look at Mrs B's complaint to the Chief Executive about the Director's alleged failure to respond to her complaints regarding "new issues". He said it was accepted that the Council had not responded, and that the Director said he sent a letter of apology for not responding within the appropriate timescales. However he did not consider she had raised new issues and the Director felt he had already responded. He did not recall whether there had been a response to her letters of the 11<sup>th</sup> and 16<sup>th</sup> June 2009 to the Director.

#### Officer I

302. Officer I was the Principal Executive Officer to the Council's Chief Executive from late 2007 to September 2009 prior to being seconded to a local health board. She returned to the Council in January 2011 and is involved in the Council's work in implementing a new complaints policy in line with recent Welsh Government guidance.

303. She said the PCP had already been applied to Mrs B and Mr R by the time she became involved. The Director of Regeneration and Leisure was the designated single point of contact for communications with Mrs B and Mr R. Her role was to liaise and coordinate the Council's responses as Mrs B's complaints extended from planning matters to other Council departments. She also dealt with Mrs B's correspondence to the Chief Executive. This included preparing responses.

304. She said that the Chief Executive's letter dated 29<sup>th</sup> January 2008 to Mrs B and Mr R was sent as a result of what had been agreed at the review meeting on 24<sup>th</sup> January 2008. The purpose of the letter was to inform Mrs B and Mr R that all correspondence to all staff and Councillors must be sent in writing to the Director. She believed that the

decision to extend the PCP to their communications with councillors may have been discussed with the Council's legal officer (Officer K).

305. She said she was involved in coordinating and convening subsequent review meetings. The Director's letter dated 5<sup>th</sup> March 2009 to Mrs B and Mr R was prepared after the review meeting held on that date. Mrs B had been told to write to the Director because she had been communicating in a number of different ways, including by emails to different officers across the Authority. It was necessary, therefore, for the Council to manage that communication and its responses to it. The decision was to ask Mrs B to communicate by letter to the Director. Hard copy letters addressed to the Director would ensure the correspondence came to the Director's attention, and was the means by which the Authority ensured that her correspondence was looked at and replied to. There was never any intention to block email access to Councillors and, therefore, the legality of access to Councillors was not discussed or seen as an issue. When she became aware that the Council's action was affecting Mrs B's right to contact councillors, she asked the Council's IT Department to address the matter, and assumed that the measures taken were successful. She was on secondment when the blanket restriction on Mrs B's email address was lifted in April 2010. She believed the reference to the restriction being "unintentionally" placed on emails from her address in the Chief Executive's letter dated 24<sup>th</sup> April 2010 was a reference to her correspondence with the IT Department in July 2009 when attempts were made to allow emails from her address to her local councillor. This was reflected in the final paragraph of the Chief Executive's letter which stated that it was not the Council's intention to prevent her from having contact with any elected member.

306. Officer I said she was not aware of any reason why a copy of the PCP was not sent to Mrs B when she first requested it. However, Mrs B had made a number of requests in a short space of time, and it may, therefore, have taken a while to prepare a response. She said that the interval between the first request (in Mrs B's letter of 1<sup>st</sup> April 2009) and the date when the Policy was sent (28<sup>th</sup> April) was outside the Council's

published guidance for responding to correspondence, but this was not intentional.

307. She said she never spoke directly to Mrs B, although she received a couple of emails. She said she had observed the upsetting impact of some of Mrs B's correspondence on officers. When Mr T's wife died, officers felt that any involvement at that time should respect the need for sensitivity.

#### Officer J

308. Officer J was a senior solicitor in the Council's Legal Services and undertook regulatory litigation work, including work relating to statutory nuisance and anti social behaviour.

309. He attended at, and took notes of the meeting on 10<sup>th</sup> August 2005 with the Head of Planning, the former Anti Social Behaviour Coordinator and a Police Inspector. His recollection was that the comment "frivolous/possibly malicious complaints" was made by the Police Officer, rather than by either the Head of Planning or the Anti-Social Behaviour Coordinator, but cannot be 100% certain after this length of time. He would not have recorded the words if they had not been said. He said it was concluded that no action could be taken against Mr and Mrs T.

310 He said he was involved in the prosecution of Mrs T for breaching the abatement notice in respect of cockerel noise. The prosecution had been accompanied by an application for a criminal anti-social behaviour order which was all encompassing and included other acts of harassment which had been alleged at the time. However, the barrister who had been retained to represent the Council advised that such an application might not succeed, and it was explained to Mrs B and Mr R that the application would be limited to the cockerel aspect. However, the Court decided that this was not necessary.

311. He said he cannot add anything in relation to the email dated 5<sup>th</sup> June 2008 from the new Anti-Social Behaviour Coordinator (which referred to "malicious complaints" by Mrs B and Mr R). The email was concerned with the outcome of the cockerel noise prosecution and he



assumed the comment was a reference to the comments made at the earlier meeting in August 2005, as that was the only time he recalled that consideration had been given to making a “stand alone” application for an anti-social behaviour order.

#### Officer K

312. Officer K is a senior solicitor and his responsibilities included advising the Council on planning matters. He said he first became involved in January 2008 when 2 members, Councillor 2 and Councillor 3 had expressed concern about Mrs B’s and/or Mr R’s communications with them. There had been an exchange of emails between Councillor 2 and the former Monitoring Officer. He had also spoken to Councillor 3 directly.

313. He said at no time was anything done which would block Mrs B from dealing with the Council. Officers had tried to manage the process, because in addition to contacting officers, Mrs B had raised concerns with Assembly Members, and via 3 sets of solicitors’ firms. She did not challenge the legality of the Council’s actions on the grounds that its actions were “Wednesbury” unreasonable. In his view, this was an indication that the Council had a definitive policy which had been fairly applied in her case.

314. He said it was arguable whether Mrs B and Mr R should have been given a warning as mentioned in Step 2 of the Council’s policy. The completed referral form also asked whether there had been a meeting/arbitration with the customer to resolve concerns. However, this part of Step 2 is not mandatory, but recommended as good practice. He suggested that the decision to instigate the Policy without taking that step may have been made in the particular circumstances of the case, because of the level of concern. However, by the time of his involvement, the Policy had been in place for some 6 months and he was unable to provide further comments. When asked if he would have expected any reasons for departing from the practice advised in Step 2 to be recorded, he said that the guidance was a separate document to the checklist in the referral form which was completed by the Officer concerned. He said, as a matter of conjecture, that the officer having

fully completed the form may have believed he had complied with all aspects of the policy correctly.

315. He was unable to comment on whether the letter dated 17<sup>th</sup> August 2007 from the Director of Regeneration and Leisure to Mrs B and Mr R contained an adequate notification that the Policy had been applied in their case, as this predated his involvement. He did not believe that the PCP, as it was then drafted, specifically required that a complainant be expressly told that the Policy had been applied. However, the current version of the policy has been amended to incorporate best practice in this regard. He said he was not aware of any complaint by Mrs B and Mr R that they were not told that the Policy had been applied or that they could have appealed against the use of the Policy. They had taken legal advice, and it was open to them to have challenged these matters at the time.

316. He said it was implicit in the terms of the Policy that it included communications with Members of the Council. The Council wanted to be careful so that the right balance was struck in how the Policy was applied in relation to Members because electors have the general democratic right to approach their elected member, and Members must be able to acknowledge that a certain amount of “hassle” accompanies the role. However, Councillor 2 was not the member for the ward in which Mrs B and Mr R lived, and he, therefore, supported the former Monitoring Officer’s advice that the use of the Policy in the case of communications with Members was justified in the circumstances. In any case the effect of the decision to impose the Policy was not to deny access to elected members. Although the Chief Executive’s letter dated 29<sup>th</sup> January 2008 referred to “Councillors”, this had to be seen in the context as it specifically referred to Councillor 2. Had any Member been contacted by Mrs B directly, the correspondence and/or complaint would have needed to have been referred to the Director to deal with in accordance with the Policy. However, there was an issue which arose later, which was concerned with a technical IT matter. Once it was discovered that a block was placed on all emails from Mrs B’s email address, he advised that this could be unreasonable, because the effect of such a block was potentially to deny access to Members by email.

317. He was present at the review meeting on 5<sup>th</sup> March 2009 but did not recall what was meant by the reference in the minutes to Mrs B's and Mr R's human rights and the decision not to notify them of the outcome of the meeting. They already knew of their status under the Policy, and he suspected that there had been a lot of further correspondence from them, and that to notify them again of their status may have exacerbated the situation. Although the language used in the minutes is somewhat unusual, he does not believe it was done for any ulterior motive or to deny them their human rights.

318. He said he corresponded with Mrs B's and Mr R's solicitors in September 2009. The information contained in his letter dated 17<sup>th</sup> September 2009, including the reference to the letter dated 10<sup>th</sup> June 2009 from the Director of Regeneration and Planning was provided by the Planning Department, and he must have seen the letter. He said the letter could have been clearer, but in essence, it did confirm that the enforcement team were taking action. He said this might have been the letter referred to by the Chief Executive in his response to Mrs B dated 15<sup>th</sup> March 2010 (regarding the Director's alleged failure to reply to her correspondence), but he is not certain.

319. He confirmed that his letter to Mrs B and Mr R dated 22<sup>nd</sup> December 2009 was a response to Mrs B's earlier letter dated 25<sup>th</sup> November 2009 to the Chief Executive (in which she had sought details of the Councillors who had complained about them). He said that the references in the Director's earlier correspondence dated 27<sup>th</sup> February and 15<sup>th</sup> April 2008 to "a number of councillors" and "several members" were possibly overstated, as only 2 members had expressed concerns, and this particular issue was subsequently addressed in his correspondence to Mrs B. However, the reference in the Director's letters to the nature and content of the contact between Mrs B and Mr R and the councillors was not overstated.

320. He viewed the DVDs of footage received from Mrs B and Mr R in early 2010. This was followed by an investigation regarding lorry movements into and out of White Farm and a possible change of use to

a lorry park or haulage related/tipping uses. There had been a history of concerns about the reliability of DVD footage. There was also a history of hostility between the neighbours, and Officers wondered whether it was another “tit for tat” between them, and could not, therefore rule out the possibility that the footage was doctored. Although the footage was timed and dated, its reliability needed to be verified, but he was unable to comment further as was not involved after that point. He accepted that at face value, the footage raised a concern about land uses on the site, and it was confirmed at the meeting that the matter would be taken forward by the Planning Department.

321. He was present at the meeting on 4<sup>th</sup> May 2010 which reviewed Mrs B’s and Mr R’s status under the PCP. He said he was informed that there was an Operator’s Licence in place which allowed the dismantling of scrap cars. He said this was referred to as a matter of fact and he was not in a position to dispute this nor was he requested to advise further. His role was to make sure the meeting was being run properly and to advise on planning issues. The Head of Planning and the Director of Regeneration and Leisure were present and could have asked for clarification had they felt this was needed.

322. He said he was not involved in the correspondence relating to Mrs B’s complaints to the Chief Executive in January and February 2010.

323. In relation to the Scheme of Delegation, he explained that all the Council’s planning powers are delegated either to the Council’s Planning Committee or the Head of Planning Services. He expressed the view that paragraphs 1.6 and 1.13 of the Scheme of Delegation allowed for consultation with the Chair or Vice Chair of the Planning Committee on a power delegated to the Head of Planning, but these provisions did not allow the Planning Committee to “call in” for determination a matter which had been delegated to officers.

#### Officer L (Head of Planning)

324. Officer L said his responsibilities included development management, planning enforcement, planning policy, conservation, minerals and building control. The day to day operation of these matters was in the hands of individual case work officers under the supervision

of more senior managers. Until March 2008, officers with casework responsibility in enforcement cases reported to the former Enforcement Manager. Since that time, there are now three smaller teams which deal with both development management and enforcement on an area basis. He does not normally get involved in individual cases, unless, for example, a complaint has been made against the case officer. Ultimately, he is responsible for judgements on technical matters which are based on his qualifications, training and experience.

325. He said he first became involved in complaints about White Farm in 2005, and he met Mrs B and Mr R (with a councillor who was representing the local Assembly Member) at their home in July 2005. He could not recall whether he was aware at that time of earlier complaints about HGV related uses at White Farm in 2001, but subsequently became aware of them. Whether the log completed by the former occupiers of Mrs B's property at the end of 2001 showed a pattern of HGV activity or not, he could only assume there was insufficient evidence to take the matter forward as a formal issue. In any event, lorries are also controlled by the Traffic Commissioners and VOSA which could lead to duplication of control on such activities. He said Mr T's evidence to the planning inquiry in October 2010 (about his use of the Farm as a base for 5/6 lorries over 10 years) was not the response he had given earlier to the Planning Department about the extent of his HGV usage at the Farm, although most of the Planning Department's dealings had been with Mrs T until she passed away in December 2008.

326. In terms of haulage related uses on the site, what the Council has to look at is first, whether it constitutes development, and if so, whether it is permitted, and if not, whether planning enforcement is warranted. This approach reflects Welsh Government Guidance in TAN 9 and within that process is a range of considerations to be taken into account, and a number of points where a judgement call has to be made.

327. He confirmed that the Council's position regarding HGV uses on the Farm in 2005 was as stated in the Council's letter dated 24<sup>th</sup> January 2005 to the MP's office, namely that the parking of up to 2 commercial lorries and minor mechanical/electrical repairs being undertaken on an

occasional basis by Mr T was acceptable. If the farm was being used for haulage and haulage related uses, he would have expected to have seen heavy maintenance equipment, such as compressors, large stocks of oil, and other vehicle parts such as filters. His visit to White Farm on 12<sup>th</sup> July 2005 provided a snap shot of the activity on the site on that occasion, and in his view, there was no evidence of an HGV maintenance business or lorry business.

328. There was a dutch barn which had an inspection pit, which is not uncommon on farms. There was a vintage lorry in the barn being renovated. However, he did not see large specialist equipment in the barn on his visit. The lorry with the lifting gear was used to load hay bales. He was not sure that the dutch barn was large enough to maintain the tipper wagons, for example, when the hydraulic tipper mechanism was fully extended.

329. There have always been agricultural implements at the farm, and Mr and Mrs T used the Farm for the production of hay.

330. He said that the Council had not been satisfied that there was sufficient agricultural justification for the First Shed, but this was allowed on appeal in February 2005. The Planning Inspector took a different view and Mrs T had convinced the Inspector of their intentions to build up a herd of cattle. By September 2006 (when the planning application in respect of the Second Shed was being considered), the herd had not been built up, and the application was refused. He assumed that the reference in the report on the application to the main uses on the site being equine and lorry uses was a reference to the description of the lorry based activity contained in the letter dated 24<sup>th</sup> January 2005 to the MP. There was an element of lorry activity consistent with 2 of Mr and Mrs T's commercial lorries, and it was not considered that the level of agricultural activity justified a second agricultural building. He said that quite a few businesses which are advertised in Yellow Pages are operated from home, and the fact that Mr and Mrs T's drivers were being directed from the Farm did not necessarily mean that a full blown haulage maintenance and repair business was being carried out on the site. If Mr T had been observed using compressors to remove tyres or

change the brakes on the HGVs, that would have been clear evidence of haulage related activity taking place amounting to a change of use. But when officers visited, lorries were present, but there was not much evidence of even small scale maintenance, and the enforcement officer had established that maintenance on the lorries was being undertaken elsewhere.

331. In relation to the Council's statement to Mrs B that clear, unambiguous proof was required including photographs if possible, and her response that she was frightened to produce the evidence she had, he said that there had been a major falling out between Mr and Mrs T and Mrs B. Mr T is not the easiest person to deal with, and the former occupiers of Mrs B's property had also experienced problems. However, if there was a concern in terms of physical threats to the person, the proper channel was the Police and his understanding was that the Police had been extensively involved in the situation, and that Mrs B was pursuing an action against the Police. He said it was not the planning authority's role to get involved in situations involving breaches of the peace or personal threats, as these were matters for the Police. From a planning standpoint, a limited amount of lorry activity was acceptable, but there was not sufficient evidence to amount to a change of use.

332. He said that one of the main issues in relation to lorry activity was noise. There had been a complaint about dog barking noise which was investigated by the Environment Health Officers, and the same approach could have been taken in respect of lorry related noise. If there was a point in time when the level of lorries routinely visiting the site in order to be maintained increased to say 10 or 15 lorries, that would be a material change of use. The next step would be negotiations and discussion with the occupiers on whether planning permission was required, and if so, whether it should be permitted subject to conditions. One consideration would be the effect on amenity, part of which is the noise element. The production of photographs may show lorries, but photographs do not of themselves indicate evidence of noise in terms of the public interest. If Mrs B's concern was lorries visiting the site and there was evidence of noise associated with maintenance, that may be evidence of impact on amenity.

333. He said he did not recall having seen Mrs B's photographs (which she said had been taken in 2005) produced by the investigator. He said he never saw activity at the site on the scale depicted in the photographs. If he had, he would have been concerned, as the activity shown in the photographs required an explanation. If the level of activity depicted in the photographs had been observed by the Inspector (who had determined the appeal in relation to the First Shed in February 2005) and by him on his own visit and subsequent site visits, then it would have been necessary to have pursued matters with Mr T, and any excessive noise, for example, from power hosing activities, would have been picked up through the monitoring carried out by the Environment Health Officers.

334. He said he did not look at the video footage taken by Mrs B in 2005 which was referred to in his notes of the meeting. He (and Planning Officer E) had become involved at that time because Mrs B had submitted a complaint to the Ombudsman which included complaints that Planning Officer D and the former Enforcement Manager (Officer F) had not acted in a professional manner. Up to that point, a judgement had been made that there had been insufficient evidence to indicate that a material change of use had occurred. He decided, therefore, not to look at matters which were being considered by the Ombudsman, but to establish a new base line from which to consider any current or new issues. From that point on, he said any new complaints were investigated.

335. He said there were difficulties in testing evidence which comprised video footage, and authorisation under RIPA has never been sought or obtained in planning enforcement cases. Local authorities have been criticised for the over use of surveillance under RIPA. Photographs provide a snap shot of the activity on the site at a certain point in time, but to show that a material change of use has occurred, there had to be evidence of a sustained pattern of usage, and if there was a change of use, then the impact on local amenity and highways would have to be considered. The amenity considerations would include the effect of noise e.g. from compressors and power washers. If Mrs B's concern



was the impact on her amenity caused by HGV maintenance noise, or if the video footage had indicated any noisy activity, he would have expected some noise to have been detected on the occasions in 2006, 2007 and 2008 when the Environmental Health Officers had used monitoring equipment to investigate complaints about noise from dog barking, quarrying and cockerel noise. However, no such noise was detected, let alone noise amounting to a statutory nuisance. He is not aware that Mrs B submitted complaints specifically about noise from HGV maintenance activities.

336. He said that the only footage he saw of HGV activity was in the current affairs television programme broadcast in 2005. He said this showed vehicles with headlights activated being driven, but did not indicate sufficient evidence to show a large number of lorries entering and leaving the site or that a HGV maintenance depot had been established on the Farm. He said he stood by his statement (in his letter dated 13<sup>th</sup> May 2008 to the Planning Division of the Welsh Assembly Government) that the video evidence was an unreliable source of evidence. In addition Mrs B's reliability as a witness was questionable in the light of her attempts to influence the investigation into dog barking noise. However, on subsequent visits to White Farm to look at other complaints, officers were alert to anything which might have indicated sustained levels of increased haulage related activity which might have indicated a material change of use.

337. He said he viewed the video footage produced by Mrs B in 2010. This prompted a further investigation which included an unannounced site inspection when he took photographs. However, he saw nothing more than what he had seen in the past. There were no signs of lorry maintenance, stocks of hydraulic oil or brakes and other parts. There was a lorry in the building which replaced the dutch barn, but nothing in his view which evidenced a material change of use to a depot.

338. He said his email dated 16<sup>th</sup> August 2010 headed "Improvement Assessment" referred to a meeting with officials at the Welsh Audit Office. The reference in that email to evidence being "doctored" related to the Environmental Health Officer's concerns that Mrs B had provoked

her neighbours' dogs into barking when evidence was being gathered, and not to the DVD video footage. He does not accept that he misled the Welsh Audit Office by omitting to mention that an abatement notice had subsequently been served in respect of dog barking noise, as he was not aware of it.

339. He said he did not recall briefing Councillor 1 in advance of the television programme broadcast in 2006. However, the Councillor's statement on the programme seemed to reflect the Council's position that the parking of 2 commercial HGVs at White Farm was the threshold. At that time, the Authority's view was that 2 HGVs was sufficient, and although Councillor 1 said a planning application would be required in respect of 3 vehicles, it was a matter of fact and degree, and it would have been necessary to establish whether planning permission was required and whether there was a sufficient movement along a continuum to indicate a material change of use.

340. After the 2010 appeal (in respect of the other site at White Farm), the Council established, on enquiries of VOSA, that White Farm was a licensed operating centre for 2 commercial haulage vehicles subject to environmental conditions. In October 2011, the Council established that the Farm was a licensed operating centre for a total of 3 HGVs. He said he was not aware that the Farm had been licensed as an operating centre for 3 vehicles since December 2005. Had the Council been aware of this, the Council could either have invited a planning application in respect of the use of White Farm for the parking of 3 HGVs, or in the absence of a planning application considered whether enforcement action was required. Such a planning application would have been assessed in the usual way, and having regard to guidance in Tan 9 in terms of whether the impact on the amenity was significant. If the Council had been aware that the Farm was licensed for 3 HGVs subject to environmental conditions, there may not have been any purpose in inviting a planning application which might, if granted, been subject to conditions which replicated those imposed by the Traffic Commissioners. He said that the authorisation of a site as an Operating Centre does not obviate the need for planning permission, but planning

authorities are advised not to duplicate other controls when imposing conditions on the grant of planning permissions.

341. He said the Council receives a publication from the Traffic Commissioners containing details of applications for licence variations. He does not recall if he was aware of Mrs T's application in 2005 to add White Farm as an operating centre for 2 more vehicles, and said that it would have been open to the Council to have made representations to the Traffic Commissioners. However, there were not strong links between the Council and the Traffic Commissioners. The evidence from 2005 to the present time had not indicated that the level of activity associated with the maintenance of lorries had resulted in a material change of use. In the case of the parking of 3 HGVs, it was still necessary to look at the consequences and whether there was any resultant harm. Mrs B was complaining about more than 3 lorries. He queried what purpose would have been served by inviting a planning application given that environmental conditions had already been attached by the Traffic Commissioners.

342. He said he did not recall that any assessment was made of the disturbance/noise log submitted by Mrs B in January 2006. However, by this time, there had been an inquiry by the Traffic Commissioners and an operating centre licence issued subject to environmental conditions.

343. He said he was present at a meeting with the Anti-Social Behaviour Coordinator, in August 2005. He confirmed that as stated in the note of the meeting, a long list of complaints about activities at White Farm was discussed. He does not recall making the statement about "frivolous/possibly malicious complaints" as recorded in the note. His contribution to the meeting related to the role of the Planning Department in looking at complaints which had been received, and in relation to consents which had been granted including the consent for the First Shed granted on appeal.

344. He said that a review of the alleged unauthorised activity was undertaken in September 2006. At this time the Council was considering the application in respect of the Second Shed and

considered that it was appropriate to undertake a comprehensive review. It was a long time before the outcome was notified to Mrs B in November 2007 when he provided a “final statement” of the Council’s position on planning enforcement cases. However, by this time, the PCP had been applied in Mrs B’s case, and he believed that a number of issues had also been raised in the intervening period.

345. In relation to Mrs B’s complaints of intimidation and other information about Mr T’s threatening and aggressive behaviour, he said that Mr T was a difficult person to deal with. However matters of intimidation were essentially a matter for the Police. If, nevertheless, the Council had used, for example, camera surveillance to gather evidence, this might have shown that White Farm was used as a lorry depot over a period of time since 2005, but he was entitled to park 3 HGVs, and if VOSA had tachograph evidence of more vehicles being parked at the Farm, that could have been vetted by them (VOSA). In relation to concerns about the use of powered machinery, there was no evidence of such activity seen during the course of a number of visits. In terms of whether planning permission was required, the Council would consider the effect on amenity, but lorries entering and leaving White Farm to the extent claimed by Mrs B did not indicate a material change of use.

346. He said that recent Welsh Government guidance (TAN 9) would be relevant in determining any planning application for use of White Farm as a haulage yard. It would have to be considered in the context of the diversification of the rural economy and such an application may be granted subject to conditions. He said that Mr T’s recent planning applications for the mixed equine and agricultural use of the sheds (and for laying tracks on other land at White Farm) have been approved by the Council.

347. He said the Council’s decision to allow the Second Shed under the GPDO was not perverse. One shed had already been permitted on appeal, and the proposal in respect of the Second Shed was submitted first as a planning application (which was refused), and then under the GPDO procedure. At the time of the earlier planning application advice was obtained from the Council’s Estates Officers on the viability of the

unit as a whole to accommodate a further shed. The Estates officer advised that further stock was being acquired and said he would wish to see the shed designed specifically for cattle. This advice tipped the scales when the proposed Second Shed was subsequently notified under the GPDO procedure. The Inspector, who allowed the appeal in respect of the First Shed, had also heard about plans from the appellant for bringing cattle on to the holding, even though this was not mentioned in the appeal decision. What was proposed in the GPDO notification was not dissimilar in design to the First Shed which had been approved. By this time, the farm had expanded in terms of the production of hay, and Mrs T had convinced the Estates Officer of their intention to build up the herd. They already had the First Shed which could be used for cattle, and the shed notified under the GPDO could be used for general storage. He said that the GPDO procedure enabled the impact of the scale and mass of a proposed building to be assessed if details of the proposals are requested. Even if, as in this case, details were not requested, there would still have been an assessment of the impact of the proposed shed.

348. He said that Mr T had erected the large board on the fence adjacent to Mrs B's property because Mrs B had mounted a CCTV camera on her house which was directed onto the neighbouring property. He said that planning permission was required for both the large board and the CCTV camera at the height at which it had been erected. In his view, the conduct of the parties in deciding whether it was expedient to take action was relevant. He said he could not justify the use of public resources on 2 items of unauthorised development in this case. This could have involved inviting both parties to submit planning applications, and if these were refused, possibly defending appeals in respect of both. He said the Council has to be proportionate and prudent in its use of resources. He said the large board is immune from enforcement action.

349. In relation to the large removal lorry parked close to Mrs B's boundary, he said that are lots of cases where caravans are used for the storage of animal feed. The status of the lorry could be reviewed, but

even if the Council concluded that it was not being used for the storage of hay, it would be open to Mr T to place a few bales of hay in it.

350. He said a planning application may have been required in relation to the shed which replaced the former dutch barn, because this had a vehicle inspection pit in it, and was being used to refurbish a vintage lorry, and the view may have been taken that it was not required solely for agricultural purposes, and could not, therefore, be dealt with under the GPDO procedure. He said he was not aware that the building adjacent to the former dutch barn had a pit (in addition to the pit in the dutch barn). He said he did not recall seeing a second pit. His understanding, from his inspection in January 2010 was that the pit was still there, although the dutch barn had been replaced. He said he did not consider that the replacement building was big enough to facilitate maintenance of the tipper wagons when extended to their full height.

351. He said his letter dated 2<sup>nd</sup> April 2007 to the Assembly Member referred to there being a vendetta between 2 parties. He did not, in the letter, accuse Mrs B of making a vendetta. He said the term is used to describe a situation where an unpleasant dispute had developed between two parties, both of whom will use whatever means they can to get the other party investigated. In 34 years experience as a planning officer he has not come across as many complaints from a single individual as from Mrs B. She had also complained about the Police and Fire Authority and against the Council's public protection officers. Equally, Mr T is a difficult individual. He has a temper, and whilst Mr T has never physically threatened him or his staff, he has an aggressive attitude, and intended to invade one's personal space. In addition, both parties have been involved in court cases for assault. In his letter, he explained that the Council could not get drawn into a long running dispute between 2 parties. However, the Council had not refused to look at issues which had been raised by each party. He said that planning enforcement was not the best process for mediation, and the development of a more formal mediation service may help in situations of this nature.

352. In relation to the use of the PCP in Mrs B's and Mr R's case, he said he thought the reference to "numerous site meetings ... since 2005" in the Referral Form related to site meetings at White Farm rather than meetings with Mrs B. He said the purpose of his own visit to Mrs B in July 2005 (which was mentioned in the referral form) was to investigate her complaint about the attitude of the enforcement officer (Planning Officer D). He did not know whether Mrs B refused access to the former Enforcement Manager (Officer F), but he may have informed Planning Officer D and Officer F that they were "off the case" and they would not, therefore, have sought access subsequently.

353. In relation to the claims in the Referral Form documentation regarding the number of letters that had been received from Mrs B since April 2005, or the date of notification from the Ombudsman regarding their complaint in July 2005, he said he thought there were more than 30 letters. But even if it was closer to 18 letters, it was over a period of 2 years, and in his view, the correspondence was excessive and justified the use of the policy. He said he did not recall whether the former Complaints Officer had direct contact with Mrs B, and was unable to comment on whether a warning was given to Mrs B prior to the Policy being implemented. He said it was rare to use the Policy, but the Council did not decline to look at new issues raised by Mrs B.

354. He said he recalled Councillor 2 approaching him about telephone calls she had received from Mr R, and concerns that he might visit her home which was nearby. He said he advised her to contact the Council's Head of Legal, and she did so.

355. He claimed Mrs B's letter dated 11<sup>th</sup> June 2009 to the Director of Regeneration & Leisure was concerned with use of material from the quarry at White Farm to lay tracks elsewhere on the holding. The issue of excavating material from the quarry in the farm yard had been looked at previously and Mrs B had been advised that material from the yard at White Farm could be used for the purpose of laying tracks for agricultural purposes. However, unauthorised development had taken place on the other land at White Farm and the Council was taking

enforcement action. This is what was referred to in the Director's earlier letter of 10<sup>th</sup> June 2009.

356. He said that his own objectivity and that of his officers was not compromised by the tone or manner or extent of Mrs B's communications. He said he has had dealings with difficult people before and has been prepared to defend his integrity. This has included bringing court proceedings against an individual in one case. All his staff were qualified planning officers or had extensive experience in planning enforcement work. Planning enforcement work required a great of patience, and officers had to deal with all sorts of people, including those who could be aggressive or emotional. Mrs B accused officers of misrepresenting the situation, but officers had to balance the different perspectives of 2 parties and as Head of Service, he had to make decisions on where the public interest lay and the resources available.

357. In relation to Officer F's email of 12<sup>th</sup> November 2007, he said it was not uncommon for officers to express frustration, but that did not affect their professional judgement. He said that Officer F had acted professionally throughout the 20 years he had known him. He might have found the case stressful and "sounded off", but at the end of the day, as his line manager, he would not have allowed an inappropriate attitude to have coloured decisions about whether enforcement action was expedient or necessary.

358. He said Mrs B verbally attacked him personally at a public meeting. She appeared to be under the impression that Officers' responses to her communications had become personalised, but he had refuted this. He said the whole range of conflict between Mrs B and Mr and Mrs T reflected certain issues which could go well beyond what a reasonable person might undertake, including the "use" of the Police and Fire Authority to pursue their respective claims.

359. He said that he did not consider that the Council had done anything wrong in relation to planning enforcement. Complaints when received were dealt with in accordance with the relevant process and investigated, and explanations were provided of the Authority's position.



Officers dealing with the complaints were also changed to accommodate Mrs B's concerns. He did not consider that the Council did anything which it should not have done. It looked at everything in a logical manner, on its planning merits, and considered whether it was reasonable to take action. Nor did he consider that the Council had failed to do something it should have done. The fact that it took enforcement action against Mr T in relation to the other land at White Farm proved that the Council had not "sided" with him as Mrs B might have believed, but was prepared to take robust action to deal with unauthorised development.

#### The Director of Regeneration and Leisure

360. He said he was briefed on the reasons for applying the PCP in Mrs B and Mr R's case. The decision was concerned more with the effective use of resources than the attitude of Mrs B. One of the reasons why he was nominated to be their single point of contact was that he had not had any prior direct involvement with them.

361. He said there was no reason why the PCP was not specifically referred to in his letter dated 17<sup>th</sup> August 2007. If Mrs B and Mr R were not warned that the Policy might be invoked if they did not modify their behaviour, that was an oversight. There was no attempt to hide anything. He referred to the Policy in his letter of 27<sup>th</sup> February 2008 to Mrs B and Mr R. By that time, someone may have mentioned the existence of the Policy to them. However, it was not his intention to mislead but to achieve a better conduit between the Council and the Complainants for dealing with the issues they had raised. One of the key issues was the need to move on from old complaints and he said he would investigate new complaints. There was no particular reason why Mrs B did not receive a copy of the Policy when she first requested it. It was the Council's intention to conduct regular reviews of their status under the Policy even if there were delays on occasions.

362. In relation to the application of the Policy to Mrs B's and Mr R's communication with Councillors, he was under the impression that more than 2 councillors had been involved but Councillor 2 had been sufficiently worried to take it up. In addition to raising her concerns with

the Legal Department she had also spoken to him personally. Although Mrs B had questioned the lawfulness of being denied access to Councillors, his concern was to protect Members from undue pressure, and if contact became a problem and caused stress to Councillors, then the issue was to protect the Councillors rather than to prevent access to all Members. He said he believed the decision (taken at the review meeting in March 2009) to block their email address was a mistake. The recording of the decision in the minutes is unfortunate, and the aim was to prevent emails being sent all over the organisation. He believed that the use of the PCP was the correct course to take, and the Council had tried to apply it in the spirit of what the Policy was intended to achieve.

363. He said that in responding to Mrs B's correspondence, he would have taken the advice given by the Planning Officers. This included his correspondence in January 2009 in which he referred to the purposes for which the sheds at White Farm were being used. He has never visited the site and was not aware of any photographs showing horses in the First Shed. He was relying on the Head of Planning to inform him of the planning situation in responding to their questions about what agricultural activity was taking place on the holding. There were grey areas.

364. He said he did not recollect Mrs B's letters of 11<sup>th</sup> and 16<sup>th</sup> June 2009 but agreed (on looking at the copies provided by the investigating officer which were enclosed with a letter to him from Mrs B's solicitors) that they related to development on the neighbouring yard, as opposed to the other land at White Farm where the Council subsequently took enforcement action. He was unable to say whether Mrs B received a specific response to that correspondence. Correspondence from Mrs B's solicitors was dealt with by the Council's senior solicitor.

365. He said he did not view the DVD footage submitted by Mrs B in February 2010. He saw the Inspector's decision relating to the other site but had not studied it in detail.

#### Councillor 1

366. Councillor 1 was the Executive Board Member for Regeneration, Leisure and Tourism. His portfolio included the Council's planning functions.

367. He confirmed that his comments during the current affairs television programme broadcast in 2006 reflected his understanding of what he had been told by Officers about the legal planning position in relation to White Farm. He understood that planning permission might be needed to use a site as a haulage yard as well as a licence issued by the Traffic Commissioners. He was not aware, that at the time he appeared on the programme, White Farm had been licensed as an operating centre for 3 HGVs. He believed the relevant issue to be whether White Farm was capable of catering for 3 HGVs and he would have expected officers to have considered whether it was appropriate to have made representations to the Traffic Commissioners.

368 As Executive Board Member, he said he had no concerns about the way in which the Authority dealt with Mrs B's complaints over the years, and that Offices had acted on the evidence presented to them.

#### Councillor 2

369. Councillor 2 said (in answer to written questions prepared by the investigating officer) she did not believe that she had said anything untrue in her email dated 16<sup>th</sup> January 2008. She merely explained why she was requesting advice. She was not Mrs B's and Mr R's ward member, but lived fairly close to them, and they had contacted her as a neighbour. She considered their conduct by repeatedly telephoning her, including 11 calls on one day, and by trying to put words into her mouth, for example, "wouldn't you say that ...?" and when she disagreed, "why not, tell me why not", was threatening and amounted to harassment. She said she had never met Mrs B and Mr R, but had been given to understand that they had behaved in a threatening manner. She said the person who told her this was afraid, and that as the information had been offered in confidence, she was unable to provide further information. She said that she had cause for concern if Mrs B and Mr R treated others the way in which they had treated her. The only question she asked the Head of Planning Services was how she should respond

to all these calls. His advice was to contact the Legal Department for advice. She therefore, sent the email message to the former Monitoring Officer who was the Head of the Department during that period. This was the only time she had asked for advice. She said that Mrs B and Mr R have caused her to suffer further anguish and lack of sleep by pursuing her again at this time through the Ombudsman.

### Councillor 3

370. Councillor 3 is the Member for the ward in which Mrs B and her neighbours live. He was elected to the Council in June 2004 and was not aware of any earlier concerns about the use of White Farm for a lorry business. He visited Mrs B and her partner after he received a phone call from them to discuss their concerns. He alerted the Planning Department to their concerns and believed the Officers were already aware of them. His recollection is that enforcement officers visited White Farm. He visited Mrs B and Mr R on a number of occasions. Their broad concern was that White Farm was being used as a haulage yard and not as a farm or agricultural unit, and that buildings approved for agricultural purposes were not being used for agricultural purposes. He said it was difficult to see from Mrs B's house what was taking place at White Farm. The only opportunity to see into the yard is on the approach to Mrs B's property from the top of the access way. On the occasions he visited Mrs B and her partner, the yard was always clean and tidy. He did not personally see many lorries, and the yard was empty. He did not recall Mrs B showing him the photographs produced by my investigator. Mrs B did not show him any video footage of lorry movements shot in 2005 but he saw the current affairs television programme which showed footage of lorry movements.

371. He recalled seeing the container type lorry parked close to Mrs B's boundary and the large board on the boundary fence. Planning is a technical matter and he accepted the Officers' stance regarding the relevant planning policy and law in relation to these matters.

372. He said Mrs B contacted him about the agricultural notification in respect of the Second Shed. She had wanted the matter to be dealt with by the Planning Committee. However, it was an agricultural

determination which had to be dealt with within 28 days under delegated powers. His understanding was that unless the Planning Officer felt it merited consideration by the Planning Committee, then it had to be dealt with under delegated powers, and as it had to be dealt with within 28 days, there was not much time to put it before the Planning Committee. In addition, technical matters were for the Planning Officers to deal with.

373. He requested a site visit by the Planning Committee in respect of the Third Shed because of the planning history. He felt it would be helpful for the Members to see the site. The application was then approved.

374. He said he was not aware of the decision in July 2007 to apply the Persistent Complainants Policy to Mrs B but she made him aware of it some time later. He was aware that Mrs B and her partner had contacted other councillors. He subsequently became aware that the PCP was applied to communications between Mrs B and councillors. He said he informed an officer in the relevant department that he had no objection to Mrs B contacting him, and he did not ask for the Policy to be extended to restrict communication with him. When he received communications from Mrs B, typically by email, he forwarded them to the Director of Regeneration and Leisure.

375. He did not think that the Council turned a blind eye to haulage operations which might have been taking place at White Farm. As the local member, this has been a difficult case. He passed on Mrs B's concerns and her correspondence to officers, and was satisfied that the officers looked at her concerns.

### **The Council's comments on the draft report**

376. The Council did not accept that because it had insisted on a planning application for the proposed cattle shed in August 2006, a planning application should similarly have been required in respect of the Second Shed. It said circumstances had changed and that Mr T was entitled to take advantage of his permitted development rights for the Second Shed which he proposed using for the storage of hay and machinery. The Council maintained that Mrs B's CCTV camera required

planning permission, and that it had exercised its discretion properly when it decided not to take enforcement action in respect of the large board. It said that the Ombudsman's Planning Adviser had the benefit of hindsight, whereas the planning officers advised on the basis of the evidence available to them at the time, that its officers had been consistent in maintaining that they did not find evidence of breach, and had acted objectively despite the challenging nature of Mrs B's correspondence. In this connection, the Council drew attention to the tone and content of Mrs B's correspondence, with particular reference to her email dated 14<sup>th</sup> February 2011 (paragraph 177 refers). It said that its Persistent Complainant's Policy mirrored similar policies of other Authorities and had been developed after reviewing best practice in other Authorities, and in relation to the absence of an appeal mechanism, that its status was merely that of an internal working document. Although the Council had unfortunately restricted Mrs B and Mr R's email access to their local member for a period, this had not been its intention and that it had taken measures to remedy the "inadvertent side-effect", and that it was unfair in the circumstances for the Chief Executive to be described as "dishonest".

### **Mr X, retired planning inspector**

377. Mr X said he worked for the Planning Inspectorate as a Planning Inspector prior to his retirement in March 2011. He conducted a public inquiry into appeals concerning White Farm on 2<sup>nd</sup> September and 14<sup>th</sup> October 2010. The appeals were concerned with land at White Farm in respect of which the Council had refused planning permission for the retention of a hard standing for the parking and storage of agricultural vehicles and implements, and had issued an enforcement notice. The Appellant, Mr T, was represented by a planning consultant, who also gave evidence. The Council was represented by a planning officer (Planning Officer B) who, together with the Council's enforcement officer, gave evidence. Mrs B was among those who also attended the inquiry. A transport consultant also gave evidence on behalf of the Appellant at the adjourned hearing about the Operator's Licences issued in respect of White Farm. The local councillor also gave evidence. Mr X said that he took notes during the inquiry and was able to refer to these during the interview.

378. He said that the appeal site was some distance away from the main farm buildings on the holding which included 2 large warehouse type buildings. He explained that one of the main purposes at the inquiry was to see why the Appellant needed such a large area of hard standing (4,500 sq m) for storage when he already had two very large warehouse type buildings built with planning permission for agricultural use and had created a large yard out of the quarry near the farm buildings. It was part of his brief to examine the need for the hard standing referred to in the enforcement notice as well as its acceptability in the countryside. He said that the Council's Planning Officer, in answer to his question about paragraph 3.1 of his written statement (in which he said there was no relevant planning history affecting the appeal site) agreed that it was necessary to look at the planning history of the whole unit including the farm buildings. However, in his closing submissions on behalf of the Council, the Planning Officer appeared to revert to his original stance, when he said that 1 or 2 haulage vehicles was acceptable on the farm as a whole but that the appeal site was secondary to that, and that the enforcement action was limited to the area of the alleged breach. It was as if the Officer wanted to divide the farm into portions and consider the uses on each portion separately, instead of looking at the farm as a single unit. In his (Mr X's) view, the correct approach was to look at the farm as a single unit, as he needed to know whether the large area of hard standing on the appeal site, with its skips and vehicle body shells could be justified in terms of the whole farm as an agricultural unit rather than operations specifically being carried out on any one part.

379. He said that Mr T claimed, in his evidence, to have cattle on the holding, but none were evident during the site inspection, only horses in one of the large sheds and in the stables on the holding. He said he was not concerned to establish whether Mr T was farming, merely to establish why the farmyard could not be used for the uses proposed on the appeal site, and he was not, therefore, directly concerned with the presence or otherwise of cattle on the holding. Nevertheless, there was some farming activity, namely the production and baling of fodder. The use of land for the grazing of horses and the production of fodder for

horses may be agricultural, but neither the breeding or showing of horses nor the erection of buildings for stabling horses which are kept for leisure or showing purposes is agricultural.

380. He said that the claim by the Appellant's planning consultant that the Farm was not being used as a commercial haulage yard was not entirely borne out by the evidence. The holding was licensed as an operating centre for haulage vehicles, the Appellant had haulage lorries parked on the holding, and he admitted he had cut up scrap on the appeal site. Although the Appellant was trying to claim, in relation to the enforcement notice, that these activities were part of an agricultural operation, the matter had to be looked at on the basis of the whole holding. The Appellant had lorries, the capability, and had scrap on the site. The planning consultant, in response to a question about the planning status of the haulage business on the farm, said the haulage business was not connected to the appeal site, which was agricultural.

381. Mr T's evidence was that he was trying to improve the farm, and that he needed the hard standing for this purpose. The site was marshy and he had dug drainage ditches. He had also obtained an exemption from the Environment Agency which enabled him to tip inert waste material which he used to level the site and make tracks for access in order to maintain and improve the land for haylage and fodder. Mr T said he needed the hard standing to store fodder, as the sheds were used for horses. He also said that that he used the horses for showing and driving.

382. Mr T also said in evidence that the Operating Centre for his haulage company was at White Farm, but his other recycling business was based in a neighbouring county. He stated openly that he was operating the haulage company from the Farm, and appeared to believe this was in order. He did not mention the number of vehicles operated from the Farm in his evidence in chief, but when questioned by the Council's Planning Officer said 6 or 7 vehicles at the Farm and 3 other operating centres. The transport consultant who gave evidence on his behalf referred to operator licences issued in respect of White Farm for 5 vehicles and 1 under another licence with 7 trailers some of which were



at another operating centre. The consultant then produced documentary evidence of VOSA operator licences which showed that White Farm was an operational base for 6 lorries and five trailers owned by two different haulage companies. Copies were made for the inquiry. He also said that the operating centre had been registered on the Farm for at least 10 years and that there was nothing untoward for a farm to have haulage vehicles. In response to questions by the Council's Planning Officer, the transport consultant said that the operator licences related to 5 vehicles of varying sizes up to 44 tons, and that there could be 5 vehicles parked at the Farm. The consultant also said that the Appellant's haulage companies were named in each licence, and that planning permission was not required, merely the consent of the landowner. The transport consultant was cross examined by Mrs B who was concerned that the operator licences which had been produced did not match the information she had obtained from the VOSA website. He replied that the website may not be up to date and that she may not have been consulted on the addition of further vehicles to the licence in respect of White Farm because it was an existing operating centre.

383. Mr X said he understood the Council's position to be that if the Appellant ran a haulage business elsewhere, then it was acceptable for him to drive a lorry home and park it at the Farm, and that the parking of one or two lorries was acceptable. He said he asked the Council's Planning Officer about the nature of the haulage use at the farm, and according to his notes, the Planning Officer replied that the Local Planning Authority would allow one or two vehicles to be on the land. He said he recalled probing him a little further to find out whether he thought that such a change of use would need planning permission, but did not record the answer. He said he had raised it as a relevant issue with the Planning Officer because he expected to reach a different conclusion about the uses made of the farmyard and buildings when writing his decision on the enforcement appeal, namely whether haulage use was different to farming, and therefore needed planning permission. It was his impression that the Local Planning Authority did not "allow" the parking of HGVs, they simply turned a blind eye to what was going on without proper investigation of the haulage use, but would be concerned if more than one or two vehicles were involved. However, in his view,

the parking of one or two commercial haulage vehicles, which regularly left the Farm at 7 am as claimed by witnesses and returned after dark is sufficient to indicate a material change of use to haulage purposes. He believed that the Council should have taken account of the operator licences issued in respect of the Farm, given that these were issued to the Appellant's haulage companies, rather than to any farming related business, such as the production and transportation of hay for profit. In any event, the parking of one or two vehicles was debateable as the evidence during the inquiry indicated the vehicle numbers to be between 5 and 7, and he had counted 10 during his site inspection, but he did not know whether all these vehicles were on the same operator licences. He does not recall suggesting to the Council that it "led [Mr T] to believe that he can do as he likes".

384. He said that Mrs B was very concerned about the uses to which the sheds were being put. She was also concerned about the quarry behind the sheds, and he understood that there had been some quarrying activity. The Appellant explained during the site visit that he was removing rock from around the perimeter of the quarry to flatten the base to make a yard.

385. He said that one of the sheds was open sided and he could see an area fenced off with hurdles, which was being used for horses. There was also some hay for the horses. The rest of the shed was being used for haulage type uses. This included lorries parked in the shed. These were mainly commercial vehicles most of which had the livery of the Appellant's haulage company. There was also an oil tanker on a raised ramp in the yard which the Appellant explained was used to fuel his lorries. Other vehicles were parked outside in the yard. He cannot recall seeing inside the other shed. However, neither the Appellant nor the Council disputed the claims by the residents regarding the uses to which the sheds were being put, and appeared to accept that the sheds were not being used for agricultural purposes. He said that there was another area of hard standing between the sheds and the paddock adjacent to Mrs B's property on which other vehicles were parked. These included a fire tender (which had been moved from the appeal site) and a couple of vans. He also saw lots of lorry tyres and other

items which could be seen in any haulage yard. He said no one challenged his description of the yard and his assessment of the use of the yard and buildings as a licensed haulage depot, and for the storage of related items and as a HGV maintenance area combined with the keeping of horses as set out in paragraphs 24 to 27 of his decision on the appeals. He said he saw very little general farming activity.

386. He visited the main farm complex at the end of the inquiry, when he was accompanied by the Appellant, the Appellant's consultant and the Council's enforcement officer. He (accompanied by the Appellant's planning consultant and the enforcement officer) then visited Mrs B and Mr R at their request, as they had wanted him to see the large lorry parked by their boundary and the location where the pigs had been kept. However, he did not consider that these were relevant to the appeals. But he noted the point on their driveway from which they had filmed lorry movements in and out of White Farm. The appeal site was not visible from their property.

387. Mr X said he had adjourned the inquiry so that the DVDs which had been referred to by Mrs B could be viewed by the principal parties and himself. He said it included the current affairs television programme and showed lorry movements which dated back several years. He does not recall if it included any footage of lorry movements to and from White Farm shot during 2010 prior to the inquiry. He did not attach a great deal of weight to the footage as it appeared to be historical, and he was interested in establishing the current situation on the Farm. At the resumed hearing, Mrs B made some submissions about the footage but accepted that none of the footage related to the appeal site. The Council, beyond commenting that "it's part of [White Farm]" (which he took to mean that the activities depicted by the footage was part of general farm activity), did not make any other comments about the video footage itself.

388. He said that during the inquiry it was necessary to remind Mrs B to confine her submissions to matters which were relevant to the appeals. Both the Appellant's planning consultant and the Council's planning officer had advised him before the start of the inquiry that the Appellant

was volatile and likely to fly off the handle. He said he had observed the Appellant getting agitated from time to time, and had, therefore, intervened to calm things down. It was also drawn to his attention that the Appellant was staring at witnesses in a menacing manner. The Inspector said he could not see this for himself, as the Appellant was facing away from him towards the witness, but in view of what had been said, he asked the Appellant to keep facing towards the front.

### **Professional advice**

389. My Planning Adviser is Jim Griffiths, MA (Arch), M.Sc, MRTPI. He is a retired planning inspector with 20 years experience of dealing with planning appeals. He also has experience of working as a planning officer for a local planning authority.

390. My Planning Adviser said that the Council was wrong to allow the development of the Second Shed under the GPDO procedure, and should have requested that it be the subject of a planning application. However, in view of the size of White Farm (42.5 hectares) he considered it likely on balance that planning permission would have been granted for the shed, if not by the Council, then on appeal. He referred to Welsh Government guidance in PPW 2002 and advised that the conduct of the parties should have little bearing on whether enforcement action should have been taken in respect of the large board, that enforcement action would have been justified, and that the presence of the board is likely to have an adverse impact on the living conditions of the occupiers of Mrs B's property, (although this may be reduced by the existence of another window in the room concerned). He also advised that although the Council appeared to have recognised that a material change of use had taken place between 2004 and 2006 at White Farm to a mixed use of agriculture, equine and haulage business, it failed to invite Mr and Mrs T to submit a planning application. However, harm to the living conditions of the occupiers of Mrs B's property caused by the largely unregulated haulage activities on White Farm is likely to be limited, having regard to the fact that modern agricultural activities, which could include machinery and engine noise, can be carried out at White Farm at all times without restriction.

391. Finally he advised that the Council's decision not to take enforcement action in respect of the parked lorry was, in the circumstances, a reasonable one.

392. The complete text of the advice appears at Appendix 2 of this report.

### **Analysis and conclusions**

393. Mrs B has complained to the Council about unauthorised activities taking place at White Farm since 2004, and there had been similar complaints dating from 2001. The investigation has, therefore, been extensive and involved a review of events over that time. Having considered all the information very carefully, I see the main issues as whether the Council:

- acted reasonably in allowing the development of the Second Shed under the GPDO;
- reasonably investigated and considered Mrs B's complaints about the haulage and equine related activities, the placing of the large lorry and the large board adjacent to her boundary;
- accused Mrs B of making "unfounded and malicious" complaints, of pursuing a vendetta and of falsifying evidence;
- acted reasonably in applying its PCP to her and Mr R;
- responded to her further complaints in 2009 and 2010 in a reasonable way.

394. I shall deal with each in turn.

#### The development of the Second Shed

395. Having refused planning consent in September 2006 for a cattle shed on the grounds of insufficient agricultural justification, the Council then in January 2008 allowed essentially the same building under the GPDO procedure. This time however, it was described as a hay and implement shed. The Council said that a deciding factor was the advice given by the Estates Surveyor in relation to the earlier application, which established the agricultural justification for the shed, and which, had it been received sooner, might have resulted in the cattle shed proposal being approved. However, the Estates Surveyor's advice was specific to

the proposed cattle shed, and “not of a general storage design such as the [First Shed]”. He was not consulted on the GPDO notification, and at interview, said he would not have supported the proposal, particularly if the cattle numbers had not increased. By the time of the GPDO notification in December 2007, the cattle numbers were down to 3, and by September 2008, the remaining cattle had been removed from the holding.

396. As my Planning Adviser has pointed out, permitted development rights are only available if the proposed building is reasonably necessary for agriculture. The Council had long had reservations about the agricultural need for large sheds on the holding. Even though its decision on the First Shed was overturned on appeal, those reservations continued until it received the Estates Surveyor’s advice in relation to the cattle shed proposal. However, the cattle numbers had decreased, and it is clear from the Surveyor’s advice that he did not support a general storage proposal. I am not persuaded, therefore, that it was appropriate to rely on the Estate Surveyor’s advice which was specifically related to a cattle shed to house an increasing herd. My Planning Adviser said that the appropriate course would have been to have requested further details by means of a planning application. This would have enabled a fuller and more transparent assessment to have been made of the proposal, including the need for a further large shed on agricultural grounds and its impact on the locality and neighbouring occupiers, such as Mrs B and Mr R.

397. Accordingly I find that the process by which the Second Shed was allowed was flawed. Whilst noting the Council’s comments, my decision is not based on the fact that the Council had earlier insisted on the submission of a planning application in respect of the proposed cattle shed, but on the reasons outlined in paragraph 395 above. Unlike GPDO notifications, a planning application in respect of the Second Shed proposal would have been publicised, and Mrs B and Mr R were denied the opportunity of requesting, via their local member, that the application be determined by the Planning Committee. That is an injustice to them. I therefore uphold this complaint. However, and whilst noting the evidence of the Estates Surveyor, and the Council’s earlier

concerns about the justification for the shed, I have also been advised that in view of the size of the holding, such an application might have been granted, if not by the Council, then on appeal.

398. Whilst noting Mrs B's concerns about the Third Shed, I do not see a problem with the way in which the application for this building was dealt with. It replaced an existing structure, other material factors were considered, including the uses to which the First and Second Sheds were being put, and I consider that the Council's decision was one which in the circumstances, it was entitled to reach.

Mrs B's complaints about haulage and equine uses, the lorry and the large board

399. Mrs B's first formal complaint appears to have been submitted on her behalf by the local MP at the end of 2004. The evidence indicates that the Planning Enforcement Officer attended a meeting with the MP's caseworker, made an unannounced visit to White Farm, and, on 24<sup>th</sup> January 2005, responded to the MP's office on the outcome of his investigation, essentially that there was no evidence to suggest that lorry repairs were taking place, and that Mr and Mrs T's haulage vehicles were being serviced and maintained at another location. He also said that it was acceptable to park up to 2 HGVs and for a lorry to receive minor mechanical/electrical attention undertaken by Mr T on an occasional basis. In relation to equine related development, his letter said that planning permission was not required for the "horse walker" but should have been obtained in respect of the ménage, but as its impact on the amenity was not significant, no further action was considered necessary.

400. A check had been made of the site history in May 2004 in order to respond to concerns/queries raised by the local community council. Planning Officer D visited White Farm in April 2002 and saw nothing untoward. However, he was taken off the case in 2005 following a complaint by Mrs B, and it is not apparent that officers who then became involved were aware of the log of vehicle movements recorded at the end of 2001 – which indicated a pattern of haulage related activity

involving between 1 and 5 HGVs being washed down and serviced at White Farm at weekends.

401. The Council was alerted to further information by Mrs B's surveyor. She referred the former Planning Enforcement Manager to the haulage company's website, and by telephone on 24<sup>th</sup> March 2005, of the outcome of her own enquiries to the effect that Mr and Mrs T were only occasionally parking a lorry at their licensed operating centre in the locality. Mrs B also said she had "clear unambiguous evidence" to support her claims, and would present it at the appropriate time. This included photographs taken during the early part of 2005 which depicted haulage related activity at White Farm. It also included video footage of lorry movements out of White Farm. The former Planning Enforcement Manager said he did not recall being shown the photographs or offered the video footage at the meeting with Mr R on 3<sup>rd</sup> May 2005. Mr R's Surveyor who was present, believed Mr R, who came to the meeting armed with photographs and papers, would have produced the photographs and made the Council aware of the footage and she recalled having seen the photographs prior to being sent copies by the investigating officer. Mr R had also referred to them in his letter dated 1<sup>st</sup> November 2005 to the Council and invited the Council again to view them. On balance, therefore, I am inclined to think that this evidence was shown/offered at the meeting. In any event, it was offered to the Head of Planning at his meeting on 12<sup>th</sup> July 2005, but he declined to view it, as by that time a complaint had been submitted to the Ombudsman, and he had decided not to look at past investigations by enforcement officers.

402. None of the planning officers interviewed said they had seen the photographs or the footage. However, Planning Officers D and E said the photographs depicted more than they had seen on their visits, and the Head of Planning said the photographs depicted activity which required an explanation. Moreover, the footage, as subsequently shown on the current affairs programme, depicted between 1 and 4 HGVs departing from White Farm prior to 7 am on a number of days in February and March 2005.



403. It is unfortunate that relations between the Council and Mrs B deteriorated to the extent that they did. Whilst I have noted Mrs B's comments about the Council's attempt to mediate between her and her neighbours, I am not persuaded that it was unreasonable. It also reflected guidance given in TAN 9. Nor was its invitation to Mrs B and Mr R to complete further logs of noise/disturbance in respect of White Farm unreasonable.

404. However, there were other signs that the Council missed or chose to ignore. The Planning Inspector's report relating to the First Shed referred to the presence of 2 commercial tipper wagons and 2 earth moving machines on the holding. The Council appeared to have been aware in the early days that White Farm was a licensed operating centre for one HGV, but it was not until October 2011 that its planning officers became aware that this had been increased to 3 in December 2005 even though it received details of applications and variations from the Traffic Commissioners. Councillor 1 was not aware of the position when he appeared on the current affairs television programme in 2006, and explained (based on advice he said he had received from officers) that the parking of 2 lorries did not constitute a business, but planning permission should be applied for if 3 were involved. However, officers in the Public Protection Department had established that White Farm was a licensed operating centre for 3 HGVs in August 2007 (paragraph 114 refers). The grant of an operator's licence does not obviate the need for planning permission. The former Planning Enforcement Manager said he thought that Planning Officer D had visited Mr and Mrs T's other licensed operating centre in the locality. However, no such visit was made, and given the information provided by Mrs B's surveyor, it would have been reasonable for such a visit to have been made.

405. I accept that the photographs and video footage, by themselves, would not be sufficient, for example, to sustain enforcement action. However, they should have been seen as part of an information gathering exercise. The fact that a complaint had been made to my predecessor did not prevent the Council from taking appropriate action in relation to any matters complained of (paragraph 31 of Appendix 1 refers). Moreover, there was a history of complaints from 2001, Mrs B

had complained of intimidation by Mr and Mrs T because she had made complaints to the Council, the Council was aware of problems experienced by the former owner of her property and that Mr T was capable of aggressive and abusive behaviour. I recognise that the Council cannot involve itself in disputes between neighbours. However, there were planning issues involved, and I think it would have been reasonable in all the circumstances for the Council to have considered the photographs and footage as part of an information gathering exercise. Had these measures been taken, the Council could then have considered whether a material change of use was taking place, and if so, whether it was expedient to take action. In this connection, I have noted the concerns expressed by Officers D and E (at paragraphs 253 and 263) that the use of White Farm as a licensed operating centre for 3 HGVs might have indicated that a change of use was taking place. Bearing in mind the problems of intimidation complained of by Mrs B and Mr R, the Council could have considered whether additional surveillance was necessary, and/or invited Mr and Mrs T to submit a planning application. I recognise that the Council would not wish to duplicate the controls imposed by the Traffic Commissioners. However, the environmental conditions imposed in December 2005 related to 2 vehicles only. I also recognise that Council officers may not have seen evidence on their visits of specialist servicing/repairs of HGVs. However, these factors do not, in my view, obviate the need to have considered whether, in the circumstances, enforcement action was necessary or a planning application should have been invited. A planning application would have enabled other matters to be considered, such as the use of the land for the operation of the haulage business, the parking of additional non agricultural HGVs and associated maintenance such as cleaning and power washing, as well as the impact on the visual amenity of the locality, the Council's policies, and the adequacy of the access and local highway network.

406. Subsequently, the Council appeared to have acknowledged in 2006 (at the time of the planning application in respect of the proposed cattle shed) that equine and haulage related uses were the primary uses of the site. The Council said it undertook a review of the planning issues at that time. However, it was not until November 2007, and after further

correspondence from Mrs B in which she had pursued her complaints with particular reference to the use of White Farm as an operating centre for HGVs, that she was notified of the outcome of that review. She was informed that no change of use of the First Shed to the commercial operations of the haulage business had taken place. But on 28<sup>th</sup> February 2008, the Director of Regeneration and Leisure informed her that previous site inspections had “proven claims that the [First Shed] was not being used for agricultural purposes”, a statement which was confirmed by the Head of Planning at interview. If this statement was correct, then the Council should have considered whether a breach of the agricultural condition relating to the First Shed had occurred. That said, this statement is at odds with the Director’s later letter dated 15<sup>th</sup> January 2009 which appears to say the opposite (paragraph 33 refers). The Council’s position does not appear to be clear.

407. Although Mrs B pursued her complaints about equine and haulage related uses in 2008, 2009 and 2010, by that time the PCP had been imposed and she was advised that only new issues would be looked at. In February 2010, the Council reviewed new video footage submitted by Mrs B. The summary prepared by officers showed in the order of 111 HGV movements over 11 days between 4<sup>th</sup> and 28<sup>th</sup> January 2010. The numbers of lorry movements varied between 1 and 36 per day. Photographs taken by Officer L depicted agricultural implements stored outside one of the sheds, horses inside a shed, 10 HGVs (one of which appeared to be a livestock transporting lorry), a milk float or similar, discarded vehicle parts, tyres, lorry container backs, shipping containers and skips. Officer L also said at interview that there was a further lorry in the Third Shed (paragraph 337). However, Mrs B was informed by the Chief Executive in his letter dated 15<sup>th</sup> March 2010 that there was no evidence of car scrapping or haulage operation. Nor did the Chief Executive’s letter refer to equine activity at White Farm. The Head of Planning also claimed at the PCP review meeting in May that “nothing new was indicated” by his site inspection and that the video footage had been wound forward in order to show lorries coming in and out of the farm in succession. For the reasons explained below (in relation to Mrs B’s claim that she was accused of falsifying the video evidence) I do not see that the Council’s scepticism was justified. In the circumstances, I

do not consider the response contained in the Chief Executive's letter to be convincing.

408. In relation to the equine related activity, it was only after the Inspector's decision on the 2010 appeal was issued that the Council tackled Mr T on the question of equine use, leading eventually to the grant of planning permission for mixed use of the sheds for agricultural, equine and vehicle storage.

409. I also find the Head of Planning's comment at interview, that lorries entering and leaving White Farm to the extent claimed by Mrs B did not indicate a material change of use, difficult to reconcile with the Council's consistently stated position from 2001 that the parking of 2 HGVs was acceptable, but that the parking of 4 lorries was a different matter. Mrs B had reported occasions over the years when between 5 and 10 lorries were entering and leaving or parked at the site supported by photographs and video footage. Lorry movements of the extent claimed by Mrs B could indicate the use of the site as a lorry depot where lorries were parked when not in use. Moreover, the Council appeared reluctant to accept Mr T's admission at the public inquiry in 2010 that he had been operating 5 lorries from White Farm for 10 years. Whilst this may not have tallied with what he (or the late Mrs T) had told Officers earlier, it was evidence given on oath, and I do not see why it should not have been accorded due weight.

410. I recognise that Mrs B's communications had become difficult to manage. However, there is also evidence to indicate that Officers lost patience with Mrs B, giving the appearance that as a result, their objectivity may have been impaired. This is evident from the emails of the former Planning Enforcement Manager dated 29<sup>th</sup> April and 26<sup>th</sup> May 2005 (paragraphs 17 and 67 above), and his comments when interviewed. Furthermore, comments made to Assembly officials in May 2008 to the effect that the clip on the 2005 television programme showed the same lorry giving the impression of a constant movement of lorries, and to the PCP review meeting in May 2010 (to the effect that the later footage had been wound forward "over a large period" to show lorries coming in and out of the farm in succession) also, in my view,

point to a lack of objectivity, given that the footage concerned showed timed and dated vehicle movements. In making this point, I recognise the concerns of the Head of Planning and the former Planning Enforcement Manager about Mrs B's interference with the evidence gathering process in relation to the initial dog barking complaint. But this did not prevent the Environment Health Officers from undertaking a further noise monitoring exercise, which led to the service of an abatement notice. In reaching this conclusion, I have noted the Council's further claim that it had acted objectively and consistently, and its concerns about the uncompromising nature of Mrs B's comments in her email dated 14<sup>th</sup> February 2011. However, and whilst not condoning her action in writing in this way, they were made after the PCP was disapplied to her and after she had received the Inspector's report in respect of the other site when she may have felt vindicated in some of her claims. In any event, I am not persuaded that her comments at this stage are relevant to the apparent lack of objectivity displayed by the Council in 2005, 2008 and 2010, and as mentioned earlier, by Officer F in his comments both at interview and on the draft report, given that he had left the Council by the time Mrs B's comments were made. I have also noted Mrs B's concerns that derogatory comments made about her by officers are a slur on her character. It is an unfortunate feature of this case that uncomplimentary statements were made on all sides. However, and as mentioned earlier, my role is limited to considering the extent to which recorded comments made by serving and former Officers gave rise to the appearance of a lack of objectivity on the part of the Council.

411. However, and having regard also to the specialist advice I have received, I am not persuaded that the Council's stance in relation to the large removal lorry parked by Mrs B's boundary was wrong. It was a moveable structure and, whatever Mr T's motives for parking it so close to Mrs B's cottage, it was capable of being used for agricultural storage, and there is some evidence that it was so used (see paragraph 261). The Council tried to persuade Mr and Mrs T to move it, but I do not see that its decision not to take any further enforcement action to be unreasonable in the circumstances.

412. Turning now to the large board, the Council's position is that it, and the CCTV camera mounted on Mrs B's property, were unauthorised in planning terms, and that due to the ongoing disagreement between Mrs B and her neighbour, it was not in the public interest to request planning applications in respect of either development. Officer L said the conduct of the parties was relevant in deciding whether it was expedient to take action. PPW 2002<sup>9</sup> said that the planning system does not exist to protect the private interests of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. That advice remains unchanged. TAN 9<sup>10</sup> on enforcement says that the decisive issue for the local planning authority should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. I think it is debateable whether planning permission was specifically required for the siting of the CCTV camera in this case, given the location of the pig pen adjacent to Mrs B's boundary and the pig faeces incident and I am reinforced in that view by my Planning Adviser. I think that in the circumstances the placing of the CCTV camera could, arguably, have been justified on security grounds. My Planning Adviser also said that the conduct of the parties should have little bearing on the question of whether enforcement action should be taken, and that enforcement action would have been justified. I recognise that the Council has discretion, and what Officer L said about the use of resources. Nevertheless, and based on the guidance referred to earlier and the advice of my Planning Adviser, I do not consider that the conduct of the parties is a relevant planning and land use consideration. In the case of the board, the relevant consideration was the impact of the board on the existing use of land and buildings meriting protection in the public interest, namely Mrs B's property, irrespective of her conduct or that of her neighbours. There was no assessment of the board from Mrs B's property. I have noted the Council's further comments, but I have been unable to reconcile those comments with the planning guidance mentioned above. In the circumstances, I do not consider that

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<sup>9</sup> See Appendix 1 paragraph 13

<sup>10</sup> See Appendix 1 – paragraph 17

the Council approached the exercise of its discretion correctly. As a consequence, the board, which is located 2 metres from Mrs B's bedroom window and obscures light to it, is now immune from enforcement action.

413. Accordingly, I find that the failures identified above, namely the Council's failure to look at the photographs and the video footage, the failure to make enquiries in respect of the other licensed operating centre, the failure to liaise with the Traffic Commissioners or be aware of the application to increase the number of HGVs at White Farm, the failure to consider whether a planning application should be invited after White Farm became a licensed operating centre for 3 HGVs, its apparent lack of objectivity in relation to Mrs B's subsequent concerns including the failure to notify her of the outcome of its review of the planning issues at White Farm in September 2006, its apparently ambiguous position in relation to the uses to which the sheds were being put, and her further complaint in 2010 amounts to maladministration. I also find that the Council's failure to take enforcement action in respect of the large board amounts to maladministration. Whilst noting the Council's comment that officers did not have the benefit of hindsight, this does not, in my view, excuse the failures to address Mrs B's complaints in the light of the information which was available, or which the Council ought to have been aware of, at the time.

414. As pointed out by my Planning Adviser, the limited farming activity at White Farm does not mean that it was no longer agricultural land. However, as a consequence of the failures mentioned above, the opportunity for assessing the impact of any change of use on Mrs B's and Mr R's amenities, perhaps in the context of a planning application, was not taken, and that is an injustice to them. However, and bearing in mind the advice I have received, it seems likely that a planning application for change of use to agricultural, equine and haulage related uses would have been granted, but subject to conditions aimed at reducing the impact of such uses on local amenities. In addition to restrictions on hours of operation, numbers of vehicles and vehicle maintenance activity, such conditions could restrict, for example, any scrap, waste or recycling operations from taking place. In the meantime,

it is not surprising that Mrs B and Mr R felt that their concerns were not being taken seriously.

415. I have considered Mrs B's comments to the effect that the dispute with Mr and Mrs T about the right of way and ensuing difficulties could have been avoided had the Council taken more robust action in 2004. However, I am not in a position to determine with any certainty that the dispute would not have occurred had the Council taken such action. In my view, the possibility that Mr and Mrs T would not have acted as they did cannot be ruled out, and there was a need for Mrs B and Mr R to resolve the problems about the access way by means of legal action against their neighbours. However, I consider that the Council's failures identified above may have added to their distress.

416. I therefore uphold this complaint, with the exception of the complaint about the siting of the removal lorry by the boundary.

Whether the Council accused Mrs B of making "malicious/possibly unfounded complaints", pursuing a "vendetta" and "falsifying evidence"

417. The "malicious/possibly unfounded" complaints comment appeared in the note of a meeting in August 2005 attended by Officer L, Officer J, a police officer and the former Anti-Social Behaviour Coordinator (paragraph 77). Officer L said he did not recall making the comment, and Officer J (who noted the comment) believed it was made by the Police officer. Whilst I am satisfied that the comment was made, I do not consider the evidence points to it having been made by either Officer L or the former Anti-Social Behaviour Coordinator. Whilst noting that the comment was made in the context of a note about complaints to the police, it is not possible to conclude with certainty who made the comment. I do not, therefore uphold this part of the complaint.

418. There was a further reference to "malicious" complaints made by Mrs B and Mr R in an email to Officer J on 5<sup>th</sup> June 2008 following the conviction of Mrs T in respect of cockerel noise nuisance (paragraph 113). The evidence indicates that this related to the earlier comment made during the meeting in August 2005 rather than, for example, a gratuitous comment by the author. I can understand that Mrs B and Mr



R were aggrieved by the comment. However, and whilst it might have been unwise, I do not consider, given the context in which it was made, that it points to maladministration by the Council.

419. Mrs B claimed that Officer L accused her of conducting a vendetta against her neighbours in his letter dated 2<sup>nd</sup> April 2007 (paragraph 102) above. In the letter, Officer L stated that he could not use resources “into what has developed into a vendetta...” He denied at interview that this was an accusation specifically against Mrs B, but was used in the context of an unpleasant dispute between 2 parties, both of whom will use whatever means they can to get the other party investigated. No parties are specifically referred to in the statement, and whilst noting Mrs B’s further comments, the statement in the letter does not in my view point unequivocally to the interpretation claimed by Mrs B. I do not, therefore, uphold this part of her complaint.

420. The claim of “falsifying evidence” relates to Officer L’s comments in his letter dated 13<sup>th</sup> May 2008 to the Assembly official to the effect that the clip on the 2005 television programme showed the same lorry giving the impression of a constant movement of lorries (paragraph 71). It also relates to his comment to the PCP review meeting in May 2010 when he is recorded as saying that recently submitted footage had been wound forward “over a large period” to show lorries coming in and out of the farm in succession (paragraph 170), and to his comments at a meeting with officials of the Welsh Audit Office in August 2010, at which in relation to the DVD evidence, he expressed doubts about the credibility of Mrs B and Mr R as witnesses as they had “doctored” dog barking evidence. He also said that the continuity in the DVD was suspect with lorries departing at high frequency (paragraph 171 above).

421. The footage shot by Mrs B in 2005 and in 2010 included timed and dated footage of lorry movements as described in this report (paragraphs 70 and 160). Mrs B said that the footage was filmed on a CCTV camera which laid the information down on the hard drive of her computer and could not be meddled with. The Council has not provided any other evidence to substantiate its concerns, other than, as mentioned above, Mrs B’s interference with the evidence gathering

exercise in the dog barking complaint. I am not persuaded, therefore, that the reported comments, insofar as they related to the DVD footage, were justified, and for the reasons explained earlier, they gave rise to the appearance of a lack of objectivity on the part of Officers. As a consequence, not only were the comments upsetting to Mrs B and Mr R, but there is the possibility that the Council failed to approach the footage with an open mind, which in my view amounts to maladministration and injustice.

422. I therefore uphold this part of the complaint.

Whether the Council acted reasonably when it applied its PCP to Mrs B and Mr R

423. It is unfortunate that the file of the former Complaints Officer who completed the original referral of Mrs B's and Mr R's case for consideration under the PCP was not available to the investigation. Only copies of relevant documents were inspected, and I must make my findings on the basis of the evidence to hand.

424. The stated aim of the Council's policy<sup>11</sup> was to deal fairly, honestly and properly with persistent complainants whilst ensuring other service users, officers or the Council as a whole did not suffer any detriment. A further aim was to provide a means for such complainants to be dealt with in a fair and consistent way by all departments of the Council. Decisions to apply the Policy in individual cases needed to be supported by evidence, and Step 2 said it was good practice to make clear to a complainant regarded as unreasonably persistent or vexatious the ways in which his/her behaviour was unacceptable, and the likely consequences of refusal to amend them, before taking action under the Policy.

425. In this case, the evidence suggests that the case for invoking the PCP may have been overstated in terms of the number of letters received, and the claim that Mrs B and Mr R had refused access to enforcement officers. The referral form referred to over 30 letters

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<sup>11</sup> See Appendix 1 – paragraph 34

received from Mrs B since July 2005, whereas the schedule of letters prepared by the Planning Department at that time recorded that 14 had been received since July 2005 (paragraph 126). There was only one occasion, namely on 31<sup>st</sup> March 2005 when Planning Officer D called on Mrs B, but she said she was on her way out. The note records what appears to have been a short exchange in which the Officer was asked to call on another occasion (paragraph 56), and he visited again in April. Neither Planning Officer D nor the other Planning Officers interviewed said they had been refused access by Mrs B.

426. Even if, however, the use of the Policy was justified, there is no satisfactory evidence to indicate that Mrs B and Mr R were given a warning as advised by Step 2, or that there were sound reasons for departing from this advice. Mr and Mrs B said they were not given a warning. The referral form stated, by means of a ticked box that there had been “a meeting with the customer to discuss the particular concerns”, but the only meeting referred to was the meeting with the Head of Planning some 2 years earlier, on 12<sup>th</sup> July 2005.

427. Step 5 of the Policy required that action taken to direct communication with a named officer or to restrict contact should be clearly and promptly communicated to the persistent complainant with reasons where appropriate. Although the Council has confirmed that the Policy was based on guidance issued by my predecessor<sup>12</sup>, there was no requirement that a complainant be told they could appeal against a decision to restrict contact. The Council’s letter dated 17<sup>th</sup> August 2007 to Mrs B and Mr R contained a brief reference to earlier complaints and informed them that further planning related correspondence be sent direct to the Director of Regeneration and Leisure, who would deal with it accordingly. They were not informed they could appeal against this decision. It was not until they received the Director’s further letter dated 28<sup>th</sup> February 2008 that Mrs B and Mr R became aware that the PCP had been applied to them. At that stage Mrs B had claimed that the Council was “trying to silence” her and that it was her “democratic right” to contact whomsoever she wished at the Council regarding matters

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<sup>12</sup> See paragraph 33 of Appendix 1

which affected her property. Had the Council informed them they could have appealed, it is likely that it would have provided more information about the reasons for the decision and the PCP itself. Moreover, there was a failure to provide them with a copy of the Policy promptly when they requested it in April 2009. I recognise that Mrs B and Mr R were taking legal advice at the time, and could have challenged the action. However, this does not excuse the Council's failures.

428. The PCP required that reviews of a complainant's status be held every 6 months. However, reviews at those frequencies were not held in this case. There was no review on the date set for the first review (1<sup>st</sup> November 2007). The evidence about the review on 24<sup>th</sup> January 2008 is conflicting, and comprises an unsigned "case review by Departmental Representative" document. Officer I said there was a meeting, but could not recall who attended. However, Mrs B was subsequently notified by the Council's Information and Data Protection Officer that a formal meeting was not convened. Unlike subsequent reviews, there were no meeting notes. However, the case review document referred to the concerns of Councillor 2 which prompted the Chief Executive's letter to Mrs B and Mr R on 29<sup>th</sup> January 2008. It appears, on balance, therefore that a review of some kind was held. Further reviews were held on 22<sup>nd</sup> August 2008, 5<sup>th</sup> March 2009, 30<sup>th</sup> September 2009, 4<sup>th</sup> May 2010, and finally on 28<sup>th</sup> January 2011, when the PCP was disapplied in Mrs B's and Mr R's case.

429. In the email dated 16<sup>th</sup> January, which featured in the January 2008 review, Councillor 2 said she had heard that Mr R had been "threatening to neighbours". Councillor 2 was not the ward member, but was a neighbour, had received a number of calls from Mr R which she had found threatening and amounted to harassment, and had asked the Head of Planning how she should respond. He advised her to contact the Legal Department and she did so, explaining why she was asking for advice. At interview, the Director explained also the need to provide support to Members if contact was causing stress. In the circumstances, and given the context in which the email was sent, namely that the PCP be extended to include communications with Members, I am not

persuaded that the reference to Mr R in this way points to maladministration by the Council.

430. However, there seems to have been no reason for the Council to have overstated its reasons for extending the PCP to members when it referred to a “number of councillors” and “several members ” (in the Director’s letters dated 27<sup>th</sup> February and 15<sup>th</sup> April 2008 respectively, see paragraphs 139 and 141 above). It is not surprising that Mrs B was prompted to pursue the claim further, and it was not until March 2010 that she was informed (by Officer K ) that the concerns had related to only 2 members, namely Councillor 2 and one other member (paragraph 157 refers).

431. The Council’s Policy at the time did not specifically require that the outcome of reviews be notified to those affected. The Council’s decision not to notify the outcome of the reviews in March and September 2009 to Mrs B and Mr R appeared to be informed by concerns that they would raise human rights issues. I accept that there may be circumstances where such action is justified. However, when looked at in the context of the other failures mentioned earlier, I am not persuaded that the reasons given for the decisions not to notify them of the outcome of the reviews in this case were appropriate.

432. At the review on 5<sup>th</sup> March 2009, Officers decided that “due to the quantity and nature of the emails, measures will also be taken to block their email address” (paragraph 146 above). The decision was communicated to Mrs B and Mr R on the same day by the Director when he said “emails and telephone calls in relation to complaints will no longer be accepted by the authority”. At interview, Officer 1 said that the intention was to block email access to officers and that there was never any intention to block access to Councillors. However this was not made clear in the minutes, or the action that was taken, or in the subsequent notification to Mrs B and Mr R. Moreover, when it became apparent in July 2009 that the restriction was affecting Mrs B’s right to contact councillors, no checks were apparently made to ensure that the measures taken to enable such access were effective. Nor was the opportunity taken to notify Mrs B at that stage, that the restriction on

emails was not intended to prevent her from emailing councillors. As a consequence, the restriction remained in place until April 2010, when it was raised again by a senior Assembly official. Although the Council has said that the restriction on her email access to elected members was unintentional, this was not apparent from the documentation which Mrs B saw. Under these circumstances, I can understand why Mrs B felt that the Council was being dishonest in saying that the block had been an oversight.

433. In the circumstances, given the stated aim of the policy to deal fairly, honestly and properly with persistent complaints as mentioned earlier, I find the failure to notify Mrs B and Mr R of its intention to take action under the Policy, its failure to communicate the decision to them adequately, its failure to inform them that they could appeal and to furnish them promptly with a copy of the Policy, and its failure to notify them of the outcome of reviews and its action in blocking email access to their elected ward member amounts to maladministration. As a consequence, they suffered the injustice of being deprived of the opportunity of challenging the decision, being denied access to their elected representative, and obliged to write and post letters to the Council. They were also made to feel more vulnerable.

434. I therefore uphold this complaint

Whether the Council's responses to Mrs B's further complaints in 2009 and 2010 were reasonable

435. After the PCP was implemented the Council informed Mrs B and Mr R, that it would consider and investigate any new complaints, and that correspondence should be addressed to the Director, who would ensure that it was dealt with. See for example, the Director's letter dated 27<sup>th</sup> February 2008 ( paragraph 139).

436. On 11<sup>th</sup> and 16<sup>th</sup> June 2009 Mrs B wrote to the Director about "further industrial work" being carried on at White Farm adjacent to the sheds. She said she received no reply, and further copies were sent to the Council by the Assembly Member. The Council, in its reply to the Assembly Member dated 11<sup>th</sup> August 2009 said it had replied to Mrs B's

letters on 17<sup>th</sup> June 2009. No copy of that letter was produced, but on seeing the draft report, the Council produced a letter dated 18<sup>th</sup> June 2009. However, this merely stated that the contents of her letters had been referred to the Planning Department and acted upon where appropriate. Mrs B eventually complained to the Chief Executive about the Director's failure to respond to her correspondence, and in his reply dated 15<sup>th</sup> March 2010, the Chief Executive said a response had been provided, but did not give particulars. At interview, the Director said he did not recollect Mrs B's letters of 11<sup>th</sup> and 16<sup>th</sup> June 2009, and agreed that they were concerned with development on the yard at White Farm adjacent to her property, rather than the other land at White Farm which was the subject of enforcement action. He was unable to say whether Mrs B received a specific response to her correspondence. By contrast, Officer L said her letters related to the other land, and that she received a response on 10<sup>th</sup> June 2009 (paragraph 355 refers).

437. In my view, Mrs B's letters dated 11<sup>th</sup> and 16<sup>th</sup> June 2009 related to further development taking place at White Farm adjacent to her property, and I am not persuaded that the Council's letter dated 18<sup>th</sup> June 2009 was an adequate response in that it did not say what action was being taken in respect of that development, or alternatively, explain why no action was considered necessary. Furthermore, the failure was not recognised and addressed when she subsequently complained to the Chief Executive. At interview, the Director said the purpose of managing communications from Mrs B and Mr R through him was to achieve a better conduit between the Council and the Complainants for dealing with the issues they had raised. However, this aim was not achieved. I find the failure to respond substantively to Mrs B's correspondence, and the further failure to deal with it adequately when she subsequently complained to the Chief Executive amounts to maladministration. As a consequence Mrs B suffered the injustice of being denied a proper consideration of the issues she had raised.

438. I therefore uphold this part of the complaint.

## **Recommendations**

439. I recommend that the Council should take the action specified in paragraphs 440 – 447 below to remedy the injustice and address the shortcomings identified in this report. In making my recommendations, I have had regard to the advice of my Planning Adviser to the effect that the Second Shed was likely to have been granted planning permission had it been the subject of a planning application, and that the impact of the largely unregulated haulage related uses at White Farm is in the circumstances, likely to be limited.

440. I recommend that within three months of the date of this report, the Council should carefully address the enforcement issues arising from the haulage related uses at White Farm referred to in this report to determine the options for taking action (if any), and to notify me of the outcome.

441. The Council has informed me that enforcement matters are not within the terms of reference of the Council's Planning Committee, but are delegated to officers under the Council's scheme of delegation. In the circumstances, and in view of my concerns that the handling of Mrs B's complaints about unauthorised development at White Farm under the Council's scheme of delegation to officers gave rise to an apparent lack of objectivity, I recommend that the Council should, within three months of the date of this report, ensure that the concerns identified in this report are brought to the attention of Members, and to send me details of the Members' consideration of those concerns.

442. I further recommend that the Council should within six months of the date of this report, reflect on whether its constitution needs to be amended so that its Planning Committee can consider or call in enforcement cases in appropriate circumstances, and to notify me of the outcome of its deliberations.

443. The Council should within 3 months of the date of this report, pay the sum of £2,500 as redress to Mrs B and Mr R for the injustice



identified in this report and in respect of their time and trouble in pursuing their complaints with the Council and then with me.

444. The Council should use its best endeavours to persuade Mr T to remove the large board which is now immune from enforcement action. If however, the Council is unable to persuade Mr T to remove the large board within 6 months of the date of this report, it should pay an additional sum of £1,000 to Mrs B and Mr R to reflect the long term impact of the board on their amenities.

445. The Council should, within 3 months of the date of this report, make a fulsome apology to Mrs B and Mr R for the failures and shortcomings identified in this report.

446. The Council should also, within 3 months of the date of this report:

- conduct a review of its planning/enforcement procedures for dealing with complaints to avoid a repetition of the shortcomings identified in this report;
- review its procedures for liaising with Traffic Commissioners/VOSA in appropriate cases.

447. Although the Council has adopted a revised PCP which appears to address some of the shortcomings identified in the policy referred to in the complaint, I recommend that the Council within 3 months of the date of this report should ensure, by means of appropriate awareness training, that its procedures are actually followed, and that undertakings to look at new complaints are fulfilled. In the meantime, the Council's action in implementing a complaints procedure which complies with the Model Concerns and Complaints Policy issued by the Welsh Government in July 2011 is to be welcomed, and I see no need for a specific recommendation in that regard.

448. The Council, having seen a draft of this report, has agreed to implement the recommendations within the timescales stated above.

These timescales are the permitted periods for the purpose of Section 21 of the Public Services Ombudsman (Wales) Act 2005.

Peter Tyndall  
Ombudsman

5 July 2012

## Relevant Legislation, Guidance, Policies and Procedures

### The need for planning permission

1. Planning permission is normally required from the local planning authority, in this case, the Council, to develop or make a material change in the use of land<sup>13</sup>. However, the use of land for agricultural purposes, does not involve development<sup>14</sup>. The courts have held that some temporary structures used for agriculture are not buildings in planning terms but are a use of land and so outside the general scope of planning control<sup>15</sup>. Agriculture includes the grazing of horses, but not the breeding and keeping of horses otherwise than for their use in the farming of land<sup>16</sup>.

2. A material change in the use of land (including land used for agricultural purposes) may occur where an ancillary use which is ordinarily incidental to the primary use of the site becomes a separate use in its own right, or if the site has a dual use. In borderline cases, the courts have accepted that it is proper to assess materiality in planning terms, having regard to the possible effect of the change on local amenities.

3. “Permitted development rights” as specified in the Town & Country Planning (General Permitted Development) Order 1995 (“the GPDO”) are granted for a range of agricultural buildings and operations subject to certain limitations regarding size, height and proximity to roads and aerodromes<sup>17</sup>. These rights include the erection of buildings below a certain size provided the building is not to be used for the accommodation of livestock within 400m of a neighbouring dwelling house. Agricultural permitted development rights also include quarrying or mineral extraction provided the quarried or extracted material is not

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<sup>13</sup> Part III Town & Country Planning Act 1990

<sup>14</sup> Sec 55(2)(e) Town & Country Planning Act 1990

<sup>15</sup> Wealden District Council –v- Secretary of State for the Environment [1988] JPL 268 CA

<sup>16</sup> Belmont Farm Ltd –v- Minister of Housing & Local Government (1962) 13 P &CR 417

<sup>17</sup> Part 6 Class A of the GPDO

moved off the unit. However, proposals to construct a new building or carry out excavations must first be notified to the Council for a determination as to whether its prior approval of certain details of the development is required. The Council, on receipt of such a notice, may either determine that prior approval is not required, or notify the applicant within 28 days that further details are required, in which event, the Council may require the submission of a planning application. Guidance on the prior notification procedure issued by the former Welsh Assembly Government in TAN 6 “Agricultural and Rural Development” (issued in June 2000) advised (in paragraph B4 of Annex B) that provided all the GPDO requirements are met, the principle of whether the development should be permitted is not for consideration. Only in cases where the authority considers that a specific proposal is likely to have a significant impact on its surroundings would the Welsh Government consider it necessary for the authority to require the formal submission of details for approval. (Similar advice appears in a revised TAN 6 issued in July 2010).

4. Permitted development rights are also available for the erection or alteration of a gate, fence, wall or other means of enclosure provided the height of the gate, fence, wall or means of enclosure does not exceed 1m where adjacent to a public highway used by vehicular traffic, and 2 m elsewhere<sup>18</sup>.

5. The installation on a building (including a dwelling) of a closed circuit television camera to be used for security purposes is permitted under the GPDO provided it is higher than 2.5 m above ground level<sup>19</sup>.

6. Planning applications are required to be publicised or notified to neighbouring occupiers. In dealing with applications involving development on agricultural land, the Council said it sometimes obtained advice from its Corporate Property officers on the viability of the unit to accommodate the proposed development.

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<sup>18</sup> Part 2 Class A of the GPDO

<sup>19</sup> Part 33 Class A of the GPDO

7. Prior notifications under the GPDO are not subject to such publicity requirements, but the Council, nevertheless, consults the local ward member and the local community council.

8. Planning permission may be granted subject to conditions. Advice on the use of conditions issued by the former Welsh Office in 1985<sup>20</sup> said that conditions should be necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. It said that conditions which duplicated the effect of other controls would normally be unnecessary.

9. A person whose planning application has been refused by the Council may appeal to the Planning Inspectorate of the Welsh Government.

#### Unauthorised development

10. Development which is undertaken without planning permission is generally unlawful (though not in itself an offence). The Council may take enforcement action where it appears that there has been a breach of planning control and that it is expedient to do so, having regard to the provision of the development plan and to any other material considerations<sup>21</sup>. The carrying out of unauthorised building operations is immune from enforcement action 4 years after the development is substantially completed. In the case of development comprising a material change of use, the limitation period is 10 years<sup>22</sup>.

11. Enforcement action may consist of the issue of an enforcement notice specifying the breach of planning control in question and the steps required to remedy the breach. Where it appears that a breach of planning control has occurred, the Council may serve a planning contravention notice ("PCN") on the owner or occupier of the land. The PCN requires the owner or occupier to furnish information about his interest in the land and about operations or activities being carried out or taking place on the land, or the use of the land. It is an offence for any

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<sup>20</sup> Welsh Officer Circular 35/95

<sup>21</sup> Sec 172 Town & Country Planning Act 1990

<sup>22</sup> Sec 171B Town & Country Planning Act 1990

person on whom a PCN has been served not to comply with any requirement.

### Planning guidance issued by the Welsh Government

12. At the time of the events leading to the complaint, guidance was contained in Planning Policy Wales 2002 (which was replaced in February 2011), and TAN 9.

13. Planning Policy Wales 2002 (“PPW 2002”) said that the role of the planning system is to regulate the development and use of land in the public interest. Paragraph 4.1.7 said:

“The planning system does not exist to protect the private interests of one person against the activities of another. Proposals should be considered in terms of their effect on the amenity and existing use of land and buildings in the public interest. The courts have ruled that the individual interest is an aspect of the public interest, and it is therefore valid to consider the effect of a proposal on the amenity of neighbouring properties. However, such consideration should be based on general principles, reflecting the wider public interest (for example a standard of ‘good neighbourliness’) rather than the concerns of the individual”.

14. PPW 2002 stated further (at paragraph 7.6.8) that agricultural permitted development rights are granted to meet farming needs and not for purposes of diversification, and that such rights should not be abused, for example, to circumvent normal planning policies on new building in the open countryside. It said that new farm buildings should be sited on land which is in use for agriculture for the purposes of a trade or business and must be reasonably necessary for the purposes of agriculture. The courts have held that the test is whether the building is reasonably necessary for, and if so, is it designed for, the purposes of the activities which might reasonably be conducted on the unit in question.<sup>23</sup>

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<sup>23</sup> Clarke v Secretary of State for the Environment [1992] 42 EG 100

15. PPW 2002 also contained guidance on the enforcement of planning control. It stated that enforcement action needs to be effective and timely, that local planning authorities should look at all means available to them to achieve the desired outcome, and that in some cases, mediation may be an agreed way forward.

16. PPW 2011 contains similar advice.

17. TAN 9 on the enforcement of planning control points out (at paragraph 5) that enforcement action is discretionary and should be used as a last resort and only when it is expedient. However, this should not be taken as condoning the wilful breach of planning controls. It also points out that powers are available to local planning authorities to bring unauthorised development under planning control and it is for them to decide which power, or combination of powers to use. It continues (at paragraph 6):

“ ... the decisive issue for the local planning authority should be whether the breach of planning control would unacceptably affect public amenity or the existing use of land and buildings meriting protection in the public interest. Enforcement action should be commensurate with the breach of planning control to which it relates; it is usually inappropriate to take formal enforcement action against a trivial or technical breach of control which causes no harm to public amenity. The intention should be remedy the effects of the breach of planning control, not to punish the person(s) carrying out the breach. Nor should enforcement action be taken simply to regularise development for which permission had not been sought, but which is otherwise acceptable ... The initial aim should be to explore, in discussion with the owner or occupier of the land, what steps, if any could be taken to reduce any adverse effects on public amenity to an acceptable level”.

18. TAN 9 states further (at paragraph 12) that where a local planning authority considers that an unauthorised development could be made acceptable by the imposition of planning conditions it should invite the

owner or occupier of the land to submit an application for planning permission.

19. TAN 9 also contains advice on the organisation of planning enforcement control. It says that authorities should ensure that there is a close and cooperative working relationship between the Planning and Legal Departments and other departments, such as building control and environmental health.

#### The Council's arrangements for determining planning applications and prior determinations

20. The Council's constitution authorises its Director of Regeneration and Leisure and its Head of Planning to determine planning applications (except where there are objections based on material considerations or whether the local member has asked that the application be considered by the Council's Planning Committee). The scheme of delegation to the Head of Planning also includes the determination of prior notifications of permitted developments under the GPDO and the investigation of alleged unauthorised development and the commencement of any appropriate enforcement action. The scheme states (at paragraph 1.6) that it remains open nevertheless to the Executive Board or any appropriate Committee of the Council to take decisions on any matter falling within the delegated power of an officer provided that the matter is within the Committee's terms of reference. The scheme further provides (at paragraph 1.13) that it shall always be open to an officer to consult an Executive Board Member, a Committee, or its Chair or Vice-chair before the exercise of the delegated powers.

#### The Council's relevant planning policies

21. The Council's planning policies are contained in the Carmarthenshire Unitary Development Plan 2006 which replaced earlier policies.

22. Policies GDC3 and E8 say that development in the countryside should not normally be permitted except in certain circumstances. These include development which is reasonably necessary for the



purposes of agriculture or in connection with an appropriate farm diversification scheme provided the proposal is of an appropriate scale and compatible with the prime agricultural purpose of the existing working farm, does not lead to levels of traffic generation which is unacceptable in terms of local access conditions, highway network capacity or otherwise detracts from environmental quality, and will not have an adverse impact on the character, setting and appearance of the farm and surrounding countryside.

### Sites of Special Scientific Interest (“SSSI”)

23. White Farm is located in an SSSI which has been notified by the Countryside Council for Wales (“CCW”) under Part II of the Wildlife and Countryside Act 1981 (as amended) because it contains wildlife, geological or landform features which are considered to be of special importance. The owners of land in a SSSI must, in addition to obtaining any planning consents from the Council, obtain consent from the CCW before carrying out any operations, such as quarrying, likely to damage the special interest of an SSSI.

### Licensing of Heavy Goods Vehicles (“HGVs”)

24. The licensing and registration of HGVs is regulated by the Traffic Commissioners<sup>24</sup>. A person who uses an HGV above a certain weight to carry goods in connection with any trade or business must have an operator’s licence issued by the relevant area Traffic Commissioner. The processing of applications for operator’s licences is delegated to VOSA.

25. An applicant for an operator’s licence must demonstrate that he is of good repute, owns or has access to an operating centre for keeping his vehicles when they are not in use, and has sufficient arrangements and financial resources for maintaining his vehicles. Guidance issued by VOSA in October 2009 states that an applicant must ensure that the proposed operating centre meets the requirements of planning law. It states that authorisation under an operator’s licence does not convey any approval for an operating centre under planning law.

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<sup>24</sup> Under the Goods Vehicle (Licensing of Operators) Act 1995

26. An applicant for an operator's licence must advertise the application in a local newspaper so that persons owning or occupying buildings or land in the vicinity of the proposed operating centre have an opportunity to make objections. Additional publicity is given by the Traffic Commissioner by means of the publication "Applications and Decisions" which is posted on the Government's "business link" website and emailed to subscribers. The Council has informed me that it subscribed to the publication.

27. Objections to the grant of an operator's licence are usually heard by the relevant Traffic Commissioner at a public enquiry when the application may be refused or granted with or without conditions. Anyone can complain about the suitability of an operating centre after it has been specified in an operator's licence and the Traffic Commissioner may review the operating centre named in a licence every five years.

28. A licensed operator who wishes to add an operating centre to his licence must apply for a variation. The application must be advertised and publicised in the same way as an application for a new licence, and in the event of any objections or representations, may be granted following a public enquiry.

#### The Council's duty in respect of noise nuisance

29. Where the Council is satisfied that a statutory nuisance, such as a noise nuisance, has occurred, it must serve an abatement notice requiring that the nuisance cease or be abated within a set timescale<sup>25</sup>. The Council may bring a prosecution against a person who fails to comply with an abatement notice which has taken effect.

30. The Council may obtain authorisation to undertake covert surveillance in connection with enforcement action<sup>26</sup>.

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<sup>25</sup> Part III of the Environmental Protection Act 1990

<sup>26</sup> Regulation of Investigatory Powers Act 2000

31. The conduct of an investigation by me does not affect any power or duty of the Council to take further action with respect to any matter under investigation<sup>27</sup>

#### The Council's Persistent Complainants Policy ("PCP")

32. In September 2006 my predecessor issued guidance to local authorities on complaints handling which remains extant. It suggested the Ombudsman's own policy as a possible model for authorities wishing to adopt a suitable policy for dealing with unacceptable actions by complainants.<sup>28</sup> The Ombudsman's policy states that a complainant would always be told what action is being taken to manage actions considered to be unacceptable and why. Complainants are also told in writing why a decision has been made to restrict future contact, the restricted contact arrangements, and if relevant, the length of time that such restrictions will be maintained. The Ombudsman's policy states that a complainant may appeal against a decision to restrict contact.

33. In March 2007, the Council adopted a PCP which referred to the need to address difficulties in the management of complaints caused by the behaviour of some individuals. Officer K confirmed that it was based on the Ombudsman's policy regarding persistent complainants.

34. The stated aim of the Council's policy was "to deal fairly, honestly and properly with persistent complaints whilst ensuring other service users, officers, or the Council as a whole does not suffer any detriment. To provide a means for such complainants to be dealt with in a fair and consistent way by all departments of the Authority".

35. The Council's policy contained a referral process that required evidence to be provided to support a decision to implement the policy in a particular case. It stated that prior to commencing the referral process, the Departmental Complaints Officer should ensure that the complainant had been provided with all appropriate information about the Council's complaints procedure, and that alternative methods of managing the complainant had been considered but were not considered to be

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<sup>27</sup> Sec 13(6) of the Public Services Ombudsman (Wales) Act 2005

<sup>28</sup> The Ombudsman's policy is published on the PSOW website

appropriate. The referral process was the means by which the Departmental Complaints Officer submitted a particular case to the Departmental Representative who decided whether the policy should be applied, and if so, the action to be taken in the management of the complainant. This could include directing contact from the complainant to a named Officer, and restricting contact. “Step 2” of the referral process stated: “It is good practice to make clear to a complainant regarded as unreasonably persistent or vexatious the ways in which his/her behaviour is unacceptable, and the likely consequences of refusal to amend them, before taking action under the Policy.” “Step 5” stated that action taken to direct communication to a named officer or to restrict contact should be “clearly and promptly communicated to the persistent complainant with reasons where appropriate”. The policy said that decisions to treat someone as a persistent complainant should be formally reviewed every six months to ensure that the measures adopted continued to be appropriate or necessary. There was no specific requirement that the outcome of reviews be notified to the complainants.

36. The referral process included a referral form for completion by the Complaints Officer. This required information on whether the complainant had exhausted the relevant complaints procedure and complained to the Ombudsman. It also asked whether there had been “a meeting with the customer to discuss the particular concerns”, and if so, to provide details. It contained provision for the review date to be specified. Neither the referral form nor the policy document said that a persistent complainant could appeal against a decision to restrict contact.

37. The Council’s policy also contained provision to protect staff from threatening or harassing behaviour. This included completing an incident form ADOR1.

38. The Council’s adopted a revised policy in November 2010. This provides for the decision to designate a complainant’s conduct as unreasonable to be taken by the relevant Head of Service in conjunction with the Council’s Corporate Complaints Officer. The revised policy requires a warning letter to be sent to the complainant prior to applying

the policy, and for the complainant, when notified of the decision to apply the policy, to be advised of the procedure for appealing, given a copy of the policy and to be notified of the outcome of reviews.

39. At the time of the events referred to in the Complaint, the relevant Departmental Representative was Officer H. The Complaints Officer passed away shortly before Mrs B submitted her complaint to me.

40. In July 2011 the Welsh Government issued advice on complaints procedures entitled “Model Concerns and Complaints Policy for adoption by Public Services Providers in Wales”. It includes advice on the adoption by providers of an “unacceptable actions by complainants” policy, and suggests that providers without such a policy may wish to consider the Ombudsman’s policy as a basis for their own procedures. In its comments on the draft report, the Council said its revised complaints procedure has been in line with the Model Concerns and Complaints Policy since April 2011.

## Specialist Planning Advice

My Planning Adviser advised as follows:

“The Ombudsman has asked for my views on aspects of a complaint relating to the Local Planning Authority’s handling of activities and new buildings and structures erected on a 107 acre (43 has) agricultural unit. I have based my appraisal on the draft report of the parties’ cases and documents, photographs and plans extracted from the file and three DVDs.

### The Second Shed

1. The erection of an agricultural building is subject to the prior notification provisions in Part 6 of Schedule 2 to the GPDO 1995. The permitted development rights in Part 6 only apply to building operations ‘reasonably necessary for the purposes of agriculture within that unit’. The Courts have held (*Clarke v SSE [1992] 42 EG 100*) that the test is whether the building is reasonably necessary for, and if so, is it designed for, the purposes of the activities which might reasonably be conducted on the unit in question. The prior notification provisions allow the Local Planning Authority 28 days in which to consider this question and other factors and determine whether the prior approval of the authority will be required for the siting, design and external appearance of the building. If the authority has reservations about the need for the building or the details of the siting, design or appearance, it can refuse the application. The ‘need’ test is essentially a matter of fact and degree based on the size of the agricultural unit, any existing buildings and the present and intended agricultural activities on the unit.

2. The First Shed was subject to the prior notification procedure and the Council determined that planning approval was required. The planning application for an implement shed and hay store (the First Shed) was refused because there was insufficient justification for the building. The decision was overturned on appeal and conditional planning permission was granted in 2005.

3. In 2006, a conventional planning application was made for the Second Shed to house the existing stock of cattle. The application was refused because there was insufficient agricultural justification for the building. The same development to house hay and implements was subject to a prior notification procedure a year later in December 2007. The short note that deems the Second Shed to be acceptable mentions

only siting considerations and surprisingly does not address agricultural need or justification matters.

4. The case officer's explanation of the decision cites the advice from the Estates Officer who had written in support of the 2006 application for a cattle shed. The Estates Officer advised that he would insist that the 2006 application building was 'a specific one to accommodate cattle and not of a general storage design'. The 2007 prior notification application was not for a cattle shed; it was for a building to house hay and implements, a function that had already been addressed in the appeal that allowed the First Shed.

5. This seems to me to be a mistake by the Council in the processing of the prior notification application for the Second Shed. Had the officer studied the planning history of the application site and observed that there was already a shed for hay and implements and had been aware that the agricultural justification was in question on this agricultural unit, he would probably have concluded that a planning application for this development was justified. After all, an application for the First Shed was deemed necessary in 2005. For these reasons, I believe that the Council made a flawed assessment of the prior notification application for the Second Shed.

#### The Large Board and CCTV

6. In February 2007, a letter from the Council considered the unlawful erection of the screen and decided that it was not in the public interest to pursue enforcement action. It has now become immune from enforcement action due to the passage of more than four years since it was erected.

7. From the photographs, I can see that the board has been erected close to a bedroom window and blocks the forward outlook from this window. Views past the board are possible obliquely to each side of the board. It appears to me to be an alien structure and looks out of place in this rural location. Given its adverse impact on the outlook from the adjacent bedroom and its incongruous appearance, I consider that enforcement action was justified in 2007. The conduct of the parties should have little bearing on the question of whether enforcement action should be taken. PPW at 3.1.7 states that "*The Courts have ruled that the individual interest is an aspect of the public interest, and it is therefore valid to consider the effect of a proposal on the amenity of neighbouring properties*". Residential amenity and the appearance of the countryside are, in my view, both matters of public interest.

8. The photographs dated 2005 appear to show a small CCTV camera fixed to the side reveal of the bedroom window. If this was the location of a security camera, its installation would have been development permitted by Class A of Part 33 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 1995.

### Haulage Uses

9. In my view, the Operator's Licence does not duplicate the purpose of a planning permission. It may have some common features, such as hours of working, but the decisions on the use and development of land are also concerned with residential amenity, highway safety and so on which lie outside the terms of an Operator's Licence.

10. The licensing and registration of HGVs is regulated by the Traffic Commissioners but there appears to be little co-ordination between the Council and the Commissioners when considering the location of haulage business and the operation centres of such businesses. In this case, closer liaison between the statutory bodies would have assisted the Council in deciding when a material change in the uses at White Farm took place

11. The lawful use of the land and buildings at White Farm until 2010 was agriculture. There is a principle in land use planning that recognises that main land uses (e.g. industry) may have a number of ancillary uses (office, canteen, parking) on the same site. On a farm, there are usually ancillary uses such as parked vehicles, trailers, workshops, fuel storage and so on. The principle use remains agriculture unless one or more of the ancillary uses increases to become a main use in its own right. When that occurs, there has been a material change in the use of the land to a mixed use of 2 or more main activities for which planning permission is required.

12. From the evidence in the report, it appears that at some time between 2001 and 2010, the haulage activity at White Farm increased from an ancillary element of the lawful agricultural use of the land to an additional main use of the land. The limited farming activity at White Farm does not mean that it is no longer agricultural land any more than an empty house or shop ceases to be a residential or retail land use. The planning authority's task in this case was to judge from the evidence when the material change of use from agriculture to two or more uses occurred and, following that, take appropriate enforcement action to regularise the activities at White Farm.



13. The site inspections by the Council during this period are reported and the view was reached that the haulage activity remained an ancillary activity at White Farm. This is at odds with the sequence of comments in official documents between 2004 and 2006. The First Shed report (18.8.04) notes that 'the unit is used as a base for two lorries'. Community Councillors commented (28.7.04) 'a transport and farming business are operating from these premises'. The Inspector for the First Shed appeal (31.1.05) records that there were 'two earth moving machines and 2 commercial tipper wagons were parked on the holding'. The Second Shed report (29.9.06) actually states that the equine activity and the 'use of the site as a lorry base' are 'primary uses of the site'. These remarks signal to me that there was recognition that a material change of use was taking place between 2004 and 2006 at White Farm to a mixed use of agriculture, equine activities and a haulage business.

14. The advice in TAN 9, paragraph 12, is that '*where a local planning authority considers that an unauthorised development could be made acceptable by the imposition of planning conditions, it should invite the owner or occupier of the land to submit a planning application*'. Although it appears that the Council had wind of an unauthorised material change of use at White Farm between 2004 and 2006, no invitation to submit a planning application was made. The representations made by the Complainants during this period taken together with the planning officers own comments in documents and evidence from the Traffic Commissioners would surely have led to an early conclusion that some activities were unauthorised at White Farm. As the Inspector who dealt with the appeals in 2010 pointed out, the movement of just a few lorries, on a regular basis, to and from the farm would have signalled to a planning officer that this was more than an ancillary agricultural activity.

15. For these reasons, I consider that the Council were dilatory in handling the unauthorised activities at White Farm. '*The fact that enforcement action is discretionary and used only when it is expedient, should not be taken as condoning the wilful breach of planning controls*' (TAN 9: Paragraph 5). I accept that detecting a change in the ancillary uses that are commonly found on farms is a difficult exercise for planners with busy workloads. However, in a rural area, there should be sufficient experience and expertise in the planning department to detect a breach or set in motion an investigation to pin down such unauthorised changes within a reasonable timescale.

### The Parked Lorry

16. Treating the lorry as a wheeled store for agricultural fodder or materials is deemed an agricultural use of the land. No change of use of the field has occurred and so there is no breach of planning control to enforce.

17. Treating the lorry as the parking of a vehicle in a field might be deemed to be a parking use of the land that requires express planning permission. The alleged breach of planning control would be that there had been a material change in the use of the field from agriculture to use for agriculture and parking purposes. I have some doubts about whether this approach would stand up to the scrutiny of an appeal or a Magistrates Court.

18. For these reasons, the Council's decision not to take enforcement action against the parked lorry was, on balance, a reasonable one.

### Residential Amenities

19. From the photographs, I have already commented that the large board has an adverse impact on the living conditions in the adjacent house. I believe that there is a second window in the bedroom with the blocked window and its presence reduces that adverse impact to a degree. In my view, the parked lorry is stationed so close to the house that it too reduces the residential amenities of the house.

20. I have found the Council's handling of the prior notification process that led to the erection of the Second Shed to be flawed. The shed itself is part of a group of buildings set at a higher level than the Complainant's house. In my view, a holding of this size (43 hectares) would probably have a range of buildings of a similar scale in this location. Given that modern buildings can be expected as part of the modern farming landscape and the distance of the group from the Complainant's house, I do not consider that the presence of the Second Shed materially harms the living conditions for occupiers of this house.

21. The unregulated haulage activities have probably had some impact on the living conditions in the Complainant's house. The early and late movement of heavy lorries would cause some harm to the residential amenity. However, one should have in mind that modern agricultural activities that can be carried out at White Farm without restriction would include machinery and engine noises at all times. For this reason, I consider that the unregulated haulage use caused limited harm to the living conditions for occupiers of this house."

My Adviser further advised (in relation to whether planning permission is likely to have been granted had an application been submitted in respect of the Second Shed), that it was difficult to give a firm answer, but he considered it likely that planning permission would have been granted, or if refused by the Council, by an Inspector on appeal. He said that a main consideration would have been the size of the holding (43 hectares).

**[end]**

## **Comments on the draft report by the former Planning Enforcement Manager (Officer F)**

“Re: Ombudsman’s investigation of complaint by [Mrs B] against Carmarthenshire County Council

I refer to your letter dated 4.10.11 concerning the above.

Initially it was my intention not to waste my time in replying, as the contents of the report merely confirmed my belief that it was your clear intention to find for this woman so that she might finally disappear from your radar. It is gratifying to note that you did not disappoint me in that regard. However, the statement made in your penultimate paragraph to the effect that non-reply would somehow mean ‘contentment’ with the manner in which the evidence has been presented is totally unacceptable to me.

I consider the contents of your report in relation to my involvement in this very long running and difficult case to be biased and lacking in any evidential basis. You insult my professionalism, and that of [the Head of Planning, Officer L] in stating that our ‘dislike’ of this woman would influence the manner with which we would have dealt with her many and varied complaints over the years. I resent such a suggestion, for which you have no basis in fact. If I had ever seen evidence that confirmed that a haulage yard or depot was operating at [White Farn], I would have taken the necessary action. As I explained at our meeting, it would have been advantageous for me to do so. As neither I, nor I understand [Officer L] ever obtained clear evidence that such an operation was in being, which would have merited action from a **planning legislative point of view**, we acted with integrity in not being intimidated by this woman, who would seek to move heaven and earth to get her way. She is sly, devious and a bully, but that would not have impacted on my evaluation of the planning situation of the site, nor would it have influenced any other of the officers involved. You have no grounds to make such disparaging statements.

In relation to your conclusions/recommendations, I have absolutely no doubt that you have exceeded your remit, and have for some reason strayed into the field of being a planning expert. On the basis of rather vague evidence from an anonymous so-called planning advisor, you have reached conclusions which challenge the planning decisions made by professional officers, rather than comment on whether those decisions were appropriately arrived at. Of course, your organisation is something of a loose cannon in that regard, as I have wondered on more than one occasion who exactly is the 'ombudsman's ombudsman'. You appear just to be a self righteous part of the blame culture.

It is my fervent hope that Carmarthenshire County Council seeks Counsel's advice in order to vigorously challenge your recommendations in this matter. In allowing such a vicious, vindictive woman to be seen to be supported in her campaign to get her way at any cost, you do public service a great disservice. However, it may be tempted (sic) just to accept and pay the money, just to get closure. It would be cheaper and less stressful in the end. To quote a World War I analogy, it may be better just to go along with the views of the donkeys sitting comfortably in the chateau, who all conveniently have 20/20 hindsight, so that that (sic) the lions can get on with doing a real job, dodging the bombs and machine gun bullets in the front line, where decision making is much difficult, but ultimately more rewarding. If you make a mistake, so be it, but at least you tried. The only people who never make mistakes are people who don't do anything. Perhaps the Ombudsman's Office falls into that category.

My only satisfaction in this sorry affair is that my initial belligerence resulted in my acquiring nearly £200 from you for my involvement, so it will not only be [Mrs B] who comes out smiling. It is strange to me that you did not draw this financial provision to my attention when you attempted to get me take part in this worthless process for nothing. A case of maladministration by omission perhaps? Who cares?

As you are aware, I did not want to get involved in this matter from the outset. I have absolutely no interest in your final conclusions so would be grateful if you would refrain from contacting me again.

Yours sincerely”