

IN THE NORTH AND EAST DEVON MAGISTRATES COURT

In the matter of proceedings under s. 82 of the Environmental Protection Act 1990

BETWEEN:

(1) ANTHONY WARD

(2) KATHRYN WARD

Complainants

and

(1) JAMES SEABRIDGE

(2) KELLY SEABRIDGE

Respondents

JUDGMENT

1. The Complainants are Anthony and Kathryn Ward, they have been represented throughout this hearing by Mr Riley-Smith of Counsel. The Complainants reside at Berry Hill Barn, Bondleigh, North Tawton, Devon.
2. The Complainants apply for an abatement order under s.82 of the Environmental Protection Act 1990 to stop statutory nuisances of odour, noise, flies, fumes, and ammonia emanating from the Respondents' barns sited at Bidbeare Barton Farm, Bondleigh, North Tawton, Devon. The Respondents are James and Kelly Seabridge, they have been represented throughout this hearing by Mr Graham of counsel.
3. The two properties are located some 7-11 metres from one another, separated by a small country road.
4. The Complainants allege that they suffer from a pungent "rotten egg" smell, ammonia, diesel fumes and the strong smell of farmhouse manure which is present throughout the year arising from the housing of cattle within the barns and the associated build-up of slurry.
5. They further allege that noise from the operation of a dairy farm, through slurry scraping and slurry pumping throughout the day, and the intermittent sound of the compressor on the milk refrigeration unit at night affects their daily lives.

6. The Complainants also state that their property suffers from a significant and unreasonable level of flies which they allege originate from the livestock, slurry and manure at the farm.
7. The Respondents do not accept that their activities amounted to a nuisance. Their case is that this is an area of Devon characterised by mixed and dairy farming and their activities are ordinary farming activities.
8. As regards odour impacts, the Respondents accept these exist but that the impact on the Complainants' property is minimal and rarely at offensive levels.
9. In respect of noise the Respondents again accept their farming activities produce a level of noise, however they argue that mitigation measures have been put in place in respect of night-time noise from the refrigeration unit compressor and that the level of daytime noise was only significantly above background levels for brief periods when slurry scraping and pumping occurs.
10. As regards flies, the Respondents submit that the Complainants cannot prove beyond reasonable doubt that sufficient flies on their property constituting a substantial interference derived from either the yard or dairy barn, rather than from one or more other sources.
11. These proceedings have been heard over a period of three days from the 24th to the 26th of October 2023 with Judgment having been reserved. For what should be summary proceedings I received a substantial volume of evidence in four lever arch bundles containing over 2000 pages. I have heard from 5 lay witnesses (Anthony and Kathryn Ward, James and Kelly Seabridge and Major Burrow) and 4 experts (Dr Bull and Mr Stoaling in respect of odour and Mr Hurst and Mr Rogers in respect of noise) all of whom have been present throughout the three days likely at significant cost. I have further read skeleton arguments from both counsel and been referred to a couple of leading case authorities.

The Law

12. Under section 82 of the Environmental Protection Act 1990 a person aggrieved by a statutory nuisance can apply to the Magistrates Court for an 'abatement order'.
13. Under section 82(2) –
If the magistrates' court..... is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises.... the court.....shall make an order for either or both of the following purposes—
 - a) *requiring the defendant.....to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;*

b) *prohibiting a recurrence of the nuisance, and requiring the defendant or defender, within a time specified in the order, to execute any works necessary to prevent the recurrence;*

and, in England and Wales, may also impose on the defendant a fine not exceeding level 5 on the standard scale.

14. The relevant date for the consideration of whether a nuisance is occurring or likely to re-occur is the date of the hearing.

15. Section 82 proceedings are criminal in nature, the relevant standard of proof therefore is the criminal standard of proof i.e. beyond reasonable doubt with the burden of proving a statutory nuisance falling on the Complainants.

16. The Court has a complete discretion as to what steps are necessary to abate the nuisance (*McGillivray v Stephenson [1950] 1 All E.R. 942*)

17. Section 79 of the 1990 Act sets out several statutory nuisances.

(1) Subject to subsections (1A) to (6A) below, the following matters constitute “statutory nuisances” for the purposes of this Part, that is to say—

....

(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;

(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;

.....

(g) noise emitted from premises so as to be prejudicial to health or a nuisance;

18. In the leading Supreme Court decision of *Coventry and others v Lawrence and another [2014] UKSC 13*, Lord Neuberger set out the foundational principles of nuisance by interference with a neighbour's quiet enjoyment of his land.

*A nuisance can be defined, albeit in general terms, as an action (or sometimes a failure to act) on the part of a defendant, which is not otherwise authorised, and which causes an interference with the claimant's reasonable enjoyment of his land, or to use a slightly different formulation, which unduly interferes with the claimant's enjoyment of his land. As Lord Wright said in *Sedleigh-Denfield v O'Callaghan [1940] AC 880, 903*, “a useful test is perhaps what is reasonable according to the ordinary usages of mankind living in society, or more correctly in a particular society”.*

In Sturges v Bridgman (1879) 11 Ch D 852, 865, Thesiger LJ, giving the judgment of the Court of Appeal, famously observed that whether something is a nuisance “is a question to be determined, not merely by an abstract consideration of the thing itself, but in reference to its circumstances”, and “what would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey”. Accordingly, whether a particular activity causes a nuisance often depends on an assessment of the locality in which the activity concerned is carried out.

19. Reasonableness is to be assessed objectively; what would an ordinary person find it reasonable to have to put up with. That question of ‘reasonableness’ in the concept of ‘ordinary use and occupation of land’ was considered in detail by the Supreme Court in *Fearn and others v Board of Trustees of the Tate Gallery [2023] UKSC 4*, in which some fundamental questions were established.
20. The first fundamental question I must decide is whether the Complainants’ use of the land was ordinary. If it was not, then an occupier cannot complain if the use interfered with was not an ordinary use.
21. There is no dispute before me that Anthony and Kathryn Wards use of their property as a residential property is and was an ordinary use.
22. The Second fundamental question I must consider is whether the Respondents’ use of the land as a dairy farm was a common and ordinary use, and that the activities associated with that use were being conveniently done. If it was, then there would not be a nuisance.
23. If I am satisfied that the Respondents’ use of the land is not a common and ordinary use or if that use is not being conveniently done then I must move on and consider if those activities duly interfere with the Complainant’s enjoyment of their land in light of what objectively an ordinary person would find it reasonable to put up with.
24. In determining what an ordinary person would find reasonable, consideration shall be had for a number of factors including, location, time, duration, frequency, convention, importance and value to the community and the difficulty in avoiding external effects of an activity. Ultimately this would be a matter of judgment having regard to all the evidence.
25. To answer the first part of the second question; Whether the Respondents’ use of the land as a dairy farm was a common and ordinary use; I must consider in detail the character of the area and the background of the farm.

Character of the Area

26. Bidbeare Barton farm is part of a large parcel of land known as Penson Farm which was the combination of two farms; Penson Farm and Bidbeare Barton. The holding is some 300 acres of land settled in the heart of the Devon countryside in an area known as Bondleigh.
27. Berry Hill Barn is an enclave to Penson Farm and the buildings in which the Complainants now live is a conversion of barns that originally formed part of the Bidbeare Barton farm. Bidbeare Barton farm originally consisted of the Bidbeare Barton farmhouse (the current residence of the Respondents) the collection of barns, which in 2015 were converted for residential use (now known as Berry Hill Barn, the current residence of the Complainants), a number of surrounding fields and directly across a small adjoining road, two connected barns known as the Dutch barn and the Dairy barn.
28. For more than 100 years Bidbeare Barton farm was owned by the family of Major Christopher Burrow. In 1920 the Dutch barn, which is the nearest farm building to the Complainant's property, was built to provide undercover storage for farming equipment. In 1968 the Dairy barn was built immediately next to the Dutch barn to the East. This was purposely built as a dairy barn to house 80 dairy cows, it included housing bays, an undercover silage clamp and a rotary milking parlour. Major Burrow's Uncle operated the farm as a dairy farm for 3 years before moving to a sheep and arable farm, upon which adaptations were made to the dairy barn to remove the milking parlour and to fix a grain dryer.
29. In 1993 Major Burrow purchased the farm from his uncle and for three years he had a herd of 30 suckler cows and 30 calves which were housed in the dairy barns over the winter.
30. In around 1996 Major Burrow further acquired the neighbouring farm, Penson farm, at which point Bidbeare farmhouse together with the Berry Hill barns were sold as a smallholding.
31. In 1999 Mr and Mrs Ward purchased this smallholding, initially residing in the farmhouse. They later secured planning permission for conversion of the Berry Hill barns which was completed in 2015, upon which they moved in and split the smallholding selling the farmhouse.
32. During the winter of 2002 the Dairy barn was used to house 100 of a neighbouring farmer's cows. It was a matter of dispute as to whether this arrangement continued for three years, as Major Burrow testified, or existed for just the one year, as Mr Ward recounted. Major Burrow was categorical that he held this arrangement with his neighbour William Hosegood for at least three years and could vividly recall receiving

the cheques from him each year. I find Major Burrow's evidence on that arrangement is likely to be far more accurate than Mr Ward's recollection of what he believed may have been taking place within the Dairy barn.

33. In 2020 the Respondents purchased Penson Farm and started to make a number of adaptations to the Dutch and Dairy barns to make them suitable for dairy cattle, the first stock were brought to the yard in May 2020 and the dairy herd in June 2020. There are currently 82 dairy cows and 30 calves on site.
34. The historic use of the farm therefore from 1968 to 2020, before the Seabridges acquired it, was that the Dairy barn had been used to house cattle on 9 of those 52 years, the last occasion being in the winter of 2005/2006. The Dutch barn had never previously housed cattle.
35. The Complainants argue that up until 2020 Penson farm was an arable farm and was sold as such to the Respondents as illustrated by the sales particulars which describe Penson Farm as "*An attractive and versatile commercial Arable Holding*" with its "*...main enterprise having been arable cropping with a rotation in recent years incorporating Winter Wheat, Winter Oats, Spring Barley, Maize and Stubble Turnips*"
36. Whilst the estate agents may have focussed their marketing of the property on its exiting arable use, they suggested also within the sales particulars of its suitability for livestock; "*Despite the current dominance of arable enterprises Penson Farm is an adaptable and versatile unit which could be equally well suited to livestock grazing and forage production.*"
37. I consider that how the estate agents best decided to market the property is of little significance to the question of common and ordinary use of the land. The sales particulars do no more than simply assert the current farming enterprise and do not create some sort of restrictive covenant on any potential buyer that its future farming enterprise would be in any way limited to arable farming. It is no more than a sales brochure.
38. The Complainants argue that in changing the nature of the farming activity from arable to dairy farming this is not in keeping with the established activity in that locality and is therefore not a common and ordinary use of the land.
39. I consider that that position can only be sustained if you limit the assessment of the locality to that one parcel of land containing the Dutch and Dairy barn. This would have the effect of looking at, and only at, the purported nuisance causing land in the assessment of the locality. I consider viewing locality with such a narrow lens is not appropriate as it lacks any meaningful context and focuses too discretely on the historic activities of that one individual piece of land, without any consideration of the activities of the local neighbourhood.

40. I determine that the assessment of locality needs to be considered more widely than that and, in my view, it is appropriate to perform that assessment for the Bondleigh area more generally.
41. Bondleigh sits in the heartland of Devon, a county renowned for centuries for its creameries, dairy farming and milk production. Bondleigh is predominantly an agricultural area and it has a well-established farming community. Mr Seabridge gave evidence that the topography of the land with its rolling grassland make it well suited for dairy farming and together he, Mr Ward, and Major Burrow all described the neighbouring farm properties in the area.
42. To the north of Penson Farm, approximately 750 meters from Berry Hill Barn sits Stabdon Farm, a large 400 cattle dairy farm with open slurry lagoon. To the North West, Riddlestone dairy farm. To the east over the River Taw is approximately 400 acres of farmland owned by Tom Dennis, a farm used for arable crops and sheep. Beyond that Luxton Farm a multi-use farm that has included dairy farming. To the south two dairy farms owned by Mr William Hosegood and an equestrian centre at Lowton. There was further reference to a cattle farm at Bondleigh Barton and, a dairy farm at Heath Hill all within close vicinity of the complaint address.
43. I find that Dairy farming is within the DNA of Bondleigh and that it is a well-established part of the character of the local area.
44. Whilst Bidbeare Barton farm has for 43 years between 1968 and 2020 predominantly not housed cattle, and has operated mainly as an arable farm, it has nevertheless remained a farm. The clear evidence of Mr Burrow who owned that farm during that time was that he did not view his farm in such specific terms such as arable or dairy. He viewed it as a general all-purpose farm, adding that in order to survive in farming you need to adapt to whatever the current economic and regulatory situation presents. Indeed, no specific permission is required for a farm to alter its farming practice.
45. I find that as a working farm it was a common and ordinary use of that land to undertake farming activity. Farming requires some versatility and adaptability and a change of farming practice from crops to cattle is in my view in keeping with the common and ordinary use of that land as a farm.
46. Even if I am wrong on the generality of farming as a common and ordinary use when assessing local character, I find as a fact that the predominant farming activity within this locality is that of dairy farming. There are a large number of long-established dairy farms operating in that locality and therefore the Respondents' use of the land as a dairy farm is in my view a common and ordinary use of that land.

47. I must now move on and consider the second part of the second question; Whether the Respondents' use of the land as a dairy farm was being done conveniently.

Respondents' farming activity and impact on the Complainants.

48. James Seabridge described at length his routine at the yard. He stated he starts activity on the farm at 7am which is considerably later than he used to on his previous farm where he started at 5:30am. He indicated dairy farmers generally will start anywhere between 4am and 7am, and he pointed out that at Stabdon farm they start at 3am. Any later than this and he said the cows would start to bellow to be fed.

49. His routine starts by scraping the slurry from the cow shed, he does this by means of a tractor which pulls a rubber scraper across the floor. He said scraping can take between 40-60 minutes over a 90minute period. He disputed that scraping would take any longer than this and he disputed that he would scrape more than once a day. He acknowledged that the tractor engine was noisy during the scraping and both acoustic experts agree that this would be audible at the Ward's property, Mr Rogers describing it as likely to cause a degree of adverse impact and Mr Hurst identifying it as likely to cause a significant adverse impact.

50. During this 90-minute window, Mr Seabridge also uses a telehandler for approximately 10 minutes to put silage bales of feed into the feed rings in the dairy barn and loafing yard. He described the telehandler as considerably quieter than the tractor, and that it has recently been fitted with an exhaust silencer. Mr Seabridge works alone, and I accept therefore his evidence that it would not be possible for both the telehandler and tractor to be operating simultaneously. Mr Rogers concludes that this activity would be unlikely to cause an adverse impact.

51. Mr Seabridge did accept that whilst scraping he will also start the slurry pumping process, this is the process of pumping out the slurry from the reception pit into the slurry tanker. He described the reception pit as being able to hold the equivalent of 2 slurry tanker loads and so this process has to occur at least every other day. In his evidence it appeared to me that this activity was more recently being performed daily at around 8am. In his written evidence he stated it takes 7-8 minutes to pump, however both acoustic experts record the activity as taking between 10-15 minutes. Both acoustic experts agree that this would be audible at the Ward's property, and likely to cause a significant adverse impact. Mr Seabridge stated that earlier this year he fitted a silencer to the slurry pump, although there is no evidence that this has significantly reduced the noise impact.

52. In respect of odour Mr Seabridge does not notice any smell when pumping or scraping, although he did accept under cross examination that as a farmer, he is

accustomed to the smells of a farm and less likely therefore to notice. Both Dr Bull and Mr Stoaling performed sniff tests on various dates. Dr Bull on his visits could recognise odours from silage and indicated that he would expect a short-term increase in odour emissions following slurry scraping and pumping however those activities did not occur during any of his visits. Mr Stoaling was present during pumping and cleaning on three occasions and appears to record no particular increase in odour emissions during that activity.

53. Diesel fumes from the tractor scraper are reported by Mr and Mrs Ward as part of their complaint, Mr Stoaling opines that the idling of a single vehicle would not generate fumes at a level which would ever be regarded as a statutory nuisance. Dr Bull makes no comment on diesel fumes in his report.
54. From between 10am and 12 midday and again between 5pm and 6pm Mr Seabridge washes down the concrete base of the yard using a volume washer, again he describes this as making a fair amount of noise. The process takes about 20minutes each time, although only 10minutes is noise producing. Neither acoustic expert makes any reference to noise emissions from this process.
55. Once Every 3-4 weeks Mr Seabridge cleans the loose housed calf pens, he describes this process as taking 3 hours. He uses the telehandler to scoop farmyard manure from the Dutch barn and empties this into his trailer. This activity generates the strongest offensive odour with Mr Seabridge acknowledging that, even as a farmer he notices a strong smell, albeit he himself doesn't find it offensive he accepts other people might. Mrs Seabridge also commented that she can smell the farmyard manure from the farmhouse which is situated 3 times further than the Ward's property. Mr Seabridge explained how once the trailer is full, he takes it away, with any overspill left at the far side of the barn. Neither Dr Bull nor Mr Stoaling were on site during this farmyard manure removal process, although I do accept that this will lead to strong offensive unpleasant odours being emitted.
56. Once a fortnight Mr Seabridge receives a delivery of feed to the yard between 9am and 10am. The bulk lorry will blow grain into his silo for about 20-30minutes, he describes this as a noisy activity which is louder than the tractor. He states that he has tried to improve amenity by insisting deliveries take place within permitted times. Mr Rogers captures this sound during his survey, concluding that it may be audible at the Ward's property but would not likely cause an adverse impact. It is not clear from Mr Hurst's report whether any of the recorded vehicle movements specifically relate to this activity.
57. Every other day milk is collected from Crediton Dairy between 12:00 and 1pm, the tanker engine is running during the pumping, although Mr Seabridge describes the pumping as quite quiet. Milk collection takes approximately 10-15 minutes. Mr

Rogers records only a +2db result and concludes this would be unlikely to cause an adverse impact.

58. In addition to those activities the Respondents have had installed 2 robot milking machines and a refrigeration unit for the milk tank which operate continuously and are noise generating. The robotic milking machines are observed to be quiet with the sound not noticeable during the attended survey of Mr Rogers. He comments that they were barely noticeable during the day and recorded only plus 4db at night. The refrigeration unit contains a compressor which engages for 15-20 minutes at a time to lower the temperature of the milk in the tank. It is affected by ambient temperature and will on average repeat every 90minutes. The sound is said to be less prominent during the day as it is masked by other sounds, however it is more significant at night where the +10db has the potential to cause a significant adverse impact on the Wards when their window is open.
59. Both Mr and Mrs Ward gave very articulate and comprehensive evidence stating that they were unable to enjoy their property because of the intolerable noise, odour and flies emanating from the Respondents' farm.
60. In respect of odour, Mr Ward described how he can be hit by the awful rotten egg smell when he opens his back door in the morning and how this can take his breath away. Mrs Ward described how she is no longer able to entertain friends at their house because of the terrible evasive smells and the comments her friends would then make.
61. In respect of noise, Mr Ward described being woken up each morning to the horrible groaning sound of scraping and pumping and being unable to get back to sleep. He also described the intermittent refrigerator compressor which wakes them both up during the middle of the night greatly disturbing their sleep.
62. Whilst I have no doubt that these activities are causing a substantial adverse effect on Mr and Mrs Ward's amenity, I do find that they are individuals who can become overly susceptible and sensitive to perceived nuisances and have a tendency to overreact in response. Major Burrow describes in his evidence 7 occasions when the Wards made petty complaints to him over relatively insignificant issues and either threatened him with legal action or reported him to authorities. These include;
1. An incident whereby Major Burrow left a gate open when using his right of way across the Complainants' land causing their dogs to escape. Mr Ward angrily reprimanded him and then sent a letter threatening legal action if it reoccurred.
 2. An incident where again using the right of way, he was threatened with being taken to court for aggravated trespass when he herded the Complainant's sheep off the track into their field.

3. In 2002 noise, odour and fly complaints were made when cattle were housed at the Dairy barn.
 4. A complaint to the Environment Agency when a slurry pipe burst.
 5. A further complaint to the Environment Agency regarding muck spreading.
 6. A complaint to the police alleging illegal hunting when some beagles wandered into the Complainant's land.
 7. Complaints about a wheat Rick covered by a tarpaulin which interfered with the Complainant's view and made a flapping noise.
63. Prior to this Statutory Nuisance complaint, the Complainants, in an attempt to abate the activities of the Respondents, had reported them to the Rural Payments Agency, the Environment Agency, the Highways Agency, the Environmental Protection Team and to Torridge District Council. They had also sent a letter to the credit department of the Respondents' bank attempting to prevent them obtaining a loan.
64. In cross examination Mr Ward denied his behaviour was unreasonably vexatious or bullying and that he was simply engaging a pattern of behaviour that he was legally entitled to take. I find this excessive and overly litigious response by Mr and Mrs Ward demonstrates not only their level of frustration and annoyance but also that this annoyance is likely to have led to a perpetuation of their already heightened sensitivities.

Flies

65. Whilst it is accepted that the derivation of the noise and odour complaints emanate from the Respondents' property the origin of the flies is disputed. Mr and Mrs Ward both gave evidence, which I accept, that there were no fly issues before 2020, when the Respondents moved into Penson Farm. I accept also that the Wards have encountered a significant number of flies in and around their property, the photographs clearly illustrate this.
66. The Environmental Protection Officer, Matthew Millichope, who initially investigated a complaint of nuisance in September 2020 placed fly traps and analysed the results, several species of fly were recorded with the predominant species identified as the stable fly, a fly that is associated with livestock and is known to breed in decaying animal bedding or vegetation. Advice was offered in respect of the removal of a manure heap and Mr Millichope concluded that a statutory nuisance had not been established. Although it was perhaps implied, it was not established by Mr Millichope that the flies located at the Complainants' property were originating from the Respondents' property. Since then, the Respondents have moved to a cubical based system with mattresses which has eliminated the accumulation of farmyard manure from the dairy herd and therefore any potential breeding ground for flies.

67. On 6th September 2021 Tim Martyn, a senior agricultural consultant prepared a report on behalf of the Respondents regarding flies. He undertook visits to the farm in April and June 2021 and he commented that he saw very few flies. He advised that the stable fly can travel up to 20km to find a suitable host and concluded that he had no reason to believe that Mr and Mrs Seabridge's management of the farm was leading to an increase in the level of flies in the surrounding residential properties beyond what would normally be expected for a rural environment.
68. In April 2022 an Environmental Management Plan was completed and recommended that the Respondents carry out routine visual fly assessments. Mrs Seabridge commenced the assessments in June 2023, recording the number of flies at 5 separate locations around the barns and yard. Fly numbers recorded during these assessments were constantly very low. In addition Mrs Seabridge treats the cattle with 'spot-on' to prevent flies and she has also placed red top fly traps.
69. Both Mr and Mrs Seabridge in their evidence report the presence of a few flies around the cows in the barn, but never in the numbers as seen at the Ward's property. Mrs Seabridge gave evidence that she sees very few flies in their farmhouse, which is located just 20-30 meters away from the Complainants at Berry Hill Barn.
70. I remind myself that the Complainants need to satisfy me beyond a reasonable doubt that the accumulation of flies at their property is derived from the barns at the Respondents' farm, and not from any other potential source, such as for example the slurry sprayed crop fields surrounding Berry Hill Barn, the nearby River Taw, any of the other Dairy farms within the vicinity or the open slurry lagoon at Stabdon farm.
71. The Complainants' case in respect of flies can be summarised as follows;
1. There are large numbers of stable flies present at Complainants' property which were not present prior to 2020.
 2. Since 2020 the Respondents have housed cattle in the neighbouring barns.
 3. The only conclusion that can be reached therefore is that the flies are coming from the Respondents' barn.
72. I cannot be certain of the conclusion that the Complainants ask me to make, and I find the evidence that flies to be originating from the Respondents' barns to be inconclusive.

Whether the Respondents activity is a convenient use of the land

73. Returning then to consider the Respondents' farming activities at the barns and whether those activities are being done conveniently, or to put it another way being done reasonably.
74. As a starting point I find they are all activities one would commonly anticipate and expect as part of a dairy farm operation. They are performed as a necessity for the operation of the dairy farm and are performed as reasonably and responsibly as possible. Although these activities quite clearly have had and continue to have a detrimental impact upon the Ward's there is no evidence that the alleged nuisance producing activities being performed are non-essential, excessive, or being performed maliciously.
75. Indeed, there is evidence before me of a number of mitigations that the Seabridges have implemented in an effort to reduce the impact of their farming activity on their neighbours, these include;
1. Controlling the operational hours of the farm from between 7am and 7pm and speaking to contractors who deliver to ensure compliance with those times.
 2. The fitting of an exhaust silencer for the air-drying plant.
 3. The fitting of a silencer on the slurry pump.
 4. Moving the refrigeration compressor further into the barn to reduce its noise impact on the Ward's.
 5. Building a timber enclosure for the refrigeration compressor.
 6. The fitting of internal doors to the milking plant and exterior doors to the barn.
 7. Enclosing the open sided high ventilation.
 8. Undertaking fly monitoring.
 9. The commissioning of an Environmental management plan by ADAS dated 26 April 2022 considering slurry, odour emission and fly control management.
 10. The commissioning of a Soundguard acoustics report dated January 2022.
76. Mr and Mrs Seabridge have also made changes to their farming methods which have indirectly benefited the Wards amenity;
77. Firstly, in January 2023 the moving from a loose housed system for the dairy herd to a cubical based system with mattresses. This has had the impact of eliminating the accumulation of farmyard manure from the dairy herd and the consequential associated foul odours and ammonia which accompanied the process of mucking this out every week.
78. Secondly, the implementation of the robot milking machines in November 2021 removing the noisier temporary milking bale.

79. Thirdly, the rental acquisition of an additional 259 acres and a shed to enable the dry cows and older calves to be housed offsite, reducing the total number of cows situated at the two barns.

80. The Seabridge's have sought, through planning applications, to make further adaptations to the site which if approved and implemented could further mitigate the impact of their farming activities on the Wards. These include;

1. Seeking planning approval for a new barn to be built to the North East of the current Dairy barn, which would then enable them to move the cattle further away and eliminate the use of the Dutch barn, situated nearest Berry Hill Barn, for the housing of cattle.
2. They have sought to obtain approval for a slurry tower and underground pump, which if granted would submerge the slurry pump underground making it inaudible.
3. The moving of the site access further up the road from the Ward's property.
4. They have also investigated the possibility of robot slurry scrapers, which would operate near silently and would eliminate the need for noisy slurry scraping each day, the cost currently prohibitive at this time.

81. All these steps demonstrate that the Seabridge's have reasonably and responsibly considered the impact of their farming activity on their neighbour's amenity and have taken measures to mitigate this impact and continue to seek to implement changes that would benefit Mr and Mrs Ward.

82. In respect of the planning proposals, it is worth commenting that Mr and Mrs Ward have opposed and continue to oppose all planning applications. Mr Ward made clear in his evidence, that he objects to the use of the barn for cows and as a dairy farm. He has therefore sought to exercise his rights to object to any planning proposals that would seek to support the operation of the farm as a dairy. He states he would not object if the farm went back to arable farming. The consequences of Mr and Mrs Wards constant objections to planning proposals is to some extent self-defeating as the plans they oppose are plans which would significantly mitigate the impact of the farm's operation on their own amenity. The nuisances they complain of today could potentially have been felt over a much shorter period of time, to a much lesser extent or perhaps not felt at all were they not to have fought so fastidiously against these proposals.

83. Over the past three years Mr and Mrs Seabridge have been subject to a number of intensive inspections;

1. 2 Dairy hygiene inspections
2. 3 Red Tractor inspections
3. 2 weeklong rural payments agency inspections
4. Several inspections from the planning officers from the Torridge District council

5. Visits from the environment agency
6. An animal welfare inspection from Crediton Dairy
7. An investigation from the Council environmental protection officer into a Statutory Nuisance complaint

84. In all inspections they have been open and cooperative with no issues raised in respect of excessive noise, odours or flies at the yard, and no evidence to indicate they are operating the farm in an unreasonable, irresponsible or poor manner. All indicative that their practices are in keeping with any other dairy farm.

85. The Complainants submit without a pre-existing concrete loafing yard, cattle enclosures or slurry pit the barns and yard were unsuitable for cattle, and the retrofitting of the barn and yard without obtaining prior planning authority was unreasonable and irresponsible.

86. When Mr and Mrs Seabridge acquired the land in April 2020 they started preparing the yard for the arrival of their dairy herd. This involved levelling and laying concrete to the South West of the barn to create a loafing yard. Concrete cladding was also erected around the open sides of the barn to keep the cows within the confines of the barn. These alterations were defined as 'engineering operations' and required planning approval.

87. I accept Mr Seabridge's evidence that he had honestly and genuinely believed that such work could be carried out under his permitted development rights. His evidence to me was that as he was not altering the footprint of the barn and was not changing its shape or size he simply didn't realise that he needed planning permission.

88. He applied retrospectively for planning permission in December 2020. That application was granted by Torrridge District Council in November 2022. Mr Ward judicially reviewed that decision, and the High Court upheld that appeal, handing down judgment 4 days before the start of this hearing.

89. Whilst I consider that a refusal of planning permission because of its potential effects on a neighbour could be relevant to a court's decision on whether an activity is inconsistent with the established pattern of use, in this case the planning authority had granted Mr Seabridge's application. The subsequent overturning of Torrridge District Council's decision simply reverts Mr Seabridge's planning submission back to application status and does not amount to a refusal.

90. Mr Justice Jay who considered that Judicial Review upheld the Complainants' three grounds of appeal, the first being that the planning officer unlawfully concluded that the interested party, Mr and Mrs Seabridge, had a fall-back position of being able to operate the site as a dairy farm. The finding of Mr Justice Jay was that without

planning permission the dairy operation could not be sustained, however I note that neither Mr and Mrs Seabridge attended the High Court hearing, nor were they represented.

91. From the evidence Mr Seabridge gave me, he stated that even without those measures he would still have been able to keep dairy cows in the barn. He stated that he could have bought in temporary sliding wind bricks and put gates on the open sided barn access to keep the animals within the confines of the barn, none of these steps would have required permission. As for the concrete floor he comments that he could have put the cows on the dirt floor.
92. The planning permission relates simply to those physical adaptations made by Mr Seabridge to the barn and yard, planning permission was not and is not required to house cattle nor to operate a dairy farm. Neither the Dutch barn nor the Dairy barn have any restrictions on them for the use of livestock and I accept the evidence of Mr Seabridge that irrespective of the planning decision he would still continue to house cattle in the barns and operate as a dairy.
93. Until Torridge District Council further consider Mr Seabridge's retrospective planning application the adaptations to the barn remain in place and the farm continues to operate the practices and processes in the manner previously described.
94. One issue I have to consider is whether the retrofitting of the barn and yard without first obtaining prior planning authority is sufficient to render the Respondents' use of the land to be unreasonable.
95. Ultimately this is one of many factors to be weighed in the balance when considering if the activities of the Respondents on the land have been conducted conveniently or reasonably. Whilst planning permission for changes to the barn and yard were not pre-emptively obtained, I've found this was a genuine error of understanding by Mr Seabridge. There has been no refusal of planning permission. Mr and Mrs Seabridge's farming activities are all ordinary and necessary activities for the operation of a dairy farm. Nothing untoward or unusual has been highlighted about any of those farming activities in the numerous inspections that have taken place and therefore I can assume they are practices which are generally accepted in dairy farming. Mr and Mrs Seabridge have implemented numerous measures to mitigate the impact of their farming activity on their neighbours, and they have changed their farming methods over time which have also had an indirect benefit on their neighbour's amenity. Mr and Mrs Seabridge continue to keep under review further measures, through either new technology or further grants of planning permission, which could further decrease the impact of any noise and odour omissions on Mr and Mrs Ward. Weighing all these factors I conclude that the Respondents' use of the land as a dairy farm is being done reasonably and conveniently.

96. On that basis I do not find that a Statutory nuisance exists.