

Sharon Chumbley

From: Enforcement Team
Subject: FW: Planning Enforcement Matters at Hillside Barn (Meadow Forge) EX16 8RZ - 20/0223/RURAL

From: John Clarke [REDACTED]
Sent: 02 June 2025 16:16
To: Heather Nesbitt [REDACTED]
Cc: Enforcement Team [REDACTED] Development Control [REDACTED]
Subject: Planning Enforcement Matters at Hillside Barn (Meadow Forge) EX16 8RZ - 20/0223/RURAL

Good afternoon, Heather.

Further to the above 2 x Section 187 Breach of Condition Notices served upon Mr D AGGETT and dated 28th March 2025.

Mr AGGETT has approached XL Planning for advice regarding his receipt of the 2 x Breach of Condition Notices and the submission of a Section 191 Certificate of Lawful Use/Development (CLEUD) in relation to his continuous long-term use of part of the building as a dwelling house and the use of external land for general storage and parking of motor vehicles, and breach of any relevant planning conditions.

Any CLEUD would relate to 10-year historical uses that accrued immunity PRIOR to the service of the BCN's x 2. Such a Certificate application, submitted under Section 191 Town & country Planning Act 1990, would refer to Section 191 (2) (b) which states – (2) For the purposes of this Act uses and operations are lawful at any time if—

- (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and
- (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

The certificate application will refer to uses/development that had accrued immunity continually over more than a 10-year period, and BEFORE the service of the BCN x 2. (*see Secretary of State for the Environment v Thurrock BC*) and therefore there was no enforcement notice in force when the immunity was gained. The LPA have had the opportunity to enforce against any perceived breaches for well over the 10-year period and it can now be considered as unfair to allow any enforcement action against uses/development that can be considered as lawful.

Can we confirm that should such a Section 191 certificate application be submitted to Mid Devon District Council (MDDC) that certificate application will be validated and then determined provided all the submission satisfies the validation requirements please.

We consider that a Section 187A Breach of Condition Notice (BCN) should NOT be considered as an enforcement notice in relation to Section 70C of The Town & Country Planning Act 1990. (s123(2) of the Localism Act 2011) and as a result any certificate application can be determined.

In support of the above we would draw your attention to the wording of Section 70C (1) A local planning authority may decline to determine an application for *planning permission* or (*permission in principle*) for the development of any land if granting planning permission for the development would involve granting, whether in relation to the whole or any part of the land to which a pre-existing enforcement notice relates, planning permission in respect of the whole or any part of the matters specified in the enforcement notice as constituting a breach of planning control.

A Certificate of Lawful Use/Development cannot be considered as a 'planning application' for planning permission or permission in principle, as it is a submission of evidential fact.

A Breach of Condition Notice (BCN) is not an Enforcement Notice. A BCN addresses breaches of conditions, while an Enforcement Notice addresses unauthorised development.

We would also draw your attention to the validation and ongoing determination of MDDC Application – 25/00295/CLU where MDDC have agreed, in the very same circumstances, to determine a CLUED following the service of 2 x BCN's.

We look forward to hearing from you.

Regards

John Clarke

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