



Town and Country Planning Act 1990

Appeal by Mr Dean Aggett (herein 'the Appellant')

**Site Address: Meadow Forge, Hillside Barn, Cadeleigh, Tiverton, Devon,
EX16 8RZ – HM LR Title DN445870 ('the Appeal Property')**

Lawful Development Certificate Appeal

Mid Devon District Council (herein 'the LPA')

MID DEVON DISTRICT COUNCIL'S STATEMENT OF CASE

PINS ref: APP/Y1138/X/26/3378579

LPA ref: 25/01406/CLU

Introduction and summary of the LPA's case in respect of the Appellant's Appeal

1. This Statement of Case is made on behalf of the Local Planning Authority (herein 'LPA') in opposition to the appeal against the refusal of a certificate of lawful existing use or development (herein 'CLEUD') under s191 of the Town and Country Planning Act 1990 (herein 'the 1990 Act').
2. The Appellant seeks a certificate that the lawful use of the Appeal Property is a mixed use comprising business use and residential use. The LPA submits that the appeal should be dismissed because:
 - 2.1. The Appellant has failed to discharge the burden of proving, on the balance of probabilities, that the claimed mixed use subsisted lawfully and continuously for the requisite period. The LPA's decision to refuse to grant a CLEUD was therefore well founded.
 - 2.2. At the date of the application the business use was not ongoing. The claimed mixed use therefore did not exist as a subsisting use capable of certification under s191. Furthermore, he was not residing in the Appeal Property by living in a yurt in his field.
 - 2.3. The evidence clearly demonstrates repeated concealment of the alleged residential use through repeated representations to the LPA that there was no residential use. The Appellant cannot rely on statutory immunity or the certification regime where the alleged residential use has been deliberately concealed from the LPA.
 - 2.4. The LPA submits that implementation of a planning permission for change of use requires the authorised use to be brought into operation in accordance with the permission. The Appellant alleges that the residential use pre-dates the planning permission granted. If, as alleged, the residential use pre-dated the grant of permission, the planning permission has not been implemented.
 - 2.5. On the Appellant's case there has been no change of use since the planning permission was obtained in 2009 because his evidence is that he has always used the Appeal Property for residential and business use since its acquisition in 2006.

The site description

3. The site is known as Meadow Forge Hillside Barn Cadeleigh Tiverton Devon EX16 8RZ (herein 'Meadow Forge'). It is located in the countryside between Bickleigh and Cadeleigh. The site area extends to approximately 1500sqm. Within it, there is an existing building located roughly centrally with a footprint of approximately 255sqm. There is a hardstanding area between the front of the building and the access lane. The access is via a shared private lane, also a public footpath, which

adjoins the public highway to the east of the site. The building appears to have been known as Meadow Forge and Hillside Barn.

The proposal

4. Certificate of lawfulness to establish the mixed (composite) use of a building as a blacksmith forge and for residential purposes, including the use of land outside of the building for the storage of materials, goods, products chattels, scrap, vehicles and waste materials contrary to Conditions 2 and 5 imposed on Planning Permission 09/01587/FULL.

Reason for the refusal in the refusal notice

5. The “Refusal of Certificate of Lawful Use or Development” is dated 29th January 2026. The LPA refused to certify that on 10th October 2025 the use described in the proposal above, in respect of Meadow Forge and shown edged red on the plan submitted with the application, was lawful within the meaning of s191 of the 1990 Act. The reason provided was:

“In the opinion of the Local Planning Authority, the submitted evidence base is not considered to be sufficiently clear and unambiguous to demonstrate, on the balance of probability, that the alleged use of the building for a mixed use comprising a Blacksmith Forge and for residential purposes and the external storage of materials, goods, products chattels, scrap, vehicles and waste materials contrary to conditions 2 and 5 of planning permission 09/01587/FULL has continued for a period in excess of 10 years.”

The relevant site history of Meadow Forge

6. The relevant site history is:

05/00017/FULL - REFUSE date 7th March 2005 Erection of 2 no. lean-to off existing silage barn for livestock/general purpose use.

05/00693/FULL - REFUSE date 13th July 2005 Erection of 2 no. lean-to off existing silage barn for livestock/general purpose agricultural use (Re-submission).

05/02000/FULL - REFUSE date 16th November 2005 Erection of 2 no. lean-to structures off existing barn for livestock/general purpose agricultural use.

09/01587/FULL - PERMIT date 14th December 2009 Retention of change of use from agricultural to blacksmith's forge.

Condition 2 The blacksmith's forge hereby permitted shall be used only as a blacksmith's forge, and for no other purpose (including any purpose in Classes

B1 or B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended)), or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

Reason; In the interest of the amenity of the area or and to restrict the traffic generation from the approved use to that which is acceptable on the local highway network.

Condition 5 No materials, goods, products, chattels, scrap or waste materials shall be store outside of any building, at any time.

Reason: To safeguard the character and amenities of the area.

[In that case the red line was drawn tightly around the building itself.]

15/01077/PE - CLOSED date 9th October 2015 Notification of PNCOU Class M - As at 12th May 2015 - The agricultural use shall be use as a gallery (A1 shops use) to display the market and works made in the building next to it known as Meadow Forge - Less than 150sqm.

25/01406/CLU - PCO date Certificate of lawfulness to establish the mixed (composite) use of a building as a Blacksmith Forge and for residential purposes, including the use of land outside of the building for the storage of materials, goods, products chattels, scrap, vehicles and waste materials contrary to Conditions 2 and 5 imposed on Planning Permission 09/01587/FULL.

The legal provisions and planning guidance applied in determining the Application.

7. Applications for Certificates of Lawful Use or Development are not assessed against planning policy but on the weight of the evidence submitted and in accordance with s191 of the 1990 Act (As Amended).
8. The onus of proof was on the Appellant to provide sufficient clear and unambiguous evidence to support the Application and in the absence of any counter evidence, the Planning Practice Guidance states:

“In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant’s version of events less than probable, there is no good reason to refuse the application, provided the applicant’s evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability.”

9. S191 states that:

“(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.

(3) For the purposes of this Act any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if-

(a) the time for taking enforcement action in respect of the failure has then expired; and

(b) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force.

3A In determining for the purposes of this section whether the time for taking enforcement action in respect of a matter has expired, that time is to be taken not to have expired if-

(a) the time for applying for an order under section 171BA(1)(a) “planning enforcement order”) in relation to the matter has not expired,

(b) an application has been made for a planning enforcement order in relation to the matter and the application has neither been decided nor been withdrawn, or

(c) a planning enforcement order has been made in relation to the matter, the order has not been rescinded and the enforcement year for the order (whether or not it has begun) has not expired.

10. S171B outlines the relevant time limits for immunity against such breaches. Section 171B(2)(a) of the 1990 Act stipulates that where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
11. S171B(3) states in the case of any other breach of planning control (breach of planning condition), no enforcement action may be taken after the end of the period of ten years beginning with the date of breach.
12. If the Appeal Property usage is that “single dwelling house, and if the breach took place prior to 25 April 2024, transitional provisions apply, and 4 years is the immunity period (Levelling-up and Regeneration Act 2023¹ (LURA 2023). For the purposes of the immunity periods under s171B of the 1990 Act and the transitional

¹ The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. Regulations 5 and 9.

provisions, the question is whether the use amounts to “use as a single dwellinghouse”, not whether there is any residential use within a mixed-use planning unit. The Appeal Property is a mixed use (also known as a composite use or *sui generis*), and therefore, the use is not that of a single dwelling house.

13. Further, *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 Bridge J, it was held that “when a single unit of occupation is used for a mixture of activities and it is not possible to say that one is incidental or ancillary to another (a mixed or composite use), that whole area is a single planning unit.” Also, cited and approved in *R (Ocado Retail Limited) v London Borough of Islington* [2021] EWHC 1509.
14. It was and remains the LPA’s opinion that the relevant period for is ten years, for each element representing a breach of conditions attached to the planning permission granted for the site.
15. In summary, pursuant to s191 of the 1990 Act, a certificate may be granted only where the use or development described in the application is lawful at the date of the application. The burden rests squarely on the Appellant to establish, on the balance of probabilities, that:
 - 15.1. The precise use claimed existed at the date of the application.
 - 15.2. The use was lawful, either because planning permission existed or because the time for enforcement action had expired.
 - 15.3. The use was continuous for the relevant immunity period that being ten years.
16. The evidential burden is substantial because a CLEUD is a conclusive determination of lawfulness. Clear, precise, and unambiguous evidence is therefore required as to the nature, extent, and continuity of the use claimed.

The Appellant’s case

17. In support of the Appellant’s case, he provided the following supporting information and evidence:
 - 17.1. Application form;
 - 17.2. Supporting statement;
 - 17.3. Site location plan, block plan;
 - 17.4. Existing floor plans, roof plan, north and east elevations;
 - 17.5. Proposed south and west elevations;
 - 17.6. Sworn declaration – the Appellant;
 - 17.7. Exhibits DA1- DA4;

- 17.8. High court judgement- *R Ocado v Islington* (2021) EWHC 1509;
 - 17.9. Sworn oath- J Steel;
 - 17.10. Sworn oath- N steel;
 - 17.11. Statutory declaration- K Meraga;
 - 17.12. Supermarket home delivery details April 2020 - September 2023.
18. The Appellant's case alleged uses (of residential use and storage) have occurred since 2010 and the LPA has served breach of condition notices after the immunity period was established. However, the Application Form states that the use began on 1 January 2007 with no interruption. In his Sworn Declaration, dated 9th October 2025, he says the use commenced in 2006/2007, and he relies of witnesses in respect of the date of 2006.
19. As per the submitted Sworn Declaration, dated 9th October 2025, it is the (summarised and in addition to para 18) Appellant's version of events that:
- 19.1. He is the registered owner of the site and acquired it in 2006.
 - 19.2. At the time of application 09/01587/FULL in 2009 the Appellant used Copenhagen Farmhouse as a correspondence address but was moving between that address and 'Meadow Forge' spending most of his time at the forge.
 - 19.3. He states that Rose Cottage was a correspondence address and he was in fact living in the blacksmiths forge for most of the time. However, it should be noted that on 14th May 2010 the Appellant completed and returned a Planning Contravention Notice (herein 'PCN') relating to an alleged breach of the mixed use of the building for blacksmith workshop and human habitation. He answered that there was no human habitation of the building at that time, and that he lived at 'Rose Cottage' TA2 6QS. He also denied any residential use in his replies to the PCN dated 8th February 2022 (see below).
 - 19.4. It is alleged that during 2011 works were undertaken including the installation of, within the NE corner of the blacksmiths forge/ building, dwellinghouse facilities that enabled him to live within the building and he used that part for residential purposes. This included wash facilities, a bath, sink and toilet on the 1st floor and a laundry area on the ground floor.
 - 19.5. He completed a census form which was sent to him at Hillside Barn (Meadow Forge) in November 2011 he registered himself as resident at Hillside Barn on the Electoral Roll. He was informed he could only register as 'local area connection' as the Appeal Property was not classed as residential.

- 19.6. His driving license shows him as resident at Hillside Barn (Meadow Forge) from 15th October 2011 until 12th May 2021.
- 19.7. He assumed the LPA had decided to take no further action regarding alleged residential use as he heard nothing until a further PCN was served in early 2022.
- 19.8. From January 2022² he has paid residential Council Tax band A which describes Hillside Barn as a 'mixed use' property.
20. The declaration also provides additional information in respect of the Appellant's answers to the PCN, signed and dated 8th February 2022.
21. It is the Appellant's case that he has used the approved blacksmith forge building continually for both residential purposes and as a working forge "in what he would describe as a composite use" for more than 10 years and certainly from 2011 until the date of the declaration. Although, he also alleges this has been from 1st January 2007 and since 2010 and since 2006/2007.
22. The supporting evidence provided for residential use includes:
- 22.1. MDDC letter 23rd November 2011 stating he is on the register of electors;
- 22.2. Driving licenses with address of Hillside Barn;
- 22.3. Copy of census form sent to Hillside Barn;
- 22.4. Various email correspondence between MDDC Officers Building Control;
- 22.5. Planning Enforcement, Revenues;
- 22.6. Details of supermarket deliveries.
23. In respect of the use of the surrounding land the Appellant's declaration sets out that:
- 23.1. Outside storage of vehicles and chattels has taken place continually for more than 10 years, as set out in replies to PCN.
- 23.2. Google Earth aerial images show outside storage from 1st January 2010 up until 1st March 2025 (Exhibit DA4).
24. The Appellant relies on the Sworn Oaths of N and J Steel. Therein it is stated that:

² However, it should be noted that in 2025 he informed the Local Authority that for Council Tax purposes the Appeal Property was business use only.

- 24.1. In February 2013 the Appellant began teaching J Steel to be a blacksmith, they visited the site virtually every week until 2020.
 - 24.2. Throughout the time he has known the Appellant, he has lived in a section of the barn.
 - 24.3. He has also had vehicles in various states of repair stored both inside and outside the barn.
25. The Appellant also relies on the Statutory Declaration of K Meraga (herein 'KM'), who states:
- 25.1. Employed by the Appellant as an apprentice blacksmith in early 2009. There were kitchen facilities and a toilet in the building.
 - 25.2. The area outside was used as a parking area for employees and deliveries, as well as storage area for scrap metal and some project vehicles.
 - 25.3. Later in 2009³ the Appellant moved residence from Tiverton to Meadow Forge, KM used their van to help move all his furniture and belongings to Meadow Forge.
 - 25.4. KM assisted the Appellant with building work on several occasions, an example being putting in some salvaged oak joists to form the first floor under what is now the bathroom area.
 - 25.5. KM went on to undertake an NVQ course in plumbing and as part of their coursework, replumbed the first floor bathroom at Meadow Forge.
 - 25.6. KM remains friends with the Appellant and has visited him at Meadow Forge often and has known Meadow Forge to be his place of residence throughout this time.

Notifications, representation and the issues raised

26. At the time of the writing of the Delegated Report, dated 29th January 2026, the LPA had received 17 representations, of which 8 are listed in support and 7 were objections.

Objections

27. In terms of the objections, 5 of the objectors submitted statutory declarations, they all confirm to have witnessed the following for the periods they have occupied their current properties which neighbour the site:

³ This is contrary to the Appellant's evidence that he was residing therein in 2006/2007.

- 27.1. Known the Appellant to reside and sleep in a converted library bus and other various vehicles over the years and not consistently in the commercial barn.
 - 27.2. Summer 2025 the Appellant has been residing in a yurt/ hut building that he constructed at the rear of this field.
 - 27.3. The Appellant has also commuted regularly from other properties over the years, where he was residing.
 - 27.4. The Appellant regularly leaves the property entirely for extended periods of time.
 - 27.5. Numerous vehicles are parked up for periods of time and then leaving the property over the years.
 - 27.6. The frontage of the property changes regularly, with different vehicles or trailers.
28. In addition to the points set out in the statutory declarations, the following comments were also received:
- 28.1. They had not observed or heard any blacksmith forge activity during time residing nearby.
 - 28.2. There is no sign of business activity.
 - 28.3. In 2006 you could see the Appellant working in the barn, this has not happened for many years.
 - 28.4. The Appellant appears to fix up old vans on occasion.
 - 28.5. The Appellant consistently stores multiple vehicles and various items on the forecourt of the property, some of the vehicles/items encroach over the access lane. The number and type of vehicles change frequently.
 - 28.6. The Appellant's current claim of continuous residence within the barn is highly questionable and believed to be untrue.
 - 28.7. The Appellant has been adding various windows etc by cutting into the façade of the barn.
 - 28.8. The Appellant appears to have admitted to providing some false information to the LPA in the past.

Support

29. The main points from supporting letters were:
- 29.1. Confirmation from visitors that the Appellant uses the property for blacksmith work.
 - 29.2. The Appellant has had toilet and kitchen facilities since 2006.
 - 29.3. Vehicles, sundries and trailers have been present outside since the occupant moved in.
 - 29.4. The Appellant has been living on site since owning the property⁴.
 - 29.5. They have frequently visited the Appellant at Meadow Forge and confirm that what he has said is accurate and true.
30. The Cadeleigh Parish Council at its meeting on 17th October 2025 note that there is little or no evidence that the Appellant was carrying out a blacksmith business from the barn. In addition to making various other objections.

Planning enforcement history

31. The LPA have investigated enforcement issues:
- 31.1. 10/00037/UCU Change of Use from Blacksmith Workshop to mixed use of Blacksmith Workshop and human habitation. The case notes include:
 - 31.1.1. 11th May 2011: The case notes record a follow up site visit- Photographs were taken of the office and small kitchen area in building but there was no evidence of anyone living at the Appeal Property. It was deemed that no further action required.
 - 31.1.2. 14th May 2010: the PCN was returned by the Appellant. He stated that building is a forge and the owner lives at Norton Fitzwarren.
 - 31.1.3. On 17th May 2010 the case was closed as no breach was found.
 - 31.2. 13/00042/UCU- Unauthorised material change of use from blacksmiths forge to a mixed use of blacksmiths forge and use for residential occupation.

⁴ Thus, since 2006.

- 31.2.1. The site visit notes dated 8th March 2013, record that the Appellant denied living in the barn and stated that the facilities were required as ancillary to the blacksmith use as he used to employ 5 people and had to provide toilet facilities under employment law.
- 31.2.2. On 28th March 2013, there was a second site visit. The case notes record that there is no evidence of the building being converted to a house although there are elements that could be argued to fulfil part of the role. The Appellant was at pains to explain that he has to provide any potential employees with certain facilities and that what could be seen amounted to those facilities. The Appellant totally denied living at the Appeal Property.
- 31.2.3. On 8th April 2015, the case was closed as no breach was identified.
- 31.3. 15/01077/PE- Notification of Prior Notification for Change of Use (herein 'PNCOU') Class M. It was stated that as at 12th May 2015, the agricultural use shall be use as a gallery (A1 shops use) to display the market and works made in the building next to it known as Meadow Forge - less than 150sqm - red line area relating to the eastern side of the building. Appellant's email indicated there was an internal partition wall.
 - 31.3.1. The case officer queried how the building was returned to agricultural use in 2011 from former B2. It was stated that the building appeared to be in use for some form of mixed storage.
 - 31.3.2. A letter dated 9th October 2015 was sent to the Appellant regarding an enforcement visit. It was noted that on the 8th March 2013 visit the kitchen and washing facilities were contained within that part of the building where agricultural use was alleged, and thus, it was not considered to be an agricultural use.
- 31.4. 20/00223/RURAL – Conversion of barn to dwellinghouse and siting of shepherds hut for human habitation (enforcement case). In the PCN responses, dated 9th February 2022, the Applicant stated:
 - 31.4.1. His home address was at Stratford Avenue, Exeter (stated as permanent residential address for 4 years).
 - 31.4.2. Started using Meadow Forge for blacksmith purposes since late 2006 or early 2007.

- 31.4.3. States Meadow Forge has been in sole use as a blacksmith forge since he purchased it.
 - 31.4.4. It has not been used for other purposes or uses.
 - 31.4.5. He confirmed there is no residential use at various answers including 3.8, 3.9, 4.9, 5.0, 5.5, 5.6, 5.7, 6.1, 6.4, 6.7.
 - 31.4.6. Vehicles at front of barn are used for blacksmith business and have been stationed at the premises for some 15 years.
- 31.5. A breach of condition notice served in respect of condition 5 of 09/01587/FULL, dated 28th March 2025, with a compliance period 2 months for condition 5. A breach of condition notice served in respect of condition 2 of 09/01587/FULL, dated 28th March 2025, with a compliance period 3 months.

The Appellant's evidence and the LPA's assessment of it.

- 32. The Council's Tax records confirmed that a commercial business rates account had been registered at the Appeal Property since 1st February 2007. The residential tax account for the Appeal Property commenced only on 1st January 2022⁵.
- 33. The Council's Electoral Role records confirm that the Appellant had been registered at this address for over 10 years, but only with a "Declaration of Local Connection⁶" to the Appeal Property. He could not be registered in the normal way as it was not registered as a residential property. In 2023 the Local Land and Property Gazetteer confirmed it had been classified as residential, so the Appellant's registration was switched to an ordinary elector.
- 34. The submitted driving license records are noted however they were not considered to be conclusive of a continuous residential use of the Appeal Property.
- 35. Whilst the supermarket delivery details (April 2020 to September 2023) were noted, they were also considered to provide limited evidence of a continuous residential use of the Appeal Property, particularly for the relevant period.
- 36. The supporting statutory declarations and oaths are noted and appear to support the Appellant's version of events.
- 37. Whilst the Appellant alleges that the mixed use (forge and residential) has been undertaken since at least 2011 (and going as far back as 2006/2007) this

⁵ The LPA now knows that in 2025, the Appellant represented, in respect of this Council Tax, that there was no residential use.

⁶ A person who does not have a fixed or permanent address may register at the place where they spend a substantial part of their time (whether during the night or day) pursuant to s7B, Representation of the People Act 1983 (RPA 1983)

contradicts with the findings of the LPA's Enforcement Team in their investigations since that time.

38. At the time of 15/01077/PE the Appellant alleged that the eastern most part of the building was in agricultural use. This contradicts the responses provided to planning contravention notices and within the submitted statutory declaration in support of the CLEUD Application.
39. The Appellant's case, including Sworn Declaration, makes a number of assertions that are directly contradictory to the evidence provided in response to (the PCN, dated 14th May 2010 and) the PCN dated 9th February 2022. It is stated in the 2022 PCN that:
 - 39.1. His home address was stated as at Stratford Avenue, Exeter (stated as permanent residential address for 4 years).
 - 39.2. He started using Meadow Forge for blacksmith purposes since late 2006 or early 2007.
 - 39.3. Meadow Forge has been in sole use as a blacksmith forge since he purchased it.
 - 39.4. It is not used for other purposes or uses (than a blacksmith forge).
 - 39.5. There is no residential use set out in various answers including 3.8, 3.9, 4.9, 5.0, 5.5, 5.6, 5.7, 6.1, 6.4, 6.7.
 - 39.6. Vehicles at front of barn are used for blacksmith business and have been stationed at the premises for some 15 years.
40. Further, in the submitted Sworn Declaration, in reference to the PCN questions where the Appellant had clearly stated there was no residential use, the Appellant sets out that he "*did not consider that my residential use was a change of use but considered that it was a 'mixed use' (composite use) of residential and blacksmith forge*". However, the PCN responses are clear and unequivocal in repeatedly stating there has been no residential use of the Appeal Property.
41. The submitted emails at exhibit DA3 are relied upon to suggest that the Council was "*aware of a mixed use taking place since 2008*". However, the email correspondence is not considered to be conclusive. It is internal correspondence from a previous Enforcement Officer considering various different hypothetical scenarios, none of which are considered to be substantiated by the evidence base put forward by the Appellant on repeated occasions.
42. The statutory declarations received from objectors are noted and suggest that the Appellant has lived in other vehicles/ structures on the land, not within the Appeal Property.

43. In terms of the blacksmith use, it is noted that significantly more evidence of an ongoing blacksmith use would be expected to be available if an ongoing business use has been undertaken. The photograph taken on various site views by the LPA show that although the forge equipment is still in situ but it does not appear to have been used for some considerable time. The lack of blacksmith use is corroborated by those living nearby.
44. In relation to the external storage element, the Appellant relies on a series of aerial photographs of the Appeal Property from 1st January 2010 to 2025 (exhibit DA4). Whilst the most recent photographs appear to show some form of storage being undertaken (externally), the photographs are not particularly clear. It is noted from 2016 and previous to that, the area around the building appears to be well covered with trees and provide little evidence of external storage uses. The statutory declarations appear to suggest there has been some use of the forecourt for storage however there is no clear evidence of timeframe for this.
45. The Appellant's evidence of the alleged uses was not considered to be clear or unambiguous. The Council had obtained contradictory evidence that opposes the Appellant's case, and it is considered to make the Appellant's version of events less than probable, particularly noting that the Appellant's current evidence contradicts earlier assertions he has personally made in respect of oral assertions at site views and answers to PCNs. Overall, it was, and is not, considered that the Appellant has not demonstrated, on the balance of probabilities, that the uses contrary to conditions 2 and 5 of 09/01587/FULL are lawful in accordance with section 171B of the 1990 Act.
46. The Inspector is invited to find that:
- 46.1. Appellant has failed to discharge the burden of proving, on the balance of probabilities, that the claimed mixed use subsisted lawfully and continuously for the requisite period. The LPA's decision to refuse to grant a CLEUD was therefore well founded.

Failure to prove the claimed mixed use

47. The Appellant seeks certification of a mixed business and residential use. The LPA submits that the evidence does not establish that such a mixed use was subsisting at the date of the CLEUD Application (10th October 2025), or in any 10 year period. In particular:
- 47.1. The evidence from neighbours and the photographs from site views of the Appeal Property show that business use was not ongoing at the date of the Application (and had not been ongoing for some time).
- 47.2. The evidence from neighbours is that at the time of the CLEUD he was living in a yurt in a field behind the Appeal Property. He has lived in various vehicles next to the Appeal Property such as in a library vehicle, ambulance and other vehicles.

- 47.3. A mixed use cannot be certified where one of the constituent uses has ceased and the claimed combination of uses no longer exists.
- 47.4. The Appellant has not provided cogent evidence of continuing business operations, such as trading records, invoices, accounts, staff activity, customer visits, or other objective indicators of an ongoing business use.
- 47.5. Accordingly, even if some residential use could be shown, the use claimed in the Application, namely a mixed business and residential use has not been established.
48. A use that has ceased cannot form part of a certified mixed use. The evidence in this case demonstrates that:
- 48.1. The business activity had ceased.
- 48.2. The Appellant has not produced sufficient objective evidence of continuing business operations.
- 48.3. There is evidence that he was not residing in the Appeal Property but in a yurt.
- 48.4. The claimed mixed use therefore did not subsist at the relevant date.
49. If the 2009 Planning Permission was implemented, which is not accepted (see below) it has been abandoned. The test being:
- (i) the physical condition of the building;
- (ii) the length of time the building was used for forge;
- (iii) whether the building was used for other purposes; and
- (iv) the owner's intentions (considered objectively).
50. The building has had some form of mock Tudor type structure built inside. It is most unlikely that the building could be used as a forge. There is no evidence that it complies with Building Regulation, such compliance seems most unlikely simply on a visual inspection. In order to function as a commercial forge and employing others (as is allege) there would need to be compliance with the Workplace (Health, Safety and Welfare) Regulations 1992, which includes structural safety.
51. The evidence from objectors living nearby is that there has been no working forge for many years.
52. If the Appellant establishes residential use and storage, those usages are not compatible for the requirements of a working forge.

53. Given the passage of time, and the state of the Appeal Property, objectively there seems to be no owner intention to resume a commercial working forge at the Appeal Property.
54. The CLEUD Application cannot be reformulated into a certificate for residential use alone, or some other use. The Application sought certification of a mixed business and residential use, and it is that claimed use which must be proved⁷.
55. As highlighted herein the burden of proof lies with the Appellant. The standard is the balance of probabilities, but the evidence must be sufficiently precise and unambiguous to justify the grant of a certificate. In this case:
- 55.1. The Appellant's evidence is undermined by repeated prior repeated denials of residential use.
- 55.2. It is contrary to the evidence of neighbours (and what has been seen on site views by the LPA) that there is no business use.
- 55.3. There is no evidence of ongoing business use at the date of the CLEUD Application, by documentary evidence.
56. The Inspector is invited to find that at the time of the Application, and for a significant period of time before, there was no business use.
57. The Inspector is also invited to find that there was not residential use at the time of the Application or if there was it had not been used in that manner sufficiently in the 10 year period as alleged.

Deliberate concealment and misleading representations

58. The LPA relies on evidence that there were repeated oral and written representations to the LPA that there was no residential use at the Appeal Property. Those representations are inconsistent with the Appellant's present claim that residential use formed part of the use of the Appeal Property.
59. If there was in fact residential use, the repeated denials⁸ of residential use is highly material for the following reasons:
- 59.1. It demonstrates that the alleged residential use was concealed from the LPA.

⁷ The LPA will say that the Appellant cannot fundamentally change or "reformulate" the description of a Lawful Development Certificate (LDC) application during an appeal. The Planning Inspectorate must determine the appeal based on the same development or use originally applied for. It is accepted that a Planning Inspector does have the discretionary power to modify, clarify, or substitute a more accurate description of the development. This is if the original wording was imprecise or slightly inaccurate.

⁸ Even as late as 12 November 2024, during a site view by the LPA, the Appellant told enforcement officers that residential use was not permanent and that he lived elsewhere. Further, on 13 August 2025 site view he again informed enforcement officers that the Appeal Property was not a residence. At this time, it was LPA's understanding that the Appellant was living in a yurt in a field at the rear of the Appeal Property.

- 59.2. It prevented the LPA from properly investigating and, if necessary, taking enforcement action within the ordinary statutory time limits.
 - 59.3. It amounts to positive deception or at least deliberate concealment in matters integral to the planning control process.
 - 59.4. If as alleged the use commenced in 2006/2007 the Appellant intended to deceive the LPA from the outset, in applying for planning permission in 2009 for use only of a forge.
 - 59.5. It undermines the credibility and reliability of the Appellant's evidence in support of the application.
- 60. The LPA submits that the Appellant should not be permitted to obtain the benefit of a CLEUD certificate where the very use now relied upon was repeatedly denied to the LPA during the relevant period.
 - 61. The leading authority is *Secretary of State for Communities and Local Government v Welwyn Hatfield Borough Council* [2011] UKSC 15. The Supreme Court held that a person cannot rely on statutory immunity where the breach of planning control has been deliberately concealed from the planning authority.
 - 62. The Court emphasised that:
 - 62.1. The planning system depends upon honest engagement with the LPA.
 - 62.2. A person should not be permitted to profit from his or her own wrong.
 - 62.3. Where there has been positive deception or deliberate concealment, public policy may prevent reliance on the ordinary limitation periods in section 171B of the 1990 Act.
 - 63. The principles in *Welwyn Hatfield* have been applied in subsequent cases concerning concealed breaches of planning control, including: *R (Fidler) v Secretary of State for Communities* [2011] EWCA Civ 1159 and *Local Government an Jackson v Secretary of State for Communities and Local Government* [2015] EWHC 20 (Admin)⁹.
 - 64. In the present case, the concealment is not merely passive. The Appellant has clearly made repeated representations, both oral, and in writing in response to PCNs, that there was no residential use. Such conduct goes directly to the integrity of the planning process and the fairness of allowing the Appellant to rely on the passage of time.

⁹ In *Jackson v Secretary of State for Communities and Local Government*, the High Court ruled that the "Welwyn principle" of planning law remains valid. It held that statutory changes (Planning Enforcement Orders) did not replace the rule preventing landowners from claiming time-immunity if they deliberately conceal unlawful developments.

65. The LPA submits that the concealment identified above prevents the Appellant from relying on the statutory immunity provisions to establish the lawfulness of the alleged residential use.
66. Should residential use be found to have existed, the Inspector is invited to find that:
- 66.1. The Appellant repeatedly represented to the LPA that there was no residential use.
- 66.2. The alleged residential use was therefore deliberately concealed from the LPA.
- 66.3. The concealment had a direct nexus with the Appellant's ability to rely on the passage of time.
- 66.4. It would be contrary to public policy to grant a certificate on the basis of a use that was deliberately concealed from the LPA.
- 66.5. The evidence does not overcome the public policy objection arising from deliberate concealment.

Residential use pre-dated the grant of planning permission

67. The Appellant alleges that that the residential use commenced in 2006, he also says 2007. The planning permission on which he relies is 09/01587/FULL, dated 14th December 2009 'Retention of change of use from agricultural to blacksmith's forge'. Thus, on the Appellant's own case the residential use commenced before the grant of the planning permission on which the Appellant seeks to rely.
68. The LPA will say that if residential use is accepted for the relevant time, further and in the alternative, the relevant planning permission authorised a specified change of use from agricultural to blacksmith's forge. However, on the Appellant's own case, residential occupation had already begun before that permission was obtained.
69. The consequences of that chronology are material:
- 69.1. The planning permission was not implemented by carrying out the authorised change of use.
- 69.2. The residential use was already taking place before the permission was granted.
- 69.3. There was accordingly no implementation of the planning permission and no material change of use from blacksmith forge use to mixed business and residential use (*Impey v Secretary of State for the Environment* [1984] 47 P & CR 157). In the *Welwyn Hatfield BC* case it was found that the construction of the building had been begun and completed as a dwelling house and not as the barn permitted by the

planning permission so that there had been no change of use from that of the permitted barn to that of a dwelling house.

- 69.4. The CLEUD Application cannot retrospectively regularise or validate a residential use that had already commenced before the planning permission was granted if that planning permission is relied upon but not implemented.
- 70. Thus, the LPA submits that implementation of a planning permission for change of use requires the authorised use to be brought into operation in accordance with the permission. Where the alleged residential use pre-dated the grant of permission, the permission has not been implemented by that use.
- 71. In those circumstances:
 - 71.1. The Appellant cannot rely on the planning permission as the source of lawfulness for the part of the alleged mixed use.
 - 71.2. The claimed mixed business and residential use cannot be said to have arisen after implementation of the planning permission.
 - 71.3. Indeed, if the residential use was already present before the permission was granted, there will have been no material change of use at all, from the granting of that planning permission.
- 72. Should the Appellant change his evidence and suggest that the alleged residential use commenced after the grant of the planning permission in December 2009, given the evidence of repeated misrepresentations to the LPA that there was no residential use, a change in this evidence now, would be a further inconsistency, and lends weight to the contention that the Appellant's evidence is unreliable and should not be accepted where there is other contradictory evidence.
- 73. Accordingly, the Inspector is invited to find, if residential use is found for the relevant time, that:
 - 73.1. The residential use commenced before the relevant planning permission was granted.
 - 73.2. The planning permission was not implemented by the carrying out of the authorised change of use.
 - 73.3. No material change of use from business use to mixed business and residential use occurred pursuant to or after that planning permission.
 - 73.4. The Appellant cannot rely upon the planning permission to establish the lawfulness of part of the claimed mixed use.

External storage

74. In the Appeal Statement at paragraph 2.1.12, it is stated that:

“The LPA has failed to reasonably apply the balance of probabilities test such that the Appellant's evidence and the objector's evidence all provided detail of the storage of chattels and vehicles around the front and side of the Meadow Forge building in breach of condition 5.

b) The timeframe of the storage use was evidenced by the aerial photographs of the site exhibited by the Appellant.

c) Again, the LPA's course of action in service of the Cond 5 BCN runs counter to the refusal. That BCN identifies the very same types of chattels that the Appellant maintains have been stored on the land outside Meadow Forge in breach of Condition 5.”

75. The LPA considered the evidence presented, weighed up that evidence, and in applying the relevant test of the balance of probabilities, reasonably found that although the Appellant relies on a series of aerial photographs of the Appeal Property from 1st January 2010 to 2025 (exhibit DA4), the most recent photographs appear to show some form of storage being undertaken (externally), the photographs were not particularly clear. It was also noted from 2016 and previous to that, the area around the building appears to be well covered with trees and provide little evidence of external storage uses. The statutory declarations appeared to suggest there has been some use of the forecourt for storage however there is no clear evidence of timeframe for this.
76. On 6 September 2017 a site visit was carried out, the Appellant was on site and was given a period of 28 days to remove the vehicles and materials from outside the building. On 4 May 2018, a further report was received by the Council stating that there was debris blowing about at the property. This case was booked in under case reference 18/00130/UNTIDY. On 13 June 2018, officers visited the Appeal Property and took some photographs of items still being stored outside the building. On 20 June 2018, this case was closed the reasons given that the majority of the items had been removed. Therefore, there was no storage outside other than *de minimis* at the time.
77. The 2017 case remained open, on 29 January 2019 the 2017 case was also closed with no further reports having been received and the investigation officer took the view that the breach had resolved, and the Appellant had complied with the removal of the items as requested.
78. On 15 October 2021, a report was received by the Council that the Appellant was in breach of condition 5 of the planning permission 09/01587/FULL in that items were being stored again outside the barn. This report was added to the already existing 2020 file. On 4 November 2021, a site visit was carried out, and pictures were taken of the outside of the barn. Whilst some items were the same as the 2018 photographs, some had been removed, and new items had been placed outside the barn.

79. The Google Earth aerial photographs do not reliably show items 'stored' at the front and side of the Appeal Property. This is especially so for the photographs predating 2018. Furthermore, the side of the Appeal Property is covered by a tree canopy.
80. The Inspector is invited to find that the Appellant has not established the breach of Condition 5 and/or the outside storage for the required period of 10 years.

Concluding remarks

81. For the reasons set out above, the LPA respectfully submits that the appeal should be dismissed, and the refusal of the certificate upheld.
82. The Appellant has failed to demonstrate, on the balance of probabilities, that:
- 82.1. The claimed mixed use subsisted lawfully and continuously for the requisite period.
- 82.2. The CLEUD Application should have been granted. The claimed mixed business and residential use allegedly subsisted at the date of the planning permission application in 2009 and thereafter:
- 1.1.1. therefore the 2009 planning permission was not implemented and cannot be relied upon;
- 1.1.2. there has been no change of use as alleged.
- 82.3. The alleged residential use can be relied upon. It cannot because it has been repeatedly deliberately concealed.
- 82.4. At the time of the CLEUD Application (10th October 2025) there was no business use and/or no residential use.
- 82.5. External storage has been ongoing for the relevant 10 year period.
- 82.6. The claimed use is lawful within the meaning of s191 of the 1990 Act.
83. Thus, in all the circumstances, the Appellant has failed to discharge the burden of proving, on the balance of probabilities, that the claimed mixed use subsisted lawfully and continuously for the requisite period. The LPA's decision to refuse to grant a CLEUD was therefore well founded.
84. The Appellant has not established that the planning permission was ever lawfully implemented so as to create the mixed business and residential use now claimed. The LPA further submits that if the alleged residential use commenced before the grant of the relevant planning permission. As a consequence, the planning permission was not implemented by the authorised change of use, and no material

change of use from business use to mixed business and residential use occurred pursuant to that permission. The Appellant cannot therefore rely on the planning permission as establishing in part the lawfulness of the claimed mixed use.

85. It would be contrary to both the statutory scheme and established public policy for the Appellant to obtain the benefit of a certificate based on a use that was repeatedly concealed from the LPA and where the claimed mixed use did not subsist at the date of the application.
86. No documentary evidence has been produced to establish that the business activity of a forge was being undertaken at the time of the CLEUD Application. There is independent evidence that business activity had not be undertaken for a considerable time. No business activity was being undertaken on visits from the LPA and the photographs suggest that although the equipment is still present it has not been used for a considerable time.
87. It is respectfully submitted that the Appeal should be dismissed.

16th July 2026

MID DEVON DISTRICT COUNCIL REFERENCE: 25/01406/CLU

PLANNING INSPECTORATE REFERENCE: APP/Y1138/X/26/3378579