

power in s.193(7) may be exercised. That power of revocation is then subject to judicial review.

84. The first ground upon which a CLEUD may be revoked is that the application relied upon a statement or a document which was false in a material particular. It is common ground that this ground does not additionally require that the party who made or relied upon the statement or document knew that it was false, or was reckless on that issue. There is no requirement that the making of a statement was deliberately false or dishonest. I agree that section 193(7)(a) lays down a straightforward, objective test that the material in question was false, in the sense of incorrect. Collins J reached the same conclusion in *R (Russman) v London Borough of Hounslow* [2011] EWHC 931 (Admin) at [11].
85. However, there is disagreement on the interpretation of s.193(7)(b). This is the issue raised by ground 1 of the challenge. It is convenient to deal with it now. The claimant submits that the word “withhold” connotes a deliberate decision to hold back information from the local planning authority. Islington and CRTP submit that a withholding does not have to be deliberate.
86. I am in no doubt that the claimant’s contention, and ground 1, should be rejected for a number of reasons.
87. According to the Oxford English Dictionary the word “withhold” has a range of meanings. It may indicate a deliberate decision. But it may also describe a situation in which a person keeps something in their possession, such as information. “Keeping” need not be a deliberate act or decision. As a matter of language, it may properly be said that a person withholds information which he or she has in their possession, and therefore is able to provide, but does not provide. Such a withholding may be accidental or inadvertent. It may be mistaken, careless or reckless. For example, the information may be contained in a file which an applicant does not take the trouble to look for. A range of situations may properly be said to fall within the notion of withholding information.
88. The width of the meaning to be given to “withheld” in s.193(7)(b) must depend upon its context. A CLEUD confers an important and valuable right which impacts upon the future exercise of planning control. The local planning authority is entitled to be satisfied with the adequacy of the information provided by the applicant to justify the grant of a certificate. The power to revoke a certificate is an important safeguard for dealing with false information or non-disclosure. It makes no sense for ground (a) in s.193(7) to be an objective test, but for ground (b) to be dependent upon the subjective intention of the applicant. There is no sharp distinction between grounds (a) and (b). They are both concerned to promote reliable decision-making under ss.191 and 192. The positive falsity of a statement may go hand in glove with the non-provision of information. They may relate to the same subject-matter.
89. The objective approach to the meaning of “withheld” in s.193(7) aligns with the onus which the statutory scheme places on the applicant to justify the grant of a certificate by providing adequate evidence to the decision-maker verifying the information included in the application. The subjective approach would undermine the applicant’s obligation to verify. It would provide an inappropriate “let out” for an applicant, where

Nonetheless, in the final analysis the test is an objective one, based upon the view that would be taken by a reasonable person with knowledge of all the relevant circumstances. The subjective intentions of the actual owner are not determinative.

77. Whereas an established use certificate was conclusive as to the matters it stated in an appeal against an enforcement notice (s.192(4) of TCPA 1990 as originally enacted), the use certified was not treated as lawful. By contrast, under the current version of s.191 a use or breach of planning control found to be immune from enforcement is lawful.
78. Although s.191(6) provides that that lawfulness “shall be conclusively presumed”, the Court of Appeal has held that that presumption only applies to the lawfulness certified as at the date of the application for a CLEUD. Consequently, a certified lawful use right is capable of being abandoned subsequently. Such a right may also be lost if an enforcement notice is later served and no appeal is brought against that notice relying upon the CLEUD (*Staffordshire County Council v Challinor* [2008] 1 P&CR 10 at [47]-[48] and [54]-[56]).
79. In the *Swale* case Keene LJ remarked at [30] that the concept of abandonment is best confined to the topic of “established use rights.” However, it is plain from [7], [9] and [15] that he was using the expressions “established use rights” and “lawful use rights” interchangeably. That was because the real point in that case was that the concept of abandonment is relevant to whether an accrued use right has been lost, but not to whether it has accrued in the first place (see [54]-[55] above). At all events *Swale* was cited in *Challinor* where the leading judgment was also given by Keene LJ.
80. Accordingly, it is plain that if a lawful right to use units A-D for B8 purposes did accrue in about 2002, through that use having continued in breach of planning control for 10 years, that right was capable of being abandoned thereafter.

The power in s.193(7) to revoke a certificate under s.191 or s.192

81. A CLEUD or a CLOPUD may only be revoked by a local planning authority on the grounds set out in s.193(7). The power of revocation may not be used, for example, because the authority wishes to revisit the merits of the application, or has changed its mind about the findings of fact it has made or the inferences or conclusions it has drawn from the material submitted.
82. The power in s 193(7) may be exercised at any time. It does not give rise to any right to compensation, unlike the making of a revocation order or a discontinuance order under s.97 or s.102 of TCPA 1990 (see ss.107 and 115). A decision to revoke a CLEUD under s.193(7) is not subject to confirmation by the Secretary of State, unlike an order made under s.97 or s.102.
83. It is reasonable to assume that a certificate under s.191 or s.192 is a “possession” for the purposes of Article 1 of the First Protocol to the ECHR. However, Mr. Brown QC confirmed that the grounds of challenge in this case do not rely upon that provision. He accepts that the grant of a CLEUD or a CLOPUD is precarious in the sense that it is liable to be revoked without compensation if the applicant relied upon a statement or document which was materially false, or material information was withheld. The absence of a right to compensation is justified by the nature of the grounds upon which the

verifying evidence) explaining why it is considered to be non-material to the merits of the application. That after all, is the course which would have to be followed if grounds for revocation arose subsequently. One advantage of disclosure up-front is that the local authority is then able to consider whether it is appropriate to pursue any other lines of enquiry before deciding whether to grant a certificate. Where such steps are taken, it is more likely that any subsequent suggestion of revocation could be resisted more effectively.

73. In many cases the ambit of any certificate and its degree of particularity are likely to be important considerations, because, for example, such matters affect the scope of any enforcement action that may subsequently be taken. Section 193(5) underscores the importance of this issue for breach of condition cases. Ultimately, it is for the local authority to consider the content and degree of particularity in a CLEUD (*R (KP JR Management Company Limited) v Richmond-Upon-Thames London Borough Council* [2018] J.P.L 838). Plainly, this can affect the nature and level of detail which an applicant can be expected to provide in support of an application. A lack of precision in a certificate may sometimes give rise to a successful legal challenge (*Broxbourne Borough Council v Secretary of State for the Environment* [1980] QB 1; *Main v Secretary of State for the Environment, Transport and the Regions* (1999) 79 P&CR 300).

Abandonment of a planning use right

74. In *Hartley v Minister of Housing and Local Government* [1970] 1 QB 413 the Court of Appeal held that the use of a site, for example an established use, could be abandoned, so that its resumption would require planning consent. The Court distinguished a temporary cessation or suspension of a use.
75. By contrast, a planning permission which remains capable of being implemented cannot as a matter of law be abandoned (*Pioneer Aggregates (UK) Limited v Secretary of State for the Environment* [1985] AC 132; *Camden London Borough Council v McDonald's Restaurant*) (1993) 65 P&CR 423. Instead, whether a planning permission lapses altogether is generally controlled by conditions in the permission imposing time limits for the commencement of development (ss.91-93 of the TCPA 1990).
76. In *Secretary of State for the Environment, Transport and the Regions v Hughes* (2000) 80 P&CR 397 the Court of Appeal accepted that abandonment can be assessed by reference to the four criteria applied in *Castell-y-Mynach Estate v Secretary of State for Wales* [1985] JPL 40:-
 - (i) the physical condition of the property;
 - (ii) the length of time for which (and extent to which) the property has not been used;
 - (iii) whether it has been used for any other purposes; and
 - (iv) the owner's intentions with regard to the use of the property.

bringing of a prosecution. Whether or not a statutory declaration is used to provide evidence to a local planning authority, s.194 makes it an offence for a person, for the purposes of obtaining a decision on an application under s.191 or s.192, to make a statement knowingly or recklessly which is false or misleading in a material particular or, with an intent to deceive, to use any document which is materially false or misleading or to withhold material information. In s.194(3) Parliament has expressly disapplied the normal 6-month time limit in s.127 of the Magistrates' Courts Act 1980 for the bringing of a prosecution in respect of a summary only offence. Section 194(3) is all of a piece with the power of revocation in s.193(7), which is exercisable at any time after the grant of a CLEUD.

68. To enable an authority to assess the weight to be placed upon a statutory declaration or witness statement, it is good practice for the author to make plain which matters are within his own personal knowledge and, unless it is obvious, how that knowledge was obtained. For each matter outside his own knowledge, he should identify the specific source relied upon. These are essentially the principles applied to witness statements in civil litigation (CPR PD32 para.18.2) and it is difficult to see why the approach should be any less rigorous in the context of s.171B where a declaration may be dealing with continuity over a long period of time.
69. An application under s.191 of TCPA 1990 is asking for a certificate to be granted which is intended to provide immunity from subsequent enforcement action inconsistent with the right certified. It would therefore be appropriate in many cases for the applicant to have in mind the type and level of information which would be needed to advance a successful appeal against an enforcement notice under grounds (c) or (d) in s.174(2).
70. At one point Mr. Forsdick QC submitted that the grant of a CLEUD is predicated on the applicant not making any false statement or using any false document or withholding information falling within s.193(7). But he went on to make it clear that he was not contending that this is a condition for the exercise of the power to grant a CLEUD. Otherwise a line of legal challenge to the grant of certificates would arise which could not have been intended by the legislature.
71. Instead, the impact of s.193(7) on the CLEUD process is that an applicant assumes a risk (which passes to or affects successors in title) that any certificate he obtains may be revoked if it turns out that materially inadequate or false information was provided on the application. That risk is likely to be greater if he takes a minimalist approach to the provision of information. In practical terms, an applicant takes on responsibility for supplying information to verify his application that will not give rise to action under s.193(7).
72. Because s.193(7) deals with a material withholding of information, it follows that an applicant takes a risk of his certificate being revoked if he withholds material which is adverse to his case. As Mr. Wald QC put it, the legislation implicitly assumes that an applicant seeking a CLEUD is candid with the local planning authority in the information he supplies to verify his application. Where, for example, an applicant has adverse material, he would need to consider carefully whether he could properly justify withholding it. If, for example, it is fatal to the application the obvious answer is "no". Indeed, the application ought not to be made, bearing in mind the criminal sanctions which might apply as well as the risk of revocation. For other adverse information, the appropriate course may well be to disclose the material with an explanation (and any

standard (*Gabbittas v Secretary of State for the Environment* [1985] J.P.L 630). This aligns with the principle that in an enforcement notice appeal the burden lies on the appellant to establish to the same standard a ground of appeal falling within, for example, s.174(2)(d) (*Nelsovil Limited v Minister of Housing and Local Government* [1962] 1 WLR 404).

62. Not only must the applicant complete an application in the form published by the Secretary of State, giving the particulars specified, he must also provide “such evidence verifying the information included in the application as the applicant can provide” (article 39(1) and (2) of DMPO 2015).
63. It is only if the applicant provides a local authority with information which satisfies them of the lawfulness of the matter specified in the application that the authority should grant a certificate.
64. If an authority is not satisfied that the information provided to them by an applicant is adequate for that purpose it may refuse the application. The applicant may then appeal against that refusal or may submit a fresh application with more information. Alternatively, the authority may require the applicant to provide further information to enable them to deal with the application (article 39(9) of DMPO 2015). If the authority considers that there may have been a breach of planning control, it may also serve a planning contravention notice under s.171C of TCPA 1990 requiring specified information, including documents, to be provided, which, in the event of non-compliance can give rise to criminal sanctions (*R (Rusznak-Johnston) v Reading Magistrates’ Court* [2021] 1 WLR 2444).
65. I accept the submission of Mr. Forsdick QC that a local authority is not obliged to exercise its powers to require more information to be provided in order to try and remedy deficiencies in the material submitted by an applicant. The exercise of those powers is a matter of judgment for the authority. Nonetheless, their availability is important, given that the grant of a CLEUD will constrain the future ability of a planning authority to exercise planning controls, including the taking of enforcement action, and the consequent need to be satisfied with the adequacy of the information presented by an applicant.
66. If an authority should grant a certificate on sparse or materially inadequate information there is a risk of aggrieved citizens applying to challenge that decision by judicial review. This risk is increased by the absence of a statutory requirement for consultation before an application for a CLEUD is determined. It might be argued, for example, that an authority has failed to comply with a *Tameside* obligation to take reasonable steps, in the circumstances of the case, to obtain further information. However, the manner and intensity of any such inquiry may only be challenged on the grounds of irrationality (*R (Khatun) v Newham London Borough Council* [2005] QB 37 at [35] and *R (Balajigari) v Secretary of State for the Home Department* [2019] 1 WLR 4647 at [70]).
67. Care needs to be taken in the drafting of any statutory declaration in support of an application for a certificate under s.191 (or s.192). Such a document is intended to have a formal and solemn status in a non-judicial process where oaths are not administered. It is an offence for a person knowingly and wilfully to make a statutory declaration containing a statement which is false in a material particular (s.5 of the Perjury Act 1911). This offence is “triable either way” and so there is no specific time limit on the

period of 10 years, the condition was breached whenever it was capable of being complied with (disregarding exceptional compliance as a matter of fact and degree). The breach of planning control imposed by the condition would have continued throughout that 10-year period. The practical test in this situation is whether it would have been possible in any year of the 10-year period for the local planning authority to have taken enforcement action in respect of the non-compliance, to which the obvious answer is “yes” ([24]-[25] and [30]).

58. It is plain from *Thurrock, Swale* and *North Devon* that the test of whether the local authority would have been able or entitled to take enforcement action during the immunity period is central to a decision on whether a lawful right has accrued, both in relation to a determination under s.191 or an appeal against an enforcement notice. This principle will help to resolve a major issue between the parties under ground 3 below.
59. *North Devon* also establishes another principle of general importance where a breach of condition becomes lawful under s.191(3). At [26] Sullivan J approved the analysis given in paragraph 8.36 of Circular 10/97. The fact that the circular has since been revoked does not alter the soundness of that analysis. It is based upon s.193(5) which provides that a CLEUD does not affect any failure to comply with a condition subject to which a planning permission has been granted, unless that matter is specified in the certificate. So where a CLEUD is granted because the 10-year immunity period is satisfied in relation to breaches of one of the conditions in a planning permission, it is the legitimisation of *that breach* which should be stated in the CLEUD. The certificate does not legitimise any breaches of other conditions in the permission which are not specified. Those conditions will continue in force unless and until, for example, immunity from enforcement is acquired or a different planning permission (without those conditions) is granted and implemented. Moreover, it may be possible to breach a particular condition in different ways. It is the extent to which a condition is shown to have been breached for 10 years which defines the scope of the accrued right and which should be specified in the certificate, no less and no more. I understand these principles to have become common ground between the parties.
60. The practical importance of these principles is illustrated by an example given by Mr. Brown QC. Suppose permission has been granted for a caravan site subject to a condition restricting the number of pitches to 50. If the landowner can show that there has continued to be 55 pitches on the site for a 10-year period, he is entitled to a CLEUD legitimising the breach of *that condition* to the extent of allowing up to 55 pitches. The immunity from enforcement, and the additional right which accrues, relate to the increase in the total number of pitches on site. The condition cannot be treated as expunged altogether, because that would not correspond to the continuing breach which has been demonstrated and would unjustifiably remove any limit on the number of pitches permitted. In effect, the condition restricting the number of pitches continues in force, but with a revised ceiling on the total number of pitches allowed. There may also be other conditions controlling the pitches on a caravan site, for example their location within the site, which remain unaffected. As s.193(5) plainly states, it is necessary to apply the 10-year time limit to each relevant condition individually.

The procedure for obtaining a CLEUD

61. It is common ground between the parties that the burden lies on an applicant to demonstrate that a breach of planning control has become lawful applying the civil

52. In *Thurrock Borough Council v Secretary of State for the Environment* [2002] J.P.L. 1278 the Court of Appeal was concerned with whether the use of land as an airfield had become immune from enforcement. The inspector had said that there was no need for the landowner to demonstrate that the use had been in continuous existence for 10 years. The use had survived throughout that period unless there had been a clear change in circumstances, such as the introduction of another use or the airfield use had been abandoned ([14]).
53. At first instance Newman J held that the rationale for s.171B is that throughout the relevant period of unlawful use the planning authority had had the opportunity to take enforcement action but had failed to do so. If at any time the authority would not have been able to take enforcement action, for example, because no breach was taking place, that period would not count towards the rolling period of 10 years ([15]). The Court of Appeal endorsed that explanation. It is for that reason that the breach of planning control must have *continued* during the immunity period ([25]).
54. The concept of abandonment is applicable to the issue whether a use right which has already accrued continues to exist or has been lost, but cannot apply to the prior issue of *whether* such a right has accrued in the first place. It cannot be used to address any gap in the carrying on of a use during the time period set by s.171B, in effect to supply an assumption that the use *continued* during that period ([26]-[27] and [57]).
55. In *Swale Borough Council v First Secretary of State* [2006] JPL 886 the issue was whether the 4-year immunity period in s.171B(2) was satisfied in relation to a change of use of an agricultural barn to a dwelling. The Court reaffirmed the principle laid down in *Thurrock* that time runs for the purposes of the time limits in s.171B only when the local planning authority is able to take enforcement action, and not when it is unable to do so, notably during periods when a breach has ceased. Just as in *Thurrock* the inspector in this case had erred by relying upon the absence of evidence to show that the residential use had been abandoned during the period before any use right could have accrued, in order to fill a gap in the continuation of that use (see [8]-[11], [25]-[26], [29]-[30] and [35]-[37]).
56. The *North Devon* case was concerned with a breach of condition. Planning permission had been granted for the erection of five holiday bungalows subject to a condition that they should only be occupied for a defined period of 8 months in any calendar year. There was no dispute that one of the bungalows had been occupied continuously for a period of just over 10 years. The Inspector granted a CLEUD on appeal rejecting the local authority's argument that there had only been a breach of condition during the 8-month period in each year and that each such portion of the year when the condition was breached amounted to a separate breach of planning control setting the clock for a 10-year period of immunity running again.
57. Sullivan J upheld the Inspector's decision. He referred to the rationale of s.171B(3) as explained in *Thurrock* and the implicit requirement that the breach of condition should continue for a period of 10 years. Some conditions are capable of being breached continuously. Others are not, such as conditions which do not prohibit or restrict an activity throughout the year but only during certain months, or on certain days (e.g. Sundays and bank holidays) (see [18] to [23]). A "seasonal" or a "time-limited" condition does not give rise to a fresh breach for the purposes of the immunity period each time it is broken. Instead, immunity from enforcement is attained if, throughout a

(ii) A breach of control which becomes immune from enforcement should also be treated as lawful (paras. 3.4);

(iii) The procedures for established use certificates and to determine under s.64 TCPA 1990 whether planning permission was required for prospective development, should be replaced by a new, unified procedure. The onus would be on the applicant to make good his case. The authority could refuse to grant a certificate if he failed to do so. The applicant could pursue the matter on appeal to the Secretary of State or in response to any enforcement action (paras. 7.4 to 7.5).

49. PCA 1991 gave effect to those recommendations by inserting s.171B into TCPA 1990 and by substituting new ss.191-196. There are two important points to be noted about the reforms following the Carnwath Report. First, the Report's recommendation of a "rolling period" of 10 years was to replace the more onerous requirement that a breach of control must have subsisted since 1964, which meant a period already in excess of 25 years and still rising. The "rolling" nature of the time limit simply meant that the landowner would not have to do any more than show that a breach of planning control has existed for a *minimum* period of 10 years prior to the date on which the issue of immunity falls to be determined. It did not mean, as has sometimes been said, that the *only* way of demonstrating immunity was by looking solely at the 10-year period immediately prior to the date of an application for CLEUD or the issuing of an enforcement notice. The 10-year rule might have been satisfied at some point prior to that date. Second, once the 10-year rule is satisfied, the breach of planning control becomes lawful. In other words, a legal right in respect of what had previously amounted to a breach of planning control would accrue. The 10-year time limit for taking enforcement action might have expired at some point in the past, but the Carnwath Report did not suggest that any right which accrued in this manner would be lost merely because it did not continue to be exercised or exercised actively.

The application of the immunity periods after the 1991 Act

50. Section 191(1) enables an application to be made for a CLEUD to determine whether (a) an existing use or (b) an operation which has been carried out (e.g. a building) or (c) a breach of condition, is lawful. Section 191(2) and (3) defines lawfulness in terms of firstly, the time for taking enforcement action having expired under s.171B (or planning permission not being required for an existing use or operations previously carried out), and secondly, there being no contravention of any enforcement notice then in force. If the local planning authority is provided with information satisfying them of the lawfulness of (a), (b), or (c) at the time of the application, then it shall issue a certificate and must describe the use, operation or breach of condition certified as being lawful (s.191(4) and (5)). As we have seen, the same approach to immunity and lawfulness applies where a planning authority serves an enforcement notice ([29] and [31] above).
51. It is well established, and common ground in this case, that in order to be able to show that a use is lawful upon the expiration of a time limit in s.171B(3) it is necessary to show that the use has *continued* for 10 years since it began. The same applies to a breach of planning control in the form of a breach of condition. It is sometimes said that the use must be "continuous", although, as we shall see, care must be taken in the use of that word. The legislation itself does not stipulate that the breach must be a continuing one (see e.g. *North Devon* at [30]). What then, is the legal basis for that requirement and what does it mean?

may be issued only within the period of four years from the date of the breach.”

45. Accordingly, breaches of conditions relating to the carrying out of operational development were subject to a 4-year time limit (s.172(4)(b)), whereas those relating to a material change of use were not (unless they fell within the single dwelling category in s.172(4)(d)). Immunity from enforcement could not be obtained for any breach of planning control falling outside s.172(4) unless it was shown that it had continued since the beginning of 1964 down to the date of the enforcement notice. These two alternative time limits were reflected in two of the grounds upon which an appeal against an enforcement notice could be brought under s.174(2)(d) and (e).
46. Section 192 enabled an application to be made for an “established use certificate”. Section 191 defined an “established use” as follows:-

“ For the purposes of this Part, a use of land is established if—

(a) it was begun before the beginning of 1964 without planning permission and has continued since the end of 1963;

(b) it was begun before the beginning of 1964 under a planning permission granted subject to conditions or limitations, which either have never been complied with or have not been complied with since the end of 1963 ; or

(c) it was begun after the end of 1963 as the result of a change of use not requiring planning permission and there has been, since the end of 1963, no change of use requiring planning permission.”

Thus, s.192 certificates could only relate to an existing use of land and not operational development carried out in the past (or breaches of conditions relating to operational development).

47. Furthermore, a use which was shown to have become “established” was only treated as immune from enforcement. It was not treated as a *lawful* use. One consequence of that distinction, was that in the event of an enforcement notice being served the landowner had no right under s.57(4) of TCPA 1990 to revert to the lawful use immediately preceding the use enforced against if it was merely an “established use” (*LTSS Print and Supply Services Limited v Hackney London Borough Council* [1976] QB 663).
48. The Carnwath Report made the following points:-
- (i) Prior to the Town and Country Planning Act 1968 there had been a 4-year time limit for enforcement against any breach of planning control. The 1968 Act had introduced a requirement for a landowner to prove that certain breaches of planning control (including a material change of use) had continued since the beginning of 1964. By the end of the 1980s, that period had become far too long to be a sensible basis for immunity. Leaving aside those cases where the 4-year rule should continue to apply, the 1964 rule should be replaced by a “rolling limitation period after which immunity would be conferred” of 10 years (paras. 3.4 to 3.11);

a CLEUD should be able to be involved, whether supporting or opposing an application. If they are not, there is potentially an increased risk of any certificate granted becoming the subject of an application for judicial review, or revocation under s.193(7), with consequential delays for a landowner wishing to rely upon that decision. If, on the other hand public participation results in the refusal of a CLEUD, the applicant is entitled to pursue the matter on appeal, where the evidence can be examined and tested.

42. It could be said to be unsatisfactory that whether consultation takes place should depend upon the exercise of discretion by individual planning officers, rather than there being a uniform national procedure. Similar concerns were raised by Collins J in *Sumption v London Borough of Greenwich* [2008] 1 P&CR 20 at [8]. The point is illustrated by paragraph 008 of the relevant part of the National Planning Practice Guidance, which states that “it may be reasonable for a local planning authority to seek evidence from other sources e.g., parish councils or neighbours, if there is good reason to believe they may possess relevant information about the content of a specific application”. The difficulty is that an authority is unlikely to be able to identify all situations in which members of the public have something material to contribute, either on the decision whether to grant a certificate or the precise scope of any certificate.

Immunity from enforcement action and lawful planning rights.

The position before the Planning and Compensation Act 1991.

43. In order to understand better the current legislation, it is necessary to refer to parts of the previous statutory scheme before it was amended by PCA 1991. This was contained in TCPA 1990 as originally enacted and was something of a hotchpotch.
44. Under s.172(1) a local planning authority could not serve an enforcement notice unless they considered a breach of planning control had occurred after the end of 1963. Section 172(4) reduced that time limit to 4 years from the date of the breach for 4 types of breach of planning control:-

“(4) An enforcement notice which relates to a breach of planning control consisting in—

(a) the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land; or

(b) the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or

(c) the making without planning permission of a change of use of any building to use as a single dwellinghouse; or

(d) the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwellinghouse,

.....

(9) The local planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable them to deal with the application.

.....

(15) Where a local planning authority propose to revoke a certificate issued under section 191 or 192 of the 1990 Act in accordance with section 193(7) of the 1990 Act (certificates under sections 191 and 192: supplementary provisions)(4), they must, before they revoke the certificate, give notice of that proposal to—

- (a) the owner of the land affected;
- (b) the occupier of the land affected;
- (c) any other person who will in their opinion be affected by the revocation; and
- (d) in the case of a certificate issued by the Secretary of State under section 195 of the 1990 Act, the Secretary of State.

(16) A notice issued under paragraph (15) must invite the person on whom the notice is served to make representations on the proposal to the authority within 14 days of service of the notice and the authority must not revoke the certificate until all such periods allowed for making representations have expired.

(17) An authority must give written notice of any revocation under section 193(7) of the 1990 Act to every person on whom notice of the proposed revocation was served under paragraph (15).”

- 39. By s.193(6) of TCPA 1990 an application for a certificate under s.191 (or s. 192) is treated as an application for planning permission for the purposes of the planning register kept by each local planning authority under s.69. Accordingly a copy of each application, the decision on the application and the information required under article 40 of the DMPO 2015 (including that specifically required by article 40(7)) must be contained in the register. The register must be open to public inspection (s.69(8)).
- 40. However, the legislation does not require a local planning authority to carry out any public consultation on an application under s.191 of the TCPA 1990 (or under s.192). Strangely, that contrasts with the position where the authority refuses to grant a certificate and the applicant appeals to the Secretary of State under s.195. It is common ground that the procedure rules for such appeals, whether dealt with at a public inquiry or hearing, or by written representations, provide for public participation in the process.
- 41. It is beneficial to the quality of decision-making on s.191 applications, which deal with past events, that persons or bodies with relevant information on the grounds for seeking

(a) knowingly or recklessly makes a statement which is false or misleading in a material particular;

(b) with intent to deceive, uses any document which is false or misleading in a material particular; or

(c) with intent to deceive, withholds any material information,

he shall be guilty of an offence.

(2) A person guilty of an offence under subsection (1) shall be liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; or

(b) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both.

(3) Notwithstanding section 127 of the Magistrates' Courts Act 1980, a magistrates' court may try an information in respect of an offence under subsection (1) whenever laid."

37. Section 195 gives an applicant a right of appeal to the Secretary of State against a refusal of an application for a certificate under s.191 (or s.192).

38. In so far as is material, article 39 of the DMPO 2015 provides:-

"(1) An application for a certificate under section 191(1) or 192(1) of the 1990 Act (certificates of lawfulness of existing or proposed use or development)(1) must be made on a form published by the Secretary of State (or on a form substantially to the same effect) and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the particulars specified or referred to in the form.

(2) An application to which paragraph (1) applies must be accompanied by—

(a) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;

(b) such evidence verifying the information included in the application as the applicant can provide; and

(c) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.

(3) In particular, such an order may provide for requiring the authority—

(a) to give to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and

(b) to give to the Secretary of State and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with.

(4) A certificate under either of those sections may be issued—

(a) for the whole or part of the land specified in the application; and

(b) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and shall be in such form as may be prescribed by a development order.

(5) A certificate under section 191 or 192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate.

(6) In section 69 references to applications for planning permission shall include references to applications for certificates under section 191 or 192.

(7) A local planning authority may revoke a certificate under either of those sections if, on the application for the certificate—

(a) a statement was made or document used which was false in a material particular; or

(b) any material information was withheld.

(8) Provision may be made by a development order for regulating the manner in which certificates may be revoked and the notice to be given of such revocation.”

36. Section 194 of TCPA 1990 provides:-

“(1) If any person, for the purpose of procuring a particular decision on an application (whether by himself or another) for the issue of a certificate under section 191 or 192—

(4) If, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case they shall refuse the application.

(5) A certificate under this section shall—

(a) specify the land to which it relates;

(b) describe the use, operations or other matter in question (in the case of any use falling within one of the classes specified in an order under section 55(2)(f), identifying it by reference to that class);

(c) give the reasons for determining the use, operations or other matter to be lawful; and

(d) specify the date of the application for the certificate.

(6) The lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

(7)

33. Section 191(7) provides that a CLEUD shall be treated as if it were a planning permission for the purpose of *inter alia* the licensing requirements for caravan sited (s.3(3) of the Caravan Sites and Control of Development Act 1960) and for waste management licences (under ss.35-6 of the Environmental Protection Act 1990).

34. Section 192 is a parallel provision enabling a person to apply to a local planning authority for a certificate that a proposed use or operation on land would be lawful (a “CLOPUD”).

35. Section 193 of TCPA 1990 provides:-

“(1) An application for a certificate under section 191 or 192 shall be made in such manner as may be prescribed by a development order and shall include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the local planning authority.

(2) Provision may be made by a development order for regulating the manner in which applications for certificates under those sections are to be dealt with by local planning authorities.

condition notice, the notice may be challenged on the grounds that it was time-barred by s.171B (*Dilieto v Ealing London Borough Council* [2000] QB 381).

31. Upon the expiry of a time limit in s.171B for taking enforcement action against either development without planning permission or a breach of condition, the breach of planning control is treated as being lawful at any time, so long as it does not contravene any enforcement notice (or breach of condition notice) then in force. That is the effect of s.191(2) and (3). Although those provisions appear in a section dealing with applications for a CLEUD, they apply equally when determining whether a breach of planning control has become lawful in an appeal against an enforcement notice or in defending a prosecution on a breach of condition notice.

32. Section 191 provides (so far as material):-

“(1) If any person wishes to ascertain whether—

(a) any existing use of buildings or other land is lawful;

(b) any operations which have been carried out in, on, over or under land are lawful;

(c) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful,

he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

(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).....

“(a) carrying out development without the required planning permission; or

(b) failing to comply with any condition or limitation subject to which planning permission has been granted.”

“Development” without planning permission may involve either a “material change of use” or the carrying out of building, engineering, mining, or other operations (“operational development”) (s.55(1)).

27. Section 171A(2) defines the “taking of enforcement action” as including the issuing of an enforcement notice and the service of a breach of condition notice. An enforcement notice may deal with both types of breach of planning control (s.172(1)). It may give rise to an appeal in which planning permission may be granted for the development enforced against or the relevant condition discharged (ss.174(2) and 177(1)). A breach of condition notice under s.187(A) simply secures compliance with conditions which are being breached and does not give rise to any right of appeal.
28. Section 171(B) lays down the time limits for the taking of enforcement action against a breach of planning control, after which no such action may be taken in respect of that breach:-

“(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building engineering mining or other operations in on over or under land no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

(3) In the case of any other breach of planning control no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

(4).....”

29. The time limits for the taking of enforcement action govern challenges to both enforcement and breach of condition notices and the determination of whether a breach of planning control has become lawful for the purposes of a CLEUD under s.191. The test is the same in both contexts (see Sullivan J as he then was in *R (North Devon District Council) v First Secretary of State* [2004] JPL 1396).
30. Thus, if an appeal is brought against an enforcement notice, the appellant may rely upon the ground of appeal in s.172(4)(d) to obtain a decision on whether enforcement action against the breach of planning control alleged is time barred under s.171B (but not otherwise – see s.285(1)). In a prosecution for non-compliance with a breach of

<i>The application of the immunity periods after the 1991 Act</i>	50-60
<i>The procedure for obtaining a CLEUD</i>	61-73
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Ground 1	124
Ground 3	125-165
Ground 2	166-172
Ground 4	173-185
Ground 5	186-198
Ground 7	199-206

Ground 6 was not pursued, but it is convenient to retain the original numbering.

The Statutory Framework.

25. The key provisions are to be found in Part VII of TCPA 1990 as amended by the Planning and Compensation Act 1991 (“PCA 1991”). The PCA 1991 amended the law on planning control in the light of the report by Robert Carnwath QC (as he then was) “Enforcing Planning Control” (February 1989).
26. Section 171A(1) of TCPA 1990 defines two types of breach of planning control:-

Director of Planning and Development. Relying on decisions in the High Court, *Nicholson v Secretary of State for the Environment* (1998) 76 P&CR 191 and *Ellis v Secretary of State for Communities and Local Government* [2010] 1 P&CR 21, Islington decided that the law required a breach of condition to have continued for at least 10 years up to and including the date of the application for the CLEUD. Even if there had been a continuing use for B8 purposes for a 10-year period ending at some earlier date, any lawful right then acquired had been lost because the occupier did not *continue* thereafter to use the application site for that purpose. Telereal's contention that the lawful use right for B8 purposes had not been *abandoned* was irrelevant to satisfying a legal requirement that the use should *continue* in order for that use right to subsist. As we shall see, the Delegated Report also approached the revocation issue on the alternative basis that Telereal's legal analysis had been correct.

21. On 20 November 2020 Ocado issued its claim for judicial review. Lane J granted permission to apply.
22. If this claim succeeds Ocado will be able to rely on the CLEUD which does not itself contain any conditions restricting the operation of the premises for B8 purposes. There might be an issue as to whether any of the conditions of the 1984 permission other than condition 3 (e.g. the noise level restrictions in condition 7) govern that B8 use accommodated in the building erected under that consent (see e.g. *Lambeth London Borough Council v Secretary of State for Housing Communities and Local Government* [2019] 1 WLR 4317 at [38]). This issue has not been the subject of argument in these proceedings and is not a matter for decision in this judgment. Leaving that point to one side, it would be open to Islington to consider exercising its powers under s.193(7) again, subject to overcoming or avoiding any legal errors identified in this judgment. A reconsideration might involve an examination of additional material. It would not be confined to the information considered so far.
23. If the claim fails, it may be open to Ocado or Telereal to consider making a further application for a CLEUD relying upon more detailed material and addressing criticisms made in the revocation process. If that application were to be refused, an appeal to the Secretary of State could be made under s.195. However, any entitlement to a CLEUD would have to be considered by Islington as at the date of any fresh application, not 15 January 2019.
24. It is appropriate to deal with the issues in this case in the following order:-

Headings	Paragraph Numbers
The Statutory Framework	25 - 42
Immunity from enforcement action and lawful planning rights <i>The position before the Planning and Compensation Act 1991</i>	43-49

whether B8 activities had continued to take place physically up until the date on which the application for the CLEUD was made.

13. The application was determined by an officer acting under delegated powers. On 26 April 2019 Islington granted a CLEUD in respect of Units A-D for a B8 use. The accompanying Delegated Report essentially accepted the information and approach presented in Telereal's application.
14. On 4 November 2019 Ocado entered into an agreement for the lease of units A-D relying upon the CLEUD which had been obtained (paragraph 6 of the Statement of Facts and Grounds).
15. On 11 November 2019 Ocado submitted a planning application to Islington for the carrying out of various improvements to the premises. Unlike the application for the CLEUD, this was the subject of consultation with landowners and occupiers in the vicinity. It attracted objections from CRTP. The group comprises a number of members of the public living in the vicinity of the Industrial Estate who are opposed to Ocado's use of units A-D. They became aware of the grant of the CLEUD and took advice on whether it could be challenged.
16. On 23 April 2020 CRTP sent a letter to Islington enclosing a bundle of documents mainly relating to the planning history of the Estate. They asked the local authority to exercise its powers under s.193(7) of the TCPA to revoke the CLEUD on the grounds that Telereal's application had contained statements which had been "false in a material particular" or that "material information" had been "withheld." The letter carefully explained the particular respects in which the group maintained that those conditions were satisfied.
17. On 1 June 2020 Islington wrote to Ocado and Telereal enclosing the material received from CRTP, stating that there appeared to be grounds for revocation of the CLEUD and giving the recipients an opportunity to make representations on the matter pursuant to article 39(15) of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015 No. 595) ("DMPO 2015").
18. Telereal responded on 25 June 2020 by a letter from its planning consultants enclosing a second statutory declaration by Mr Molony (dated 25 June 2020). That declaration revealed that he had not visited the premises during Royal Mail's lease. Ocado's solicitors also sent a response on the same day, enclosing a Note from the claimant's planning consultants, Gerald Eve. Telereal and Ocado contended that there were no grounds for revocation. Paragraph 1.8 of a Note by Telereal's consultants stated that, in reliance upon the CLEUD, refurbishment and fit out works costing over £2.3m had been carried out, but without any more detail or clarifying who had borne those costs.
19. On 7 August 2020 Islington wrote to Telereal and Gerald Eve responding to points which had been made, stating that the conditions for exercising the power of revocation appeared to be met, but giving one further opportunity for representations to be made. Telereal and Ocado's solicitors sent separate replies on 20 August 2020. No complaint has been made about the procedure followed by Islington.
20. On 13 October 2020 Islington revoked the CLEUD pursuant to s.193(7) of TCPA 1990. That decision was accompanied by a Delegated Report authorised by the Council's

there are some three-storey block of flats. To the south east is the Yerbury Primary School, which is attended by about 450 children.

7. It is said that BT was in occupation of Units A-D from the time they were constructed until late 2013. In 2002 the first interested party, Telereal Trillium Limited (“Telereal”) acquired much of BT’s property estate, including units A to D, which were then leased back to BT.
8. On 27 January 2014 Telereal arranged for the grant of a 10-year lease of units A-D to Royal Mail for use, it is said, as a Parcel Force distribution warehouse. The small extract provided from the lease suggests that there were rights to break the term on *inter alia* 27 January 2017. At all events, Royal Mail did terminate the lease in the early part of 2017. Telereal then marketed the premises for B8 purposes and carried out refurbishment work.
9. In 2018 Telereal entered into negotiations with Ocado for a lease of units A-D. Paragraphs 3 to 5 of the claimant’s Statement of Facts and Grounds explain that Ocado was seeking a distribution centre in the Islington area where it could store food at chilled temperatures, process customer orders and organise scheduled deliveries. It was important to the company to be able to find suitable B8 premises from which it could operate 24 hours a day. It was a condition of the negotiations that the premises would have a suitable planning consent allowing for a use, which included B8, a “click and collect” facility and 24 hour use. Telereal said that it would obtain a CLEUD for that purpose.
10. On 15 January 2019 Telereal applied to Islington for a CLEUD certifying that the lawful use of units A to D was for B8, storage and distribution purposes. The application form stated that the use had begun more than 10 years before the date of the application in breach of condition 3 of the 1984 planning permission and said that the use had started in 1992. The application relied upon a statutory declaration dated 12 February 2019 by Mr. Damian Molony, a chartered surveyor, who had some responsibility for the site, first as an employee of BT and then from 2002 as an employee of Telereal. The application also relied upon a covering letter from Telereal’s planning consultants, Union 4 Planning, which enclosed some supporting documents. They included a site boundary plan showing the application area edged in red. The area was said to be 1.9ha.²
11. The legislation does not require any public consultation on an application for a CLEUD and none was carried out on this particular application.
12. In summary, the case put on behalf of Telereal to Islington was that BT had used units A-D for B8 purposes from 1992 to 2013, although not to full capacity in the latter part of that period. Between early 2014 and early 2017 Royal Mail leased the premises for warehousing and since then they had been marketed for that same purpose. The application was presented on the basis that units A-D had constituted a single planning unit throughout that entire period and that once the premises had been used for B8 purposes for a 10-year period in breach of condition, the use right thereby obtained had not subsequently been abandoned. On that basis it was contended that it did not matter

² Strangely, Mr. Molony stated that the area of the application site was shown on a different plan he produced which restricted that area to the footprint of the units A-D. It does not appear that this discrepancy was noticed before the CLEUD was granted and, although it was raised during the hearing, it has not been resolved. No party suggests that any of the issues the court is being asked to determine are affected by it.

Mr Justice Holgate :

Introduction

1. This claim for judicial review raises some important issues of planning law. How does the 10-year time limit in s.171B(3) of the Town and Country Planning Act 1990 (“TCPA 1990”) for the taking of enforcement action apply to a breach of condition in a planning permission? What is the legal nature of the right which accrues when a breach of condition becomes immune from enforcement and lawful under s.191(3)? Does the subsistence of such a right depend upon it continuing to be exercised? What is the scope of the power in s.193(7) of TCPA 1990 to revoke a certificate of lawfulness of an existing use or development (a “CLEUD”) granted under s.191?
2. This case has raised some difficult points and at the outset I would like to express my gratitude for the considerable assistance I have received from Mr. Paul Brown QC for the claimant, Ocado Retail Limited (“Ocado”), Mr. David Forsdick QC for the defendant, the London Borough of Islington (“Islington”) and Mr. Richard Wald QC for the second interested party, Concerned Residents of Tufnell Park, (“CRTP”), along with their respective teams.
3. The claim relates to 4 units A-D on the Bush Industrial Estate, Station Road, London, N.19. This terrace was built pursuant to a full planning permission dated 17 May 1984, which granted consent for an “industrial building to house British Telecom Power Workshops and ancillary buildings for storage, diesel repair and engine-testing, with associated vehicle parking.” Condition 3 stated:-

“The Industrial accommodation shall be used as light or general industrial buildings only, as defined in Classes (3) and (4) of the Schedule to the Town and Country Planning (Use Classes) Order 1972 and General Development Order 1977, and shall not be used without planning permission for any other purpose, including warehousing (Class 10).”¹
4. The planning application indicated that the premises would provide 5000 sqm of accommodation, including some ancillary office and storage areas. It is unclear whether the permission also authorised the construction of Unit E, lying immediately to the south of Units A to D. This appears to have been used for vehicle maintenance. It was demolished by 5 January 2019 and it is not suggested that it has any significance for the issues now to be determined.
5. Units A-D lie at the north-eastern end of the Bush Industrial Estate. To the south west lies another range of units 1-10, several of which were occupied by BT for a number of years, and units 11-13 in a separate range, occupied for several years by Royal Mail for storage and distribution purposes (class B8 in the Town and Country Planning) (Use Classes) Order 1987 – SI 1987 No. 764) (“UCO 1987”).
6. The Industrial Estate occupies a long site oriented from south west to north east. A railway line runs along its long north-western boundary. Employment development and residential properties lie on the other side of that line. To the north east of units A to D

¹ Referred to in the 1972 Order as use classes III, IV and X.



Neutral Citation Number: [2021] EWHC 1509 (Admin)

Case No: CO/4316/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7th June 2021

Before :

THE HON. MR JUSTICE HOLGATE

Between :

**The Queen on the application of OCADO RETAIL
LIMITED**

Claimant

- and -

LONDON BOROUGH OF ISLINGTON

Defendant

-and-

(1) TELEREAL TRILLIUM LIMITED
**(2) CONCERNED RESIDENTS OF TUFNELL
PARK**

**Interested
Parties**

Paul Brown QC (instructed by **Mishcon De Reya LLP**) for the **Claimant**
David Forsdick QC (instructed by **London Borough of Islington Legal Services**) for the
Defendant
Richard Wald QC (instructed by **Walton & Co**) for the **2nd Interested Party**
The 1st Interested Party was not represented and did not appear

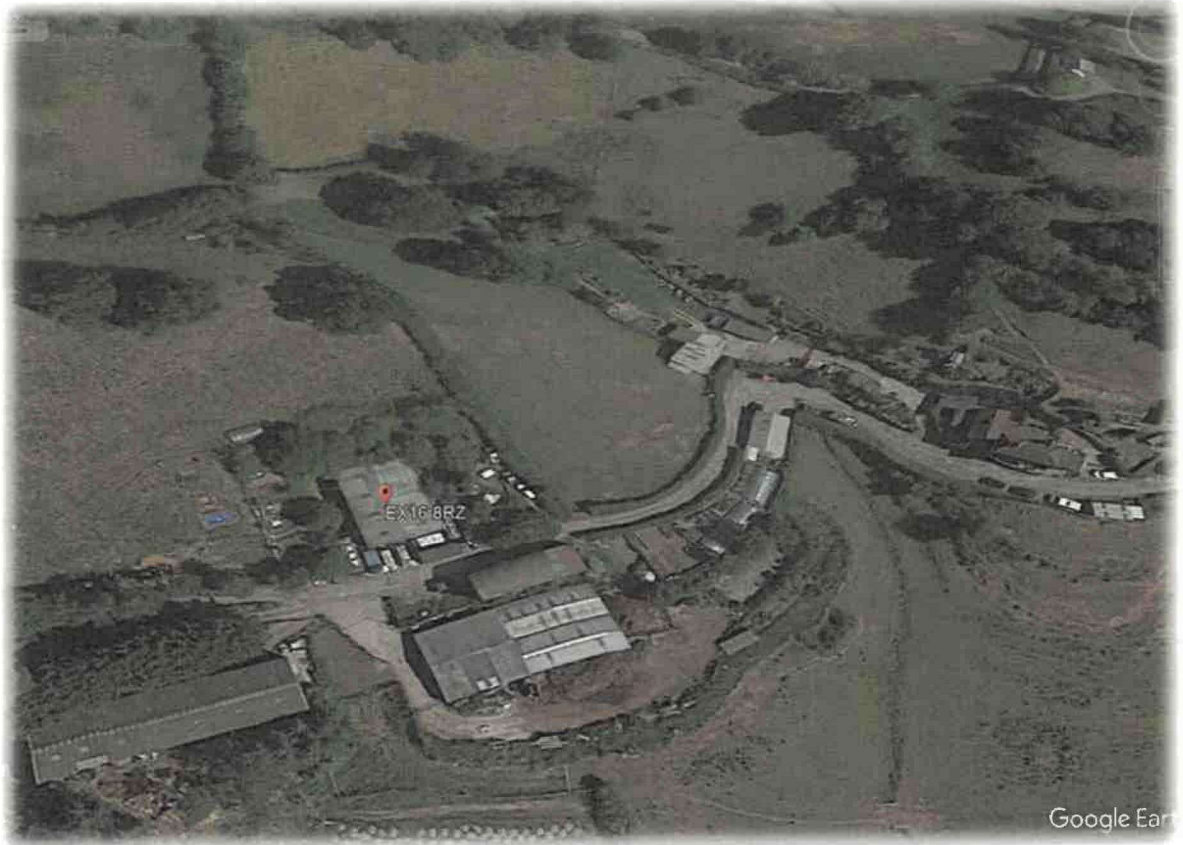
Hearing dates: **05/05/2021 and 06/05/2021**

Approved Judgment

Dated - 22/6/2022



Dated - 1/3/2025

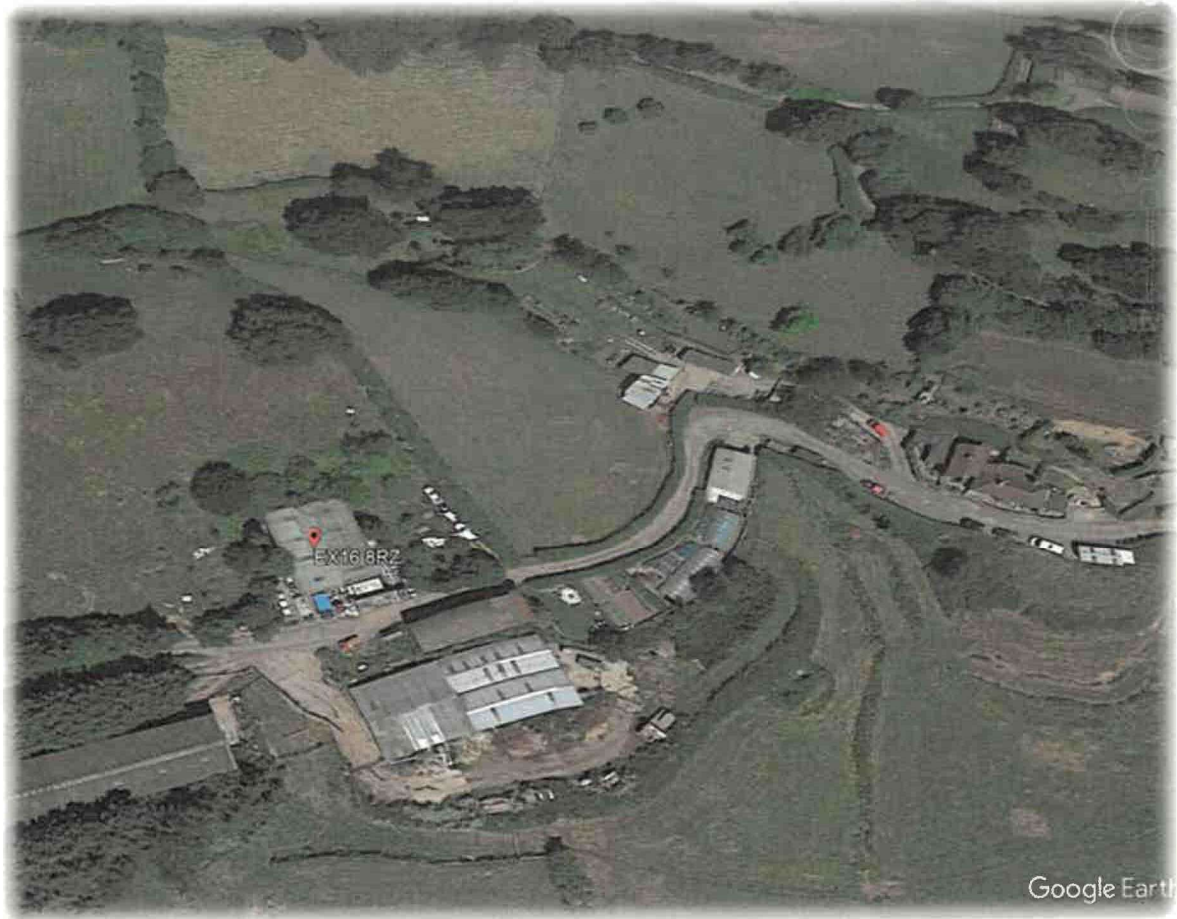


Dated – 29/5/2020



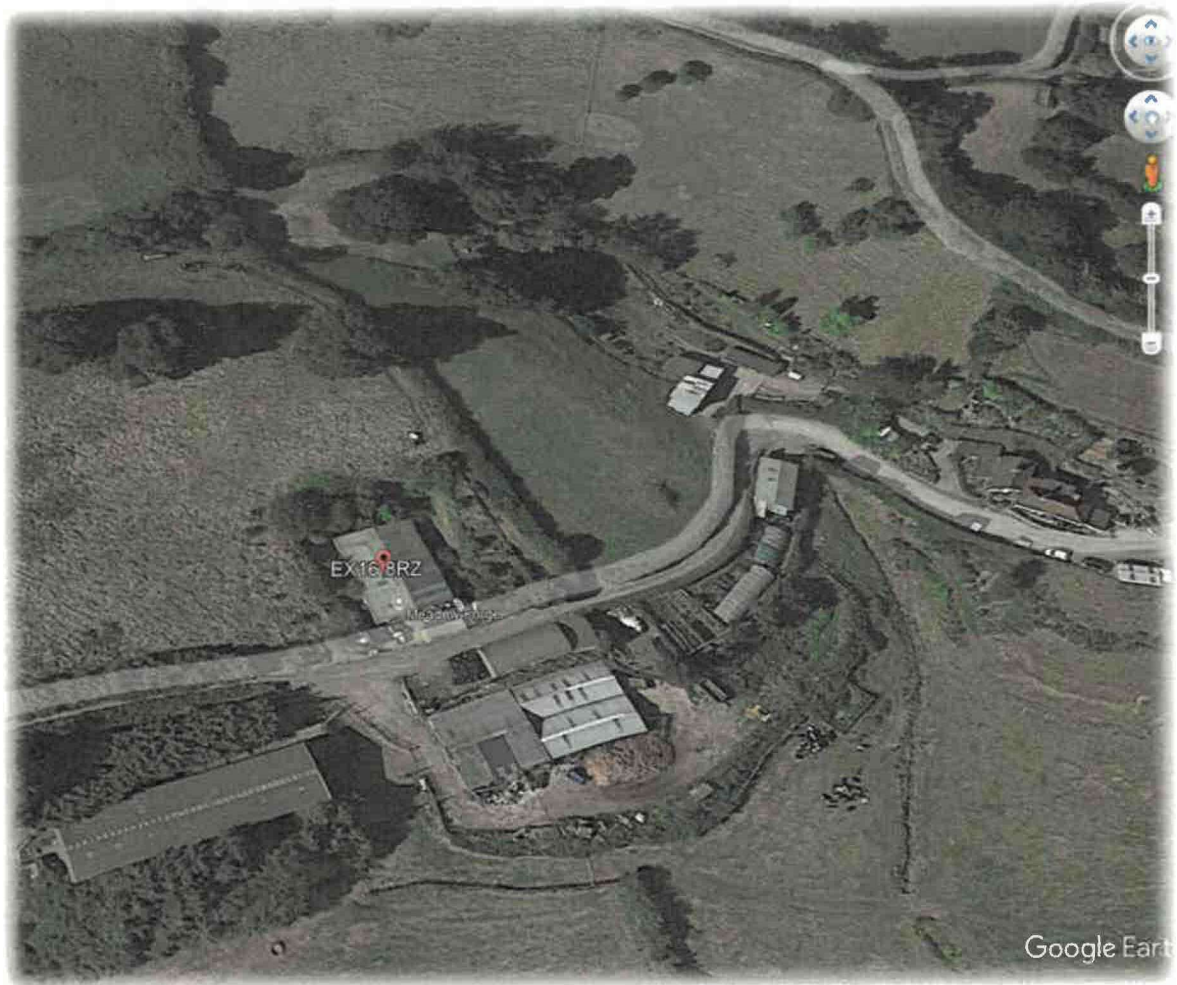


Dated - 18/9/2019



Dated - 22/6/2018

Exhibit D14



Dated – 15/8/2016



Dated – 22/4/2015

Exhibit DA4



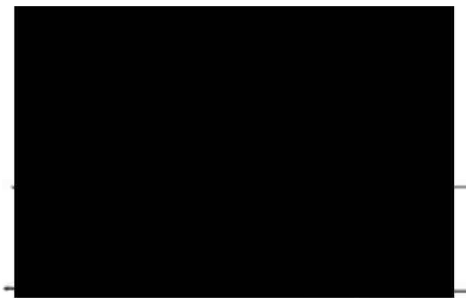
Dated – 8/4/2011

Google Earth dated Chronology land surrounding 'Meadow forge' EX16
8RZ

Exhibit DA4



Dated - 1/1/2010



9/10/25

From: [REDACTED]
Sent: 21 October 2021 11:39
To: [REDACTED] <[\[REDACTED\]@midsevon.gov.uk](mailto:[REDACTED]@midsevon.gov.uk)>
Subject: FW: Hillside Barn, Cadeleigh, Tiverton, Devon, EX16 8RZ

Exhibit D13

Hi [REDACTED]

Re: 117394

I was after some advice on this one which has been instigated by an enforcement enquiry below.

The owner of this business is living "off grid" and has been adapting part of this barn into residential accommodation over a period of several years. His Facebook photos and posts clearly show he is living here and Dean has asked me to register it with the VO (see attached e-mail).

The only thing I need to confirm is from when do we list it?.....

He has a Facebook photo album called Hillside Barn, forge and land (link below) and I have attached various photos taken from it. It would appear that he started working on this circa 2010 but if you read the inspector notes on the NDR account it would appear that Di and the VO visited circa 2011 and confirmed the building wasn't occupied (I think he was living in a wagon/caravan on the site).

The photos below showing bathroom, landing, living room area were all added in February 2013 and the kitchen was earlier than this.

I think we have enough evidence to list the residential accommodation from February 2013.....would you agree?

Thanks

[REDACTED]

[\[4\] Facebook](#)

Enforcement Team

From: [REDACTED]
Sent: 25 November 2021 09:53
To: Enforcement Team
Subject: FW: 20/00223/RURAL Fire /Health Risk at property
Categories: P2, Update Actions & Upload to DMS

From: [REDACTED]@middevon.gov.uk>
Sent: 25 November 2021 09:16
To: [REDACTED]@middevon.gov.uk>
Subject: FW: 20/00223/RURAL Fire /Health Risk at property

Access your Council Tax account online 24/7 @ www.middevon.gov.uk/mycounciltaxaccount
 Access your Business Rates account online 24/7 @ www.middevon.gov.uk/mybusinessratesaccount
 Access your Housing Benefit and Council tax reduction online 24/7 @ www.middevon.gov.uk/myhousingbenefitaccount

From: [REDACTED]@nmdbuildingcontrol.co.uk>
Sent: 26 October 2021 19:35
To: Enforcement Team <enf@middevon.gov.uk>; [REDACTED]@middevon.gov.uk>; [REDACTED]@middevon.gov.uk>
Subject: RE: 20/00223/RURAL Fire /Health Risk at property

Our Ref: 21/00042/UW
 Meadow Forge Hillside Barn Cadeleigh Tiverton Devon EX16 8RZ

Thank you for making us aware of the situation at this property. I have set up a contravention file and attached a warning flag regarding the owner.

I have reviewed the information available and it appears that the owner Mr Aggett has been living in the premises for some time and probably since around 2010. There does appear to have been a material change of use of the building and the probability of the work carried out complying with the Building Regulations would appear exceptionally low. However, in order for Building Control to take any action we would need to provide evidence beyond reasonable doubt that the work resulting in a contravention of the Building Regulations was carried out in the last 2 years or within 6 months of the Local Authority being aware. Given the circumstances of this case the likelihood of successful enforcement action through the Building Act 1984 is therefore extremely low.

I would suggest that any action by the Local Authority should be led by the Planning Enforcement Team as their enforcement powers are more suited to this situation. Hence at this stage we do not intend to

Please let me know if you have any questions regarding this response.

I would normally just ask the VO to backdate this as far as possible but looking at his "off grid" lifestyle would we just be creating a debt that would never be recovered?

Elections have confirmed that he did try to register on the electoral roll on 20 July 2018.

Please could you let me know your thoughts on backdating this and I will arrange to notify the VO.

Thanks

■

■ | Revenues Retention Officer | Mid Devon District Council | Phoenix House | Phoenix Lane | Tiverton | EX16 6PP
Direct Dial: 01884 ■ | Switchboard: 01884 255255 | Email: ■@middevon.gov.uk | Website: www.middevon.gov.uk

Access your Council Tax account online 24/7 @ www.middevon.gov.uk/mycounciltaxaccount

Access your Business Rates account online 24/7 @ www.middevon.gov.uk/mybusinessratesaccount

Access your Housing Benefit and Council tax reduction online 24/7 @ www.middevon.gov.uk/myhousingbenefitaccount



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From: ■
Sent: 20 October 2021 15:28
To: ■@middevon.gov.uk>
Subject: Hillside Barn, Cadeleigh, Tiverton, Devon, EX16 8RZ

Hi ■

I've done some digging on this and his Facebook page is a treasure trove of evidence (see attached photos) ... it even includes a Youtube video.

It would appear that he moved a portacabin into the barn over 10 years ago and has slowly (and crudely) been converting part of the barn into living accommodation ever since.

It is clear that he has been occupying the site throughout so I will be contacting ■ for advice on potential Council Tax

[Hillside Barn, Cadeleigh, Tiverton, Devon, EX16 8RZ](#)

[Hillside Barn, Cadeleigh, Tiverton, Devon, EX16 8RZ](#)

[Living Off Grid - Tiny House Builder & Blacksmith - YouTube](#)

Thanks

■

■ | Revenues Retention Officer | Mid Devon District Council | Phoenix House | Phoenix Lane | Tiverton | EX16 6PP
Direct Dial: 01884 ■ | Switchboard: 01884 255255 | Email: ■@middevon.gov.uk | Website: www.middevon.gov.uk

Access your Council Tax account online 24/7 @ www.middevon.gov.uk/mycounciltaxaccount

Access your Business Rates account online 24/7 @ www.middevon.gov.uk/mybusinessratesaccount

Access your Housing Benefit and Council tax reduction online 24/7 @ www.middevon.gov.uk/myhousingbenefitaccount



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From: ■@middevon.gov.uk>
Sent: 19 October 2021 15:02
To: ■@middevon.gov.uk>
Subject: Today

Hi ■

Looks like it's too late for site visits now, having had a meeting with ■ this morning, he has asked if you could do a drive by ONLY on Hillside Barn, Cadeleigh, Tiverton, EX16 8RZ.

From: [REDACTED] <[\[REDACTED\]@middevon.gov.uk](mailto:[REDACTED]@middevon.gov.uk)>
 Sent: 13 July 2023 13:31
 To: [REDACTED] <[\[REDACTED\]@middevon.gov.uk](mailto:[REDACTED]@middevon.gov.uk)>; [REDACTED] <[\[REDACTED\]@middevon.gov.uk](mailto:[REDACTED]@middevon.gov.uk)>
 Subject: RE: Case Number: MDQC-587384 - PROTECT

Hi [REDACTED]

The 'in time' aspect is, perhaps axiomatically, the crucial point, although not its simplest sense. Briefly, the history suggests that the initial occupation might not have been a fully formed residential unit necessary to trigger the four year rule. We know subsequent works have been undertaken internally to the building over the years [they were kind enough to post them on Facebook] to convert an area of the building to what could be considered a more formalised arrangement but it was still unclear as to whether this was certainly a dwelling in the four year sense or simply an unauthorised mixed use.

The latter point was picked up previously by legal [a solicitor no longer working here] who was suggesting that it might be a ten year breach on the basis it was a live/work unit – authorised use of building is a blacksmiths workshop and the occupier remains engaged in this activity – although that view didn't appear to gain particular favour. We served a PCN in the early part of 2022 to which the owner responded that they weren't living there and provided an alternative address which appear to be contradicted by a credit report that was obtained. [REDACTED] attempted to get onto site/into the building following the returned PCN but I don't think that was ever successful.

All of which means:

- (a) If it has been and remains a 'live/work' unit in the planning sense then as we have corroboratory evidence confirming use and occupation since 2008 we were most likely out of time by the point of 2020 complaint, and which is the first time we were made aware of the issues.
- (b) If it did start out as 'live/work' unit and then subsequently a fully formed residential unit was created inside the building that would trigger the start of a new immunity clock for four years. We know that the Facebook photographs of the more substantial works [external windows, for example] are dated to the latter part of 2021, but we also know that there was a bathroom, landing, living area provided in circa 2013 (information provided by VO and Council Tax) with mention of a kitchen having been provided earlier than that. I suspect it's this aspect on which the matter will ultimately turn as it's clear from the evidence that the owner has been doing work internally to the building and providing facilities, most likely from day one, over a number of years, but we haven't previously taken a view on if we think it is a dwelling and, if so, when it was substantially completed. Those most recent external works to provide windows in November 2021 are, in my view, clearly associated with the residential use so there may be an argument to say that, in this context,

substantial completion did not occur until that point. Conversely, if that argument is not accepted, I suspect we would have a difficulty in demonstrating that part of the building was not being residentially occupied given all the evidence which points to just that scenario and for a considerable period of time.

- (c) Finally, if there is an unlawful dwelling in the building, would we indeed grant planning permission on a linked basis to the business activity as it is clearly associated with it?

Sorry for the length of reply.

[REDACTED]

[REDACTED] | Planning Enforcement Officer | Mid Devon District Council | Phoenix House | Phoenix Lane | Tiverton | EX16 6PP

Switchboard: 01884 255255 | Email: [REDACTED] <[\[REDACTED\]@middevon.gov.uk](mailto:[REDACTED]@middevon.gov.uk)> | Website: www.middevon.gov.uk

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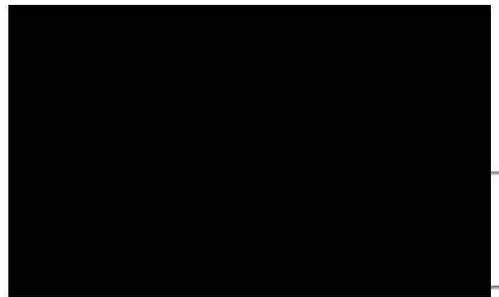
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Do you really need to print this? Please stay Green and leave it on the screen!

Exhibit DA3

Bundle

MDDC e-mails dated - 21/10/2021- 26/10/2021 – 13/7/2023



9/10/25



The Householder
Hillside Barn
Cadeleigh
EX16 8RZ



40400/01007/1/345130

If you need help, go to
www.census.gov.uk
or phone us free on

Reference number:

Dear Householder

Our records show that you have not submitted your census. You must complete and submit it as soon as possible. If you've submitted it in the last week, thank you and please ignore this letter.

You must complete the census by law or you could be taken to court and fined up to £1,000.

How to complete your census now

1 Go to www.census.gov.uk and select "Start census".

2 If you've started your census online in the last week, enter the household access code you already used to continue and submit.

Or to start a new form, enter this new access code:

3 Answer the questions and submit when complete.

Your answers are protected by law and will be kept confidential.

Help is available for everyone to complete the census. Visit www.census.gov.uk or call 0800 141 2021 to find out more, or to request a paper form. A member of our Office for National Statistics (ONS) team may visit you if you've yet to complete the census.

Thank you

Professor Sir Ian Diamond – National Statistician



H1



Mr Dean Aggett
Hillside Barn
Cadeleigh
Tiverton
Devon
EX16 8RZ

Please ask for: James Stevens

Telephone:

Date: 14 April, 2011

Dear Sir/Madam

Notice of Addition
Representation of the Peoples Act

I am writing to inform you that, provided there are no objections to your application to be included on the Register of Electors at Hillside Barn, Cadeleigh, Tiverton, Devon, EX16 8RZ within the next 5 working days, you will be added to the **May** register.

If you require any further information or assistance with this matter, please do not hesitate to contact me.

Yours faithfully:


pp. Kevin Finan
Electoral Registration Officer

Mr Dean Aggett
Hillside Barn
Cadeleigh
Tiverton
Devon

Electoral Services
Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

Ask for: Jackie Stoneman

Tel: 01884 255255

Date: 23 November, 2011

To whom it may concern:

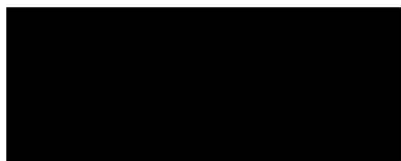
CERTIFICATE OF ELECTORAL REGISTRATION

Dear Sir/Madam

**Re: Mr Dean Aggett: Declaration of Local Connection - Hillside Barn, Cadeleigh,
Tiverton, Devon, EX16 8RZ**

This is to confirm that Mr Dean Aggett is on the Register of Electors 2011 at the above address by Declaration of Local Connection. This declaration is due to the fact that the property is not an approved residential address. The electoral roll number is FE-157/1 on this register.

Yours faithfully



Jackie Stoneman
Electoral Services Manager

Poll card

Voting on Thursday 5 May 2011

**Referendum on the voting system for UK
Parliamentary elections**

Election to Mid Devon District Council (Ref)

Voting Information

Council Ward	Cadbury
Polling Day	Thursday 5 May 2011
Polling Hours	7:00 am to 10:00 pm
Your polling station will be	Parish Hall Cadeleigh EX16 8HW

Your details:

Dean Aggett
Hillside Barn
Cadeleigh
Tiverton
Devon
EX16 8RZ

You cannot be issued with a ballot paper after 10:00 pm, even if you are at the polling station before then.

You do not need to take this card with you to vote.

If undelivered, return to: Mid Devon District Council (Ref),
Phoenix House, Phoenix Lane, Tiverton, Devon, EX16
6PP

Please turn over >

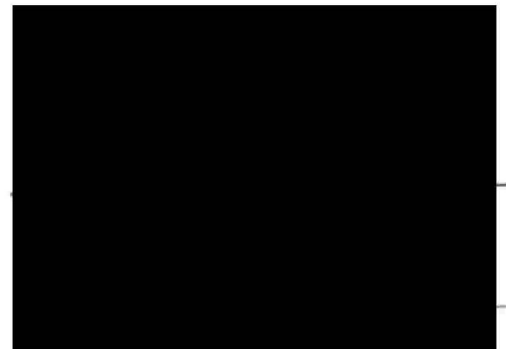
Exhibit DA2

Bundle

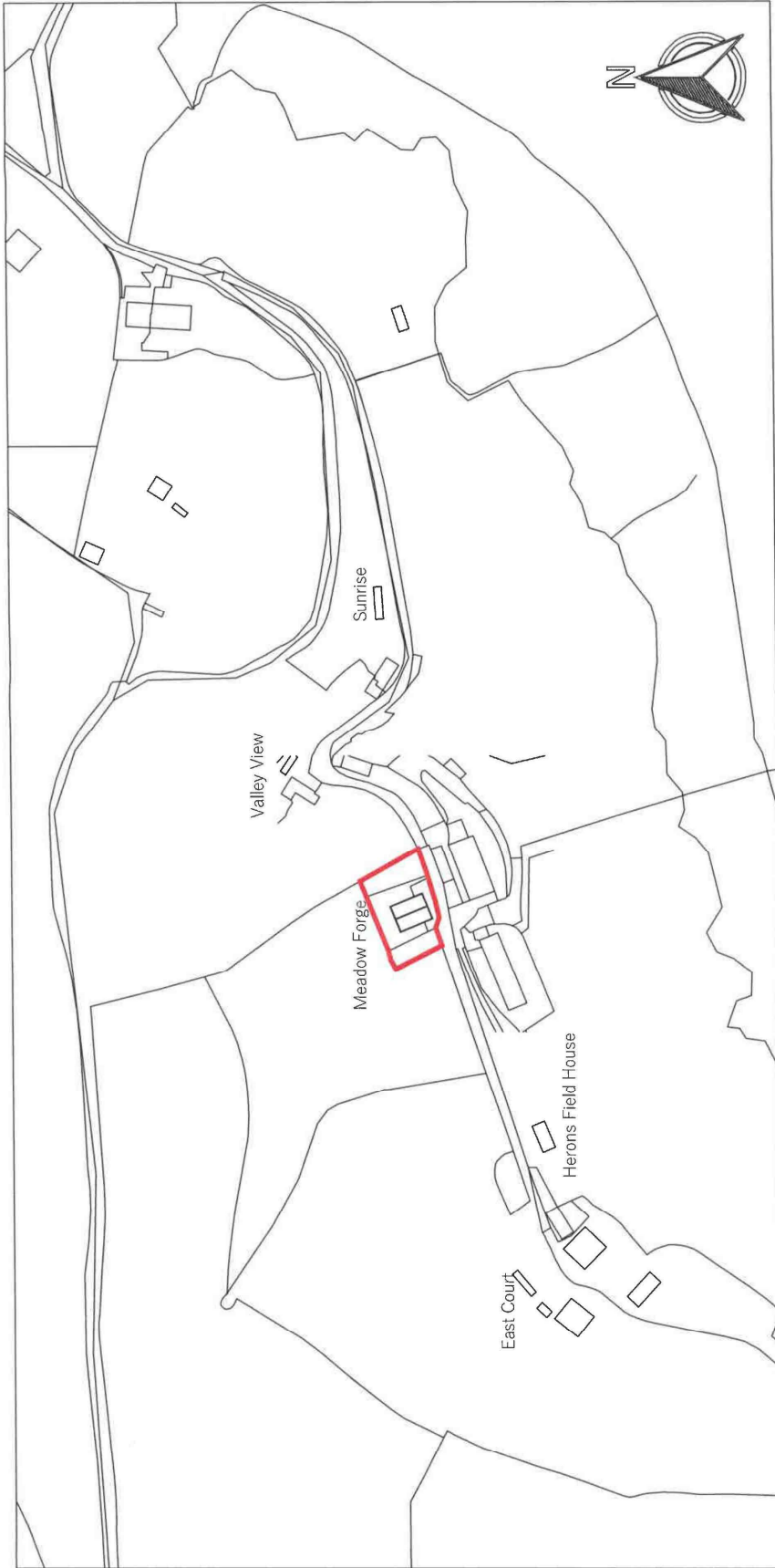
MDDC letter dated 23/11/2011 reference Register of Electors

Copies of Driving Licence x 2 with address of Hillside Barn

MDDC Electoral Roll evidence April 2011



9/10/25



SITE LOCATION PLAN

October, 02, 2025 SL 007



9/10/25

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info@xlplanning.co.uk

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CLIENT: Mr Dean Aggett

SITE: Meadow Forge
Blacksmiths
Cadeleigh
Devon
EX16 8RZ

DRAWING NAME:

Exhibit DA1

DRAWING NUMBER:

A107-AT-02325

ISSUE DATE:

October, 02, 2025

REV:

1

DRAWN:

STATUS:

CONCEPT

PAPER SIZE:

A3

Exhibit DA1

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CLIENT:	Mr Dean Aggett
SITE:	Meadow Forge Blacksmiths Cadeleigh Devon EX16 8RZ

DRAWING NAME: Elevations II

DRAWING NUMBER:

A106-AT-02325		REVISION: 1
ISSUE DATE:	October, 02, 2025	CHECKED:
DRAWN BY:		STATUS: CONCEPT
PROJECT REF:	PAPER SIZE:	SHEET NUMBER: NO.
A106-AT-02325	A3	006





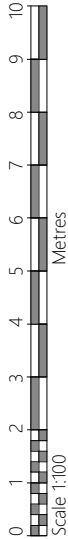
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CLIENT:	Mr Dean Aggett
SITE:	Meadow Forge Blacksmiths Cadeleigh Devon EX16 8PZ

DRAWING NUMBER :		Elevations	
ISSUE DATE :		A105-AT-02325	
October, 02, 2025		REV:	1
DRAWN :		STATUS:	CHECKED:
PROJECT REF:	AT-02325	CONCEPT	NO.
PAPER SIZE:	A3	SHEET NUMBER:	005



WEST ELEVATION

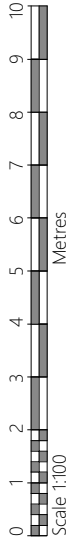
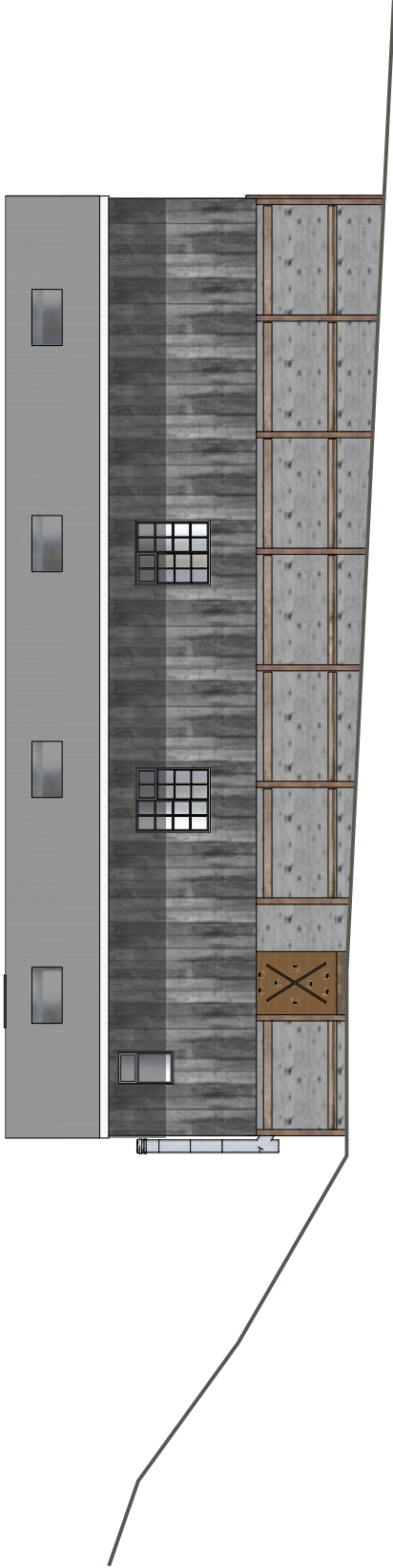
October, 02,

2025

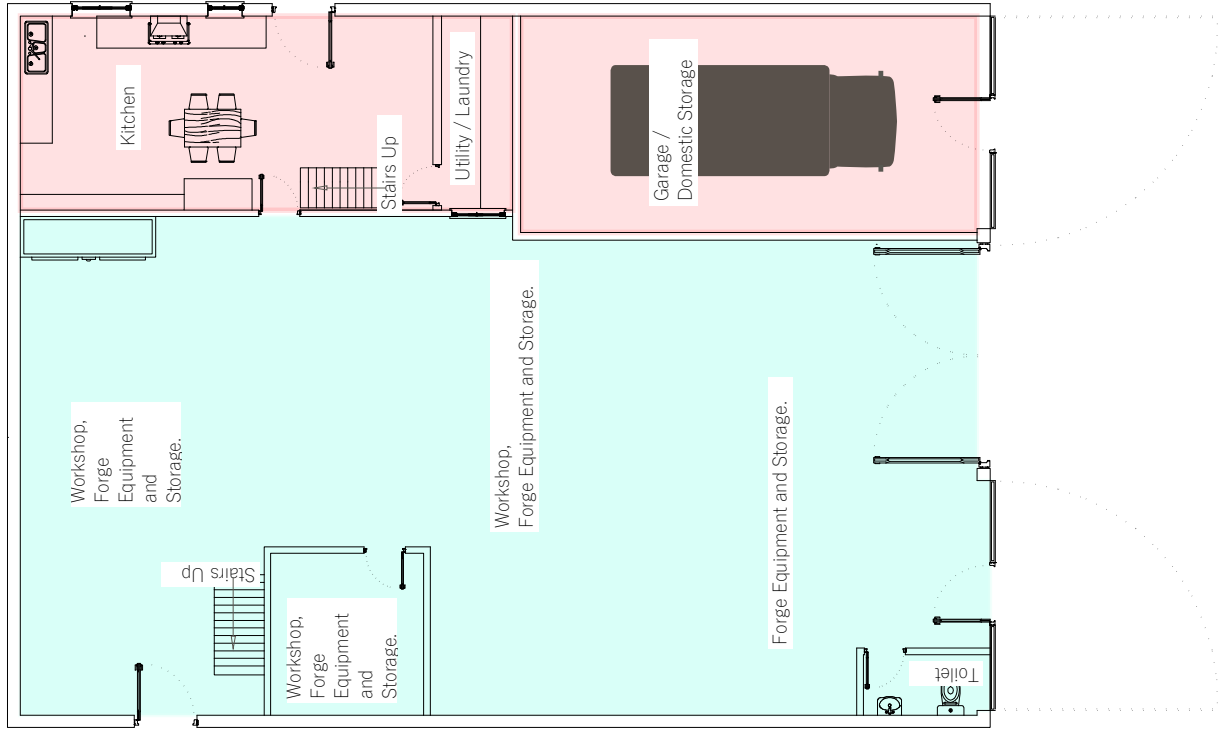
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A



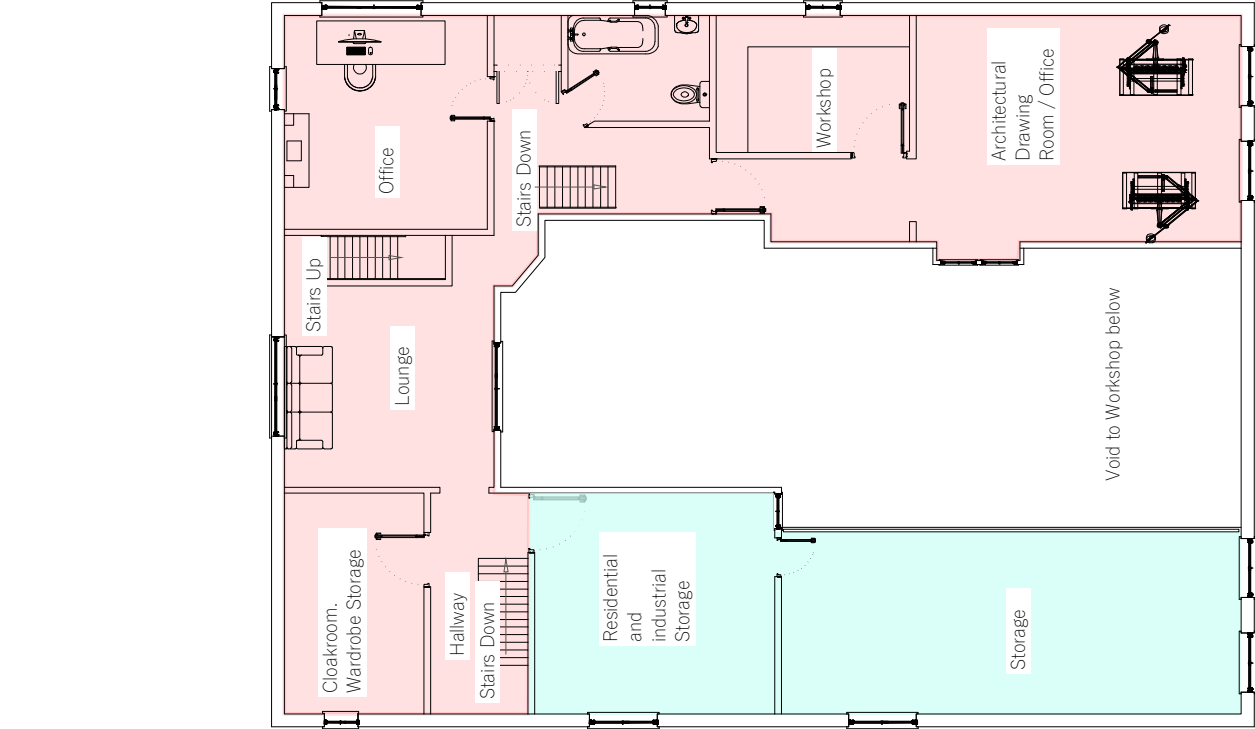
WEST ELEVATION
October, 02,
2025
Scale: 1:100
005 A



GROUND FLOOR PLAN

Scale 1:100

October, 02, 2025



FIRST FLOOR PLAN

Scale 1:100

Scale 1:100

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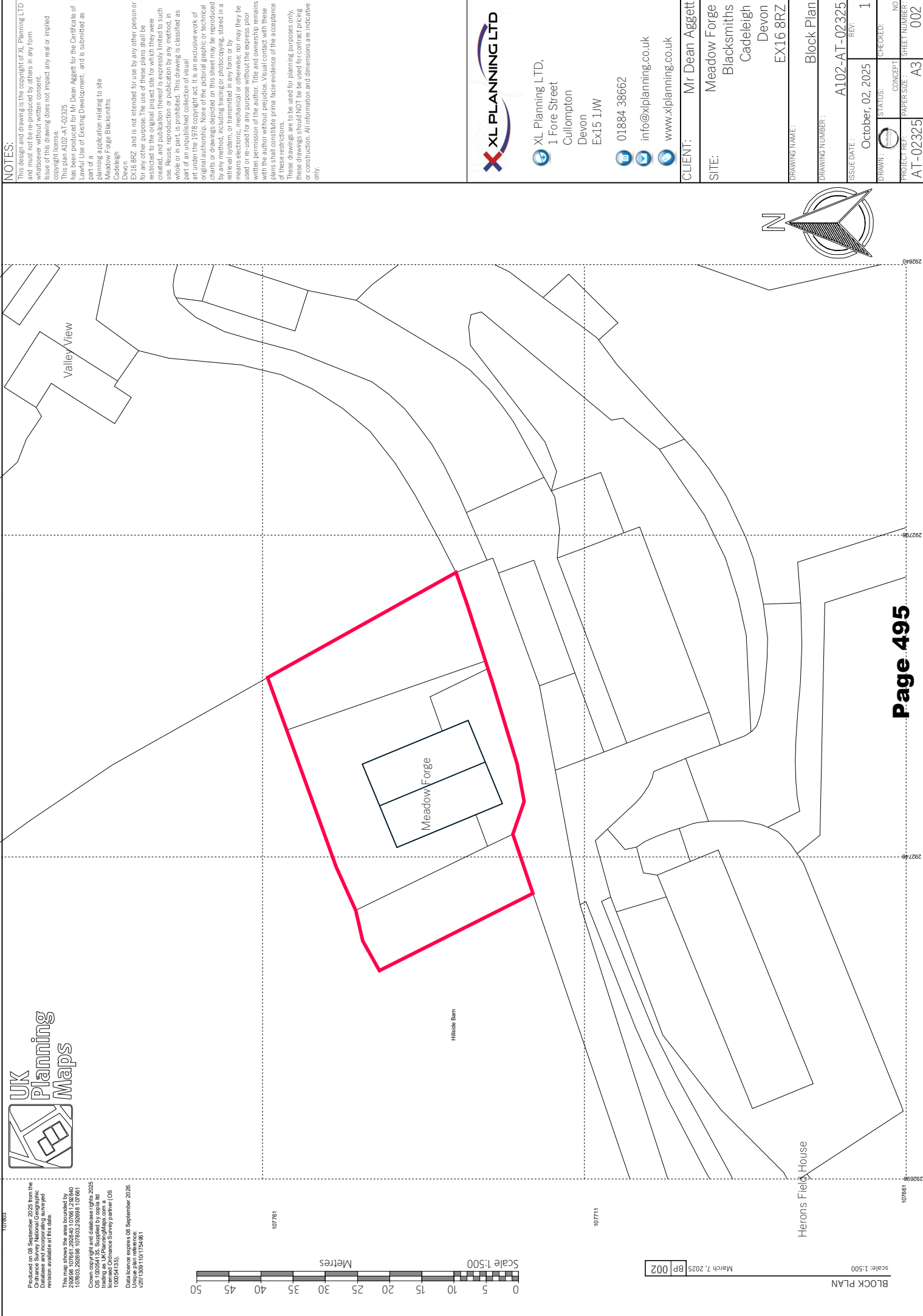
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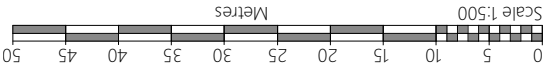
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CLIENT:	Mr Dean Aggett
SITE:	Meadow Forge Blacksmiths Cadeleigh Devon EX16 8RZ
DRAWING NAME:	Floorplans 1
DRAWING NUMBER:	A103-AT-02325
ISSUE DATE:	October, 02, 2025
REV:	1
DRAWN:	October, 02, 2025
STATUS:	CONCEPT
PROJECT REF:	AT-02325
PAPER SIZE:	A3
CHECKED:	NO
SHEET NUMBER:	003



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March 7, 2025 BP 002

BLOCK PLAN
Scale: 1:500



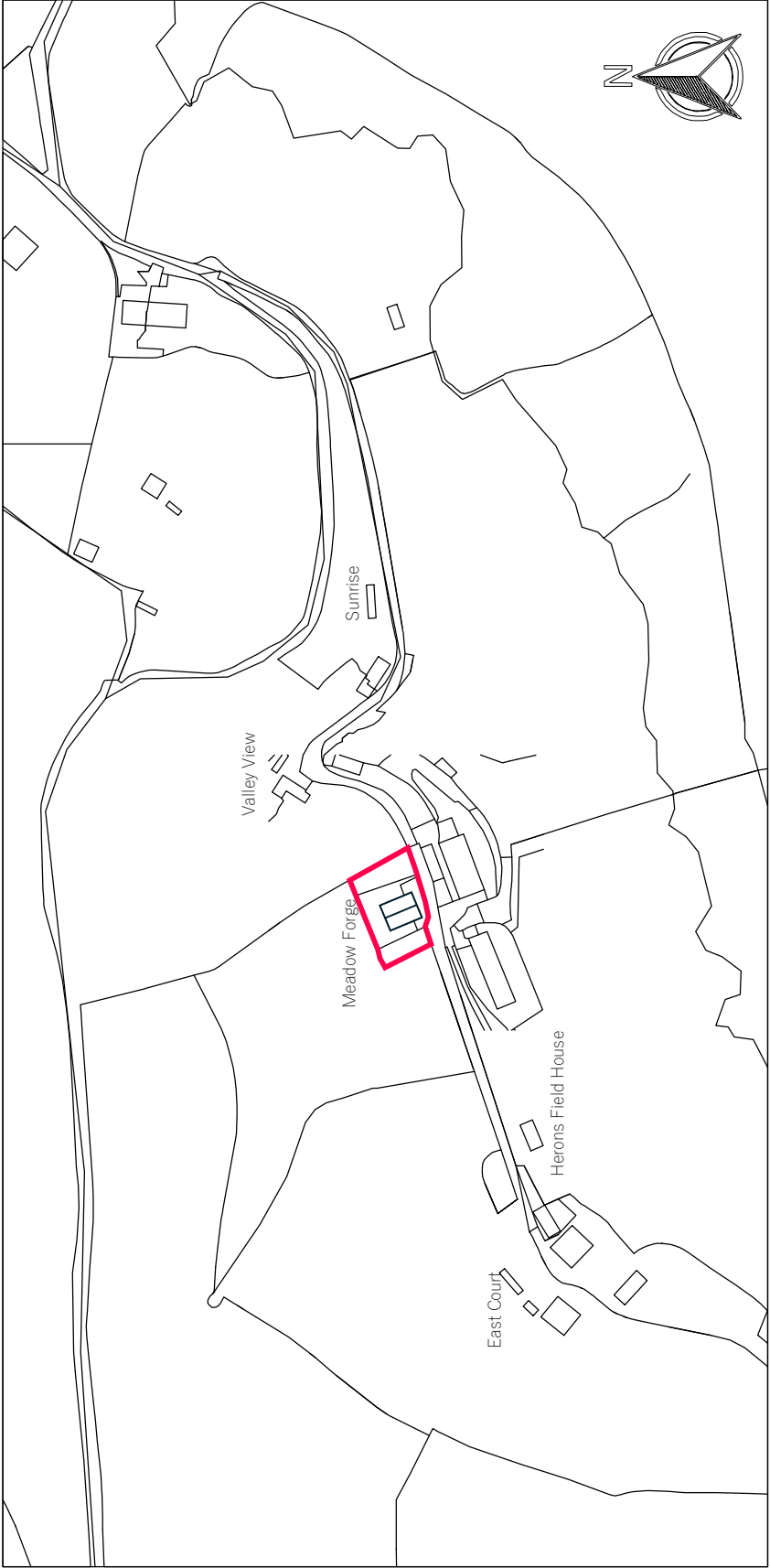
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Devon
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www.xlplanning.co.uk

CLIENT:	Mr Dean Aggett
SITE:	Meadow Forge Blacksmiths Cadeleigh Devon EX16 8RZ
DRAWING NAME:	Block Plan
DRAWING NUMBER:	A102-AT-02325
ISSUE DATE:	October, 02, 2025
REV:	1
DRAWN:	October, 02, 2025
STATUS:	CONCEPT
CHECKED:	NO
PROJECT REF:	PAPER SIZE: A3
AT-02325	SHEET NUMBERS: 002

APPENDIX B (d)

DRAWING INDEX.		
SHEET NUMBER	SHEET NAME	REVISION NUMBER
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Sheet 002	Block Plan	1
Sheet 003	Floorplans 1	1
Sheet 004	2 Floor and Roof Plan	1
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Sheet 006	Elevations II	1
Sheet 007	Exhibit DA1	1
Sheet 008		1
Sheet 009		1
Total Sheet Count		7

REVISION INDEX		
REVISION NUMBER	DESCRIPTION	REVISION DATE
C	Concept Issue	07/03/25



SITE LOCATION PLAN
Scale: 1:2500
October, 02, 2025 SL 001

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1 Fore Street
Cullompton
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01884 38662
info@xlplanning.co.uk
www.xlplanning.co.uk

CLIENT: Mr Dean Aggett
SITE: Meadow Forge
Blacksmiths
Cadeleigh
Devon
EX16 8RZ

DRAWING NAME: Title and Location Plan
DRAWING NUMBER: A101-AT-02325

ISSUE DATE: October, 02, 2025
REV: 1

DRAWN: October
STATUS: CONCEPT
PROTECT RPT: A3
SHEET NUMBERS: NO 001
AT-02325

9. I consider that because of the information and evidence provided within this declaration that any alleged breach of planning conditions had achieved immunity 'before' the service of the 2 x BCN's, and as a result those uses, and breach of conditions had become lawful after 10 years of continual breach. As a result, the service of those notices was not proportionate. I also consider that the service of a BCN does not stop the immunity clock in relation to breaches of planning legislation as a BCN is not considered as an enforcement notice in relation to planning legislation.
10. I am a Blacksmith and have little knowledge of the particular use of planning words and phrases, given that they don't seem to always align with the common understanding most of us non planning public have. I have answered the questions to the PCNs x2 with the best guesses at what was required. This I have done as an ordinary man on the street, this being so, I have always claimed I have used my property exactly the same way since I first bought it 19 years ago, and that my understanding now is that due to the passage of time my use has gained the immunity granted by such legislation as exists regardless of how I phrase or describe that use to be, it has become a completely lawful use and has been so for a long time.
11. I believe from the above information and evidence referred to in this sworn statement, that it is clear that the building known as 'Hillside Barn' (Meadow Forge) has been in continuous composite use as a forge and dwelling house/residential (B2 and C3 Use Classes) and that the areas outside of the approved forge have been used for the storage and stationing of materials/vehicles and chattels for well over ten (10) years. As a result, that change of use and any breach of planning conditions imposed upon planning permission 09/01587/FULL is now immune from planning enforcement action by the Local Planning Authority (LPA) and a Certificate of Lawful Use can be granted to that effect.

I make this declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835 declared at 38 High Street, Cullompton on before.

Signed

Dated

(Your name)

Dean Aggett

Signed

Dated

(Solicitor)

Michael
Muckelbauer
Solicitor at

Dunn & Baker Solicitors
Chudleigh House
38 High Street
Cullompton
EX15 1AE

A bundle of MDDC e-mails to include - An MDDC e-mail dated 21st October 2021 ref – 117394 stating that there is enough evidence to *'list as residential from February 2013.'*

Another MDDC e-mail dated 26th October 2021 subject 20/00223/RURAL that states *'I have reviewed the information available, and it appears that the owner Mr Aggett has been living in the premises for some time and probably since around 2010. There does appear to have been a material change of use of the building'*

An MDDC e-mail dated 13th July 2023 MDDC Case Number MDQC – 587384 which states *'We have corroboratory evidence confirming use and occupation since 2008 and we are most likely out of time by the point of 2020 complaint, and which is the first time we were made aware of the issues'*

Bundle Exhibit DA3

It is apparent from MDDC own records that they have been aware of my mixed use of 'Meadow forge' for many years (more than 10) 'prior' to the service of their 2 x Breach of Condition Notices both dated 28th March 2025. (20/0223/RURAL).

I consider that I have not attempted to conceal or hide my mixed (composite) use based upon my disclosure to the Electoral Roll registration and Driving Licence Authority.

7. Issue (b)

The use of associated external land to store materials, goods, scrap metal and waste materials in Breach of Condition 5 imposed upon planning permission 09/01587/FULL. I would contend that when I applied for the retention of the change of use from an agricultural building to a blacksmiths forge in November 2009 (09/01587/FULL) that application related only to the building in question and not the outside land. But understand that conditions can be imposed upon land that I own and that was identified as such when I made the planning application.

It is clear from my PCN replies that outside storage of vehicles and chattels has taken place continually for more than ten (10) years and the aerial images from Google Earth show a period of outside storage from 1st January 2010 up until 1st March 2025 with various dates in between. I produce a compilation of dated Google Earth Images **Exhibit DA4**

As a result of the above I consider that the breach of condition 5 on planning permission 09/01587/FULL has been breached for more than ten (10) years and as a result that breach is now immune from enforcement action.

8. On 28th March 2025 I was served with two (2) x Breach of Condition Notices (BCN) that related to perceived breaches of Conditions 2 and 5 imposed upon Planning Permission 0901587/FULL granted on 14th December 2009. Both BCN's had the enforcement investigation reference of 20/0223/RURAL. I would imagine that, given the enforcement investigation reference, that those investigations have been ongoing since 2020 and that it has taken MDDC five (5) years to consider the service of the 2 x BCN's.

immunity against enforcement action as any unauthorised use had taken place continually over ten (10) years from 2006/7 until and beyond 2007/18. It was also evident that there had been 10 years' worth of use between 2011 when I registered with MDDC on their electoral roll (FE-157/1) with the address of 'Hillside Barn' on 5th May 2011 and 2021 well before I was served with the PCN.

6.4 – See answers 3.6 – 5.8 and 6.1.

6.5 - To further explain I have paid Business Rates since 2007 and residential Council Tax since 2022.

6.6 - I have paid Business Rates since 2006/7 but when I answered the PCN no Council Tax was being paid. The Residential Council Tax that I now pay was 'back dated' to BEFORE the PCN date.

6.7 - See answers 3.6 – 5.8 and 6.1

6.8 - I put N/A here because I the answer to 6.7 was NO

6.9 - This question was not relevant to the allegation of change of use or Breach of Conditions

7.0 – See 6.9

7.1 – See 6.9

7.2 – See 6.9

7.3 – See 6.9

7.4 – Was irrelevant

7.5 – This answer provides details of 15 years of use to station the vehicles on the land. However, this answer has been ignored as I have been served with a Breach of condition Notice in relation to that use. I believed that the use had become immune after 10 years.

7.6 – This answer is accurate and correct

7.7 – See answer 7.5 plus this answer gives further information in relation to the use of the land in question.

7.8 – Correct and accurate answer.

7.9 to 8.2 are all correct and accurate as answered.

As a result of the above I consider that I have used the approved Blacksmiths Forge building continually for both residential purposes and as a working forge in what I would describe as a composite use for well more than ten (10) years and certainly from 2011 until the date of this declaration.

I produce a bundle of evidence in support of this declaration consisting of, but not exclusively.

A MDDC letter dated 23rd November 2011 stating I am on the Register of Electors 2011.

Driving Licence x 2 with address of 'Hillside Barn' from 15th October 2011 until the current date.

MDDC Council Tax Reference. Electoral Roll evidence from April 2011 and November 2011. Bundle **Exhibit DA2**.

from the council such as the term 'human habitation' despite requests for such clarification being made. This with my limited understanding of the planning guidance and was my best guess at what was required. I held this belief rightly or wrongly until the issuing of a council tax bill that made it clear to me that the council were now of a different opinion to the one, they gave me previously, and from that time on I now believe that my use would indeed constitute a use as the council claimed. As such that use going back to at least 2013 and possibly earlier. I can confirm I had in fact used my property this way from day one and registered my use as such from 2011 even though at that time the council refused to see it as a change of use and would only register me as a locale area connection and not residential even though I clearly gave them all the information as to how my building and land was used by myself at that time.

I will only address the answers given that I feel could be misunderstood.

A.1.2 – My reply relates to my correspondence address not my residence.

A 1.6 – Owned since 2006 as identified on Land Registry

A 3.2 – See my answer to 1.2.

A 3.3 – I had given residential addresses that I have had permission to receive personal correspondence as my address (Meadow Forge) was not a residential address according to MDDC. A residential address was required to complete the PCN.

3.5 – This answer is correct, but I would now add that I occupied the barn in 2006/7 after I had purchased the site. Then retrospective planning permission was granted ref – 09/01587/FULL and I used a correspondence address to make that application.

3.6 – I 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 blacksmiths forge.

3.7 – See my previous answer to 3.6.

3.8 – See 3.6

3.9 – See 3.8

4.0 – I put none as I thought the use was a 'mixed use' (composite)

4.1 – I put No but in fact there was and still is electricity to the 'mixed use'

4.2 to 4.5 as on the PCN

4.7 – See 3.6

4.8 – I did not understand this question so answered 'No works started'

4.9 – See 3.6

5.0 – See 3.6

5.1 – I felt this question was not relevant to the alleged breach referred to within the PCN

5.5 – See 3.6

5.6 – See 3.6

5.7 – See 3.6

5.8 – See 3.6 I considered that the uses were mixed uses of a blacksmiths forge and residential. (composite)

5.9 – This answer I considered as correct as the use was as a mixed use of work and residential for example a live work planning unit. Composite use.

6.0 – Correct

6.1 – See answers 3.6 and 5.8 and no planning application was invited. MDDC continued to state the use was NOT residential until I was served with the PCN (Enf/20/00223/RURAL) which I completed, and to repeat the uses I considered were acceptable mixed uses. In addition, I considered at that time I had gained an

mixed use of Blacksmiths workshop and for human habitation. The MDDC enforcement investigation reference was 10/00037/UCU.

I did answer that there was no human habitation of the building at that time, and that I lived at 'Rose Cottage' TA2 6QS. However, 'Rose Cottage' was a correspondence address, and I was in fact living within the blacksmiths forge building for most of the time. From the documents that I have obtained from MDDC it would seem that they closed the case (10/00037/UCU) on 11th May 2011. MDDC did not follow up on any enforcement action after I returned the completed PCN.

During 2011 various works and activities occurred to include. The installation of, within the northeastern corner of the blacksmiths/forge building, dwelling house facilities that allowed me to live within the building and use that part of it for residential purposes (human habitation). Which included wash facilities, a bath, sink and toilet were plumbed in on the 1st floor and a laundry area was installed on the ground floor.

I completed a Census form which was sent to me at Hillside Barn.

In November 2011 I registered myself as resident at Hillside Barn on the Electoral Roll. I was informed that I could only register as a '*local area connection*' as the property was not classed as residential. I accepted this explanation because I did not understand the regulations. As far as I know I am still on the electoral roll. MDDC Electoral Roll ref – FE-157/1. I was able to vote in relation to the MDDC Elections on 5th May 2011 as a result.

My 2 x Driving Licences show me as resident at Hillside Barn from 15th October 2011 and until 12th May 2021 in relation to my HGV licence which needs to be renewed every 4 years. I have not renewed my HGV licence, but my main driving licence continues to relate to my address as 'Hillside Barn' and has done since 2011.

The Valuation Office Agency (VOA) attended and surveyed in 2011 to re-evaluate the property and survey the building.

I assumed that MDDC had decided that they would take no further action regarding the allegation of my residential use (human habitation) of Hillside Barn as I heard nothing from MDDC until I was served with another Planning Contravention Notice (PCN) in early 2022 which I completed and returned dated 8th February 2022. The MDDC enforcement reference was ENF/20/00223/RURAL which was a new reference because of what I assume was a new complaint as the previous MDDC enquiries had the Enforcement reference of 10/00037/UCU. As can be seen these investigations and the service of the more recent PCN are 12 years apart.

I completed the PCN but did not hear from MDDC until November 2024.

From January 2022 I have paid MDDC residential Council Tax under the reference – 168RZHIL0000 Council Tax Band A. The Council Tax describes Hillside Barn as a 'mixed use' property. I assumed that the mixed-use description included residential given that I was paying residential Council Tax.

As mentioned above I completed and returned a Planning Contravention Notice (PCN) and signed it dated 8th February 2022. This PCN had the MDDC Enforcement Reference ENF/20/00223/RURAL. I found this PCN very confusing and complicated so I feel I should explain my answers more fully.

My understanding of planning regulations at the time of each PCN was that having de minimis use such as running a business from home or having an office in a spare room for an employment in a job use would be equivalent to using a workplace facility after or during a working day such as washing, eating, or resting would not be a change of use and with there being no clarification of these uses being available

APPENDIX B (c)

IN THE MATTER OF 'Meadow Forge' Cadeleigh, EX16 8RZ

I Dean AGGETT. Of 'Meadow Forge' Cadeligh, EX16 8RZ. Do **Solemnly and sincerely declare** as follows:

1. I make this declaration in relation to the submission of a Section 191 Certificate of Lawful Use application that I will make to Mid Devon District Council (MDDC) regarding the mixed (composite) use, of a building, as a Blacksmiths Forge and dwelling house, and the use of associated external land for storage in breach of conditions 2 and 5 imposed upon MDDC planning permission 09/01587/FULL. The site is known as, and located at 'Meadow Forge' Cadeleigh, EX16 8RZ.
2. For the purposes of this declaration, and for the avoidance of doubt, the building and associated external land referred to within this declaration, and the subject of the Certificate of Lawful Use application, has been identified by me and outlined in red on a Site Location Plan (SLP) and a set of full plans which I produce as **Exhibit DA1**.
3. I am the registered owner of land and buildings located on the site (Exhibit DA1) which is now known as 'Meadow Forge' EX16 8RZ. I acquired the land and building in 2006. As a result of the above I can provide detailed information and evidence regarding my continued and uninterrupted use of the site, from 2006 until the date of this declaration.
4. Mid Devon District Council (MDDC) have been aware of my use of the building and land since 2007 when they wrote to me regarding an alleged change of use. The MDDC reference was ENF/07/00052/UCU. As a result on 14th December 2009, I obtained planning permission from Mid Devon District Council (MDDC) for the '*Retention of change of use from agricultural to blacksmiths forge*' that planning permission received the reference 09/01587/FULL. This planning permission was granted in retrospect and condition 1 imposed upon that permission states that '*the date of commencement of this proposal is to be taken as 2nd November 2009*' which is the date the application was submitted, NOT when it was approved. The plans I submitted in support of this application show empty spaces on both the ground and first floor. When I applied for planning permission 09/01587/FULL, I used the correspondence address of 'Copenhagen Farmhouse' but I was in fact moving between that address and 'Meadow Forge' spending most of my time at the forge.
5. This my declaration will refer to two (2) issues.
 - a) My use of the approved blacksmiths forge building as a mixed (composite) use as a blacksmiths forge and dwelling house. In breach of condition 2 p.p. 09/01587/FULL.
 - b) My use of the associated external land for the storage of materials goods scrap and waste materials and chattels in breach of condition 5 p.p. 09/01587/FULL.
6. Issue (a).

After planning permission 09/01587/FULL was granted on 14th December 2009. On 14th May 2010 I completed and returned a Planning Contravention Notice (PCN) in relation to the allegation that there was a breach of planning legislation relating to the

- Site Location Plan (SLP) (Exhibit DA1) and (block and elevational plans) indicating the mixed (composite) use of the building and external areas to which this application applies.
- Statutory declaration with accompanying exhibits **(some confidential)**, from the landowner (applicant) and occupant.
- Documentary and photographic submissions in relation to the facilities and occupation of the mixed (composite) use building and use of the external space.

Conclusion

Having regard to the matters set out above, evidence, and material factors, such as case law, as well as evidence on site, and the fact that no known enforcement action has been undertaken historically within the claimed immunity period in relation to any unauthorised development or material change of use or breach of condition. Plus, as there was no enforcement notice or breach of condition notice in force when the immunity was gained.

It is considered, that on the balance of probability, the Local Planning Authority (LPA) have been provided with the evidence to support the issue and grant of a Certificate of Lawful Use/Development under the provisions of Section 191 Town & Country Planning Act 1990. That certificate to state that the unauthorised changes of use and breach of conditions 2 and 5 imposed upon planning permission 09/01587/FULL, at 'Meadow Forge' (and associated external areas) EX16 8RZ, identified on Exhibit DA1 have been used and been in place continually for a period of more than ten (10) years '*prior*' to the service of the 2 x Breach of Condition Notices and prior to this certificate application. As a result, those uses and breach of conditions are now lawful, and immune from planning enforcement action. It is respectfully requested therefore that a Certificate of Lawful Use can be granted to that effect.

Gravesham (above) indicates that it is the facilities and their characteristics which are important. Not the time periods involved in relation to occupation.

The dwelling house element is located within the northeastern end of the building and on different floors, as shown and identified (shaded red) on the submitted plans. The ground floor contains a kitchen area with units and appliances and a utility area. The 1st floor contains a shower room and toilet (bathroom), a furnished seating/living area with log burner, snug storage and office areas. 2nd floor contains a sleeping area with bed and storage. (see submitted photos)

The dwelling house element has always been furnished with facilities associated with residential use since 2010. (see submitted statutory declaration).

The building footprint and that of the outside storage area, have all been identified on the submitted plans for the avoidance of doubt. (Exhibit DA1)

Of note to the Local Planning authority (LPA) will be that the use of this building and land has never been concealed or hidden. (see statutory declaration/evidence and Council Tax records). In addition, see the MDDC historical information showing that enforcement investigations have been ongoing under the references – 10/00037/UCU - 17/00184/BRE and 20/00223/RURAL.

A MDDC e-mail communication dated 13/7/23 states that MDDC were aware of a 'mixed use' taking place **since 2008**. Complaints had obviously been received by the LPA in 2010 and 2017 given that enforcement investigations were commenced and presumably closed. Another complaint was received in 2020 hence the enforcement file and investigation reference 20/00223/RURAL which resulted in the service of the 2 x BCN's on 28th March 2025 4 or 5 years later.

[a] If it has been and remains a 'live/work' unit in the planning sense then as we have corroboratory evidence confirming use and occupation since 2008 we were most likely out of time by the point of 2020 complaint, and which is the first time we were made aware of the issues.

MDDC e-mail communication dated 13/7/23 showing a historical mixed use. 2008 date highlighted red arrow.

The Evidence

The evidence base in relation to this application constitutes the following material and documentation:

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Property information for

HILLSIDE BARN, CADELEIGH, TIVERTON, DEVON, EX16 8RZ

Local Authority	Mid Devon
Local authority reference number	168RZHIL0000
Council Tax band	A
Improvement indicator	No
With effect from	1 January 2022
Mixed-use property	Yes
Court code	None

► [What does my property information mean?](#)

MDDC Council Tax records with effect from 1/1/2022

The dwelling house element of the mixed use at 'Meadow Forge' contains all the facilities required for use as a dwelling house as referred to in *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307 where it states that.

Generally, it has been held that the distinctive characteristic of a dwelling house is its ability to afford those who use it, the facilities required for day-to-day private domestic existence. It does not lose those characteristics if it is occupied for only part of the year, or at infrequent intervals, or by a series of different persons.

The applicant has owned the land including the site/location of the dwelling house since at least 2010.

The building contains all the facilities of a dwelling house. These facilities are described below.

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in force when the immunity period had been achieved, and the use/development had become lawful.

In short once Section 171B (2) and (3) have been satisfied the use/development is lawful.

It may transpire that the LPA (MDDC) in this case consider that Section 191 (3) (b) of the Town & Country Planning Act 1990 applies. In that a Breach of condition Notice *'is then in force'* at the time of this Certificate Application. However, it must be that the term *'then in force'* relates to the existence of an Enforcement Notice OR Breach of Condition Notice during the period that the immunity was being accrued. **NOT** after that immunity had been gained.

This application seeks to prove, on the balance of probability, that the mixed use (composite) of the approved blacksmiths building, as a forge and dwelling house along with the use of the external areas for storage are now lawful and immune from LPA enforcement action. Whilst only four (4) years of continual use needs to be proven in relation to the change of use of part of the building to a dwelling, the applicant has owned and used the building and external land as described for well over the required ten (10) years

There has been submitted in support of this application a statutory declaration made by the applicant along with numerous exhibits consisting of invoices/receipts/photographs/Council Tax and MDDC documents that establish a timeline in relation to the historical unauthorised change of use of the building to a mixed (composite) use and the use of the outside area/s for storage. All in breach of conditions 2 and 5 imposed upon planning permission 09/01587/FULL.

The above BCN x 2 notices were served on 28th March 2025 **AFTER** the claimed four (4) year and ten (10) immunity periods had been accrued (see supporting statutory declaration and exhibits) and as a result have not stopped or interrupted that immunity period. A Breach of Condition Notice (BCN) is not an enforcement notice. A BCN is not an "enforcement notice" (which is defined as an enforcement notice issued pursuant to s172 of the TCPA within the Act) i.e. not a BCN pursuant to s187A.

As a result, the immunity period continues to be accrued.

In any event the applicant will claim ten (10) years of immunity going as far back as 2010 which then satisfies all of the immunity periods as imposed by way of Section 115 of the Levelling-up and Regeneration Act 2023 which became legislation on 25th April 2024, **and** the relevant legislation that applied before that date.

It is important to note that once an immunity has been gained **no** enforcement action can be taken by the Local Planning authority (LPA). *R Ocado v Islington (2021) EWHC 1509* The (Ocado) decision (see paragraphs 49 – 60 and 130 within the judgement) thus establishes that once a breach of condition has continued for more than 10 years, the right to use the land in breach of that condition can only be lost by *abandonment, subsequent change of use or creation of a new planning unit*. The breach of condition does not have to be continuous after the original 10 years (or 4 years if applicable) has passed.

See *Thurrock Borough Council v Secretary of State for the Environment [2002] J.P.L 1278* The LPA have had the opportunity to take enforcement action since 2010 (see below evidence) and have not done so. The *Thurrock* judgement where Schiemann LJ explains at [25] that the rationale for the time limits in s.171B is that once they have expired the local planning authority has lost the chance to take enforcement action in respect of that breach.

Section 171B expressly prohibits the taking of enforcement action. It must be queried therefore if the service of the 2 x BCN's was in fact lawful at the time given that the immunity had already been gained. It may have been the case that if the applicant in this case and the recipient of the 2 x BCN's was aware of the above he may have lodged a legal challenge to those 2 x BCN's but of course that time for challenge has expired.

Also see *Swale Borough Council v First Secretary of State [2006] JPL 886*.

The service of the 2 x Breach of Condition Notices (BCN's) cannot stop the immunity 'clock' once the development/use has become lawful (Ocado) and cannot be considered to be 'then in force' as far as the consideration of Section 191 (3) Town & Country Planning Act 1990 when dealing with such applications as this certificate submission. The BCN's were not

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Such development, to include building works and any material change of use, without planning permission could be unauthorised and contrary to Section 171A (1) of the Town & Country Planning Act 1990.

However, Section 171B (1) and (2) of the same legislation '**previously**' referred to immunity time limits and stated at.

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed.

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a 'single dwelling house', no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. *This definition includes the change of use to a dwelling house in breach of a condition.*

However, and importantly, Section 115 of the Levelling-up and Regeneration Act 2023 became legislation on 25th April 2024.

Regulation 3(b) brought section 115 of the 2023 Act (time limits for enforcement) into force on 25 April 2024. However, Regulation 5 contains a transitional provision which provides that the amendments made to the 1990 Act by section 115 **do not apply**, in the case of a breach of planning control referred to in section 171B (1) and (2) of the 1990 Act (relating to unauthorised development and to the change of use of any building (part of a building) to use as a single dwellinghouse), if the change of use or development occurs **before the 25th April 2024.**

This application refers to alleged unauthorised change of use of the blacksmith building into a mixed use (composite) of blacksmith building and dwelling house, and the use of outside space to store materials and chattels. These allegations are contained within the 2 x Breach of Condition Notices (BCN's) served by MDDC their ref- 20/0223/RURAL and both dated 28th March 2025. The notices refer to breaches of conditions 2 and 5 imposed upon planning permission 09/01587/FULL.

The alleged Breach of Condition 2 relates to the residential use of the building.

The alleged Breach of Condition 5 relates to use of external land for storage.

In this case a mixed (composite) use (planning unit) has been created, the mixed use comprises blacksmiths forge (B2) and outside storage (B8), and dwelling house (Use Class C3 (dwelling house)) resulting in a 'sui-generis' use class. The term given to the uses of land or buildings not falling into any of the use classes identified by the UCO.

In determining whether the use of planning unit (the site) has changed to its current use as described, the following needs to be considered.

Section 55 (1) of the Town and Country Planning Act 1990, states that "Subject to the following provisions of this section, in this Act, except where the context otherwise requires, "development," means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

For the purposes of the 1990 Act, section 336(1) defines "building" as including any part of a building. It is considered that the criteria for determining the mixed use (composite) of the building as a blacksmith and as a dwelling house would include both the physical condition of the premises and the manner of the uses. Where a single, self-contained set of premises comprises a mixed (composite) unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act

A mixed-use building combines residential and non-residential (commercial) spaces within the same structure or development. This could include a shop on the ground floor with apartments above, **OR** a building with both commercial space and a residential unit/space (as is the case of this application).

The key characteristic is the presence of both living and working areas within the same building.

The leading case in relation to defining what constitutes a planning unit is *Burdle v SSE* (1972). *Burdle* provides three (3) possible situations.

First, whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered.

Secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities, and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time, but the different activities are not confined within separate and physically distinct areas of land.

Thirdly, however, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.

The Second (2nd) and relevant situation applies to this application where the applicant is the owner of the building and land in question (Exhibit DA1), along with other adjacent land used for other lawful activities (agricultural and horticultural and forestry). The mixed (composite) use has taken place in relation to the use of the building approved by way of planning permission 09/01587/FULL 'Meadow Forge' has been created because of the unauthorised adaptation and unauthorised material change of use of **part** of the blacksmiths forge building and its associated outside area all of which can now be considered as a separate planning unit as defined by the consideration of *Burdle 2nd scenario* (above)

The change of use and breach of conditions has resulted in the creation of the new separate planning unit as identified by way of Exhibit DA1. (Site Location Plan)

A certificate for existing use must include a description of the use, operations, or other matter for which it is granted, regardless of whether the matters fall within a use class. But where it is within a "use class", a certificate must also specify the relevant "class". In all cases, the description needs to be more than simply a title or label if future problems interpreting it are to be avoided. The certificate needs to therefore spell out the characteristics of the matter to define it unambiguously and with precision.

MDDC Online Planning History

Planning Permission was granted on 14th December 2009 for -

1. *Retention of change of use from agricultural to blacksmith's forge.*
2. Two (2) x Breach of Condition Notices were issued on 28th March 2025 in relation to Condition 2 and Condition 5 imposed upon planning permission 09/01587/FULL. The notices required compliance by 28/5/25 (condition 5) and 28/6/25 (condition 2) – Enforcement ref – 20/0223/RURAL.

The case for the Grant of a Certificate

The building and land the subject of this application, has been identified on the submitted site location plan (SLP) (Exhibit DA1) block plan and additional plans.



Google Image dated 1/3/2025 building (red arrow)

The unauthorised breaches and breach of condition/s are continuing at the time of this application.

The building and land the subject of this application, can be considered as an independent single planning unit for the following reason.

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Site Location plan (Exhibit DA1) and identified mixed use building, outside storage area, and planning unit 'Meadow Forge' EX16 8RZ.

Planning History

A search of the Mid Devon District Council (MDDC) website reveals the below relevant planning history.

Address Property History (7) Constraints (1) Map

Planning Applications (4)

- [Erection of 2 no. lean-to off existing silage barn for livestock/general purpose use](#)
Ref. No: 05/00017/FULL | Status: Application Refused
- [Erection of 2 no. lean-to off existing silage barn for livestock/general purpose agricultural use \(Re-submission\)](#)
Ref. No: 05/00693/FULL | Status: Application Refused
- [Erection of 2 no. lean-to's off existing barn for livestock/general purpose agricultural use](#)
Ref. No: 05/02000/FULL | Status: Application Refused
- [Retention of change of use from agricultural to blacksmith's forge](#)
Ref. No: 09/01587/FULL | Status: Application Permitted

Planning Appeals (2)

- [Erection of 2 no. lean-to off existing silage barn for livestock/general purpose agricultural use \(Re-submission\)](#)
Ref. No: 05/00033/WR | Status: Appeal Dismissed
- [Erection of 2 no. lean-to's off existing barn for livestock/general purpose agricultural use](#)
Ref. No: 05/00050/WR | Status: Appeal Dismissed

Planning Enforcements (1)

- [Enforcement Enquiry](#)
Ref. No: 20/00223/RURAL | Status: Notice Issued

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“building” includes any structure or erection, **and any part of a building**, as so defined, but does not include plant or machinery comprised in a building.

This supporting statement provides information and evidence in accordance with guidance as set out within the Department for Communities and Local Government - Planning Practice Guidance in relation to Lawful Development Certificates. (Revised 6th March 2014)

If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191. The applicant in this case understands that the statement in a lawful development certificate of what is lawful relates only to the state of affairs on the land at the date of the certificate application.

In addition, in the case of *F W Gabbitts v SSE and Newham BC [1985] JPL 630* the Court held that the applicant’s own evidence does not need to be corroborated by “*independent*” evidence to be accepted. If the LPA have no decisive evidence of their own, or 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*”.

A local planning authority needs to consider whether, on the facts of the case and relevant planning law, the specific matter is or would be lawful. Planning merits are not relevant at any stage in this application, or any subsequent appeal process.

Site and surrounding area

For the purposes of this application the relevant site is identified and outlined in red on the Site Location Plan (SLP) Exhibit DA1, Block Plan and elevational plans. The mixed-use building is known as ‘Meadow Forge’ Cadeleigh, EX16 8RZ. Additional land, which is outside of the application red line, is owned by the applicant and is described as ‘*agricultural/horticultural & forestry*’.

Time limits for enforcement action.

Prior to 25 April 2024 Section 171B of the Town and Country Planning Act 1990 ("TCPA") provided that LPAs could not take enforcement action in respect breaches of planning control (including a breach of condition) following a period of either four (4) or ten (10) years, depending on the type of breach.

The four-year period applied in respect of operational development and the change of use of a building (or part of a building Sect 336 T & CP Act 1990) to a single dwellinghouse. The 10-year period applied in respect of all other breaches of planning control, including breaches of planning condition, but the 4-year rule applied to a breach of condition which involved the change of use of a building (or part of a building) to a dwelling house. (see below).

Section 171B (2) previously stated; Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house (as in this case), no enforcement action may be taken after the end of the period of **four years** beginning with the date of the breach.

(3) Any other matter (breach of condition) stated that a ten (10) year immunity was required

Section 171B as from 25th April 2024 now states –

(1) Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of—

(a) in the case of a breach of planning control in England, ten years beginning with the date on which the operations were substantially completed, and

(2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of—

(a) in the case of a breach of planning control in England, ten years beginning with the date of the breach,

(3) In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.

The definition (interpretation) of a Building at Section 336 Town & Country Planning Act 1990 (as amended) states.

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Section 191 Town & Country Planning Act 1990 states; at (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.

OR and in relation to this application -

(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.

NOTE. In the case of this application 2 x Breach of Condition Notices (BCN's) were served and dated 28th March 2025 (MDDC ref – 20/0223/RURAL) but were not 'in force' when immunity had been gained. A BCN is not an enforcement notice that prevents immunity being gained.

Section 70C of the Town & Country Planning Act 1990 (TCPA) indicates that a BCN is not an "enforcement notice" (which is defined as an enforcement notice issued pursuant to s172 of the TCPA within the Act) i.e. not a BCN pursuant to s187A.

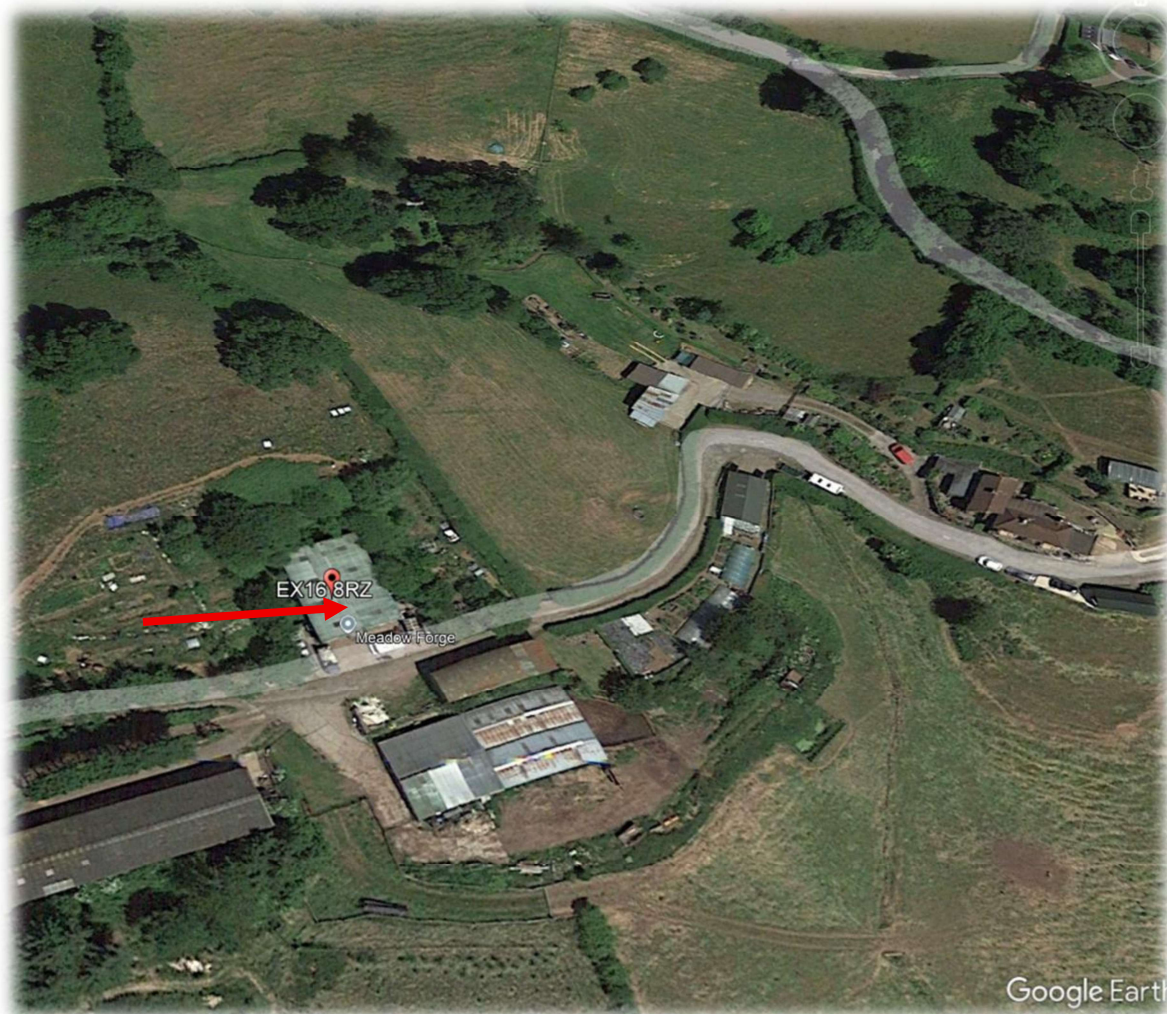
As a result, the immune and lawful uses identified continue at the time of this application and the immunity 'clock' has not been stopped by the service of the 2 x BCN's.

The lawfulness of a use or development is 'not' dependent on an LDC being issued. This has been confirmed in relation to the lawfulness of an existing use or 'development' (as in this case) by the judgment of the High Court in *Hillingdon LBC v SSCLG [2008] EWHC 198 (Admin)*. In the course of this judgment, attention was drawn to paragraph 16 of Annex 1 to Circular 17/92 which existed at the time and stated that. subsection (2) of section 191 which provides that, (for the purposes of the Act) uses of land and operations are lawful at any time if no enforcement. action may then be taken in respect of them applies "*whether or not an LDC. has been issued under sections 191 or 192 of the 1990 Act.*" See also the decision of the Court of Appeal in *Republic of France v Kensington and Chelsea. RLBC*

Once the lawfulness of a use/development is established it is considered to apply and can only be lost because of abandonment or a change of use. R Ocado v Islington (2021)

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The application site concerned, is now known as 'Meadow Forge' which is 0.9 miles (1.3k) to the east of Cadeleigh and within the Mid Devon District Council (MDDC) area. The site is predominately surrounded by agricultural land and agricultural buildings. The specific location of the building and land at 'Meadow Forge', is identified on the submitted site location plan (SLP). Exhibit DA1. Additional land, which is outside of the application red line, is owned by the applicant and is described as '*agricultural/horticultural & forestry*'.



Meadow Forge (red arrow) image courtesy of Google Earth

There are 2 types of lawful development certificate.

A local planning authority can grant a certificate confirming that, and specifically in relation to this application that.

(a) an existing use of land, or some operational development, or some activity being carried out in breach of The Town & Country Planning Act 1990 (as amended), is lawful for planning purposes under the provisions of section 191 of the Town and Country Planning Act 1990.

T. 01884 38662



'Meadow Forge', building and outside land at EX16 8RZ

Introduction

XL Planning Ltd are instructed to submit a Lawful Development Certificate (LDC) application on behalf of the applicant and owner of the building which is in a mixed (composite) use (blacksmiths forge and residential) and outside storage under the provisions of section 191 of the Town and Country Planning Act 1990, to determine whether the use in breach of conditions 2 and 5 of planning permission 09/01587/FULL would be considered as lawful for planning purposes.

T. 01884 38662

+



**The Town and Country Planning Act 1990 (as amended)
Lawful Development Certificate – Section 191**

Supporting Statement

To establish the Lawful Mixed (Composite) Use of a building as a Blacksmith Forge and for residential purposes plus the use of the 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 upon Planning Permission 09/01587/FULL.

At

‘Meadow Forge’ Cadeligh, Tiverton, EX16 8RZ

Interest in the Land

Please state the applicant's interest in the land

- ☒ Owner
- ☐ Lessee
- ☐ Occupier
- ☐ Other

Authority Employee/Member

With respect to the Authority, is the applicant and/or agent one of the following:

- (a) a member of staff
- (b) an elected member
- (c) related to a member of staff
- (d) related to an elected member

It is an important principle of decision-making that the process is open and transparent.

For the purposes of this question, "related to" means related, by birth or otherwise, closely enough that a fair-minded and informed observer, having considered the facts, would conclude that there was bias on the part of the decision-maker in the Local Planning Authority.

Do any of the above statements apply?

- ☐ Yes
- ☒ No

Declaration

I/We hereby apply for Lawful development: Existing use as described in the questions answered, details provided, and the accompanying plans/drawings and additional information.

I/We confirm that, to the best of my/our knowledge, any facts stated are true and accurate and any opinions given are the genuine opinions of the person(s) giving them.

I/We also accept that, in accordance with the Planning Portal's terms and conditions:

- Once submitted, this information will be made available to the Local Planning Authority and, once validated by them, be published as part of a public register and on the authority's website;
- Our system will automatically generate and send you emails in regard to the submission of this application.

☒ I / We agree to the outlined declaration

Signed

Jonathan Clarke

Date

09/10/2025

In the case of an existing use of land, has there been any material change of use of the land since the start of the use for which a certificate is sought?

☐ Yes

☒ No

Residential Information

Does the application for a certificate relate to a residential use where the number of residential units has changed?

☐ Yes

☒ No

Site Visit

Can the site be seen from a public road, public footpath, bridleway or other public land?

☒ Yes

☐ No

If the planning authority needs to make an appointment to carry out a site visit, whom should they contact?

☒ The agent

☐ The applicant

☐ Other person

Pre-application Advice

Has assistance or prior advice been sought from the local authority about this application?

☒ Yes

☐ No

If Yes, please complete the following information about the advice you were given (this will help the authority to deal with this application more efficiently):

Officer name:

Title

First Name

Surname

Reference

Date (must be pre-application submission)

Details of the pre-application advice received

Grounds for application for a Lawful Development Certificate

Under what grounds is the certificate being sought

*Where the use, building works or activity began **before 25 April 2024***

- ☒ The use began more than 10 years before the date of this application
- ☒ The use, building works or activity in breach of condition began more than 10 years before the date of this application
- ☐ The use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years
- ☒ The building works (for instance, building or engineering works) were substantially completed more than four years before the date of this application.
- ☒ The change of use to use as a single dwelling house began more than four years before the date of this application.
- ☐ Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

*Where the use, building works or activity began **on or after 25 April 2024***

- ☐ The use, building works or activity began more than 10 years before the date of this application.
- ☐ The use began within the last 10 years, as a result of a change of use not requiring planning permission, and there has not been a change of use requiring planning permission in the last 10 years.
- ☐ Other - please specify (this might include claims that the change of use or building work was not development, or that it benefited from planning permission granted under the Act or by the General Permitted Development Order).

Is the certificate being sought for a use, operation, or activity in breach of a condition or limitation?

- ☒ Yes
☐ No

Please give the reference number of any existing planning permission, lawful development certificate or enforcement notice affecting the application site. Include its date and the number of any condition being breached.

Reference number

09/01587/FULL

Condition number

Conditions 2 and 5

Date (must be pre-application submission)

01/01/2007

Please state why a Lawful Development Certificate should be granted

Immunity against enforcement action gained and use/s now lawful

Information in support of a Lawful Development Certificate

When was the use or activity begun, or the building works substantially completed (date must be pre-application submission)?

01-01-2007

In the case of an existing use or activity in breach of conditions has there been any interruption?

- ☐ Yes
☒ No

Contact Details

Primary number

***** REDACTED *****

Secondary number

Fax number

Email address

***** REDACTED *****

Reason for Lawful Development Certificate

Please indicate why you are applying for a lawful development certificate

- ☐ An existing use
- ☐ Existing building works
- ☒ An existing use, building work or activity in breach of a condition

Being a use, building works or activity which is still going on at the date of this application.

If Yes, to either 'an existing use' or 'an existing use in breach of a condition', please select the relevant Use Class.

Other

Other (please specify)

Sui-Generis

Description of Existing Use, Building Works or Activity

Please fully describe each existing use, building works or activity for which you want the lawful development certificate. Where appropriate, show to which part of the land each use, building works or activity relates

To establish the Lawful Mixed (Composite) Use of a building as a Blacksmith Forge and for residential purposes plus the use of the 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 upon Planning Permission 09/01587/FULL.

Secondary number

Fax number

Email address

Agent Details

Name/Company

Title

First name

Surname

Company Name

Address

Address line 1

Address line 2

Address line 3

Town/City

County

Country

Postcode

Applicant Details

Name/Company

Title

Mr

First name

D

Surname

AGGETT

Company Name

Address

Address line 1

Hillside Barn Lane To East Court Farm

Address line 2

Meadow Forge

Address line 3

Town/City

Cadeleigh

County

Devon

Country

Postcode

EX16 8RZ

Are you an agent acting on behalf of the applicant?

- ☒ Yes
- ☐ No

Contact Details

Primary number

**Planning and Regeneration**

Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP

Email: DCRegistration@middevon.gov.ukWebsite: www.middevon.gov.uk

Telephone 01884 255255

Fax: 01884 234235

Mid Devon District Council Planning

A 'Good Two-Star Service' as rated by the Audit Commission

For office use only	
Application Number	
Date Received	Fee Received

Application for a Lawful Development Certificate for an Existing Use or Operation or Activity, including those in breach of a planning condition

Town and Country Planning Act 1990 (as amended)

Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

Site Location

Disclaimer: We can only make recommendations based on the answers given in the questions.

If you cannot provide a postcode, the description of site location must be completed. Please provide the most accurate site description you can, to help locate the site - for example "field to the North of the Post Office".

Number	
Suffix	
Property Name	Hillside Barn
Address Line 1	Lane To East Court Farm
Address Line 2	
Address Line 3	Devon
Town/city	Cadeleigh
Postcode	EX16 8RZ

Description of site location must be completed if postcode is not known:

Easting (x)	Northing (y)
292759	107734
Description	

Appendix B.

Content of Certificate Application to MDDC ref – 25/01406/CLU.

- (a) Application form 25/01406/CLU
- (b) Approved Supporting Statement CLEUD 2 10 25
- (c) AGGETT Dean Signed Sworn Declaration dated 9 10 25
- (d) AT 02325 Dean AGGETT Plans
- (e) Exhibit DA1 signed 9 10 25
- (f) Exhibit DA2 “
- (g) Exhibit DA3 “
- (h) Exhibit DA4 “
- (i) R Ocado Retail Ltd v London Borough of Islington 2021 EWHC 109

5.12 Cond 2 BCN and the Cond 5 BCN were served after the breaches described in each breach of condition notice were lawful. Accordingly, neither Cond 2 BCN or Cond 5 BCN are effective. Breaches of condition notices that are not effective cannot be considered to be in force. The lawfulness of the use of Meadow Forge in breach of Conditions 2 and 5 of the 2009 Permission is not therefore brought into question by section 191(3)(b).

6. Conclusion.

For the reasons given above the Refusal decision 25/01406/CLU issued by MDDC and dated 29th January 2026 was not well founded.

It is respectfully requested that the inspector using their powers under the provisions of Section 195(2) Town & Country Planning Act 1990 can grant a certificate of lawful use as applied for or as amended by the inspector.

7. Request for determination by inquiry

7.1 The Appellant requests that the appeal be determined by way of public inquiry. This is because:

- a) The evidence of the LPA and the third parties needs to be tested though formal questioning by an advocate.
- b) The Appellant's factual evidence relating to the duration of the Appellant's use of the Property ought to be given under oath.
- c) Third party representations were made by statutory declaration, and they may wish to give their evidence under oath.