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**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



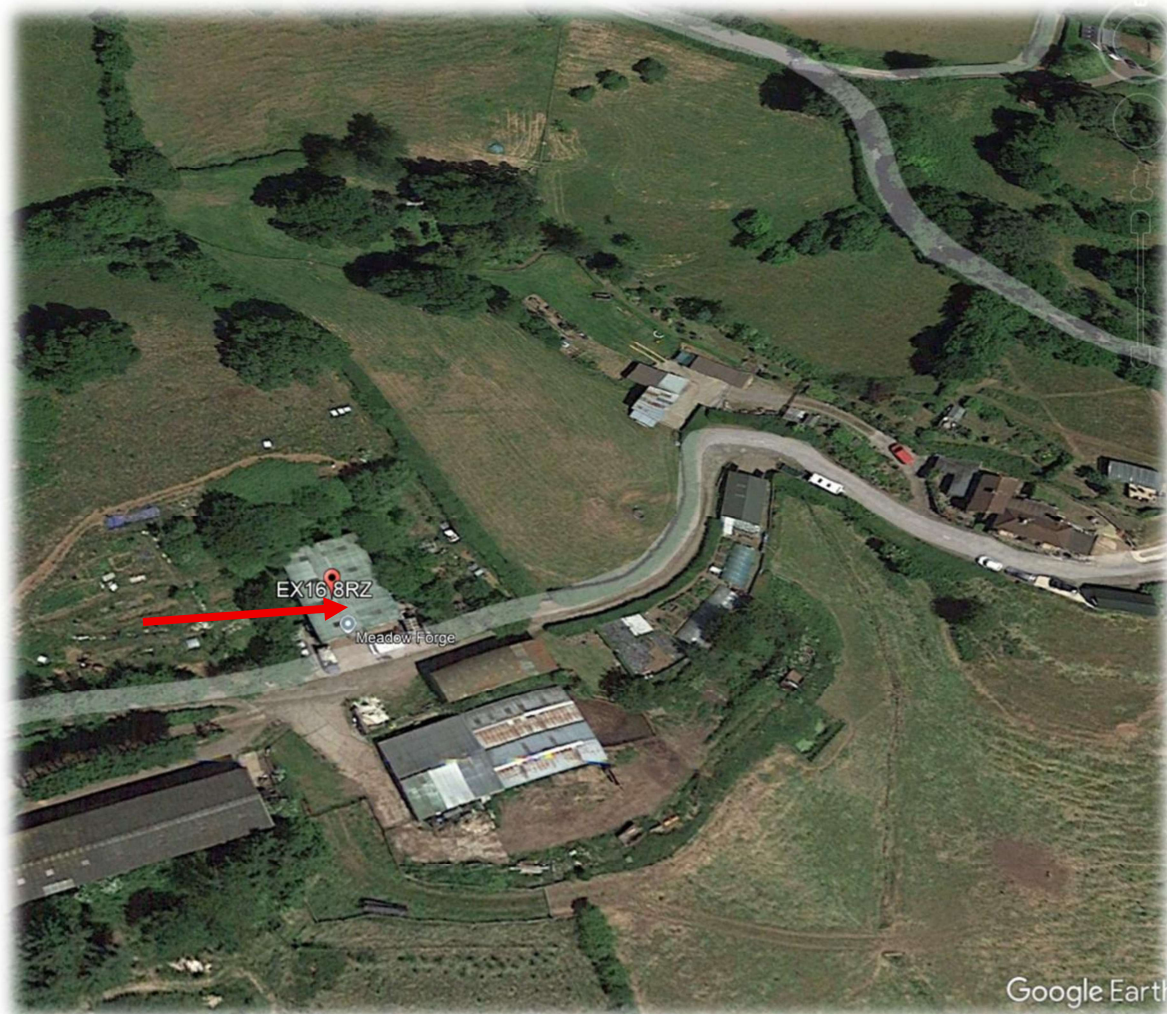
'Meadow Forge', building and outside land at EX16 8RZ

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.

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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.

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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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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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“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*’.



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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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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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.

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.

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.

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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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.

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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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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- 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.

