

**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

Address Line 1

Address Line 2

Address Line 3

Town/city

Postcode

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

Easting (x)

Northing (y)

Description

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

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

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.

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

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

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.

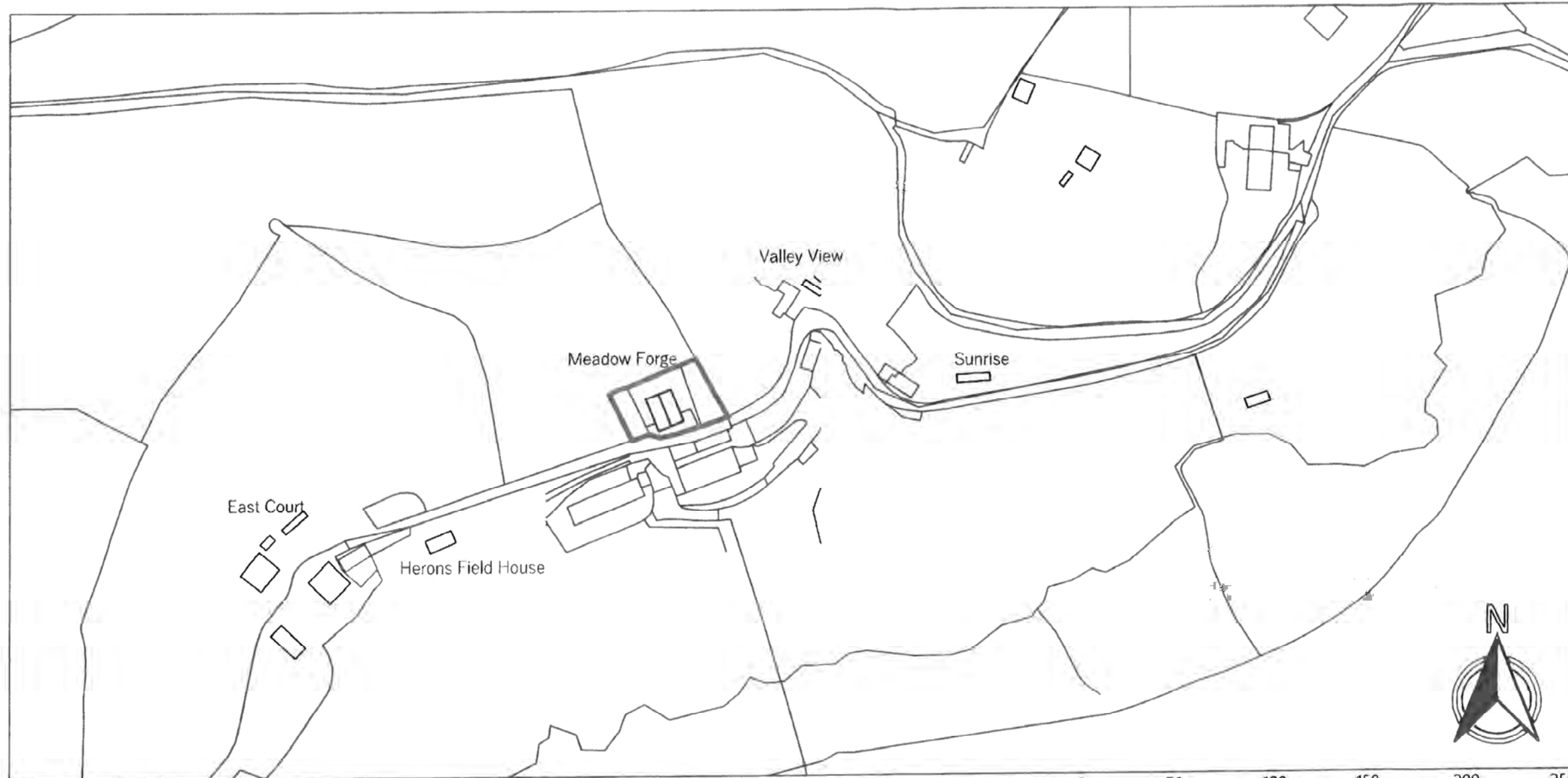
☒ I / We agree to the outlined declaration

Signed

Jonathan Clarke

Date

09/10/2025



SITE LOCATION PLAN

Scale: 1:2500

October, 02, 2025

SL 007



9/10/25

NOTES:

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This plan A107-AT-02325 has been produced for Mr Dean Aggett for the Certificate of Lawful Use of Existing Development, and is submitted as part of a planning application relating to site Meadow Forge Blacksmiths Cadeleigh Devon EX16 8RZ and is not intended for use by any other person or for any other purpose. The use of these plans shall be restricted to the original project site for which they were created, and publication thereof is expressly limited to such use. Reuse, reproduction or publication by any method, in whole or in part, is prohibited. This drawing is classified as part of an unpublished collection of visual art under the 1978 copyright act. It is an exclusive work of original authorship. None of the pictorial graphic or technical charts or drawings depicted on this sheet may be reproduced by any method, including tracing or photocopying, stored in a retrieval system, or transmitted in any form or by means electronic, mechanical or otherwise; nor may they be used or re-used for any purpose without the express prior written permission of the author. Title and ownership remains with the author without prejudice. Visual contact with these plans shall constitute prima facie evidence of the acceptance of these restrictions.
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XL Planning LTD,
1 Fore Street
Cullompton
Devon
Ex15 1JW

01884 38662

info@xlplanning.co.uk

www.xlplanning.co.uk

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: CHECKED: NO

PROJECT REF: AT-02325 PAPER SIZE: A3 SHEET NUMBER: 007

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

Poll card**Voting on Thursday 5 May 2011**

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

Election to Mid Devon District Council (Ref)

Your details:

Dean Aggett
Hillside Barn
Cadeleigh
Tiverton
Devon
EX16 8RZ

**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

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 DAZ



Electoral Services
Phoenix House
Phoenix Lane
Tiverton
EX16 6PP

Mr Dean Aggett
Hillside Barn
Cadeleigh
Tiverton
Devon

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

Exhibit DA2



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

Kevin Finan, Electoral Registration Officer, Mid Devon District Council,
Phoenix House, Phoenix Lane, Tiverton, Devon, EX16 6PP



Household Questionnaire

England



Office for
National Statistics



THE OCCUPIER
HILLSIDE BARN
CADELEIGH
TIVERTON
EX16 8RZ

Exhibit DA2

20351204 / 5442



87124302

0150 2553 7468 7156

Return to:
FREEPOST 2011 Census,
Processing Centre, UK

A message to everyone - act now

Everyone should be included in the census - all people, households and overnight visitors.

It is used to help plan and fund services for your community - services like transport, education and health.

Please complete your census questionnaire on 27 March 2011, or as soon as possible afterwards. You can fill it in online or on paper.

Taking part in the census is very important and it's also compulsory. You could face a fine if you don't participate or if you supply false information.

Your personal information is protected by law. Census information is kept confidential for 100 years.

So help tomorrow take shape and be part of the 2011 Census.

Jil Matheson
National Statistician

Where can you get help?



www.census.gov.uk



Census helpline 0300 0201 101



Text Relay 18001 0300 0201 160

Help is available in large print and Braille

Complete online



www.census.gov.uk

Your personal internet access code is:



OR fill in this paper questionnaire and post it back using the pre-paid envelope supplied.

If your address is incorrect or missing, enter your correct address here:

	Postcode

Declaration

This questionnaire has been completed to the best of my knowledge and belief.



Date

16/3/2011

Telephone number



We may contact you if we need to collect missing information.

If you have lost your envelope, please return to:
FREEPOST 2011 Census, Processing Centre, UK

H1



101001



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
0800 141 2021

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

Exhibit DA3

Bundle

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



9/10/25

From: [REDACTED]@middletown.gov.uk
 Sent: 13 July 2023 13:31
 To: [REDACTED]@middletown.gov.uk; [REDACTED]@middletown.gov.uk
 Subject: RE: Case Number: MQQC-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]@middletown.gov.uk | Website: www.middevon.gov.uk

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Follow us on Twitter

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

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?

Electrons 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

■

■ | Revenue's Enforcement 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/counciltax

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

Access your Housing Benefits and Council Tax reduction online 24/7 @ www.middevon.gov.uk/housingbenefits



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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 20 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.

161 Dean Asset | Facebook

161 Facebook

Local Off Grid - Tiny House Builder & Blacksmith - YouTube

Thanks

■

■ | Revenue's Enforcement 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/counciltax

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

Access your Housing Benefits and Council Tax reduction online 24/7 @ www.middevon.gov.uk/housingbenefits



[Like us on Facebook](#)



[Follow us on Twitter](#)

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

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

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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]@rmdbuildingcontrol.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.

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

EX16 8RZ

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]

14 Facebook

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

Exhibit DA4

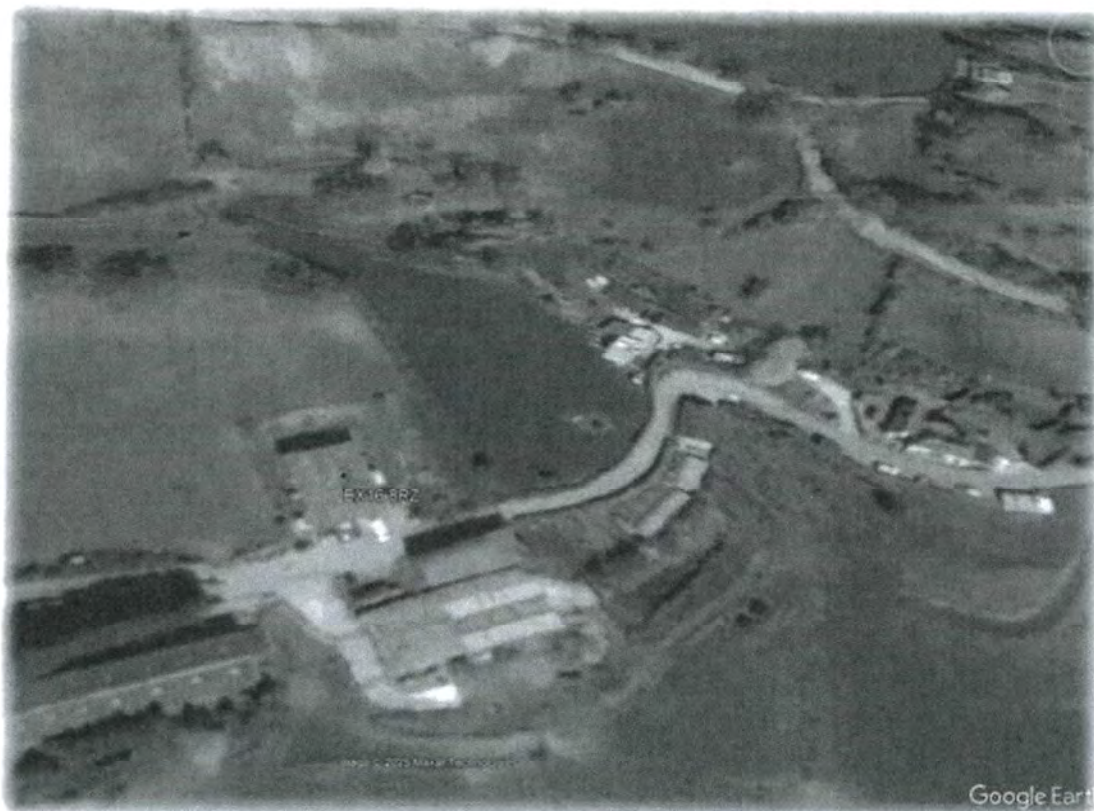


Dated - 1/1/2010



9/10/25

Exhibit DA4



Dated - 8/4/2011

Exhibit DA4



Dated – 22/4/2015

Exhibit DA4



Dated - 15/8/2016

Exhibit DA4



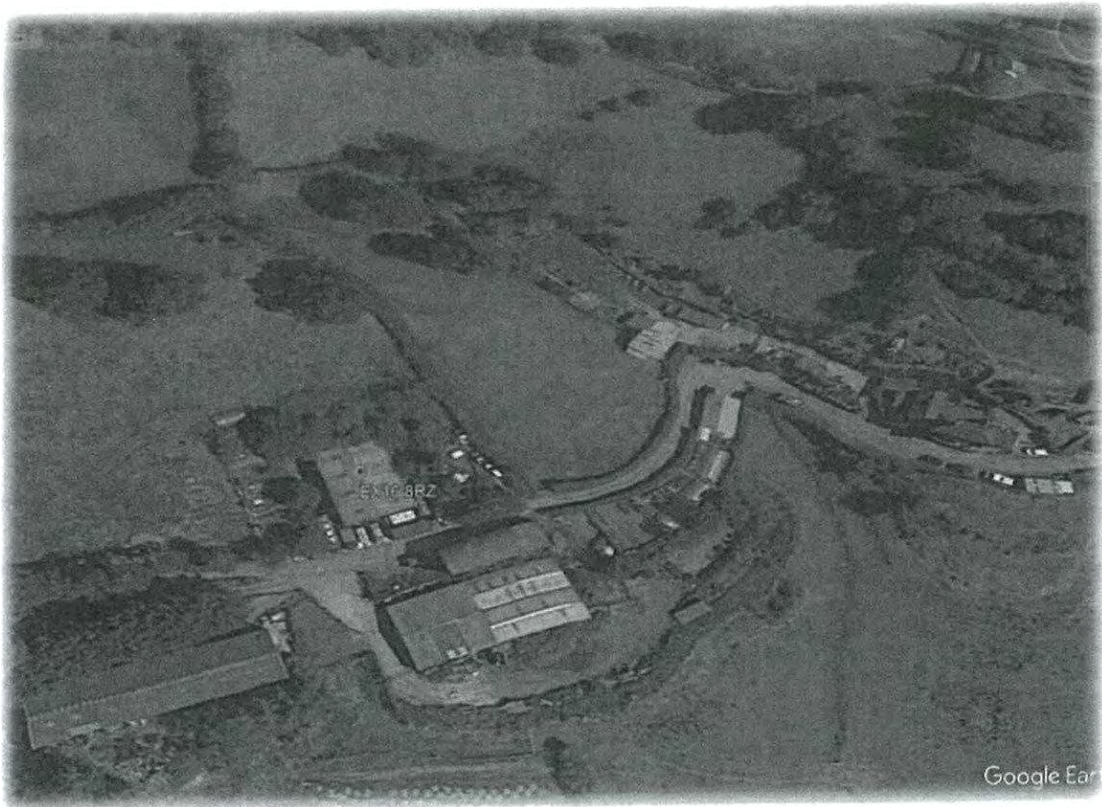
Dated - 22/6/2018

Exhibit D14



Dated - 18/9/2019

Exhibit DA4



Dated – 29/5/2020

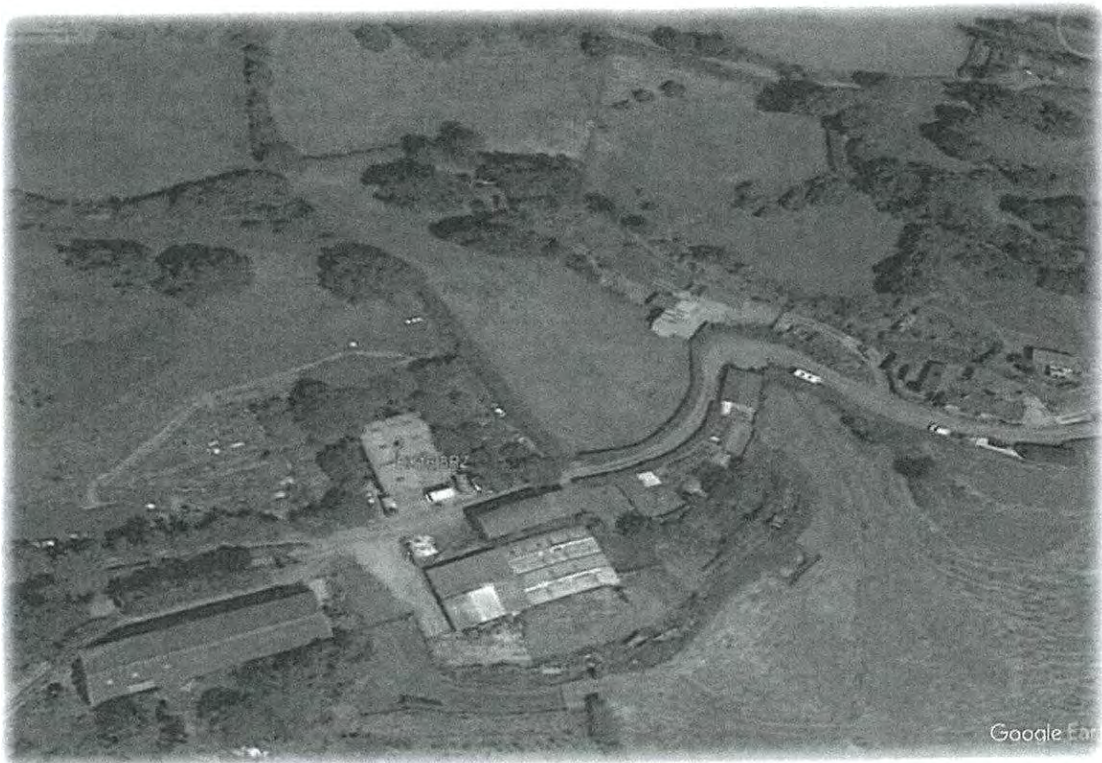
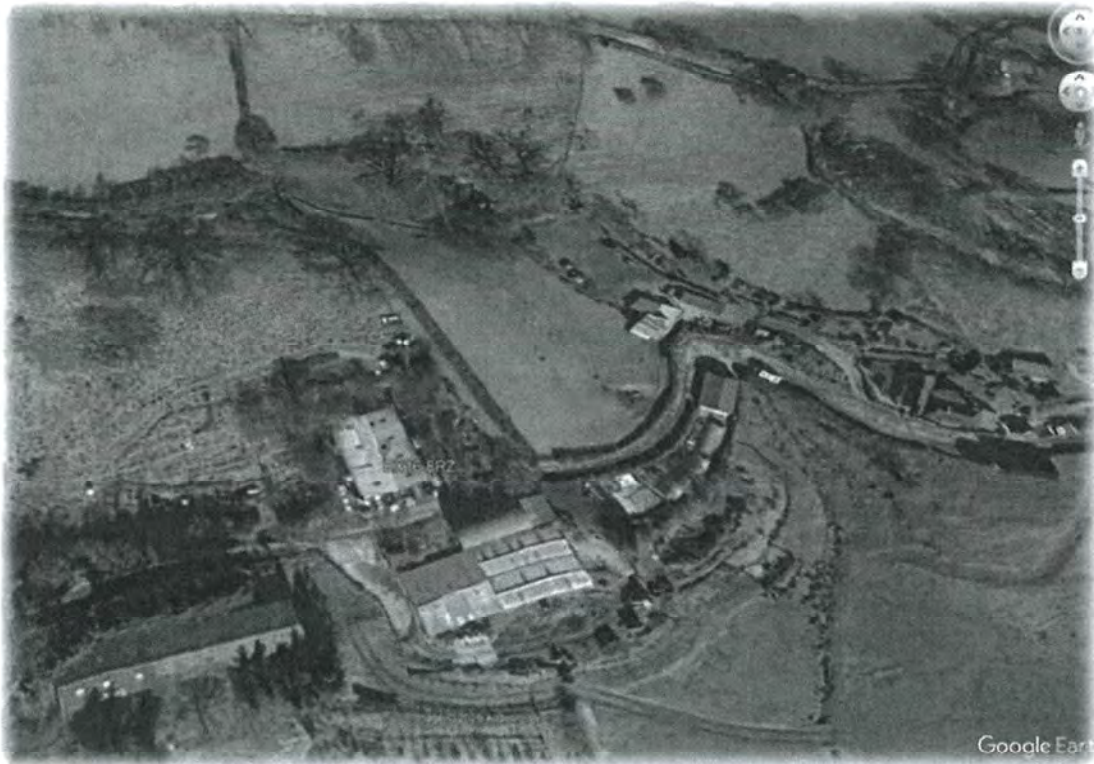


Exhibit DA4

Dated - 22/6/2022



Dated - 1/3/2025



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

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.

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.

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

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

<i>The application of the immunity periods after the 1991 Act</i>	50-60
<i>The procedure for obtaining a CLEUD</i>	61-73
<i>Abandonment of a planning use right</i>	74-80
The power in s.193(7) to revoke a certificate under s.191 or s.192	81-108
The application for the CLEUD	109-122
Summary of the grounds of challenge	123
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:-

“(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

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).....

(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.

(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—

(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.

.....

(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 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,

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);

(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?

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

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

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 (Russnak-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

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

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.

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

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

it could not be shown that he had withheld information deliberately, but who may have acted carelessly.

90. The procedure applicable under s.193 does not involve any hearing in which the issue of whether an applicant had acted deliberately could be examined by live evidence and tested through cross-examination. This stands in marked contrast to the offence in s.194(1)(c), withholding information with intent to deceive, where the applicant's state of mind can be examined in a hearing before the magistrates' court. Furthermore, a failure to provide information which had a material impact upon the decision to ~~grant a~~ certificate may not be discovered until much later. At that stage it might no longer be practicable to consider the intention or mental state of the applicant when considering the possible use of the power of revocation.
91. I do not accept Mr. Brown's submission that the words with "intent to deceive" in s.194(1)(c) demonstrate that Parliament understood knowledge of the relevant information to be inherent in the use of the word "withheld" in that provision and in s.193(7)(b). Instead, the objective meaning of "withheld," which does not require information to be withheld deliberately, is entirely consistent with the specific form of *mens rea* required by Parliament for s.194(1)(c). This is demonstrated by s.194(1)(b), which criminalises the use of a document which is false in a material particular provided that there is an "intent to deceive." That specific intent is consistent with the test in s.193(7)(a) for the use of a false document being entirely objective. In other words, Parliament's decision to make criminality in s.194(1) dependent upon specific forms of intent does not help in deciding whether the tests in s.193(7)(a) and (b) are either objective or subjective.
92. For all these reasons, ground 1 must be rejected. The withholding of information referred to in s.193(7)(b) need not be deliberate. Islington made no error of law in this respect.
93. Next, I turn to consider the phrases "in a material particular" and "material. This language appears both in s.193(7) and in the offences defined by s.194(1). It also appears in s.5 of the Perjury Act 1911 in relation to false statutory declarations.
94. I accept Mr. Forsdick's submission that a local planning authority is entitled to consider the materiality of matters falling within s.193(7)(a) and (b) cumulatively as well as individually.
95. To be "material" the information in question must at least be relevant. Relevance is for the court to decide (*Tesco Stores Limited v Secretary of State for the Environment* [1995] 1 WLR 759, 780F). But "materiality" here refers to not only relevance but also significance. As Mr Brown QC rightly accepted, it refers to information the falsity or withholding of which *could*, and not necessarily *would*, have resulted in the application for a CLEUD being refused, or being granted in different terms. It is common ground that Islington applied the "could" test. In my judgment they were correct to do so.
96. I also accept the submission of Mr. Forsdick QC that the materiality test may be satisfied because the relevant information could have resulted in the authority making a different factual finding (or drawing a different inference) to one made previously, or a line of inquiry leading to that outcome, and that could have resulted in the application under s. 191 or s. 192 being determined differently.

97. The words “in a material particular” have frequently been used by Parliament in legislation dealing with false statements and non-disclosure. Relevant case law is helpfully summarised in Archbold 2021 at paras. 28-144 and 28-157, Blackstone Criminal Practice 2021 at para. B14.10, and Halsbury’s Laws Vol 26 para. 984. The principles I have set out above are in line with that case law.
98. For example, in *R v Millward* [1985] QB 519 the Court of Appeal endorsed the “could” test and rejected the “would” test. Furthermore, the “materiality” test is to be applied to the *information* which was falsely given or withheld. So it follows that a statement may be materially false because it discourages a relevant line of questioning or inquiry (p.525G).
99. In summary, a local planning authority considering whether to exercise the power of revocation under s.193(7) does not have to be satisfied that if false statements had not been made or information withheld, it would have refused to grant the certificate applied for. One possible basis for the exercise of the power is that the matters in question are “material” because the authority considers that the certificate could have been refused if a line of inquiry had been followed.
100. When a local planning authority determines an application for a CLEUD or a CLOPUD it must act on a correct understanding of relevant legal principles. In other words, it must not misdirect itself as to the law. But beyond that, the application of the law to the circumstances of the case is a matter for the authority. It will involve assessing the evidence submitted in support of an application for a CLEUD, weighing the material supplied along with any weaknesses or gaps in it, and making findings of fact and drawing inferences from that material. These are matters of judgment for the decision-maker in an evaluative process. The authority’s evaluation may only be challenged on *Wednesbury* principles.
101. The same analysis applies to the evaluation by the authority under s.193(7) of false statements or withheld information and their materiality. So, where an authority identifies a false statement or withheld information, the essential legal question is whether its reasoning on why that matter was “material” was rationally incapable of supporting that judgment. In other words, was that reasoning irrational? For this reason, several of Mr Brown’s criticisms were expressed in that way.
102. Mr. Brown QC submitted that where an area of doubt or a potential line of inquiry was apparent from the material submitted with the application for a CLEUD, the power in s.193(7) cannot apply where further information becomes available after the grant of a certificate which simply raises the same point or doubt. I do not accept that broad and absolute proposition. At the application stage the applicant only has to satisfy the local authority of the matter to be certified on the balance of probabilities. The local authority may consider, for example, that there is uncertainty on one issue but not to such an extent that further information should be required, or the application refused on the grounds that the applicant had failed to satisfy the civil standard of proof. But if the authority should subsequently discover that information provided with the application was false or other information was withheld, that may increase the uncertainty or doubt on that very same issue to the extent that it is judged that a certificate would not or might not have been issued, for example, without certain questions being raised and investigated. The revocation power in s.193(7) enables that course to be followed if the authority judges that to be appropriate.

103. It is common ground between the parties that s.193(7) cannot be relied upon simply to correct an error of law, for example, an error which was made in the application and was not corrected by the authority before it decided to grant a CLEUD. Instead, that should be dealt with by judicial review, possibly by a self-challenge (*R v Bassetlaw District Council ex parte Oxby* [1998] PCLR 283) subject to CPR 54.5(6). In view of the conclusions I have reached on the grounds of challenge in this case, there is no need for me to decide whether I agree with this point. It should be left to a case where it needs to be determined. Different circumstances and considerations may arise. For example, an error of law by an applicant may lead to the making of a false statement or the withholding of material information without the same error being committed by the decision-maker. It may be arguable that in some circumstances a decision under s.193(7) does not have to adhere to or replicate, in effect, a legal error made in the decision to grant a CLEUD. These may not be straightforward issues.
104. Nevertheless, the grounds on which the power in s.193(7) to revoke is engaged are limited to those set out in paragraphs (a) and (b). Like the initial decision whether to grant a certificate under s.191, the planning merits of the matter in question are not relevant to the decision whether paragraphs (a) or (b) are satisfied.
105. If either paragraph (a) or (b) is met, s.193(7) confers a discretion on the local authority as to whether to revoke a certificate under s.191 or s.192. The authority is not under an obligation to revoke. It “may” do so. The statute does not expressly indicate any factors which must be taken into account in the exercise of that discretion. Nor did the parties contend that the legislation impliedly identified any factors which must be taken into account, at least not in the circumstances of the present case.
106. Accordingly, the position in law is that the local planning authority may have regard to other relevant factors in so far as it considers it appropriate to do so. Where it is shown that an authority did not take a particular consideration into account, that will not give rise to an error of law unless the consideration was “so obviously material” that it was irrational in the *Wednesbury* sense not to have taken it into account. The mere fact that a decision-maker did not advert to a particular consideration does not render its decision unlawful, unless it was irrational not to have taken it into account in the circumstances of the case:-

“There is no obligation on a decision-maker to work through every consideration which might conceivably be regarded as potentially relevant to the decision they have to take and positively decide to discount it in the exercise of their discretion.”

(see the decision of the Supreme Court in *R (Friends of the Earth Limited) v Secretary of State for Transport* [2021] PTSR 190 at [116] – [121]).

107. By way of example, the local planning authority might take into account the effect of revoking the certificate on affected landowners, particularly if time has elapsed and successors in title demonstrate the harm they would suffer. In that event, it could also be relevant to consider whether a successor in title was involved in, or aware of, the application for a certificate, particularly if it intended to rely upon any certificate granted. Where a local authority has reason to conclude that material information was *deliberately* withheld at the application stage, or that there has been material

concealment of information after the certificate was issued, those matters could be taken into account as weighing in favour of revocation. Although the planning merits of a development or a legitimised breach of condition are irrelevant to whether subparagraphs (a) or (b) of s.193(7) are satisfied, a local authority may have regard to that aspect when exercising its discretion whether to revoke a certificate. But it is entirely a matter for the authority whether to consider planning benefits or harm at all and, if so, to what extent, subject only to review on the grounds of irrationality.

108. There is no statutory requirement for reasons to be given for a decision to revoke a certificate under s.191 or s.192. However, it is common ground between the parties, and I agree, that a local planning authority has a common law obligation to give reasons for such a decision. Ocado does not contend that Islington failed to satisfy that requirement in this case.

The application for the CLEUD

109. Telereal's application form seeking a CLEUD stated that it related to an existing use in breach of condition falling within Use Class B8. It stated that the use began on 1 January 1992 and had not been interrupted since then, and that there had been no material change in the use of the property. The application form relied upon a covering letter from Telereal's consultants, Union4Planning. That letter submitted a brief analysis of the planning history of the Industrial Estate and commented on certain documents (including a short extract from Royal Mail's lease in 2014, a marketing brochure in 2017, and extracts from the 2010 and 2017 Valuation Lists maintained by the Valuation Office Agency).
110. The planning consultants did not purport to give any evidence about the way in which units A-D had been used over the years. They did not claim to have any knowledge of that subject. Instead, they commented on the documents presented. The consultants said that Appendix 1 to their letter contained "the full planning history" for the estate as far as could be ascertained from Islington's planning register. They stated that most of the planning history concerned units 1 to 13 and was not relevant to units A-D, save that some of the planning applications had described the use of those units. The letter referred to permissions in 1997 and 2000 for B8 use in units 9 to 13 and a permission in 1985 for an open storage use to the rear of units 3 to 10. Whilst those permissions did not relate to units A-D, they did indicate "the prevalence of B8 uses within the estate." The letter also mentioned two applications, one in 2010 and the other in 2011, which proposed an increase in the area used for open storage and the erection of an indoor tennis court. The consultants said that the Design and Access Statement for the 2010 application had referred to "the underused nature of the surrounding B8 units. In relation to the 2011 application they said that "the applicant importantly confirmed that the major warehousing building on the site is units A to D, but that these are not being used to capacity." The letter did not give any further detail on these matters.
111. Turning to the history of units A to D, the letter from the consultants relied upon the first statutory declaration of Mr. Molony. On the basis of that document the consultants asserted that units A-D had been in use for B8 purposes "since at least 1992":-

"During the period from 1992 to 2013, during which the building was controlled by BT and then by Telereal Trillium, the building was *fully operational* as a warehousing/storage depot with

ancillary offices (class B8). The building was primarily used as stores for field engineers with ancillary office areas.” (emphasis added).

The letter relied upon the photographs of the interior of units A-D “from February 2006”. The letter then referred to the grant of the Royal Mail lease in January 2014 and the termination of that lease in Spring 2017. Nothing was said about the extent to which, if at all, Royal Mail physically used units A-D.

112. The consultants submitted that the building had been occupied as a whole and treated as a single planning unit. They claimed that a class B8 use of the building had been acquired “as a result of continuous and uninterrupted occupation of the building for storage and distribution use for a period exceeding 10 years.” They contended that that use right had not subsequently been lost by abandonment, replacement by a different use, or extinguishment following the formation of a new planning unit. In this context, Telereal relied upon the decision of the High Court in *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* (1999) 78 P&CR 186.
113. Thus, there is no dispute that Mr. Molony’s declaration was the key document relied upon to “verify” the claim that a B8 use right had accrued by 10 years’ continuous and uninterrupted use in breach of planning control and had not subsequently been abandoned. But although he was addressing the occupation of 5000m² of floorspace during a period of just over 37 years, the document amounted essentially to no more than one page of text.
114. Mr. Brown QC confirmed that the claim to a continuing use for B8 purposes began on 1 January 1992 because that was when Mr. Molony first became “responsible” for the site and “familiar” with it (paras. 5 and 7 of the declaration). He explained that he had been employed by BT as a chartered surveyor between 1991 and 2002 and then when in 2002 Telereal acquired the majority of BT’s estate, including the site, his employment was transferred to Telereal. He said that he continued to be “responsible” for the site from 2002 to the date of the declaration, 12 February 2019. But he gave no details on the nature and extent of his involvement with the site over that 37 year period.
115. Mr. Molony’s statutory declaration made the following additional points:-
 - (i) The declaration was made from his own knowledge and the information provided was complete and accurate (para.1);
 - (ii) Units A-D comprise “four interlinked warehouse units with ancillary offices” (para.4);
 - (iii) Between 1992 and 2002 Mr. Molony had “direct responsibility” for the rationalisation and consolidation of BT’s operations in units A-D and was involved in relocating operations from the adjoining leasehold units occupied by BT (para.7);
 - (iv) In 1992 units A-D were “already fully operational as a warehousing storage depot” (para.7);

(v) Since at least 1992 “the whole of [units A-D] was in use as a warehousing/storage (class B8) depot with ancillary offices and, as far as I am aware, this use has been continuous throughout. The site was primarily used for stores for field engineers with ancillary office areas.” He produced photographs taken in 2006 “which are typical of the uses which were” (sic) (para.8);

(vi) In December 2013 BT vacated the site and a new 10-year lease was granted to Royal Mail in January 2014 for a distribution warehouse. The lease was terminated in 2017, since when units A-D have been marketed as “an industrial warehouse” and were being refurbished (para.9);

(vii) “I dispose (sic) of the above information from my own knowledge of the use of the buildings and the site generally” (para.10).

116. Thus, the key information provided by Mr. Molony was said to be based solely upon his own personal knowledge and without relying on other sources. The declaration gave the clear impression that he was able to speak to the entire period between 1992 and February 2019. It also gave the clear impression that the premises had been used physically for B8 purposes continuously throughout the whole period from 1992 to 2017. I also note that the covering letter said that during the period 1992 to 2013 the building “was fully operational as a warehousing/storage depot with ancillary offices.” The declaration did not address the subject of whether the whole or any part of units A-D was vacant at any time. It did not suggest that any B8 use right continued to subsist because there had been no abandonment of that right. No evidence was provided in the declaration addressing any of the four criteria on abandonment set out in [76] above. Instead, the covering letter from the planning consultants asserted that there had been no abandonment of B8 use rights, but without any supporting evidence.
117. The approach taken in this case to the provision of verifying evidence in support of the application for a CLEUD can only be described as minimalist. Even if that application were to be approved, there was plainly a substantial risk of revocation in the event of information coming to light which engaged s.193(7).
118. Mr. Molony’s second statutory declaration dated 25 June 2020 stated that:-
- (i) Units C and D were marketed for subletting from 2006 whilst units A and B were being used for storage;
 - (ii) In response to a suggestion by local residents that Royal Mail did not use units A-D during the period 2014 to 2017, Mr. Molony said that he had not inspected the premises during that period;
 - (iii) No evidence was given, for example information obtained from Royal Mail, about the extent to which they actually used units A-D.

119. Given the nature of the grounds of challenge, it is unnecessary in this judgment to summarise at this stage the representations sent to Islington by Ocado and Telereal in 2020. The challenge relates essentially to the approach taken in the Delegated Report dated 13 October 2020.
120. The Report correctly stated that s.193(7)(b) does not require material information to have been withheld deliberately (para.4).
121. The Report identified what Islington considered to have been material false statements and withholding of information, which may be summarised as follows:-

(i) Telereal’s application had relied on units A-D as “four interlinked units” forming a single planning unit, without mentioning a lack of interconnection between units B and C (paras. 11, 13 and 19);

(ii) Telereal had not referred to a statement in the 2011 planning application that units C-D were unused at that time and, being surplus to requirements, had been marketed since 2006 as a separate unit. Telereal had not produced photographs taken in 2011 showing the empty units. This information contrasted with the false statement in the application that between 1992 and 2013 units A-D had been fully operational as a warehouse and also with the reliance placed upon photographs taken in 2006 produced by Mr. Molony. This was not a case where units had simply not been used to capacity (paras. 11, 17 and 18);

(iii) The statutory declaration had been false in stating that since 1992 the whole site had been in use as a warehousing/storage depot, that the use had been continuous throughout, and that the photographs submitted were “typical of the uses” (para. 18);

(iv) The statutory declaration had withheld the fact that Mr. Molony, who was professing to give first-hand evidence, had not visited the site during Royal Mail’s lease³ and so could not attest to its use during that period (para.18);

(v) The application had failed to refer to Royal Mail ceasing to use the premises by, at the latest, 2015 (paras. 11 and 17);

(vi) The application and the decision in 2019 had proceeded on the incorrect legal basis that the issue was whether there had been a 10-year period of continuous use in breach of condition at any time in the past, without that lawful use being subsequently abandoned or suspended. Instead, the law had been correctly stated in *Ellis* (para.22). In any event, even applying “the wrong legal tests” relied upon by Telereal, the applicant had been required to provide an accurate factual account of the use over

³ The reference to “BT’s occupation” is an obvious typographical error.

time. The false statements and withholding of information were still material to that issue (para.23);

(vii) The false assertion about the interlinked nature of units A-D, as well as the lack of use and the separate marketing of units C and D, were relevant to the identification of the correct planning unit (para.28);

(viii) On the exercise of the discretion to revoke the CLEUD, the legislation assumes the provision of “correct and complete material information.” Had the false statements not been made and/or material information withheld, Islington “would have been alerted to the need to carry out further investigations in particular as to the planning unit” and “could have come to a different decision” (para.8).

122. It was common ground between the parties that the officer’s report should be read with “reasonable benevolence” and not with “undue rigour” (*R (Mansell) v Tonbridge and Malling Borough Council* [2019] PTSR 1452 at [42], [62] and [64]).

Summary of the grounds of challenge

123. In summary, Ocado advances the following grounds of challenge:-

1. Islington erred in law by deciding that s.193(7)(b) of TCPA 1990 does not require a withholding of material information to have been deliberate;
3. Islington erred in law by proceeding on the basis that an accrued right relating to a breach of planning condition legitimised by s.191(3) is lost if that right does not continue to be exercised;
2. Islington’s conclusion that false statements had been made, or material information withheld, was inconsistent with its acceptance that those statements (or omissions) had been made on the legal basis set out in the application. Viewed in that way it could not be said that any such statements were false or that any material information had been withheld;
4. Islington erred in law in concluding that the false statements and withheld information they identified were material to the correct identification of the planning unit for the site to which the s.191 application related;
5. Islington erred in law in concluding that the false statements and withheld information they identified were material to whether the B8 use had been abandoned;