

7. In exercising its discretion as to whether to make the revocation order Islington failed to take into account material considerations.

Ground 1

124. For the reasons given in [84]-[92] above, ground 1 must be rejected. Section 193(7)(b) does not require the withholding of material information to have been deliberate.

Ground 3

125. Islington reached its decision to revoke the CLEUD on the basis that where a breach of planning condition becomes lawful after 10 years by virtue of s.191(3), the right which thereby accrues is lost if it does not continue to be exercised. Ocado submits that the mere fact that such a right is not exercised for a time does not result in it ceasing to subsist. Something more than that would be required for the right to be lost, such as abandonment.
126. It is necessary to put the parties' submissions into context. Three scenarios should be considered where a breach of planning control becomes lawful, and so a right accrues by virtue of section 191(2) or (3): (1) development without planning permission (i.e. a material change of use or operational development) which does not also constitute a breach of condition; (2) a breach of condition which does *not* also constitute development without planning permission; and (3) a breach of condition which *does* also constitute development without planning permission.
127. As to these three scenarios, Islington, supported by IP2, submits that:-
- (1) In scenario (1) once the relevant immunity period in s.171B for development without permission is satisfied at any time before enforcement action is taken or a s.191 application is made, that development becomes lawful. The right which then accrues is not lost thereafter merely if it ceases to be exercised for a time. Cessation of use would not result in the right being lost unless there was sufficient evidence to show that it had also been abandoned;
 - (2) In scenario (2) the breach of condition must continue for at least 10 years and thereafter must continue until the date when enforcement action is taken or a s.191 application is made. Once a breach of condition becomes lawful by satisfying s.191(3), the right which then accrues only exists for so long as it continues to be exercised, or, in other words, for so long as that former breach continues. It follows that such a right may be lost through mere cessation not amounting to abandonment;
 - (3) In scenario (3), either the rules in scenario (1) or the rules in scenario (2) apply according to whether a s.191 application made by a landowner or an enforcement notice served by a local authority is directed at development without planning permission or alternatively a breach of condition. Accordingly,

Mr. Forsdick QC had to accept that even if a landowner obtains a CLEUD expressed as a change of use, where that use also involves a breach of condition, the use right conferred by the certificate can be defeated by the subsequent service of an enforcement notice alleging a breach of that condition, merely because the use has ceased for a period even though the right certified has not been abandoned.

Ocado agrees with scenario (1) but says in relation to scenarios (2) and (3) that an accrued right based upon a breach of condition does not come to an end merely because that right is not exercised for a time.

128. It should be noted that the parties have proceeded on the basis that the s.191 application and the CLEUD granted by Islington related to a use in breach of condition.
129. It can be seen straightaway that, according to Islington's analysis, the right which accrues in scenario (2) by virtue of s.191(3) is of a very different nature to the right which accrues in scenario (1) by virtue of s.191(2). A "use it or lose it" principle is said to apply in scenario (2), but not in scenario (1). The distinction in Islington's analysis is illogical, not least because an accrued right would be stronger and more durable where it derives from a failure to obtain any planning permission at all, as compared with a situation where a planning permission was obtained but the only breach of planning control is a breach of condition. Islington's analysis of scenario (3) is even more odd. Mr. Forsdick QC was unable to provide any rationale for the illogical consequences that would result from Islington's analysis of the law. He said that that they were just the inevitable result of the distinction which Islington says the law requires to be drawn between scenarios (1) and (2).
130. It is helpful to begin by returning to *Thurrock* where Schiemann LJ explained at [25] that the rationale for the time limits in s.171B is that once they have expired the local planning authority has lost the chance to take enforcement action in respect of that breach. Section 171B expressly prohibits the taking of enforcement action. Subsection (3) does so in relation to cases involving either a material change of use or a breach of condition without distinction. Schiemann LJ also drew an analogy with a landowner who has allowed the public to walk regularly along a path over his land and after a time loses the right to object. Similarly, in private law an easement such as a right of way may be acquired by prescription. But once such a right has accrued, it is not lost by mere non-user. It must be shown that the right has been abandoned (see *Megarry & Wade: The Law of Real Property* (9th edition) paras. 28-009 to 28-010).
131. Mr. Forsdick QC rightly accepted that the correctness of Islington's analysis depends on whether it is justified by the nature of the right which accrues under s.191(3) or by the wording of the legislation. In fact his submission on the nature of the right depends on the way in which that right is acquired. In addition, Mr. Forsdick QC relied upon the decisions in *Nicholson* and *Ellis*. It is common ground that these are the only authorities deciding the issue under ground (3). Although they are not binding on me, I should only depart from them if satisfied that there is a powerful reason to do so or that they are clearly wrong (*Willers v Joyce* (No.2) [2018] AC 843 at [9]).
132. I turn to the nature of the right which accrues under s.191 and with the breach of planning control from which it derives. The key principle upon which the decisions in

Thurrock, *Swale* and *North Devon* are based is that time does not run for the purposes of s.171B during periods when the local planning authority would be unable to take enforcement action because the breach of planning control has ceased. It is for that reason that a breach of planning control must continue throughout the immunity period. If, for example, a breach of condition ceases the clock stops. If the condition is breached again a fresh breach of planning control occurs and the clock starts all over again (*Nicholson*). This requirement of continuity is not explicitly stated in the legislation; it is a judicial principle (see [51]-[58] above).

133. Some conditions require only intermittent, rather than continuous, compliance. But the same principle applies. During periods when the control imposed by such a condition does not apply, it would be incorrect to say that any previous breach of condition has ceased, or that there is compliance with the condition. For the purposes of gaining immunity from enforcement action, it suffices that the breach occurs throughout the part (or parts) of the year when the control applies. The local authority “continues” to be able to take enforcement action throughout the year in respect of periods when an intermittent control does bite and is breached; the clock carries on running.
134. It is plain that the application of this requirement of continuity does not differ between a breach of planning control based upon a material change of use and one based upon breach of a condition prohibiting that use. If in either case the use ceases or is interrupted during the immunity period, time ceases to run and if the use recommences a fresh breach of planning control occurs (see e.g. *Thurrock* and *Swale*). So, contrary to Islington’s case, there is no difference in the way in which the continuity requirement applies to these types of planning control so as to justify the difference in the nature of the accrued right for which they contend.
135. More fundamentally, Islington’s argument involves flawed logic. The continuity requirement simply determines whether time is running for the purposes of s.171B and the requisite period for immunity is achieved. It is based upon the notion that time only runs when the planning authority is able to take enforcement action. But once the relevant time limit in s.171B expires the question of whether the authority would be able to take enforcement action is completely irrelevant. The taking of enforcement action is prohibited by the legislation itself and not by any principle that such action cannot be taken when a breach has ceased. The continuity principle is defunct so far as that former breach of planning control is concerned. There is therefore no reason why this judicial principle should govern the entitlement to enjoy the right which has accrued. Once the immunity period for a breach of planning control is satisfied, it is the time bar in s.171B which prevents any enforcement action being taken thereafter, irrespective of whether what was formerly a breach of planning control continues.
136. As we have seen, *Thurrock* established that the concept of abandonment is irrelevant to whether a use right has accrued under s.191(2). But the Court also endorsed the view that abandonment, and not mere cessation of use, is relevant to determining whether an accrued right is lost ([26] and [56]). There is nothing in the principles by which breaches of planning control *become lawful* which could justify drawing a distinction between breaches of condition and development without permission when it comes to considering how such accrued rights may be *lost*.
137. Mr. Forsdick QC sought to justify Islington’s stance by pointing to differences of language in the legislation in the treatment of development without permission as

compared with breaches of condition. In summary, he points to the fact that changes of use and operations are dealt with in s.191(2), whereas breaches of condition are dealt with separately in s.191(3). The former are referred to by language using the plural, whereas the language dealing with the latter is in the singular. As I understood the argument, the use of the singular for a breach of condition is said to reflect the separate breach which occurs each time there is an interruption in the activity prohibited.

138. In my judgment, this submission adds nothing to the arguments already considered above. First, changes of use and operations are dealt with separately in s.191(2) because there are two grounds upon which such development may be lawful in addition to the expiration of a time limit in s.171B, namely they do not involve development or if they do, they do not require planning permission (s.191(2)(a)). Those grounds cannot apply to breaches of condition. Second, because the same criteria apply to uses and operations the draftsman has dealt with them in one subsection rather than two, to avoid unnecessary repetition. Consequently, the plural had to be used in s.191(2). Moreover, s.191(2) is a classic example of a statutory provision where the plural must be read as including the singular. Section 191(3) only deals with one type of breach of development control and so there the singular had to be used. In any event, the singular is used in s.191(1)(a), when dealing with a use of land, just as in s.191(1)(c) when dealing with a breach of condition. There is no material difference.
139. Initially, Islington submitted that a breach of condition is not lawful unless it is shown that the breach has continued during the 10-year period expiring on the date when an enforcement notice is issued or the date when an application for a CLEUD is made, and not during any earlier 10-year period. During argument Islington modified that stance by accepting that the 10-year requirement could be satisfied during an earlier period, but the right which would have then accrued must continue to be exercised down to the date of an enforcement notice or application for a CLEUD. In my judgment neither version of Islington's submission is consistent with the statutory language.
140. Section 191(4) applies to the certification of all types of lawfulness falling within s.191, whether a use, an operation or a breach of condition. It requires the authority to be satisfied of *the lawfulness* of the matter in question at the date of the application for a CLEUD, and not that that matter *became lawful* on that date. Sections 191(2) and (3) declare that any use, operation or breach of condition is lawful *at any time* if the time for enforcement action had *then* expired. That language makes it plain that the time limit for enforcement may have expired at some point prior to the application date or the issuing of an enforcement notice. That approach aligns with the language in s.171B that "no enforcement action may be taken *after* the end of" the relevant time limit. What the legislation does not do is to define the nature of any of the rights which may accrue under s.191(2) or (3) by the expiration of a time limit in s.171B by reference to the manner in which those time limits are satisfied.
141. Lastly, I turn to the case law to which the parties have referred. *Nicholson* was concerned with a refusal of a CLEUD relating to non-compliance with an agricultural occupancy condition in a permission for a dwelling. For 15 years the property was occupied in compliance with the condition. Then it was unoccupied for 7 years before being occupied in breach of the condition for the next 7 years. For the following 4 years leading up to the date of the application for the CLEUD the house was unoccupied while extensive works were carried out. Mr. Robin Purchas QC (sitting as a Deputy High Court Judge) rejected the claimant's argument that it sufficed for her merely to

show that the breach had occurred more than 10 years before the date of the application. It is highly pertinent that because the breach of condition had ceased after 7 years, the 10-year time limit had never been satisfied. That in itself was fatal to the claim. The breach had not continued for at least 10 years (p197). The judge accepted that straightforward point at p.200 (see Sullivan J in *North Devon* at [16]).

142. The judge also held that the concept of whether a planning use is or is not abandoned was irrelevant to deciding whether a breach of condition had continued for the requisite period (p. 198). No doubt that point had arisen in relation to the 4-year refurbishment period (see p.193). The judge's observation is consistent with the subsequent decisions in *Thurrock* and *Swale* that it is irrelevant to whether a use has continued throughout the appropriate immunity period to say that it was not abandoned during that time (see [54]-[55] above). It was unnecessary for the Court to go any further in *Nicholson*.
143. However, the judge did go on to hold that the relevant breach of condition had to subsist not only during the 10-year immunity period but also at the date of the application for a CLEUD. He equated the issue under s. 191(1)(c) as to whether any matter relating to a failure to comply with a condition is lawful to the provisions in s.191(a) and (b) which are also expressed in the present tense. But s.191(1) does not define lawfulness. That is left to s.191(2) and (3) where it is crucial to note that a use, operation or breach is declared to be lawful "at any time" and not simply by reference to the date when an application for a CLEUD happens to be made. The problem is that the judgment in *Nicholson* did not consider the nature of the rights which accrue and continue once a time limit in s.171B has expired. That issue did not arise in *Nicholson* and so it was not argued before the judge, as it has been very fully in the present case.
144. This difficulty can also be seen at p.199 where the judge said that the effect of s.191(1)(a) is that "the *use* must exist at the time of the application" (emphasis added). In my judgment that statement is only accurate if the word "use" is understood as referring to a "use right", whether or not any physical use pursuant to that right is taking place at the time. In this context it is preferable to use the term "use right" rather than the shorthand "use" to avoid confusion. As Keene LJ said in *Swale* at [7], where the necessary period of user can be shown under s.171B the land in question enjoys "lawful use rights". It is those rights, in other words "lawfulness", which must presently subsist at the date of the application, not a breach of planning control. The two concepts should not be elided. On this important point the legislation does not distinguish between a use, an operation or a breach of condition.
145. The judge then suggested that s.191(2)(b) and s.191(3)(b) pre-suppose that there must continue to be something capable of amounting to a breach of planning control at the date when lawfulness is being considered if there was in fact a relevant enforcement notice then in force.
146. With respect, I am unable to agree with this analysis of the legislation. First, the approach taken in *Nicholson* to s.191(2)(b) is inconsistent with the established principle that an accrued lawful use right subsists during periods when the land is not being actively used unless it is abandoned. Second, section 191(2)(b) and s.191(3)(b) apply equally to uses, operations and breaches of conditions without drawing any material distinction between them. Third, they operate by making it clear that a lawful right does *not accrue* upon the expiration of a time limit in s.171B for taking enforcement action if the use, operation, or breach of condition in question contravenes *the requirements*

of an enforcement notice then *in force*. In other words, Parliament did not wish an *extant* enforcement notice (or breach of condition notice) to be negated by the subsequent application of a time limit in s.171B to something which contravened the requirements of that notice. The position would be different if at the time the relevant period in s.171B expired the notice had ceased to be in force, e.g. because it had been withdrawn (s.173A of TCPA 1990) or quashed. Fourth, if both limbs (a) and (b) in s.191(3) are satisfied, then the “matter constituting a failure to comply” with a condition is declared to be lawful “at any time”. That matter is not lawful simply at the point when the time limit in s.171B expires. Accordingly, contrary to the suggestion in *Nicholson*, these provisions do not imply that there must be a continuing breach of planning control *after* the expiry of the time limit in s.171B for taking further enforcement action.

147. For these reasons, I do not consider *Nicholson* to be an authority which assists on the issue to be decided under ground 3.
148. *Panton* decided that a lawful use right which has accrued for the purposes of s.191 may only be lost by operation of law, whether by abandonment, the formation of a new planning unit or by a material change of use, or by a discontinuance order (p.193). Unlike *Nicholson*, *Panton* was not concerned with the legal requirements for a breach of planning control to *become* immune from enforcement and lawful. Instead, *Panton* was concerned with whether an *accrued* lawful use right still subsisted. The decision supports the analysis in scenario (1) (see [127(1)] above). But it did not consider the nature of an accrued right arising from a breach of condition and on what basis it may continue to exist. *Panton* does not assist on the issue I have to decide under ground 3.
149. *Ellis*, like *Nicholson*, was also concerned with an agricultural occupancy condition in a planning permission for the erection of a dwelling. Unlike *Nicholson*, the condition had been breached for well over 10 years, in fact for 39 years between 1961 and 2000. An application for a CLEUD was made in March 2007. Between 2000 and 2007 the cottage was occupied for two periods amounting to nearly 5 years in total, but was otherwise unoccupied. At the time the application was made the dwelling was also unoccupied ([3]-[4]).
150. Mr. Rabinder Singh QC sitting as a Deputy High Court Judge (as he then was), accepted that immunity from enforcement had been acquired on four different bases prior to the application for a CLEUD ([27], [32], [35], and [38]). Plainly a right to occupy the dwelling without complying with the agricultural occupancy condition had accrued by 2000.
151. The judge accepted that the facts of *Nicholson* were distinguishable because in that case there had not been a breach of the relevant condition for at least 10 years ([50]). In *Ellis* the condition had been breached for substantially more than 10 years and so it was necessary to decide whether, in addition, lawfulness depended upon the breach of condition continuing down to the date of the application for a CLEUD. The judge held that the court had decided in *Nicholson* that it did ([52]) and he went on to agree with that conclusion. Accordingly, *Ellis* is undoubtedly authority for that particular proposition.
152. The judge in *Ellis* stated at [54] that *Nicholson* had been approved in *Swale* [2006] J.P.L. 886 at [6]. But in my judgment it is important to note that all that Keene LJ said in that passage was that the issue of whether enforcement action can be taken against a breach

of planning control, in that case a change of use, is to be judged as at the date of the application for the CLEUD. In other words, the question of lawfulness is to be judged as at that date (see s.191(2) to (4)). The Court of Appeal did not endorse the conclusion in *Nicholson* that a breach of condition which has continued for 10 years must thereafter continue in order to remain lawful.

153. The judge acknowledged that *Panton* was authority for the proposition that a lawful use right which had accrued by virtue of s.171B(3) would not be lost merely by an interruption in that use, but could only be lost by abandonment, or the other methods referred to. But he concluded that changes of use were to be treated in a different way from a breach of condition, a distinction said to have been recognised in *Panton* (see [56]).
154. In *Ellis* the judge relied at [57] upon the acceptance in *Panton* at p.194 that *Nicholson* had correctly stated that if a period of compliance with a condition followed a period of non-compliance that breach would be at an end, and any later breach would constitute a fresh breach. It was said that a CLEUD could therefore only be granted in relation to a breach of condition which had continued down to the date of the application.
155. At [58] of *Ellis* the judge said that *Panton* and *Nicholson* were consistent with each other. I accept that conclusion as far as it goes. But in my judgment the flaw in the analysis summarised in [154] above is that what *Nicholson* was dealing with was a requirement for continuity during the 10-year period for achieving immunity from enforcement and lawfulness. Neither *Nicholson* nor *Panton* analysed the nature of the right which accrues and subsists after a breach of condition has continued for 10 years. Ultimately, *Nicholson* and *Ellis* depend upon an unstated assumption that the legal test for determining whether a breach of condition had become lawful over a period of time also governs the nature of the right which accrues and its continued existence.
156. At [60] of *Ellis* the judge stated that *Thurrock* did not assist the claimant's argument. I agree that *Thurrock* was concerned with whether the absence of abandonment could be relied upon to support the *acquisition* of immunity from enforcement, and did not address the issue in *Ellis* about the *retention* of use rights which have already accrued.
157. I also agree with the judge that the issue which had to be determined in *Ellis* did not arise in the authorities addressed in [61] to [64] of his judgment. Likewise, those authorities did not address the related point in *Nicholson* which he decided to follow.
158. At [66] of *Ellis* the judge returned to the central point in his reasoning, namely that because a breach of condition can cease and a fresh breach commence later, it follows that that type of breach must continue to subsist down to the date of the application for a CLEUD in order to be treated as lawful at that date. That was the same point as had been made in *Nicholson* and *Panton* (see [154] above).
159. I have reached the clear and certain conclusion that, with great respect, I should not follow the decisions in *Ellis* and in *Nicholson*, that a breach of condition which has become lawful after continuing for 10 years does not remain lawful unless that breach continues thereafter. I do not consider that those decisions can be reconciled with the following key points, along with the earlier analysis in this judgment:-

(i) The requirement that a breach should continue during the immunity period is not contained in the legislation (Sullivan J in *North Devon* at [30]);

(ii) That requirement is based solely on the rationale for the time limits in s.171B, namely that throughout the relevant period the local planning authority had the opportunity to take enforcement action but failed to do so. The continuity requirement is only concerned with whether the time period for satisfying an immunity period is running. Time only runs while a breach of planning control, whether a change of use or a breach of condition, is liable to enforcement action. Time does not run when a use or breach of condition has ceased;

(iii) Once an immunity period is satisfied, the legislation prohibits the taking of enforcement action *thereafter* (s.171B). It follows that from then on, any question about whether there is an ongoing breach of planning control against which a local planning authority would be able to take enforcement action would be completely irrelevant. The *raison d'être* for the continuity requirement disappears upon the expiration of an immunity period. There is no need to consider whether time is running for the purposes of s.171B;

(iv) Once an immunity period expires, what was formerly a breach of planning control becomes “lawful at any time”, save only that that planning right does not accrue if it would contravene the requirements of an enforcement notice then in force;

(v) There is nothing in the legislation to indicate that the requirement for continuity to satisfy an immunity period also characterises the nature of the legal right which accrues upon the expiration of a time limit in s.171B, or conditions the basis upon which that right may continue to exist thereafter, or that a right which accrues under s.191(2) or (3) ceases to exist when it ceases to be exercised;

(vi) The legislation does not treat a use, operation or breach of condition differently in these respects.

160. For completeness, I should mention the decision of the Court of Appeal in *Bilboe v Secretary of State for the Environment* (1980) P&CR 495, which was decided under the enforcement regime in the Town and Country Planning Act 1971. The Court of Appeal held (pp 512-4) that tipping of waste involves a material change of use and not operational development and so the then 4-year time limit in s.87(3)(b) for enforcement action against a breach of condition relating to operational development authorised by a planning permission (which ceased to apply as from PCA 1991) should not have been applied. Instead, the issue was whether the breach of planning control had begun before 1964. The Court held that it had. However, they did not address the continuity principle, although that was an explicit requirement in s.94 of TCPA 1971 dealing with the

conditions for the grant of an established use certificate for pre-1964 uses. Moreover, the focus of the Court's reasoning was on the issue of whether there had been a change of use, and if so when, rather than on the legal nature of any rights arising from a breach of condition. TCPA 1971 did not confer lawful planning rights on matters immune from enforcement, unlike the present TCPA 1990. Not surprisingly, the Court in *Bilboe* did not address the principles applying to the current statutory regime, as later set out in *Thurrock* and *Swale*. Accordingly, *Bilboe* does not provide any assistance on the nature of a lawful right which accrues under the present legislation when the time limit for taking enforcement action against a breach of condition has expired.

161. For all these reasons, I conclude that Islington's submissions under scenario (2) are incorrect. It follows that its analysis in scenario (3) collapses.
162. The correct legal position is that a lawful planning right which has accrued upon the expiry of a time limit in s.171B is not lost merely because subsequently that right is not exercised for a period of time. That conclusion applies just as much to a right legitimising a breach of condition which prohibited a use as to a use right derived from a material change of use. The law does not require that such a right be exercised on the date when an application for a CLEUD is made (or an enforcement notice is issued), or that it has been exercised throughout the intervening period from the time when it accrued. Instead, the law requires that the right remains in existence at the date when the lawfulness of what it authorises is in issue. So an accrued planning right must not have been lost in the meantime because of a supervening event, such as abandonment. The legal arguments in this case did not address in detail what other events might suffice to terminate a planning right arising from a breach of condition. It may well be that events of the kind recognised as terminating a use right would also suffice here, but any further discussion of that point should await a case in which it arises for decision by the court and is therefore addressed more fully in argument.
163. Before leaving ground 3, I think it would be helpful to clarify some further points. This case has had to focus on the breach of a negative condition restricting the use of land. But the range of conditions which may be imposed on a planning permission is very wide and varied and the nature of the breaches to which they can give rise may also vary considerably. For example, a condition may be mandatory in nature by requiring something positively to be done, e.g. a requirement to provide landscaping, noise attenuation or some other form of mitigation, parking spaces, or just obscure glazing to prevent overlooking through a window. Where such a condition is breached during the 10-year immunity period the accrued right will entitle the landowner not to comply with the condition thereafter. The continued existence of that right will not depend upon the landowner having to take any positive action to assert his right, let alone to continue taking that action. In my judgment there is no legal reason why the continued existence of a right which arises from breach of a negative condition should be any different in this respect.
164. The breach of a condition may be of a continuing nature, or it may be once and for all. For example, a condition may require an approval to be obtained before a specified activity may take place (as in *Bilboe*). The failure to obtain such an approval may well be treated as a once and for all breach of that particular control. But some conditions contain a negative and ongoing prohibition of an activity or on carrying on an activity outside a specified parameter (e.g. number of caravan pitches, or limits on emissions of noise or light or pollutants). Differences in the nature of the control imposed by a

condition may affect the way in which an immunity period in s.171B falls to be applied, for example, the date from which times runs. As we have seen, the extent of any lawful planning right which accrues will be determined by the nature and extent of the breach which has continued during the relevant immunity period. But I do not presently see why, once that accrued legal right has been defined, its continued existence is affected by whether the past breach was of a once and for all or a continuing nature. It does not seem to me that the position is any different from the situation where a breach of planning control relates to development without planning permission. Such a breach may be once and for all (e.g. the erection of a building) or continuing (e.g. a material change of use). There is no suggestion that the legal basis for the continued existence of an accrued right relating to development without planning permission is different according to whether the former breach of planning control was once and for all or a continuing breach.

165. Although Ocado has succeeded under ground 3, the question remains whether, and if so to what extent, that error vitiates Islington's findings that materially false statements were made and material information withheld on the application for the CLEUD? That issue will be considered under grounds 4 and 5 below.

Ground 2

166. The arguments on both sides under this ground became somewhat convoluted. But it is not necessary for the court to disentangle all of them in view of the conclusion I have reached under ground 3 above.
167. In summary, Ocado says that the application for a CLEUD was made on the basis that a lawful right to use units A-D for B8 purposes in breach of condition had accrued by 2002 and thereafter had not been abandoned. The approach taken in *Panton* to a use right was said to be applicable. Here Ocado submits that, irrespective of the outcome of ground 3, Islington acted illogically or irrationally in that the statements and withheld information upon which they relied could not properly be described as false and/or material according to the legal approach on which the CLEUD application had been founded. Those matters could *only* have been treated as false and/or material according to the *Nicholson/Ellis* approach which did not form the basis for the application. The matters relied upon by the authority relate to the period postdating the accrual of the lawful B8 use right in 2002 and therefore could only have engaged s.193(7) if it had been necessary for Telereal to show that the breach of condition had continued after 2002 down to the date of the application for the CLEUD. Because the officer who decided to grant the CLEUD had proceeded on the same understanding of the law as Telereal, Islington's true complaint was not that false statements had been made and/or material information withheld, but that the officer's legal approach had been incorrect. Islington was not entitled to rely upon s.193(7) to address that complaint instead of applying for judicial review to quash the CLEUD (para.39 of Ocado's skeleton).
168. It will be seen, and Mr. Brown QC accepted, that Ocado's argument under ground 2 could only arise if (a) the legal approach taken in the decision to grant the certificate had been wrong and (b) the matters said by Islington to engage the power of revocation in s.193(7) were irrelevant to that approach.

169. But the effect of my decision under ground 3 is that the legal approach advanced by Telereal in its s.191 application, and accepted by the officer in his decision to grant the CLEUD, was essentially correct. On that basis ground 2 adds nothing.
170. The issue left over from ground 3 is whether the legal error relating to Islington's reliance upon *Nicholson* and *Ellis* vitiated its conclusions that materially false statements were made and material information withheld on the application for the CLEUD. A related issue is whether, in any event, Islington relied upon those conclusions in relation to the correct legal basis for considering how an accrued planning right may be lost. These issues should be considered under ground 4 and 5 where Ocado argues that Islington's legal error under ground 3 tainted its treatment of the planning unit (ground 4) and the continued subsistence of the accrued right (ground 5).
171. For these reasons, I do not consider that there is any legal basis for quashing the revocation of the CLEUD under ground 2.
172. However, before leaving this subject I should add that I do not accept the broad proposition put forward by Ocado, namely that the falsity and/or materiality of statements made or information withheld may only be judged in the context of the legal approach upon which an application for a CLEUD is based. For example, a decision-maker may accept the information put forward by the applicant but grant a certificate adopting a rather different legal approach to that relied upon in the application. Subsequently, the local authority may decide to revoke the certificate relying on false statements or information withheld which are material to the legal approach upon which the decision was based, even if they are immaterial to the legal approach in the application.

Ground 4

173. In paragraph 28 of the Delegated Report on revocation Islington stated that the identification of the correct planning unit was a key factor in determining the existence of a lawful use right and the area to which it applied. This is not in dispute. Islington's statement is correct in relation to the legal approach adopted in Telereal's application for, and the officer's decision to grant, the CLEUD.
174. In the covering letter accompanying the application for the CLEUD, the planning consultants stated that units A-D had been occupied as a whole and as a single planning unit. They added that the lawful B8 use right which had been acquired through "continuous and uninterrupted occupation of the building" for that purpose over 10 years had "not been lost by abandonment, replacement by a different use, or extinguishment following the formation of a new planning unit." Thus, the applicant rightly accepted that any B8 use right which had accrued by 2002 could have been lost if thereafter a new planning unit had been formed.
175. The planning unit is a long-established tool for defining an area of land (or building) in order to determine the use to which that area is put and whether a material change of use has occurred requiring planning permission.
176. In *Burdle v Secretary of State for the Environment* [1972] 1 WLR 1207 Bridge J (as he then was) identified some broad criteria, without purporting to propound exhaustive

tests covering every situation (pp. 1212D-1213A) which may be summarised as follows:-

- (i) A useful working rule is to assume that the unit of occupation is the appropriate planning unit, unless and until some smaller unit can be identified;
- (ii) Where the whole unit of occupation is used by the occupier for a single main purpose to which secondary activities are incidental or ancillary, that should be treated as the planning unit;
- (iii) When a single unit of occupation is used for a mixture of activities and it is not possible to say that one is incidental or ancillary to another (a mixed or composite use), that whole area is a single planning unit. In such a case the component activities may fluctuate in their intensity from time to time, but the different activities are not confined to separate and physically distinct areas of land;
- (iv) Where within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes, each area used for a different main purpose (together with its incidental and ancillary activities) is a separate planning unit;
- (v) The application of these criteria, like the question of material change of use, is a matter of fact and degree;
- (vi) Activities which were once incidental to another use or formed part of a composite use, may be so intensified in scale and physically concentrated in a recognisably separate area that they produce a new planning unit, the use of which is materially changed.

- 177. In *Johnston v Secretary of State for the Environment* (1975) P&CR 424 the Divisional Court re-emphasised that the identification of a planning unit is a question of fact and degree and only open to challenge on *Wednesbury* principles. *Prima facie* the planning unit is the area occupied as a single holding by a single occupier (p.427). Occupation is significant because it signifies control of an area of land by the occupier (p.428). In that case three lock-up garages capable of separate occupation were in fact in single occupation. There was no error of law in treating those three garages as a single planning unit to determine whether a material change of use had taken place (p.428). In *Church Commissioners for England v Secretary of State for the Environment* (1996) 71 P&CR 73 the Court confirmed that “control” had been a relevant factor for determining that a retail unit within a shopping mall was the appropriate planning unit rather than the single building comprising the shopping centre.
- 178. Although the covering letter from the planning consultants asserted that units A-D had constituted a single planning unit throughout, there having been no formation of a new planning unit, they did not produce any evidence themselves to support that contention. The annexed planning history did not deal with the issue. In other respects, the covering

letter relied upon the statutory declaration of Mr. Molony and the lease to Royal Mail. But the statutory declaration did not address the *Burdle* criteria or whether the planning unit changed at any point. At most it indicated that BT, then Royal Mail, held a single property interest in the 4 units.

179. There was much discussion during the hearing as to whether it had been false for Mr. Molony to state that the four units A-D were interlinked, given that there was no physical interconnection through the wall separating units B and C. Instead, access between the two could only be obtained by going outside one of these units into a shared loading area under a canopy (see the agreed statement between the parties). Likewise, because of this lack of internal connection between units B and C the same also applied to communication between units A and D. The only internal connections were between units A and B and between C and D. In view of decisions such as *Johnston* Mr. Forsdick QC did not claim that this could be sufficient to show, for example, that there were two planning units comprising (1) units A and B and (2) units C and D, rather than a single overall unit. But he said that this point fell to be considered with the misstatements and withholding of information which had not revealed that (i) units C and D had not been occupied by BT since 2006, (ii) they had been marketed for separate subletting since that year and (iii) Mr. Molony could not speak to the use made by Royal Mail of the site and hence there was no evidence about that subject.
180. It is apparent from paragraph 28 of the Delegated Report that Islington's concern about the planning unit related not just to the interconnection point, but was also based upon these other issues, as summarised at [121] (ii) to (v) and (vii) above. Mr. Forsdick QC pointed out that while these matters could be consistent with Ocado's case that there continued to be a single planning unit with usage reduced to, say, units A and B, they were also consistent with the possibility of the overall planning unit having being subdivided into two units. An important part of Islington's reasoning was that if the authority had been aware of the false statements and/or information withheld "it would have been alerted to the need to carry out further investigation in particular as to the planning unit" (para.8 of Delegated Report). Accordingly, Islington had not reached a concluded view on that issue and had not been required to do so (para.28).
181. Applying the principles set out in [93] to [102] above, Islington was legally entitled to rely upon those considerations to support its decision to revoke the CLEUD unless that line of inquiry could not rationally have led to any different conclusion being reached on the planning unit issue or was otherwise irrational. One of the problems faced by Ocado here is the exiguous amount of information and lack of detail in the material supplied to verify the application. By contrast, where an application is robustly supported by evidence, the authority may judge that its decision to grant a CLEUD was not materially affected by false statements or withheld formation at the application stage, and would not have been affected even if further inquiries had been made. But given the minimalist approach taken to the s.191 application in this case, I find it impossible to say that Islington's conclusion that inquiries needed to be made which could have resulted in a different decision on the planning unit and on the grant of the CLEUD could possibly be impugned as irrational. Likewise, there is nothing irrational or illogical about Islington deciding to revoke the certificate without having yet been able to form a concluded view on the planning unit issue.
182. There is no merit in the criticism that the Delegated Report failed to apply the *Burdle* criteria. Those criteria would have been applied after a more detailed inquiry into the

facts relating to the planning unit issue, involving the provision of more detailed information by the landowner. The *Burdle* criteria provide no basis for concluding that Islington's reasoning was irrational.

183. Ocado's argument focused on the issue regarding interlinking of the 4 units (skeleton para.54). But that criticism goes nowhere, because Islington relied upon the interlinking in combination with the other points referred to above, and not in isolation.
184. I wholly reject the contention that the officer who took the decision to grant the CLEUD ought to have discovered for himself the marketing exercise carried out on units C-D over a 5-year period by examining the "2011 tennis court application" (paragraph 54d of Ocado's skeleton). Islington had no obligation to go through each of the applications mentioned in the planning history or in the covering letter to see whether, on the off-chance, they might have contained any relevant information not disclosed by the applicant. That does not accord with the statutory framework as analysed above and the expectation that an applicant will be candid in the provision of information relevant to his application.
185. For all these reasons, ground 4 must be rejected.

Ground 5

186. I have held under ground 3 that once a lawful use right accrues its continued existence does not depend upon that right continuing to be exercised. Instead, the true question is whether that use right was thereafter abandoned or whether it was lost because of some other supervening event.
187. In the present case, Islington decided to revoke the certificate partly because they considered that the false statements and/or information withheld went to the issue of whether the B8 use had "continued" after 2002. If the authority's reasoning had stopped there, it would have been tainted by the legal error identified under ground 3. But it is clear that success under ground 5 cannot justify the quashing of Islington's decision to revoke the certificate, because the authority's approach to the planning unit issue cannot be impugned (see ground 4 above) and that was a freestanding and sufficient basis to found the decision. Islington's decision would inevitably have been the same. Telereal's covering letter accompanying the application rightly accepted, in line with *Panton*, that the creation of a new planning unit was one of three alternative routes (including abandonment) by which any lawful B8 use right could have been lost. Ocado did not argue otherwise in this case.
188. In any event, the Delegated Report plainly stated that Islington considered that the false statements and withheld information it identified went to Telereal's additional assertion that the B8 lawful use rights had not been abandoned as well as to Islington's contention that the use had not continued (para.23). Accordingly, the real issue now under ground 5 is whether Islington erred in law in reaching that conclusion on the subject of abandonment. As Mr. Forsdick QC rightly pointed out, the need for Islington to carry out further investigations applied to both the abandonment and the planning unit issues (para.8 of the Report). Plainly, the two topics were related.
189. Here also, it is relevant to have in mind the absence of any evidence to support the assertion by Telereal's planning consultants that the B8 use which had accrued by 2002

had not been abandoned, albeit that Telereal knew that half of the floorspace (units C and D) had been vacant from 2006 and marketed at least until 2011 as a separate letting. Mr. Molony's statutory declaration did not address those matters nor did he address the four criteria for assessing whether a planning right had been abandoned (see [76] above). Telereal's application for the CLEUD did not provide any other information to support its contention that there had been no abandonment of a B8 use right. This is not a case where the landowner can say that there was other significant information before the authority when it granted the CLEUD which has not subsequently been criticised in the decision to revoke.

190. Accordingly, there is no merit in the faint criticism made by Mr Brown QC during oral argument that the reasoning given by Islington on this aspect was insufficient. Read in context, it is not arguable that the authority's legal reasoning was inadequate as a matter of law. Indeed, Ocado accepted that the point had not previously been raised. Ocado's criticism is not improved by referring to Islington's letter dated 7 August 2020. There the authority did say that abandonment was not in issue. But that was solely for the express reason given that, applying *Thurrock*, abandonment could not be relevant to whether a lawful use right had been created during the relevant 10-year period which, applying *Ellis*, had to run up to the date of the s.191 application. There was no justification for Telereal's planning consultants to misread that letter as stating that Islington had accepted that there had been no abandonment *as a matter of fact*, as they purported to do in their response dated 20 August 2020. There was no legal obligation on Islington to correct that blatant error. Ultimately, as we have seen, the Delegated Report considered the materiality issue on the alternative legal basis that its reliance upon *Ellis* might be incorrect.
191. Ocado's first real criticism under ground 5 is that if units A-D formed a single planning unit then the mere fact that units C and D were vacant for a period of time would be irrelevant to satisfying the implicit requirement in s.171B(3) that the use be "continuous" (para.55 of skeleton). There are two separate answers to this. First, the argument assumes that units A-D remained a single planning unit, which begs the question already addressed under ground 4. Second, we are now dealing with abandonment and not the continuity principle. Here, what is relevant is not merely whether an activity was interrupted or not, but the substantial period of time for which the property was not in active use together with the other factors listed in [76] above. The test is an objective one as to what would be the view of a reasonable person with knowledge of all the relevant circumstances. Accordingly, there is nothing in Ocado's first criticism. This is not a case where, on the information available, the issue of abandonment could not rationally have arisen.
192. Ocado's second criticism is that the vacant status of units C and D for 6 or more years could not have involved the withholding of material information because the covering letter sent with the application for the CLEUD stated that units A-D were not being used to capacity and referred to "the underused nature of the surrounding B8 units". I reject this submission. "Not being used to capacity" is consistent with all four of units A-D being used. It does not indicate that BT had moved altogether out of units C and D and had concentrated its storage use entirely within units A and B, and moreover, had done so since 2006, and not merely in 2010 or 2011 when the tennis court applications were made. The statement that "surrounding units" "were underused" was no more explicit. Moreover, the context for this remark was "the B8 warehousing on

the wider estate”, which did not indicate which of BT’s B8 units was being referred to. In any event, these statements must be read alongside both Mr. Molony’s statutory declaration that the whole of units A-D was in use as a B8 storage depot and the statement in the covering letter that “the building was fully operational as a warehousing/storage depot” during the period 1992 to 2013, that is to say from 2006 to 2011 and beyond.

193. The assessment of falsity, withholding and materiality are, subject to any issue about relevance, matters of fact and degree, and therefore judgment, for the decision-maker, subject to challenge on the ground of irrationality. I have already dealt with the argument raised on relevance. I see no basis for contending that Islington’s judgment was irrational. Rather, it seems to me to have been entirely reasonable, *a fortiori* given that the matters identified plainly required further investigation.
194. I regard as wholly untenable the suggestion in paragraph 57 of Ocado’s skeleton that an applicant cannot be treated as withholding information in an application for a CLEUD if that information is already in the possession of the local planning authority. An applicant withholds material information if he has it and does not provide it to the authority. That remains the case even if the authority has that information in its records. Ocado’s contention is completely at odds with the statutory scheme, which puts the onus on the applicant to justify the grant of a CLEUD with adequate verifying information. The legislation places a clear risk upon an applicant and his successors in title that a CLEUD may be revoked in the future if the conditions in s.193(7) are met. It is a deeply unattractive submission that what would otherwise amount to a material withholding of information justifying the revocation of a CLEUD, should be treated differently simply because the local planning authority did not search through its register of planning applications looking for anything which might undermine the application. Ocado’s submission transforms the statutory expectation that an applicant will make an adequate and candid disclosure of relevant information into an implicit obligation on the local authority to search through its own records and files before granting a CLEUD.
195. Likewise, I reject the submission that material was not withheld because Telereal adequately “signposted” or summarised the content of the “tennis court application.” I have already referred to the “*actualité*” that units C and D were empty and unused for at least 5 years from 2006 as opposed to the “economical”, indeed misleading, statements that units A-D were fully operational between 1992 and 2013 but were simply not being used to capacity at the time of the application in 2011. Again, it is very unattractive to suggest that a landowner can avoid action being taken under s.193(7) to address a withholding of material information on the actual use of premises, which it plainly would have been aware of and which could have undermined its application, by making a cursory observation which would not be expected to raise any significant doubts in the mind of the reader about the merits of the application. The submission advanced by Ocado would simply encourage bad practice of this kind and undermine the transparency and soundness of, and even public confidence in, the certification regime. An unjustifiable burden would be placed on local authorities to check the material relied upon by an applicant to support a s.191 application against their records for information which is available to the applicant and should plainly be disclosed.

196. Finally, Ocado complains that the failure to mention in the application that Royal Mail had ceased to use the premises in 2015 could not have involved the making of any false statement or withholding of material information at the application stage. This is because the statutory declaration and the other material submitted to Islington said nothing about the nature or extent of Royal Mail's active use of the site, nor could Telereal have been expected to have had knowledge of such matters.
197. There is no merit at all in this complaint. Mr Molony's statutory declaration stated that as an employee of Telereal he had "responsibility" for units A-D down to the date of the application for a CLEUD (para.6). He stated that he was able to make the declaration from his own knowledge and that the information was complete and accurate (para.1). His declaration was expressly made for the purpose of "confirming the existing use" of the site and "in support of the application for a certificate of existing lawful use in respect of the site" (para.3). He confirmed that since at least 1992 the whole site was in use as a B8 warehousing/storage depot and "as far as I am aware, this has been continuous throughout." On the basis of those statements Islington had been entitled to proceed on the basis that Mr. Molony knew what he was talking about. It was only in his second statutory declaration produced in response to the indication by Islington that revocation was being considered, that he revealed that he had not inspected the premises during Royal Mail's lease. On any view that was plainly a material withholding of information, which would justifiably lead Islington to question the sources and extent of the knowledge which Mr. Molony claimed to have for the period before and after 2014. Furthermore, beyond the revelation that Mr. Molony had not visited units A-D during Royal Mail's lease of the premises, Telereal's representations to Islington in 2020 did not state that neither he nor Telereal had no knowledge at all of the extent to which physical activity took place during that period, nor that they could not have been expected to have had such knowledge.
198. For all these reasons, there was nothing irrational or otherwise unlawful in Islington's identification of false statements or information withheld as being material to the abandonment issue. Accordingly, ground 5 must be rejected.

Ground 7

199. I have reached the conclusion that the challenge to Islington's decision that the conditions for exercising the power to revoke under s.193(7) must fail. Ground 7 only arises in that event. At this stage Ocado challenges Islington's exercise of its discretion as to whether to revoke the CLEUD. It does so on the basis that the authority failed to take into account certain relevant considerations. The principles in [105] to [107] above are relevant. In particular, Mr. Brown QC accepted that Ocado has to show irrationality.
200. First, Ocado submits that Islington failed to consider whether the false statements and information withheld would, as opposed to could, have led to a different outcome. This complaint is untenable. Islington stated in its decision *inter alia* that further investigation would have been necessary. That is sufficient to dispose of the suggestion that the absence of any conclusion about what the outcome would have been was irrational. Indeed, had Islington attempted to conclude that the CLEUD would still have been granted, that decision would have been liable to be quashed on an application by IP2.

201. Second, Ocado contends that Islington failed to consider the importance of (a) public confidence in the issuing of certificates of lawfulness and (b) the fact that Ocado had relied upon the CLEUD in this case before entering into an agreement for a lease of the premises. It is also submitted that it was Telereal, not Ocado, that made the application and Ocado “may..... not be in possession of the ‘full and correct information’” needed for a fresh application under s.191.
202. Public confidence in CLEUDs must extend to the reliability of the information put forward by an applicant to support the grant of a certificate. That was a matter which Islington plainly had in mind in paragraph 8 of the Delegated Report. Telereal obtained a certificate to which it was not entitled on the basis of the information it provided and withheld.
203. Very little was said about harm to either Telereal or Ocado in the representations made to Islington in the event of revocation (see [9] and [18] above). Plainly, the progressing of the s.191 application would have been a key aspect of the negotiations for an agreement for a lease and Ocado would have had the opportunity to ask to see and consider the application in draft. Certainly, there is no evidence that they did not have any involvement at all. Substantial expenditure has been incurred in refurbishing units A-D, but the nature of the works was not explained to Islington in any detail, nor when and how the costs were borne, in particular as between Telereal and Ocado. Nothing was said about any remedies which Ocado might have against Telereal. The letter from Ocado’s solicitors dated 25 June 2020 simply said that Ocado would be prejudiced by the revocation of the certificate “by at the very least the uncertainty of applying for a fresh certificate or making a planning application.” It was not suggested that there would be any particular difficulty in obtaining appropriate information to support a fresh application. The solicitor’s letter dated 20 August 2020 added that Ocado had “been put to considerable cost and inconvenience as a result of the Council’s mishandling of the issue” without any further details.
204. In these circumstances, I do not accept that it was improper for Islington not to have given explicit consideration to Ocado’s position in the Delegated Report. There is nothing to suggest positively that Islington disregarded the submissions relating to Ocado’s position. In any event, even if Islington did fail to consider the non-specific representations made on Ocado’s position, that could not be described as irrational. It would be difficult to give any significant weight to submissions of the kind which were put forward.
205. Next, Ocado complains that Islington had failed to consider the extent to which the *incorrect* legal approach adopted by the officer who had granted the CLEUD “contributed to any mistakes in the grant of the certificate.” There is nothing in this point. It falls away because, as I have decided under ground 3, that approach was not incorrect. Moreover, as I have already explained, Islington decided that the false statements and information withheld were material in relation to that correct legal approach taken by both Telereal and the officer.
206. Lastly, Ocado complains that Islington paid no regard to the planning merits of a B8 use on the site, as opposed to a light industrial or a general industrial use. This contention had not been developed in any detail in the representations to Islington before revocation. In these circumstances, this was not a case in which it was irrational for the authority not to make an assessment of the planning merits.

Conclusion

207. For all these reasons, Ocado's claim for judicial review of Islington's revocation of the CLEUD dated 26 April 2019 in respect of units A-D on the Bush Industrial Estate must be dismissed.

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

Supporting Statement

To establish the Lawful Mixed (Composite) Use of a building as a Blacksmith Forge and for residential purposes plus the use of the land outside of the building for the storage of materials, goods, products chattels, scrap, vehicles and waste materials contrary to Conditions 2 and 5 imposed upon Planning Permission 09/01587/FULL.

At

‘Meadow Forge’ Cadeligh, Tiverton, EX16 8RZ



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

Introduction

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

T. 01884 38662

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



Meadow Forge (red arrow) image courtesy of Google Earth

There are 2 types of lawful development certificate.

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

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

T. 01884 38662

Section 191 Town & Country Planning Act 1990 states; at (2)

For the purposes of this Act uses and operations are lawful at any time if—

(a) No enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and

(b) They do not constitute a contravention of any of the requirements of any enforcement notice then in force.

OR and in relation to this application -

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

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

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

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

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

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

The lawfulness of a use or development is 'not' dependent on an LDC being issued. This has been confirmed in relation to the lawfulness of an existing use or 'development' (as in this case) by the judgment of the High Court in *Hillingdon LBC v SSCLG [2008] EWHC 198 (Admin)*. In the course of this judgment, attention was drawn to paragraph 16 of Annex 1 to Circular 17/92 which existed at the time and stated that. subsection (2) of section 191 which provides that, (for the purposes of the Act) uses of land and operations are lawful at any time if no enforcement. action may then be taken in respect of them applies "*whether or not an LDC. has been issued under sections 191 or 192 of the 1990 Act.*" See also the decision of the Court of Appeal in *Republic of France v Kensington and Chelsea. RLBC*
Once the lawfulness of a use/development is established it is considered to apply and can only be lost because of abandonment or a change of use. R Ocado v Islington (2021)

T. 01884 38662

Time limits for enforcement action.

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

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

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

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

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

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

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

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

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

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

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

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

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

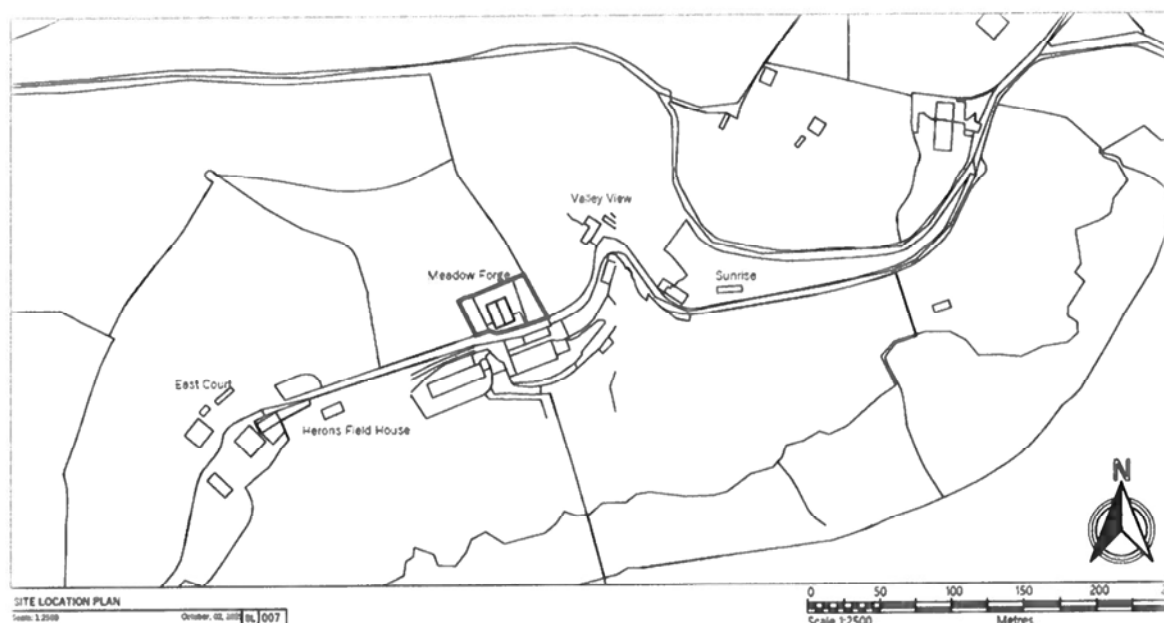
If the local planning authority is satisfied that the appropriate legal tests have been met, it will grant a lawful development certificate. Where an application has been made under section 191. The applicant in this case understands that the statement in a lawful development certificate of what is lawful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

In addition, in the case of *F W Gabbitts v SSE and Newham BC [1985] JPL 630* the Court held that the applicant's own evidence does not need to be corroborated by "*independent*" evidence to be accepted. If the LPA have no decisive evidence of their own, or from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "*on the balance of probability*".

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

Site and surrounding area

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



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

Planning History

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

Address Property History (7) Constraints (1) Map

Planning Applications (4)

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

Planning Appeals (2)

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

Planning Enforcements (1)

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

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MDDC Online Planning History

Planning Permission was granted on 14th December 2009 for -

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

The case for the Grant of a Certificate

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

It is important to note that once an immunity has been gained no enforcement action can be taken by the Local Planning authority (LPA). *R Ocado v Islington (2021) EWHC 1509*

The (Ocado) decision (see paragraphs 49 – 60 and 130 within the judgement) thus establishes that once a breach of condition has continued for more than 10 years, the right to use the land in breach of that condition can only be lost by *abandonment, subsequent change of use or creation of a new planning unit*. The breach of condition does not have to be continuous after the original 10 years (or 4 years if applicable) has passed.

See *Thurrock Borough Council v Secretary of State for the Environment [2002] J.P.L 1278*

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

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

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

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

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

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

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

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

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

Property information for

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

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

► What does my property information mean?

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

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

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

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

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

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

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

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

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

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

A MDDC e-mail communication dated 13/7/23 states that MDDC were aware of a 'mixed use' taking place **since 2008**. Complaints had obviously been received by the LPA in 2010 and 2017 given that enforcement investigations were commenced and presumably closed.

Another complaint was received in 2020 hence the enforcement file and investigation reference 20/00223/RURAL which resulted in the service of the 2 x BCN's on 28th March 2025 4 or 5 years later.

1a) If it has been and remains a 'live/work' unit in the planning sense then as we have corroboratory evidence confirming use and occupation since 2008 we were most likely out of time by the point of 2020 complaint, and which is the first time we were made aware of the issues.

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

The Evidence

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

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

Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A 1.6 – Owned since 2006 as identified on Land Registry

A 3.2 – See my answer to 1.2.

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

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

3.6 – I did not consider that my residential use was a change of use but considered that it was a 'mixed use' (composite use) of residential and blacksmiths forge.

3.7 – See my previous answer to 3.6.

3.8 – See 3.6

3.9 – See 3.8

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

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

4.2 to 4.5 as on the PCN

4.7 – See 3.6

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

4.9 – See 3.6

5.0 – See 3.6

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

5.5 – See 3.6

5.6 – See 3.6

5.7 – See 3.6

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

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

6.0 – Correct

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

immunity against enforcement action as any unauthorised use had taken place continually over ten (10) years from 2006/7 until and beyond 20017/18.

It was also evident that there had been 10 years' worth of use between 2011 when I registered with MDDC on their electoral roll (FE-157/1) with the address of 'Hillside Barn' on 5th May 2011 and 2021 well before I was served with the PCN.

6.4 – See answers 3.6 – 5.8 and 6.1.

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

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

6.7 - See answers 3.6 – 5.8 and 6.1

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

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

7.0 – See 6.9

7.1 – See 6.9

7.2 – See 6.9

7.3 – See 6.9

7.4 – Was irrelevant

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

7.6 – This answer is accurate and correct

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

7.8 – Correct and accurate answer.

7.9 to 8.2 are all correct and accurate as answered.

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

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

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

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

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

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

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

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

Bundle Exhibit DA3

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

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

7. Issue (b)

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

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

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

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

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

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

Signed

Dated

(Your name)

Dean Aggett

9th October 2025

Signed

Dated

(Solicitor)

Michael
Mickelthwait
Solicitor at

9th October 2025

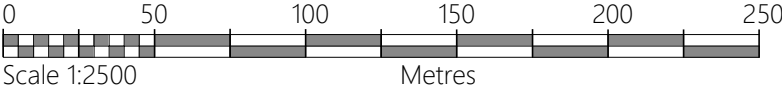
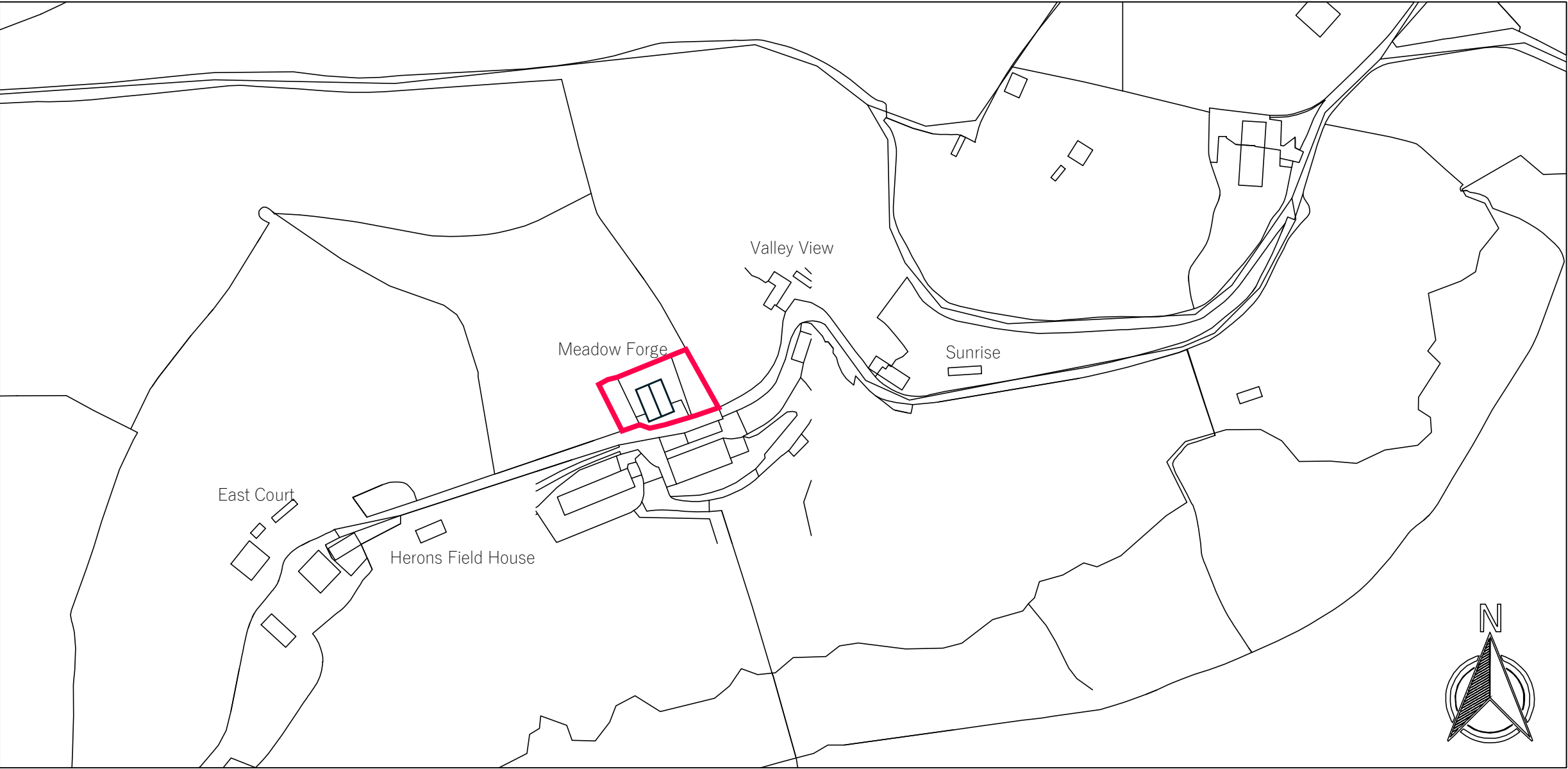
Dunn & Baker Solicitors
Chudleigh House
38 High Street
Cullompton
EX15 1AE

DRAWING INDEX.		
SHEET NUMBER	SHEET NAME	REVISION NUMBER
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	Total Sheet Count	7

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

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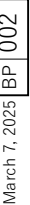
01884 38662

info@xlplanning.co.uk

www.xlplanning.co.uk

CLIENT:	Mr Dean Aggett		
SITE:	Meadow Forge Blacksmiths Cadeleigh Devon EX16 8RZ		
DRAWING NAME :	Title and Location Plan		
DRAWING NUMBER :	A101-AT-02325		
ISSUE DATE :	October, 02, 2025	REV:	1
DRAWN :	STATUS: CONCEPT	CHECKED:	NO
PROJECT REF: AT-02325	PAPER SIZE : A3	SHEET NUMBER :	001

Data licence expires 08 September 2026.
Unique plan reference:
v2f//1309110/1754961

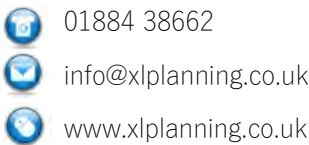


BLOCK PLAN

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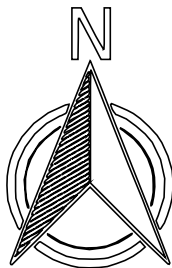
Page 734

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SITE: Meadow Forge
Blacksmiths
Cadeleigh
Devon
EX16 8RZ

PROJECT REF:	PAPER SIZE :	SHEET NUMBER :
AT-02325	A3	002

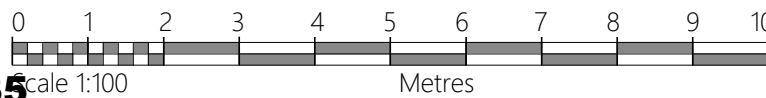




PG	003
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Scale: 1:100

October, 02, 2025



FIRST FLOOR PLAN

PF	003
----	-----

Scale: 1:100

October, 02, 2025

Page 735

Scale 1:100

Metres

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has been produced for Mr Dean Aggett for the Certificate or Lawful Use of Existing Development. and is submitted as part of a

planning application relating to site

Meadow Forge Blacksmiths

Cadeleigh

Devon

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1 Fore Street
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 01884 38662

 info@xlplanning.co.uk

 www.xlplanning.co.uk

CLIENT: Mr Dean Aggett

SITE: Meadow Forge
Blacksmiths
Cadeleigh
Devon
EX16 8RZ

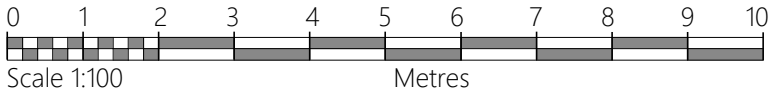
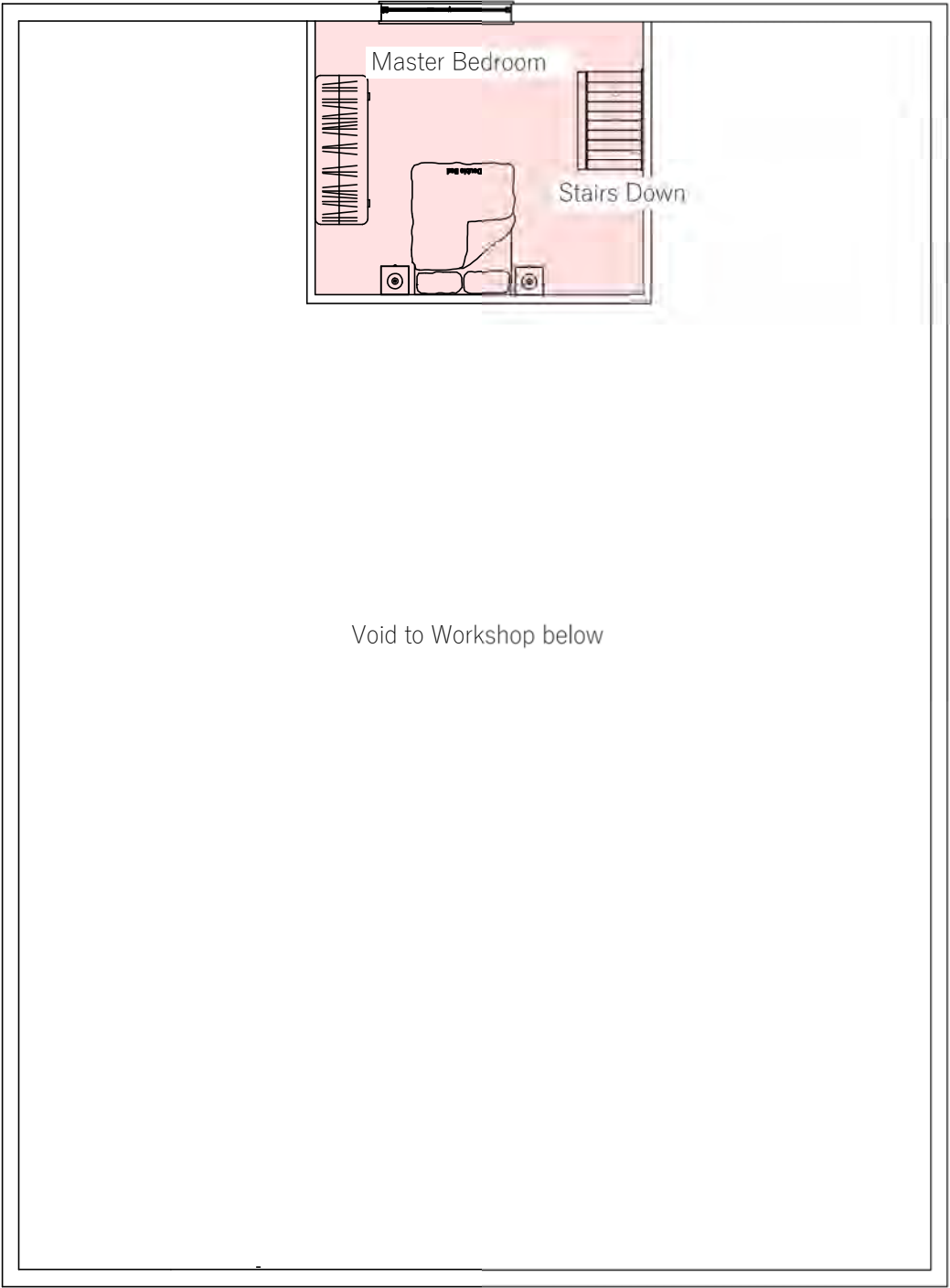
DRAWING NAME : Floorplans 1

DRAWING NUMBER : A103-AT-02325

ISSUE DATE :	REV:
October, 02, 2025	1

DRAWN: 	STATUS:	CHECKED:
	CONCEPT	NO

PROJECT REF:	PAPER SIZE :	SHEET NUMBER :
AT-02325	A3	003

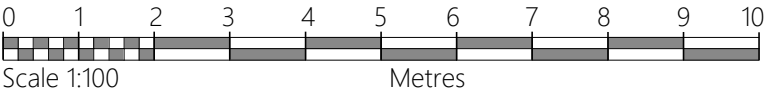
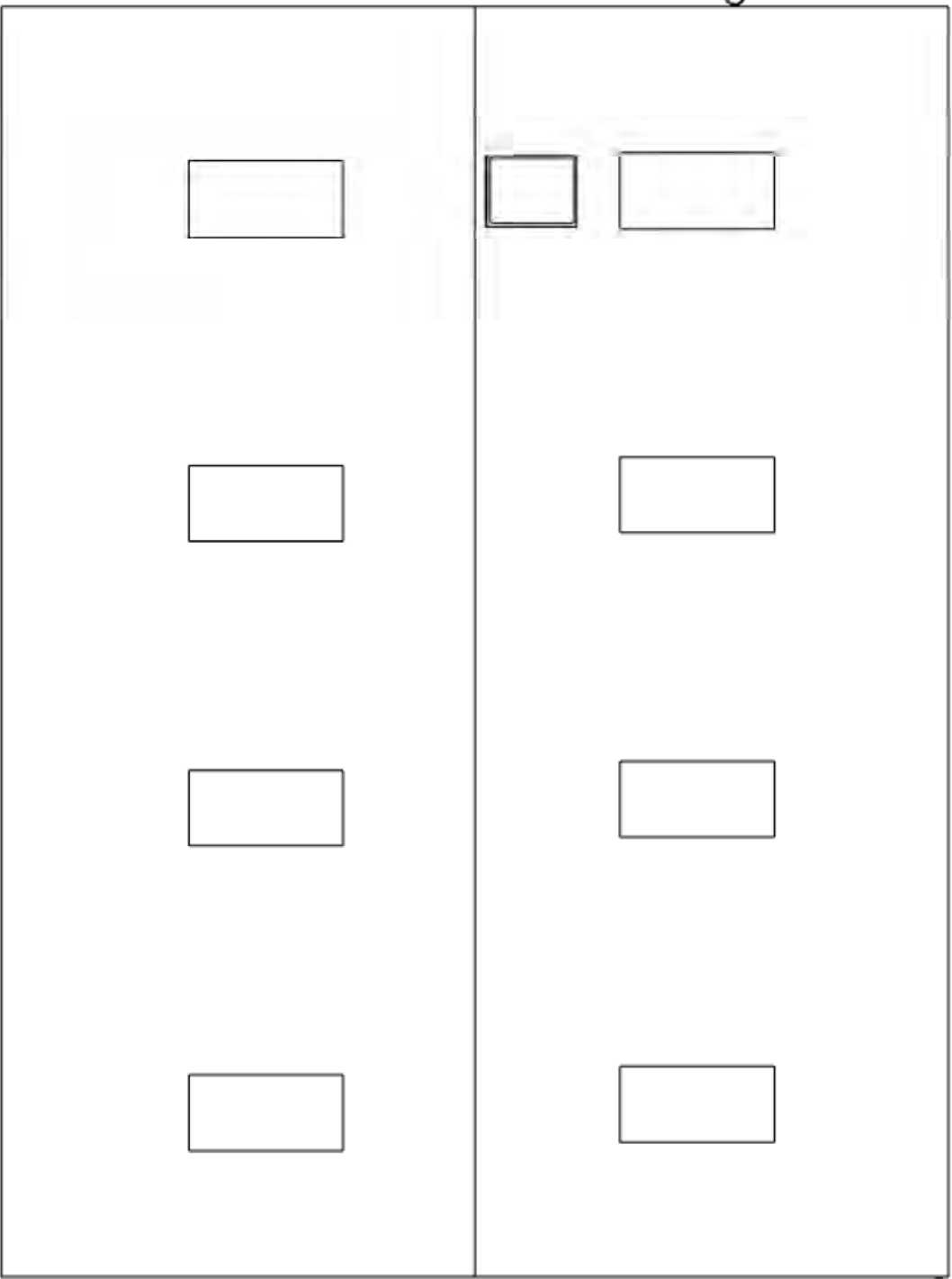


SECOND FLOOR PLAN

PF004

Scale: 1:100

October, 02, 2025



ROOF PLAN

PF004

Scale: 1:100

October, 02, 2025

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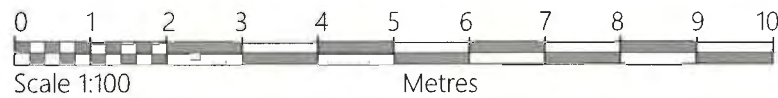
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1 Fore Street
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 01884 38662

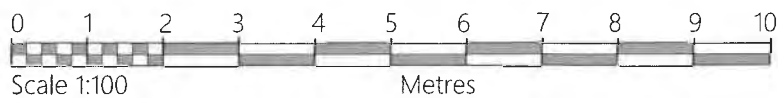
 info@xlplanning.co.uk

 www.xlplanning.co.uk

CLIENT:		Mr Dean Aggett	
SITE:		Meadow Forge Blacksmiths Cadeleigh Devon EX16 8RZ	
DRAWING NAME :			
2 Floor and Roof Plan			
DRAWING NUMBER :			
A104-AT-02325			
ISSUE DATE :		REV:	
October, 02, 2025		1	
DRAWN :	STATUS:	CHECKED:	
	CONCEPT	NO	
PROJECT REF:	PAPER SIZE :	SHEET NUMBER :	
AT-02325	A3	004	



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



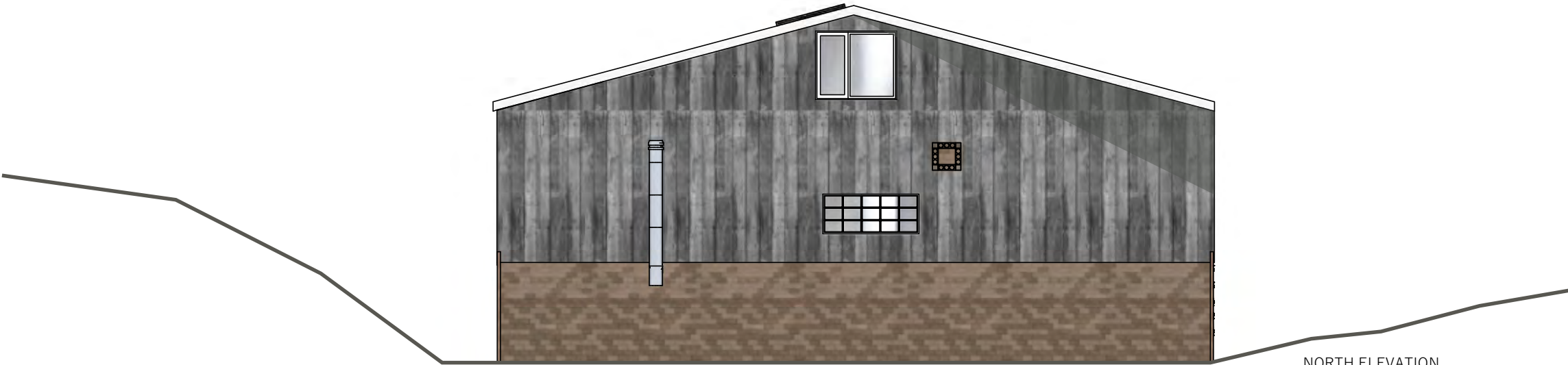
WEST ELEVATION
October, 02, 2025
Scale: 1:100 005 A

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CLIENT:	Mr Dean Aggett		
SITE:	Meadow Forge Blacksmiths Cadeleigh Devon EX16 8RZ		
DRAWING NAME :	Elevations		
DRAWING NUMBER :	A105-AT-02325		
ISSUE DATE :	October, 02, 2025	REV.	1
DRAWN :	STATUS:	CHECKED:	
PROJECT REF:	PAPER SIZE :	SHEET NUMBER :	
AT-02325	A3	005	



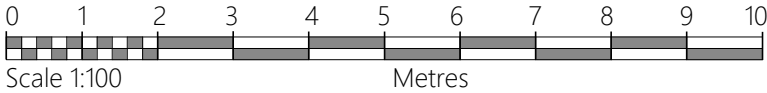
NORTH ELEVATION

October, 02,
2025

Scale: 1:100

006

A



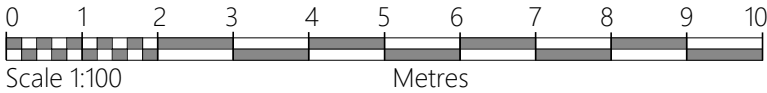
EAST ELEVATION

October, 02,
2025

Scale: 1:100

006

A



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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 :			
		Elevations II	
DRAWING NUMBER :			
		A106-AT-02325	
ISSUE DATE :		REV:	
October, 02, 2025		1	
DRAWN : 	STATUS:		CHECKED:
	CONCEPT		NO
PROJECT REF:	PAPER SIZE :	SHEET NUMBER :	
AT-02325	A3	006	

Jonathan Steel

67 Trinity Road TAUNTON TA1 3JJ

I Jonathan STEEL of 67 Trinity Road Taunton make oath and say as follows:-

1. In the matter of Mid Devon District Council Planning issue regarding Meadow Forge Hillside Barn Cadeleigh Tiverton Devon EX16 8RZ.

Ref. No: 25/01406/CLU

2. I assert that in February of 2013 Mr Dean Aggett of Meadow Forge Cadeleigh began teaching me to be a blacksmith and I visited him in Meadow Forge virtually every week from then until March 2020 when the Covid pandemic lockdown halted this.
3. Throughout the time I have known him, Mr Aggett has lived in a section of the barn that was developed as living quarters. He has also had vehicles in various states of repair and/or dereliction stored both inside and outside the barn.

Sworn at

SLEE BLACKWELL SOLICITORS
1 Marco Polo House
Cook Way
Taunton
Somerset
TA2 6BJ

In the county of Somerset

This 23rd day of October 2025

Before me JASMINE MOXEY-BUTLER FCILEX
C/O SLEE BLACKWELL LLP 1 MARCO POLO HOUSE, COOK WAY
TAUNTON SOMERSET TA2 6BJ

We certify this is a true copy of the original document
Dated: 23/10/2025
Slee Blackwell LLP
1 Marco Polo House, Cook Way, Taunton, TA2 6BJ

J MOXEY-BUTLER

Revd Norman Steel

49 The Fairways Sherford TAUNTON TA1 3PA

I Norman William STEEL, clerk in holy orders (retired) of 49 The Fairways Sherford Taunton make oath and say as follows:-

1. In the matter of Mid Devon District Council Planning issue regarding Meadow Forge Hillside Barn Cadeleigh Tiverton Devon EX16 8RZ.

Ref. No: 25/01406/CLU

2. I assert that in February of 2013 Mr Dean Aggett of Meadow Forge Cadeleigh began teaching my son (Jonathan STEEL) to be a blacksmith. My son and I visited him in Meadow Forge virtually every week from then until March 2020 when the Covid pandemic lockdown halted this.
3. Throughout the time I have known him, Mr Aggett has lived in a section of the barn that was developed as living quarters. He has also had vehicles in various states of repair and/or dereliction stored both inside and outside the barn.

Sworn at

SLEE BLACKWELL SOLICITORS
1 Marco Polo House
Cook Way
Taunton
Somerset
TA2 6BJ

In the county of Somerset

This 23rd day of October 2025

Before me JASMINE MOXEY-BUTLER FCILEX
C/O SLEE BLACKWELL LLP 1 MARCO POLO HOUSE
COOK WAY TAUNTON SOMERSET TA2 6BJ

We certify this is ~~the~~ the original document

 J. MOXEY-BUTLER
Dated 23.10.2025
Slee Blackwell LLP
1 Marco Polo House, Cook Way, Taunton, TA2 6BJ

In support of the application number 25/01406/CLU

I Karim Meraga of The White Cottage, George Nympton, EX36 4JE, do solemnly and sincerely declare as follows:

1. In early 2009 I was employed by Dean Aggett of Meadow Forge, Cadeleigh, EX16 8RZ, as an apprentice blacksmith. At this time there were kitchen facilities and a toilet in the building connected to a septic tank. The area outside the building was used as a parking area for employees and deliveries, as well as a storage area for scrap metal and some project vehicles.
2. Later in 2009, Deans relationship ended, and he moved residence from Tiverton to Meadow Forge. I used my van to help Dean move all his furniture and belongings out from his former address in Chapel Street, Tiverton, and into Meadow Forge.
3. I assisted Dean with building work on several occasions during my time as an apprentice at Meadow Forge. One example of this was helping him to put some salvaged oak joists in place to form the first floor under what is now the bathroom area.
4. After moving on from my position at meadow forge, I did an NVQ level 2 course in plumbing at Petroc college. As part of my coursework to achieve this qualification, I replumbed the first-floor bathroom at meadow forge which was witnessed, photographed and documented by one of my tutors at the time. This work was carried out and completed in 2012.
5. I remain, and have remained friends with Dean over the years. I have visited him at Meadow Forge often, and have known Meadow Forge to be his place of residence throughout this time.

I make this declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act 1835 declared at

on before.

Heckford Norton Solicitors
19 Leys Avenue
Letchworth Garden City
Herts SG6 3EB

Signed



Dated

30.10.2025

(Your Name)

KARIMMERAGA

Signed



Dated

30.10.25

(Solicitor)

Sophie Jones
CILEx Lawyer
19 Leys Avenue
Letchworth Garden City
Hertfordshire
SG6 3EB

IN THE MATTER OF:

Confirmation of residential arrangements and vehicular activity at Hillside Barn/Meadow Forge

I, CLAIRE VICTORIA FLAVELL of [REDACTED] DO SOLEMNLY
AND SINCERELY DECLARE as follows:

1. I have resided at my current address since August 2020.
2. Since August 2020, I have known Mr Dean Aggett to reside and sleep in various vehicles including a converted library bus, and NOT consistently within the commercial barn located on the property.
3. Most recently, during the summer period, Mr Dean Aggett has been residing in a yurt/hut constructed at the rear of his field within the trees for periods of time.
4. Mr Dean Aggett also regularly leaves the property entirely for extended periods of time.
5. I have personally witnessed numerous vehicles, including lorries, trailers, vans, and others, parking up for periods of time and then leaving the property over the years.
6. The frontage of the property is constantly changing due to the frequent movement and parking of such various types of vehicles/trailers etc...

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835 (as amended).

DECLARED by the said

CLAIRE VICTORIA FLAVELL

at

this ^{18th} day of November 2025

Before me,

[REDACTED]

Signature of Declarant

[REDACTED]

Signature of Solicitor

[REDACTED]

Name and Qualification of Solicitor

SRA 647457

RECEIVED
21 NOV 2025

Every's Solicitors LLP
5A Oaklands Court
Tiverton Way
Tiverton
Devon
EX16 6TG

I, FAYE ANNE WARREN of [REDACTED]
DECLARE AS FOLLOWS:

DO SOLEMNLY AND SINCERELY

1. I have resided at my current address since 2003.
2. I have known Mr Dean Aggett to reside and sleep in a converted library bus and other various vehicles over the years, and not consistently within the commercial barn located on the property.
3. Most recently, during this summer, Mr Dean Aggett has been residing in a yurt/hut building that he constructed at the rear of his fields within the trees for a period of time.
4. Mr Dean Aggett also commuted regularly from other properties over the years, where he was residing.
5. I have witnessed numerous vehicles, including lorries, trailers, vans and others, parking up for periods of time and then leaving the property over the years.
6. The frontage of the property changes regularly, with different vehicles or trailers.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1985 (as amended).

DECLARED by the said FAYE ANNE WARREN At This.....18th..... Day of November 2025

Before me

[REDACTED]

Signature of Declarant.

[REDACTED]

Signature of Solicitor.

[REDACTED]

Name and Qualification of Solicitor.

Everyys Solicitors LLP
5A Oaklands Court
Tiverton Way
Tiverton
Devon
EX16 6TG

SCA 647457

I, JANET BALSDON of [REDACTED]
AS FOLLOWS:

DO SOLEMNLY AND SINCERELY DECLARE

1. I have resided at my current address since 1981.
2. I have known Mr Dean Aggett to reside and sleep in a converted library bus and other various vehicles over the years, and not consistently within the commercial barn located on the property.
3. Most recently, during this summer, Mr Dean Aggett has been residing in a yurt/hut building that he constructed at the rear of his fields within the trees for a period of time.
4. Mr Dean Aggett also commuted regularly from other properties over the years, where he was residing.
5. I have personally witnessed numerous vehicles, including lorries, trailers, vans and others, parking up for periods of time and then leaving the property over the years.
6. The frontage of the property changes regularly, with different vehicles or trailers.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1985 (as amended).

DECLARED by the said JANET BALSDON At This.....16th..... Day of November 2025

Before me

[REDACTED]

Signature of Declarant.

[REDACTED]

Signature of Solicitor.

[REDACTED]

Name and Qualification of Solicitor.

SRA 647457

Every's Solicitors LLP
5A Oaklands Court
Tiverton Way
Tiverton
Devon
EX16 6TG

IN THE MATTER OF:

Confirmation of residential arrangements and vehicular activity at Hillside Barn/Meadow Forge

I, JAMES PETER WILSON of [REDACTED], DO SOLEMNLY AND
SINCERELY DECLARE as follows:

1. I have resided at my current address since August 2020.
2. Since August 2020, I have known Mr Dean Aggett to reside and sleep in various vehicles including a converted library bus, and NOT consistently within the commercial barn located on the property.
3. This year, Mr Dean Aggett has been residing in a yurt/hut structure that was erected within the field behind the commercial barn he's now claiming to live full time in.
4. Mr Dean Aggett also regularly leaves the property entirely for extended periods of time.
5. I have personally witnessed numerous vehicles, including lorries, trailers, vans, and others, parking up for periods of time and then leaving the property over the years.
6. The frontage of the property is constantly changing due to the frequent movement and parking of such various types of vehicles/trailers etc...

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1835 (as amended).

DECLARED by the said

JAMES PETER WILSON

at

this 20th day of November 2025

Before me,

[REDACTED]

Signature of Declarant

[REDACTED]

Signature of Solicitor

[REDACTED]

Name and Qualification of Solicitor

SRA: 647 457 .

Every's Solicitors LLP
5A Oaklands Court
Tiverton Way
Tiverton
Devon
EX15 6TG

I, PAUL DONALD BALSDON of [REDACTED]
DECLARE AS FOLLOWS:

DO SOLEMNLY AND SINCERELY

1. I have resided at my current address since 1981.
2. I have known Mr Dean Aggett to reside and sleep in a converted library bus and other various vehicles over the years, and not consistently within the commercial barn located on the property.
3. Most recently, during this summer, Mr Dean Aggett has been residing in a yurt/hut building that he constructed at the rear of his fields within the trees for a period of time.
4. Mr Dean Aggett also commuted regularly from other properties over the years, where he was residing.
5. I have personally witnessed numerous vehicles, including lorries, trailers, vans and others, parking up for periods of time and then leaving the property over the years.
6. The frontage of the property changes regularly, with different vehicles or trailers.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act 1985 (as amended).

DECLARED by the said PAUL DONALD BALSDON At This.....18th..... Day of November 2025

Before me

[REDACTED]

Signature of Declarant.

[REDACTED]

Signature of Solicitor.

[REDACTED]

Name and Qualification of Solicitor.

SRA 647 457

Everyys Solicitors LLP
5A Oaklands Court
Tiverton Way
Tiverton
Devon
EX16 6TG