

APPELLANT'S CLOSING SUBMISSIONS

Meadow Forge, Hillside Barn, Cadeleigh, Tiverton

Appeal reference: APP/Y1138/X/26/3378579 under section 195, Town and Country Planning Act 1990

Sir,

1 Introduction

- 1.1 This appeal is brought under section 195 of the Town and Country Planning Act 1990 against Mid Devon District Council's refusal of the Appellant's application under section 191 for a certificate of lawfulness.
- 1.2 The Council's refusal is challenged on the statutory ground that it was not well-founded.
- 1.3 Before turning to the evidence, it is important to remember why this application was made and why it was framed in the terms that it was.
- 1.4 On 28 March 2025 the Council served two Breach of Condition Notices. One alleged a breach of condition 2 of planning permission 09/01587/FULL by reason of the residential occupation of Meadow Forge. The other alleged a breach of condition 5 by reason of the external storage of materials, goods, vehicles and other items on the surrounding land. Those notices sought to require the cessation of the very activities which are the subject of this appeal.
- 1.5 The importance of those notices should not be understated. The Council subsequently laid informations before the Magistrates' Court alleging non-compliance with the two BCNs. Mr Aggett was summoned on 3 March 2026 and faces potential criminal sanction arising directly from the Council's contention that the residential occupation and external storage activities are unlawful. The criminal proceedings are stayed pending the outcome of this appeal.
- 1.6 The certificate application was therefore not an attempt to secure an abstract determination of planning status. It was a direct response to enforcement action already taken and to criminal proceedings subsequently commenced. The Appellant sought a certificate because the Council asserted, through the BCNs and the prosecution which followed, that the activities in question were unlawful and must cease.
- 1.7 In the alternative to serving the BCNs the Council could have encouraged Mr Aggett to submit a certificate of lawfulness application first, or they could have served an enforcement notice. They did neither, preferring a BCN. In doing so they knew that should Mr Aggett want to preserve his lawful uses of Meadow Forge required either an expensive judicial review (which Mr Aggett confirmed he could not afford) or putting technical planning arguments to Magistrates should (as is the case here) the Council prosecutes breaches.
- 1.8 The appeal concerns two matters: first, the use of the building known as Meadow Forge for a mixed use comprising a blacksmith's forge and residential occupation, contrary to condition 2 of planning permission 09/01587/FULL; and secondly, the use of the

surrounding land for the storage of materials, goods, products, chattels, scrap, or waste materials contrary to condition 5 of that permission.

- 1.9 The question for the Inspector is whether, on the balance of probabilities, the mixed residential/forge use and outside storage use (being the two activities identified by the Council in the BCNs) had subsisted continuously for the requisite period before enforcement action was taken and were lawful at the date of the section 191 application. If they were, the refusal was not well-founded and a certificate should be issued.

2 The Statutory and Legal Context

- 2.1 The application was made under section 191(1)(c) of the 1990 Act. It sought a certificate that failures to comply with conditions 2 and 5 of planning permission 09/01587/FULL were lawful.
- 2.2 Section 191(3) provides that a failure to comply with a planning condition is lawful if, at the relevant time, the period for taking enforcement action (being the ten years set out in section 171B) has expired and the matter does not constitute a contravention of any enforcement notice or breach of condition notice then in force.
- 2.3 Section 191(4) requires the decision-maker to determine the lawfulness, at the time of the application, of the matters described in the application. It also makes provision for the decision-maker to modify the description and thereby confirm the lawfulness of a substituted alternative description. Indeed *Panton and Farmer v Secretary of State for the Environment, Transport and the Regions* [1999] JPL 461 confirms the obligation to issue a certificate for development which the evidence shows to be lawful and, where necessary, to modify or substitute the description.
- 2.4 The provisions governing the form and effect of the certificate permit it to address the whole or part of the land and all or some of the matters described.
- 2.5 The burden of proof rests upon the Appellant and the applicable standard is the balance of probabilities. Planning Practice Guidance is however clear that if the Council relies on its own evidence in the determination of a CLU application it must share that information with the Applicant prior to determining the Application.
- 2.6 Questions concerning the existence of a mixed use, the character of occupation and the nature of the activities taking place are matters of fact and degree assessed objectively by reference to the actual use of the planning unit.
- 2.7 Identification of the planning unit should be in accordance with the principles in *Burdle*.
- 2.8 The approach in *Gravesham Borough Council v Secretary of State for the Environment* [1983] JPL 307 deals with the identification of a dwellinghouse. The distinctive characteristic of a dwellinghouse is its ability to afford those who use it the facilities required for day-to-day private domestic existence, and the decision-maker must take a factual approach to the use or uses to which the building is put. A dwellinghouse use is a residential use, and without authority to the contrary it is appropriate to turn to *Gravesham* when identifying the residential component of a mixed-use comprising residential and blacksmithing.

- 2.9 The Court of Appeal's treatment of lawful breaches of condition in *R (Ocado Retail Ltd) v Islington LBC* [2023] EWCA Civ 265 is also important. A breach which has acquired immunity becomes lawful by operation of the statutory scheme. The certificate should record that lawful planning status and identifies the breach of condition which has been legitimised. But it does not expunge the condition, which remains.

The significance of section 171B and the BCNs

- 2.10 Section 171B(3) provides that, in the case of any other breach of planning control, no enforcement action may be taken after the end of ten years beginning with the date of the breach. A breach of planning condition falls within that ten-year period. Service of a BCN constitutes taking enforcement action for the purposes of section 171B (section 171A(2) applying).
- 2.11 The application falls to be determined by reference to the date on which it was made. However, in deciding whether the matters described in the 9 October 2025 Application were lawful at that date, due to the provisions of section 191(2)(b) the Inspector must necessarily consider the effect of the BCNs served on 28 March 2025.
- 2.12 The Appellant's case is that both the mixed residential and forge use and the external storage use had subsisted continuously for more than ten years before the BCNs were served. If that factual case is made good, the Council's power to take enforcement action had already expired. Immunity had already accrued. This was accepted by Heather Nesbitt in cross examination.
- 2.13 That analysis accords with *Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 128 at [18], where Newman J explained that, after the relevant time limit has expired, no enforcement action can be taken and an enforcement notice cannot be effective in law if the breach alleged occurred outside the prescribed period.
- 2.14 The decisive factual question is therefore whether the mixed residential and forge use and the external storage use had completed the ten-year period before 28 March 2025. If they had, the BCNs were too late and, on the Council's own witness's evidence, could not interrupt or defeat accrued immunity.
- 2.15 Conversely, if the Inspector concludes that the requisite period had not accrued before service of the BCNs, the notices were capable of interrupting the accrual of immunity and the Appellant's claim must fail. The effectiveness of the BCNs therefore depends upon the very factual questions which this Inquiry must determine.
- 2.16 This is not a direct challenge to the BCNs, nor an appeal against the criminal proceedings. Nevertheless, the Inspector cannot determine whether the matters described in the application were lawful at the application date without determining the significance and effect of the notices within the statutory scheme.
- 2.17 Accordingly, if the Inspector concludes that the residential and storage uses had already acquired immunity before the BCNs were served, the Appellant respectfully invites the Inspector to record that conclusion and explain its consequence for the notices in his decision letter. That does not determine the criminal proceedings. It determines the planning law issue which the section 191 application places before the Inspector.

Concealment and Planning Enforcement Orders

- 2.18 The Council relies upon allegations of concealment and authorities including *Welwyn Hatfield BC v Secretary of State for Communities and Local Government* [2011] UKSC 15, *R (on the application of Fidler) v Secretary of State for Communities and Local Government* [2011] EWCA Civ 1159 and *Jackson v Secretary of State for Communities and Local Government* [2015] EWHC 20 (Admin).
- 2.19 The common-law *Welwyn* principle is concerned with positive concealment, not merely silence, inaction, inconsistency or the authority's failure to discover a breach. In *Welwyn* the Supreme Court identified positive deception in matters integral to the planning process, directly intended to undermine that process, which did in fact undermine it and from which the wrongdoer would profit if permitted to rely upon the statutory time limit.
- 2.20 *Fidler* was concerned with the deliberate physical concealment of a large domestic dwelling behind straw bales.
- 2.21 *Jackson* confirms that the decisions are fact-sensitive, but retains the requirement for positive conduct intended to deceive the authority so that it does not appreciate that a breach has occurred until after the enforcement period has expired.
- 2.22 The legal question is therefore not simply whether the Appellant omitted to volunteer the breach, gave an inaccurate answer, or failed to make the position sufficiently clear. The Council must establish positive and deliberate deception directed at preventing discovery of the breach, with the necessary causal connection to the authority's failure to enforce within time.
- 2.23 That test is not met here. The residential arrangements were not physically concealed; the external storage was visible; the Council received express allegations, opened investigations, served PCNs and attended the site; and its own officers ultimately recorded apparent occupation and corroboratory evidence of use and occupation.
- 2.24 Even if some of the Appellant's descriptions or PCN responses are found to have been inaccurate, evasive or misleading, that does not without more establish the positive, deliberate and effective concealment required by the *Welwyn* principle. The evidence must show a course of deception which actually prevented discovery and thereby undermined the planning process. On the facts, the Council (as a whole and as the planning enforcement team) discovered, or had ample opportunity to discover, the activities now said to have been concealed.
- 2.25 The Appellant accepts the principle that a person should not obtain immunity through deliberate deception designed to prevent the planning authority discovering a breach. Parliament's statutory response is contained in sections 171BA to 171BC, which establish the Planning Enforcement Order regime.
- 2.26 No Planning Enforcement Order was secured by the Council in relation to the residential use or the external storage use. The Appellant does not submit that the absence of an order is itself fatal to every concealment allegation. *Jackson* confirms that the underlying *Welwyn* principle survives the statutory regime. The absence of a PEO is nevertheless material context where the Council investigated Meadow Forge repeatedly, served PCNs, maintained enforcement files, undertook visits, served BCNs and commenced prosecution proceedings, but never exercised its statutory right to apply for a PEO.

- 2.27 The Appellant's case is that this is not a concealment case. It is a case about the proper evaluation of a substantial body of evidence concerning long-standing activities conducted openly at Meadow Forge and corroborated by many independent witnesses, photographs, videos, third-party representations (including those purporting to object) and the Council's own records.

What is a chattel for the purposes of condition 5

- 2.28 The question as to what was meant by chattels was left to submissions. Chattels is a common law concept with no helpful statutory definition. Practical Law, a legal tool commonly used by lawyers, defines chattel as:

"A thing that a person can possess in physical form; a tangible, movable asset (for example, a piece of jewellery, a painting or a car and, in some contexts, goods, equipment or machinery)." [emphasis added]

- 2.29 Chattels therefore includes vehicles.
- 2.30 The storage of vehicles outside Meadow Forge was therefore prohibited by Condition 5.

3 Condition 2: The Mixed Residential and Forge Use

- 3.1 The first issue is whether Meadow Forge was used as a mixed use comprising a blacksmith's forge and residential occupation throughout the relevant immunity period and at the date of the application.
- 3.2 The Appellant submits that the evidence establishes that proposition overwhelmingly. This case does not depend upon one witness, one photograph or one document. The evidence comes from numerous sources accumulated over many years. Those sources were created for different purposes, by different people and at different times. They consistently point to the same conclusion: Meadow Forge functioned as a live-work unit in which the Appellant both worked and lived.

A chronology of the relevant events

- 3.3 Before examining the evidence in detail, it is helpful to stand back and consider the chronology. The evidence does not support an artificial analysis in which the use changed on one precisely identifiable day. It demonstrates the progressive evolution of the site through a series of planning stages.

Pre 2006: agricultural use

- 3.4 The starting point is not controversial. Permission 09/01587/FULL was granted in December 2009 for the retention of the change of use from agriculture to a blacksmith's forge. The retrospective permission establishes the planning baseline: before the blacksmithing use arose, the building's lawful use was agricultural.

2006 to December 2009: emergence of the forge use

- 3.5 The Appellant acquired Meadow Forge in 2006. Blacksmithing activities were undertaken from the building during this period and formed the basis of the retrospective permission. Whatever view is taken of residential occupation, by December 2009 Meadow Forge was being used as a blacksmith's forge.

- 3.6 Mr Aggett's evidence, supported by Mr Meraga's, is that his sleeping at Meadow Forge was a very basic and intermittent arrangement unsupported by the domestic facilities that *Gravesham* would require.

December 2009: the retrospective permission

- 3.7 On 14 December 2009 the Council granted permission 09/01587/FULL for retention of the change of use from agriculture to a blacksmith's forge. The Appellant's position, addressed separately in Appendix A, is that the permission was implemented and took effect. The chronology therefore proceeds from an established lawful forge use.

Late 2009: residential occupation begins to emerge

- 3.8 The most important independent evidence during this period comes from Karim Meraga. Karim first attended Meadow Forge as the Appellant's apprentice in early 2009. He describes kitchen facilities and a toilet already existing in 2009; the Appellant's relationship ending in late 2009; the Appellant moving from Chapel Street, Tiverton to Meadow Forge; Karim helping move the Appellant's belongings; and the Appellant thereafter living at Meadow Forge while continuing to practise as a blacksmith.
- 3.9 That evidence provides the earliest clear and independent evidence of a residential component emerging alongside the forge use.

2010 to 2012: development of a material mixed use

- 3.10 The evidence thereafter shows residential occupation becoming more established. It includes continuing occupation and blacksmithing; creation and improvement of residential facilities; Karim's involvement in the first-floor works; his later bathroom plumbing; completion of bathroom works in 2012; and photographic evidence of residential accommodation.
- 3.11 The Inspector need not determine the precise day on which a material mixed use first arose. By this period, however, the evidence shows something substantially beyond occasional overnight occupation, temporary accommodation or workplace welfare facilities. It shows a settled pattern of residential occupation alongside continuing forge use.
- 3.12 That approach accords with the oral evidence of both Heather Nesbitt and Adrian Devereaux. Each accepted that not every change in the activities carried on at land amounts to a material change of use. They also agreed that, where a use develops through incremental steps, the precise date upon which the cumulative activity crosses the threshold of materiality may not be readily identifiable.
- 3.13 The absence of a single dramatic commencement date is therefore not a defect in the Appellant's case. The Inspector must assess the evolving residential activities and facilities as a matter of fact and degree and determine by when, at the latest, they had become a material component of the use. The dated evidence establishes that point by early 2013 at the latest.

By early 2013 at the latest: an established mixed use

- 3.14 Even if the Inspector were not persuaded that the mixed use emerged in late 2009 or during 2010 to 2012, by early 2013 the evidence is overwhelming. By then there were

completed domestic facilities, photographic evidence, continuing occupation, continuing blacksmithing and independent witness evidence corroborating the mixed use.

- 3.15 Accordingly, three findings are realistically open: the mixed use emerged by late 2009; alternatively during 2010 to 2012 as the residential facilities were progressively developed and occupied; or, at the very latest, by early 2013. On each analysis, the mixed use was established more than ten years before the BCN of 28 March 2025.

2013 to 2025: continuity

- 3.16 The notable feature after early 2013 is not change but continuity. Witnesses, photographs, videos, documentary records and Council material repeatedly describe the Appellant living and working at Meadow Forge and the building operating as a combined live-work unit. The evidence does not reveal interruption, abandonment or cessation. It reveals continuity.

The contemporaneous evidence

- 3.17 The strongest evidence before the Inspector is not recollection of events or conversations, or speculation as to why an enforcement file was closed, but contemporaneous material. Photographs, videos and documentary records generated during the relevant period show domestic facilities within the building over many years, including facilities necessary for day-to-day residential occupation. They were not created for this litigation. They show what existed at the relevant times.
- 3.18 Viewed objectively, that material demonstrates a building functioning not merely as a forge but as a place of residence. Applying *Gravesham*, the building possessed the attributes required for day-to-day private domestic existence and was occupied accordingly.
- 3.19 The oral evidence confirmed the significance of the dated material. The Appellant's photograph shows a functioning kitchen by 14 December 2010, including sink, cooker, shelving, table and chairs. The photographs posted in January and February 2013 show a furnished living room, bathroom and landing. Those images accord with Karim Meraga's evidence of kitchen and toilet facilities in 2009, his assistance with the Appellant's move later that year, his involvement in the first-floor works and the bathroom plumbing completed in 2012. They also accord with Ian Beech's dated account of his visit on 20 October 2012, supported by his diary and photographs, when he saw a functioning downstairs kitchen and an upstairs bedroom and bathroom. The evidence is therefore not a retrospective reconstruction: it is a dated sequence showing residential activity and facilities developing cumulatively and becoming an established material component of the mixed use by early 2013 at the latest.
- 3.20 That chronology was materially strengthened by the Council's concession concerning the photographs exhibited to Heather Nesbitt's proof at paragraph 6.5. Although the proof treated those photographs as dating from 2021, the Council accepted at the Inquiry that they were in fact taken materially earlier, on the date identified in Dean Aggett's evidence. The photographs must therefore be assessed at their true earlier date. They cannot properly be relied upon as though they first recorded the relevant physical arrangements in 2021. Instead, they provide further contemporaneous support for the Appellant's earlier chronology.

The independent witness evidence

- 3.21 The contemporaneous material is supported by a substantial body of independent witness evidence. Importantly, that evidence extends well beyond the witnesses who gave oral evidence at the Inquiry.
- 3.22 At application stage the Appellant relied upon statutory declarations, sworn statements and supporting representations from people who knew the Appellant, visited Meadow Forge, worked with him or otherwise observed the use of the site over many years. Further supporting material was submitted during the appeal. Taken together, those materials demonstrate a striking degree of consistency. They do not describe isolated or occasional occupation. They repeatedly describe Meadow Forge as both the Appellant's place of work and his home.
- 3.23 The evidence of Karim Meraga and Norman Steel forms part of that wider evidential picture, but it is important not to treat the case as depending upon those two witnesses alone.
- 3.24 Karim's evidence is especially important because it addresses the genesis of the residential use. His evidence under oath describes kitchen facilities and a toilet within Meadow Forge in 2009; the Appellant's move from Chapel Street, Tiverton in late 2009; Karim's own assistance in moving the Appellant's belongings; the construction of residential accommodation; and his later plumbing works to the bathroom. He describes the Appellant openly living at Meadow Forge while continuing to practise as a blacksmith. Karim's evidence therefore provides direct, independent evidence of both the emergence of the residential component and its coexistence with the forge use.
- 3.25 Norman Steel's evidence (again under oath) addresses a different but equally important issue: continuity. It supports the conclusion that residential occupation and forge use were not temporary, sporadic or recently established, but formed part of the ordinary and continuing use of Meadow Forge over an extended period. The evidence recorded in the third-party representations indicates that Norman and Jonathan Steel visited virtually every week for blacksmithing between February 2013 and March 2020. Norman Steel may not have gone upstairs but his son did and Norman described, under oath, conversations with his son about how pleased Dean was with his upstairs living arrangements.
- 3.26 The wider body of supporting evidence reinforces those accounts. It comes from people of different backgrounds who visited Meadow Forge for different reasons, at different frequencies and during different periods. Some knew the Appellant professionally; others knew him personally or as a neighbour. Yet the essential account remains consistent: Meadow Forge operated as a combined live-work unit occupied by the Appellant as his home while continuing to function as a blacksmith's forge.
- 3.27 That breadth matters. The Inspector is not faced with a simple contest between the Appellant's recollection and the recollection of one contrary witness. He is faced with a substantial body of mutually reinforcing evidence, including statutory declarations and representations submitted with the certificate application, further representations submitted on appeal, oral evidence, photographs, videos and documentary records extending across the relevant period.
- 3.28 Particular examples within the wider body of evidence include evidence of first-hand visits during 2010, 2011 and 2012; Ian Beech's dated diary and photographic evidence of his October 2012 visit; the evidence of Amanda Porteous, Freya Porteous and Sydney Langley

concerning visits in 2012; and the long period of regular observation described by Norman and Jonathan Steel. Those accounts materially corroborate the Appellant's residential occupation of Meadow Forge at points distributed across the critical chronology.

- 3.29 The Council relies upon a smaller body of statutory declarations and third-party evidence which gainsay the Appellant's occupation. The parties making those representations did not attend the Inquiry. They were not available for cross examination. The Appellant does not invite the Inspector to disregard that evidence. It must be assessed fairly. Much of it, however, is negative evidence: the witness was unaware of occupation, did not observe it, or did not believe that it was occurring, and they give no details as to the timeline of their statements.
- 3.30 Non-observation does not establish non-occurrence, particularly where the witness did not have continuous access to the interior of the building or undertake any systematic assessment of its day-to-day use. A person passing or observing the property externally could readily form a view about visible vehicles, materials or activity outside. That does not place them in an equivalent evidential position to a witness who entered the building and directly observed its residential accommodation and use.
- 3.31 By contrast, the Appellant's supporting witnesses provide positive evidence of direct observation. They describe residential accommodation, domestic facilities, furniture, personal possessions, bathrooms, kitchens and the practical incidents of day-to-day living. There is an important evidential distinction between a witness who saw the indicators of residential occupation and a witness who did not happen to see them.
- 3.32 When the third-party evidence is considered as a whole, the balance strongly favours the Appellant's account. The consistent positive observations of residence and live-work occupation, read with the contemporaneous documentary and photographic material, carry substantially greater evidential force than evidence founded upon lack of awareness, lack of access or lack of observation.
- 3.33 The overall conclusion does not depend upon every supporting witness being correct about every date or detail. It arises from the convergence of numerous independent accounts with the physical, photographic, video and documentary evidence. Those separate strands repeatedly identify the same factual reality: the Appellant lived and worked at Meadow Forge throughout the relevant period.
- 3.34 And what of the evidence from third parties (not present at the appeal and not subject to cross-examination) that the Appellant slept in his yurt or in the library bus? Well firstly anything other than occasional sleep overs in the library bus are denied by the Appellant. Secondly their respective evidence repeatedly confirms the Appellant's position, in that those parties assert that the yurt and bus were in alternative to the Appellant's acknowledged residential use of Meadow Forge. And then finally, the Appellant relies on *Ocado* which confirms that where a breach of condition has continued for the full enforcement period, the resulting lawfulness crystallises by operation of the statutory scheme and it is not lost merely because the activity is later reduced, temporarily interrupted or not exercised with the same intensity.

The Council's own records

- 3.35 The case does not rest solely on Dean or his supporting witnesses. Council records recognise Dean's long-standing association with Meadow Forge and contain material supportive of occupation extending back many years. Those email records exhibited in

Dean's statutory declaration DA3 are difficult to reconcile with any suggestion that residential occupation emerged only shortly before enforcement action.

- 3.36 The Council's emails very much take the form of: 'the evidence shows a long term residential occupation, now what are our options for dealing with that fact?'.
- 3.37 Similarly with the Council's own records at Appendix 8 of Mr Aggett's proof, where the council tax arm of the Council confirmed that the planning enforcement arm of the Council were aware that they were accepting a mixed use at Meadow Forge back to 2013.
- 3.38 The enforcement history also shows that allegations of human habitation and mixed use reached the Council years before the BCNs. That history is relevant both to the factual assessment and to the later allegation of concealment.
- 3.39 Under cross examination Mrs Nesbitt was studiously unwilling to speculate on the alternative reasons held by her predecessors to the enforcement officer role to the closing of enforcement files relating to the Appellant's use of Meadow Forge. Such reasons could well have included convenience, discretionary underenforcement, or a recognition from those officer's that the matters had become lawful through the passage of time.

The Council's objections

- 3.40 The Council's opposition rests principally upon alleged inconsistencies in historic statements and responses to PCNs. Those matters must be considered, but in context and against the whole of the evidence.
- 3.41 The Inspector's first task is to consider with the mixed use was lawful, not to decide whether every historic statement was perfectly expressed. It is to determine what was actually occurring at Meadow Forge on the balance of probabilities.
- 3.42 Even taken at their highest, the Council's criticisms do not explain away the residential facilities, photographs, videos, independent witnesses, Karim's account of the Appellant's move, the third-party evidence or the Council's own records. Nor does the Council provide a coherent alternative explanation for their cumulative effect.

Findings sought

- 3.43 The Appellant invites the Inspector to find that Meadow Forge was used as a mixed use comprising a blacksmith's forge and residential occupation; that the mixed use had become established by no later than early 2013; that it continued throughout the relevant immunity period; and that it remained in existence at the application date.
- 3.44 Those findings are supported by the chronology, contemporaneous evidence, independent witnesses and documentary record. They represent, by some margin, the most probable explanation of the evidence.

4 Condition 5: The External Storage Use

- 4.1 The second issue concerns the use of the land surrounding Meadow Forge for the storage of materials, goods, products, chattels, scrap, vehicles and waste materials contrary to condition 5.
- 4.2 In many respects the condition 5 case is more straightforward. Unlike residential occupation within the building, the storage use was visible. It could be observed by visitors,

neighbours, objectors and Council officers. The real question is whether it continued for the requisite period. The Appellant submits that it plainly did.

A chronology of the storage use

- 4.3 From the emergence of the forge use after Dean acquired the site in 2006, the external areas were used in connection with blacksmithing activities. The Appellant's evidence is that vehicles, materials, equipment, stock, scrap and associated items were kept outside from an early stage.
- 4.4 The 2009 permission imposed condition 5, prohibiting external storage of materials, goods, products, chattels, scrap and waste materials. The evidence thereafter demonstrates continuing activities falling outside that prohibition.
- 4.5 Karim worked at Meadow Forge from 2009 and continued visiting after his apprenticeship. His evidence is that the external areas were used throughout that period for parking and storing vehicles, materials, equipment and other items associated with Dean's activities. His evidence supports both existence and continuity.
- 4.6 From 2010 to 2025 photographs, videos, aerial imagery, witness accounts, third-party representations and objector evidence repeatedly show or describe vehicles, equipment, materials, trailers, scrap and other items kept on the land. The evidence reveals not a short-lived activity but a continuing storage use outside the parts of Meadow Forge being land in part identified in the redline plan submitted with the CLU application.
- 4.7 By 28 March 2025, the date of the BCN relating to condition 5, on the Appellant's evidence that use had already continued for longer than the statutory ten year period.

The contemporaneous and witness evidence

- 4.8 The Appellant relies upon photographs, videos and aerial imagery showing vehicles, materials and other items over an extended period. These are contemporaneous records and provide direct evidence of the use made of the land.
- 4.9 The witness evidence likewise describes storage as an ordinary and continuing characteristic of Meadow Forge, not an isolated episode. It is consistent with the Appellant's account and inconsistent with any suggestion that the activity arose only shortly before enforcement.

The significance of the objector evidence

- 4.10 One of the most striking features is that parts of the objector evidence support the factual basis of the Appellant's case. Opposition to a use is not evidence that the use did not occur. Numerous objectors describe the very activities relied upon by the Appellant.
- 4.11 The representations refer to numerous vehicles, lorries, trailers, vans, scrap, stored materials and changing arrangements across the site. The dispute is not whether storage occurred. The issue is whether those observations, read with the other evidence, demonstrate continuity over the statutory period.
- 4.12 The objectors' own descriptions significantly assist the Appellant because they are independent observations made by people opposed to the activities. Their evidence corroborates the existence and recurring character of the external storage.

The Council's objections

- 4.13 The Council points to alleged inconsistencies and challenges aspects of the Appellant's evidence. Those criticisms do not provide a coherent alternative explanation for the extensive contemporaneous and third-party evidence of storage over a lengthy period.
- 4.14 The photographs remain. The videos remain. The aerial imagery remains. The supporting witnesses remain. The objectors' observations remain. Viewed cumulatively, that material demonstrates a continuous external storage use extending beyond ten years.

Findings sought

- 4.15 The Appellant invites the Inspector to find that the land surrounding Meadow Forge was used for the external storage of materials, goods, products, chattels, scrap, vehicles and waste materials; that the use continued throughout the relevant immunity period; and that it remained in existence at the application date.
- 4.16 Those findings are supported by mutually reinforcing evidence accumulated over many years. On the balance of probabilities, the external storage use had acquired immunity before the Council attempted to enforce against it.

5 Why the Council's Case Does Not Displace the Evidence

- 5.1 By this stage, the evidence has established the emergence of residential occupation alongside the forge use, a settled mixed use by no later than early 2013, continuous external storage, continuity of both uses throughout the relevant period, and their subsistence at the application date.
- 5.2 The question is whether any Council objection displaces those conclusions. The Appellant submits that none does.

The concealment case fails

- 5.3 Whilst not a reason for refusal of the Application the Council relies on concealment for the Appeal. The Appellant accepts the legal principle which underpins those authorities. The facts here do not resemble them.
- 5.4 This was not a hidden building or a use physically concealed from view. The activities occurred over a lengthy period while visitors, neighbours, customers, apprentices, suppliers and Council officers attended the site. There were windows which would have revealed the internal lights of nighttime occupation. There was a door. There was the continuous presence of Mr Aggett, whose residential occupation of Meadow Forge was referred to by the objectors who clearly know Mr Aggett was living there.
- 5.5 The Council received complaints, opened investigations, served PCNs, carried out visits and maintained enforcement files. No Planning Enforcement Order was sought. Its absence is not determinative, but the Council's long history of investigation is difficult to reconcile with a case of calculated concealment.
- 5.6 The Council appears to rely particularly on the Appellant's PCN responses and statements made during investigations. Those statements require careful consideration, but inconsistency is not synonymous with deliberate concealment of the *Welwyn/Fidler* kind. The issue remains what actually occurred, assessed against all the objective and independent evidence.

- 5.7 The Council also relies heavily upon the fact that historic investigations were closed. But the contemporaneous basis for those closures has not been produced. Heather Nesbitt was unable to identify any document before the Inquiry recording a conclusion that residential occupation was absent. Mrs Nesbitt declined to speculate on alternative reasons for why historic files were dealt with as they were, but she did confirm that not every breach of planning control results in enforcement action being taken. The closures therefore should not bear the weight the Council now places upon them. At most, they demonstrate that the Council repeatedly received allegations, repeatedly investigated and repeatedly decided not to pursue formal enforcement. That history is inconsistent with a case of successful concealment.

The approach in APP/F2415/X/23/3330809

- 5.8 The Appellant also relies, by way of a helpful factual comparison, upon the Inspector's decision dated 1 November 2024 in appeal reference APP/F2415/X/23/3330809, concerning Langton View Stables (submitted with the Appellant's Appeal Statement). The Appellant recognises that the decision does not bind this Inspector and that each concealment case is fact-sensitive. Its value lies in the approach taken to the evidence and the distinction drawn between conduct which may be inaccurate or misleading and conduct amounting to the degree of deliberate deception required to engage the *Welwyn Hatfield* principle.
- 5.9 In that appeal, the Inspector found that the appellant knew that she did not have permission to live in the building, had not specifically brought the material change of use to the Council's attention and had given answers which were inaccurate and misleading. Nevertheless, those matters did not establish deliberate concealment or a planned course of deception designed to circumvent planning control and escape enforcement. The Inspector concluded that the conduct amounted principally to deliberate inaction, rather than sustained or actively deceptive steps, and that it did not reach the degree of wrongdoing necessary to engage *Welwyn Hatfield*.
- 5.10 The Inspector's reasoning was informed by the objective indicators from which the residential use could have been discovered. Internal lights would have been visible in autumn and winter; domestic bins were collected; an unannounced visit would have revealed the residential use; Council Tax continued to be paid at the address; and the appellant appeared on the electoral register there.
- 5.11 The Inspector also considered the opportunity available to the authority to investigate. Although the enforcement service operated reactively and no specific complaint had been made about occupation of the building, the established planning history and known welfare facilities were matters which would ordinarily have prompted an unannounced spot check. The authority had instead confined itself to viewing the site from the highway to confirm removal of a mobile home.
- 5.12 The comparison with Meadow Forge assists the Appellant. Here, the Council did not merely possess information from which occupation might have been inferred. It received express allegations of human habitation and mixed use, opened enforcement investigations, served PCNs and attended the site. The residential arrangements were physically present within the building and the external storage was plainly visible. The Appellant also relied upon electoral registration, correspondence, address records, domestic works and numerous visitors who knew Meadow Forge as his home and workplace. These matters must be assessed alongside what the Council says about the PCN responses.

- 5.13 The Appellant does not rely upon APP/F2415/X/23/3330809 for any proposition that concealment must always be physical. The decision itself recognises that the authorities are fact-sensitive and that the four factors identified in *Welwyn Hatfield* are sufficient factors rather than necessary tests.
- 5.14 The relevant comparison is narrower and more persuasive. Conduct may be inaccurate, evasive or misleading without necessarily forming a deliberate, elaborate and sustained plan which successfully prevents the planning authority from discovering the true position. The question is one of fact and degree, considered against both the conduct alleged and the authority's actual knowledge and opportunities for investigation.
- 5.15 In the present case, even if the Inspector concludes that aspects of the Appellant's PCN responses were inaccurate or difficult to reconcile with his present evidence, that is not the end of the analysis. The Inspector must ask whether those answers formed part of a planned course of deception which actually prevented the Council from discovering the residential and storage uses. The Appellant submits that the Council's repeated knowledge, investigations and opportunities to inspect demonstrate that they did not.

The evidence does not support concealment

- 5.16 The photographs, videos, independent witnesses, statutory declarations, Council files and third-party representations are not explained away by the concealment allegation. This is an evidence-evaluation case, not a paradigm concealment case.
- 5.17 The Council was not prevented from discovering the alleged residential use. The Council knew of the allegations, despite the PCN responses. Parts of the Council were convinced in 2021 that there was 'treasure trove' of evidence from the Appellant's Facebook confirming a long term residential use, and this was shared with the Council's enforcement team. It investigated them repeatedly and had every opportunity to reach its own conclusions. The real dispute is about what the evidence ultimately proves, not whether the Council was deprived of the opportunity to investigate. It was not.
- 5.18 It took a change in planning enforcement officer in 2024 to take a different view as to the need for planning enforcement. By then the uses were lawful.

The abandonment allegation adds nothing to the appeal

- 5.19 Abandonment of the blacksmithing use was not a matter raised in the refusal of the application. It was added at the appeal by the Council.
- 5.20 The issue of abandonment should not distract from the central questions before the Inspector: has Meadow Forge been used for residential and purposes for more than ten years prior to the issue of the breach of condition notices.
- 5.21 Section 75 of the 1990 Act (which deals with the effect of a permission) confirms that "*any grant of planning permission to develop land shall (except in so far as the permission otherwise provides) enure for the benefit of the land and of all persons for the time being interested in it*".
- 5.22 The development described in the 2009 Permission permits blacksmithing.
- 5.23 The 2009 Permission contains no prescriptive conditions that requires the permitted blacksmithing use be a 'successful business', or curtailing that use if it is something less

than a 'commercial enterprise'. Accordingly there is nothing in the permission that 'provides otherwise' in the manner considered by section 75.

- 5.24 The judicial test for abandonment is a question of fact as to whether a reasonable man would consider that the right to use the land granted in a permission has been abandoned. The decision-maker should have regard to four factors: the physical condition of the building; the period of non-use; whether there had been any other use; and the owner's intentions (*Hughes v Secretary of State for the Environment, Transport and the Regions* [2000] 1 WLUK 363). What mattered was what a reasonable person would conclude in the circumstances (*Trustees of the Castell-y-Mynach Estate v Secretary of State for Wales* [1985] 1 WLUK 659). Mere cessation, reduced activity or a lengthy period of non-use does not by itself establish abandonment.
- 5.25 The Appellant's evidence is one of the continuing presence of forge equipment, continuing blacksmithing activity and continuing operation of Meadow Forge as the live-work unit described by the Appellant and the supporting witnesses.
- 5.26 Mr Aggett's evidence is that of a blacksmith and he was the only person at the Inquiry or who made representations who knows what is involved in being a blacksmith, including what jobs and activities a blacksmith might be engaged in.
- 5.27 The Appellant's clearly stated intention is that he has no intention of ceasing to operate his forge or give up blacksmithing, which is consistent with the evidence presented and the materials and equipment present in Meadow Forge.
- 5.28 If the evidence leads you as the decision maker applying the tests on abandonment to the conclusion that the blacksmithing use has been abandoned then the consequence of this conclusion is a matter of timing.
- 5.29 If the evidence indicates abandonment four years before the date of the CLU Application then the lawful use of Meadow Forge crystallises to a single dwellinghouse commencing before the section 171B time limit was extended from four years to the current ten years. As such the lawful use becomes that of a single dwelling house and that can be confirmed in the certificate.
- 5.30 If the evidence indicates that the blacksmithing use was abandoned within the four years preceding the CLU Application then certificate will not be able to confirm the mixed-use applied and will need to focus only on the lawfulness of the residential use. Whether that abandonment amounted to a material change of use is a question of fact and degree, but it does not touch on the ongoing lawfulness of the residential use.

The Council's alternative case does not explain the evidence

- 5.31 The Appellant's account is straightforward. A forge use emerged; residential occupation later arose alongside it; a mixed use became established; external storage continued; and those activities remained at the application date.
- 5.32 That account explains the domestic facilities, Karim's evidence of the Appellant's move, the independent accounts of occupation, the photographs and videos, third-party identification of Meadow Forge as Dean's home and workplace, the recurring storage observations and the consistency of the evidential record.

- 5.33 The Council criticises that account but offers no equally persuasive explanation. Its positions appear to move between no residential occupation, occupation not proved, occupation concealed, forge use abandoned, mixed use never existing and storage not proved for the necessary period. Those positions do not form a coherent planning history.
- 5.34 The Inspector must decide what most probably occurred. The Appellant's account is the only coherent explanation capable of accommodating the chronology, contemporaneous records, independent witnesses, third-party evidence, photographs, videos and Council records.

Council's treatment of the Appellant

- 5.35 The Council's enforcement position changed, but the evidence does not show that the use of Meadow Forge changed.
- 5.36 Between 2009 and 2024 the Council repeatedly investigated Meadow Forge without taking formal enforcement action. Its own later records referred to apparent occupation from around 2010 and corroboratory evidence extending still further back.
- 5.37 What did change and what led to the service of the BCNs was the involvement of a different enforcement officer.
- 5.38 But a changed institutional assessment cannot alter the historic facts which the Council had already accepted or revive an enforcement power which had already expired. The issue remains whether the uses had continued for ten years before 28 March 2025, not why a later enforcement officer took a different view to that of her predecessors.
- 5.39 And this changed institutional assessment has been perniciously pursued with prosecutions for non-compliance with the BCNs.
- 5.40 The Appellant also records the Council's late assertion that he had used a post-it flagged bundle while giving evidence. The Appellant's evidence, supported by three other persons who had observed the Appellant as he relied on his bundle (rather than the paginated bundle with which he was not familiar), is that the items seen by the Council officer were file-dividing tabs.
- 5.41 The Appellant's bundle whilst he gave evidence was openly visible to the Council's advocate and the Council's 'front bench team' who both had clear sightlines to the bundle, compared to Sarah Radley's over-the-shoulder view.
- 5.42 The Appellant's bundle during examination was also visible to the Inspector who can draw his own conclusions.
- 5.43 The Appellant requests the Inspector treats with due caution and circumspect the Council's likely request that adverse conclusions are drawn as to the Appellant's oral evidence.

Conclusion on the Council's case

- 5.44 The Appellant does not suggest that every piece of evidence points in exactly the same direction or invite the Inspector to disregard proper criticisms. He invites the Inspector to stand back and assess the whole.

- 5.45 The Council has identified points capable of being made against aspects of the evidence. It has not displaced the Appellant's case. Neither concealment, abandonment nor the alleged inconsistencies undermine the findings sought under conditions 2 and 5.

6 The Appeal Should Be Allowed

- 6.1 The Inspector is respectfully invited to find that Meadow Forge was used as a mixed use comprising a blacksmith's forge and residential occupation; that the mixed use had become established by no later than early 2013; and that it continued throughout the statutory period and at the application date.
- 6.2 The Inspector is further invited to find that the surrounding land was used for the external storage of materials, goods, products, chattels, scrap, vehicles and waste materials; and that this use likewise continued throughout the statutory period and at the application date.
- 6.3 Both uses had subsisted continuously for more than ten years before the BCNs were served on 28 March 2025. The Council's enforcement powers had therefore expired before the notices were issued.
- 6.4 The concealment allegation is not established. The abandonment allegation is unnecessary if the Appellant's continuity evidence is accepted and, in any event, lacks a coherent evidential basis.
- 6.5 The consequence is that the matters described in the application were lawful at the application date. The Council's refusal was not well-founded and the appeal should be allowed under section 195(2).
- 6.6 The remaining question is the legal characterisation of those findings and the appropriate form of certificate. That is addressed in Appendix A, which is deliberately retained as a short and adaptable module in light of Pre-Inquiry Note 02 and the way the issue may develop during the Inquiry.

Michelmores LLP

28 September 2026

Appendix 1

Dealing with the Inspector's Pre-Inquiry Note 02 and the Form of Certificate

Implementation of the 2009 permission

1 The Appellant submits that the 2009 permission was implemented. It retrospectively authorised retention of the change from agriculture to a blacksmith's forge. Blacksmithing was taking place before grant and continued thereafter. The authorised forge use therefore existed when permission was granted and continued.

2 Evidence of some residential occupation around 2009 does not compel a finding that the material mixed use now relied upon had already arisen at the moment of grant. The domestic component developed progressively. The more probable chronology is that the retrospective permission took effect in relation to the existing forge use and that a material residential component and external storage use subsequently emerged.

The later planning chapter

3 The Inspector has identified the possibility that a later material mixed use brought about a new chapter in the planning history. The Appellant accepts that this is a possible legal characterisation. It does not lead to dismissal of the appeal.

4 On the first analysis, permission 09/01587/FULL continued to subsist and conditions 2 and 5 regulated the site. Residential occupation and external storage were breaches which, after ten years, acquired immunity. *Ocado* confirms that it is the lawful breach which should be identified in the certificate.

5 On the alternative analysis, the later material mixed residential and forge use, together with external storage, became the operative lawful planning status after the statutory period. On that analysis, the certificate should identify those lawful uses directly.

6 Section 191(4) and *Panton and Farmer* permit the description to be modified or substituted to reflect the lawful use established by the evidence. The statutory scheme therefore supplies the flexibility required to give legally accurate effect to the Inspector's factual findings.

Effect of the BCNs

7 The appeal is determined by reference to lawfulness at the application date. The effect of the BCNs is nevertheless unavoidable. If the ten-year period had not expired when they were served, they were capable of interrupting immunity. If the period had expired, the Council's enforcement power had already been lost and the notices could not defeat accrued immunity.

8 The Appellant respectfully invites the decision to state expressly whether the statutory periods had expired before 28 March 2025 and, if so, to explain that the BCNs did not prevent the residential and storage activities being lawful at the application date. That finding determines the planning issue without purporting to determine the stayed criminal proceedings.

Suggested certificate wording

Primary wording: lawful breaches of conditions 2 and 5

9 If the Inspector concludes that the 2009 permission and its conditions remained operative, the Appellant invites a certificate in the following form:

The use of the building known as Meadow Forge as a mixed or composite use comprising a blacksmith's forge and residential occupation, contrary to condition 2 of planning permission 09/01587/FULL, and the use of the land shown edged red on the attached plan for the external storage of materials, goods, products, chattels, scrap, vehicles and waste materials, contrary to condition 5 of that permission, were lawful at the date of application 25/01406/CLU.

Alternative wording: later lawful mixed and storage uses

10 If the Inspector concludes that the later mixed use and associated storage constituted the operative lawful planning status, the Appellant invites a certificate in the following form:

The use of the building known as Meadow Forge as a mixed or composite use comprising a blacksmith's forge and residential occupation, together with the use of the land shown edged red on the attached plan for the external storage of materials, goods, products, chattels, scrap, vehicles and waste materials, was lawful at the date of application 25/01406/CLU.

11 The precise wording and plan should reflect the Inspector's factual findings. The certificate should identify the use or breaches found lawful, while the decision reasons explain the consequence for conditions 2 and 5 and for the BCNs.