
Appeal Decisions

Inquiry Held on 7 & 8 May 2019 and 24, 25 & 26 July 2019

Site visit made on 7 May 2019

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal A Ref: APP/L1765/C/18/3208707

**Land at High Ridge Farm, Hospital Road, Shirrell Heath, Southampton
SO32 2JR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dan Dennis of Equestrian Fencing against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 9 July 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land and buildings in the area hatched red on the plan attached to the notice from the manufacture, assembly, storage and sale of timber products to trade and general public together associated offices, outbuildings, portacabins and car parking and storage and maintenance of plant and equipment to a mixed use comprising:
 - a. The manufacture, assembly, storage and sale of timber products to trade and general public together associated offices, outbuildings, portacabins and car parking and storage and maintenance of plant and equipment: and
 - b. A goods vehicle operating centre not associated with the lawfully permitted use of the land, including the parking of two goods vehicles on the Land.
 - The requirements of the notice are:
 - a. Cease the use of the land for the purposes of a goods vehicles operating centre and all associated operations; and
 - b. Remove all goods vehicles which are unconnected to the lawful established use on the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/L1765/C/18/3208721

**Land at High Ridge Farm, Hospital Road, Shirrell Heath, Southampton
SO32 2JR**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Dan Dennis of Equestrian Fencing against an enforcement notice issued by Winchester City Council.
- The enforcement notice was issued on 9 July 2018.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land and buildings in the area hatched red on the plan attached to the notice from a mixed use site having a primary equestrian use and a secondary use ancillary to the residential dwelling, to a mixed use comprising:
 - a. Manufacturing and assembly of timber products; and
 - b. Storage that is not connected with or ancillary to the lawful use of the Land and Buildings including the storage of timber and timber products; and

- c. Access and deliveries by commercial vehicles not connected with or ancillary to the lawful use of the Land and Buildings; and
 - d. Use ancillary to the equestrian use; and
 - e. Use ancillary to the residential dwelling.
 - The requirements of the notice are:
 - a. Cease the use of the Land and buildings for the manufacture and assembly of timber products;
 - b. Cease the use of the Land and buildings for storage that is not connected with or ancillary to the lawful use, including the storage of timber and timber products;
 - c. Cease the use of the Land by commercial vehicles not connected with or ancillary to the lawful use.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/L1765/C/18/3208865

Land at High Ridge Farm, Hospital Road, Shirrell Heath, Southampton SO32 2JR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Dan Dennis against an enforcement notice issued by Winchester City Council.
 - The enforcement notice was issued on 9 July 2018.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the Land in the area hatched red on the plan attached to the notice from a mixed use site with a primary equestrian use together with use ancillary to the residential dwelling, to a mixed use comprising:
 - a. Equestrian use together with use ancillary to the residential dwelling; and
 - b. Parking and deliveries by commercial vehicles not connected with or ancillary to the lawful use of the Land; and
 - c. Parking of vehicles associated with the activities and business taking place on the adjoining timber yard established under application Ref: 11/00238/FUL; and
 - d. Storage of timber and other items which are not connected with or ancillary to the lawful use of the land.
 - The requirements of the notice are:
 - a. Cease the use of the land for parking or deliveries by commercial vehicles, vehicles associated with the activities and business taking place on the adjoining timber yard established under application Ref: 11/00238/FUL, and any vehicles not connected with or ancillary to the lawful use of the land;
 - b. Cease the use of the land for any storage of timber and other items not connected with or ancillary to the lawful use of the land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b) and (d) of the Town and Country Planning Act 1990 as amended.
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Summary Decisions: Appeal A is allowed and the enforcement notice is quashed as varied. Appeal B is dismissed and the enforcement notice is upheld as corrected and varied. Appeal C is dismissed and the enforcement notice is upheld as corrected and varied.

Background and procedural matters

1. The enforcement notices subject to these appeals are three out of a total of seven enforcements notices issued by the City Council in relation to this site in July 2018. The remaining four enforcement notices were either not appealed against or, in one case, an appeal was made but subsequently withdrawn. The three enforcement notices subject to these appeals are

identified by the City Council (on the plans attached to the notices) as Notice B, Notice D and Notice G, and were referred to as such throughout the Inquiry. It is unfortunate, but unavoidable, that the receipt of the appeals did not entirely correlate with the sequence established by the City Council in issuing and labelling the notices. Therefore, in the interests of clarity, Appeal A relates to Notice D; Appeal B relates to Notice B; and Appeal C relates to Notice G.

2. The enforcement notices issued by the City Council in July 2018 followed an appeal against an earlier enforcement notice in relation to the same site issued on 29 March 2017 (APP/L1765/C/17/3174806). I held an Inquiry into that appeal in February 2018 and ultimately found the notice to be a nullity, such that no further action was taken in connection with that appeal. I did, however, visit the site at that time. I also made an accompanied site visit at the opening of this Inquiry. On the basis of those two site visits, and having heard all the evidence presented at this Inquiry, I was sufficiently familiar with the site that a further visit at the close of the Inquiry was not necessary.
3. All evidence at the Inquiry was given under oath by way of affirmation.
4. The appellant submits that the enforcement notices subject to these appeals are nullities for essentially the same reasons that I found in relation to the previous enforcement notice issued in March 2017, but with an additional problem of far more fundamental importance. The latter relates, in the appellant's view, to the failure of the City Council to correctly identify the relevant planning unit. It is therefore necessary for me to identify the correct planning unit before going on to consider the appellant's submissions on the question of nullity.

The Planning Unit

5. There is no dispute that the tests set out in *Burdle and Willaims v SSE and New Forest DC* [1972] 1 WLR 1207 should be applied in this case when considering the planning unit. There is no need for me to rehearse the tests set out in *Burdle* here, but it is sufficient to say that the three tests set out in that judgment primarily concern the uses taking place within a given unit of occupation.
6. The land to which each of the enforcement notices relate forms part of a larger parcel of land in the ownership of the Dennis family. I therefore consider that any assessment of the planning unit in this case and the subsequent application of the tests in *Burdle* must begin with the identification of this large parcel of land as the unit of occupation.
7. At the time the enforcement notices were issued, part of this unit of occupation (that closest to Hospital Road) was in use for the manufacturing, assembling, storage and sale of timber products to trade and the general public together with associated offices, outbuildings, portacabins and car parking and storage and maintenance of plant and equipment, all pursuant to a Certificate of Lawfulness granted in September 2009 (City Council Ref: 09/01384/LDC). For convenience, I shall hereafter refer to this part of the site as the 'established timber yard'.
8. To the north-west of the established timber yard are two buildings that, at the time the enforcement notices were issued, were being used for the

manufacturing and assembly of timber products (and which are the focus of Notice B). For convenience, I shall hereafter refer to these buildings as 'the workshops'. To the immediate south of the workshops the land is being used for the storage of timber. The workshops and the area of storage collectively form the land hatched red in Notice B. I shall hereafter refer to this area as Area B.

9. The established timber yard is, for the most part, physically separate from Area B. There is, however, an access linking the established timber yard with Area B. I understand that this access is not available to customers visiting the established timber yard but is used by employees of Equestrian Fencing to move timber and timber products between the established timber yard and Area B. There is, therefore, a clear functional link between the established timber yard and Area B.
10. Situated between the established timber yard and Area B is a detached dwelling known as High Ridge Farm. The dwelling has its own curtilage, and is physically separated from the established timber yard and Area B by fencing. Furthermore, whilst this dwelling is occupied by the appellant and his family, I have no evidence to show that it is used in connection with the Equestrian Fencing business.
11. To the north of this dwelling is an area that is used for the storage of timber and the parking of vehicles. This is the area subject to Notice G, and I shall hereafter refer to it as Area G. The evidence before me indicates that there is a functional link between Area G and the established timber yard, and possibly also with Area B.
12. Adjoining Area G to its south-east is Simms plant storage compound. This relatively small area is enclosed by fencing, and contains various pieces of plant and equipment. The evidence before me indicates that, whilst some of this plant and equipment is employed by Equestrian Fencing in connection with activities related to the established timber yard (and by association Areas B and G), some of the plant and equipment is hired out for purposes wholly unrelated to the established timber yard.
13. Moving north-eastwards away from Hospital Road, the nature and the character of the use of the unit of occupation changes. There is a stable building immediately to the north of Area B that, at the time the enforcement notices were issued, was still being used to stable horses. Beyond that is a menage that is being extended pursuant to a planning permission granted in April 2019 (City Council Ref: 19/00197/FUL). The description of development granted planning permission also included the siting of a horse walker. This part of the unit of occupation, comprising of stables, a menage and potentially a horse walker, therefore has a primary use for equestrian purposes, a use that has been consolidated by the recent granting of planning permission 19/00197/FUL. The latter are physically separated and distinct from other uses taking place on the unit of occupation and, whilst I recognise that the stable building is not physically separated, there is no functional relationship with those other uses.
14. In terms of area, the largest part of this unit of occupation is divided into paddocks. These paddocks are separated from each other and the other uses taking place on the unit of occupation by fencing. From the limited evidence available to me, and as a matter of logic, it appears that the horses stabled in

the stable buildings on the unit of occupation are exercised in these paddocks. I therefore consider that this part of the unit of occupation also has an equestrian use.

15. It therefore seems to me that here is a situation where within the single unit of occupation there were, on the date on which the enforcement notices were issued, two or more physically separate and distinct areas occupied for different and unrelated purposes. This is the scenario contemplated in the third of the *Burdle* tests. In accordance with that judgment, each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit. Applying that principle to the facts of this case, I consider that there are currently four separate planning units within this single unit of occupation, as follows.
16. The Land to which the enforcement notices relate, as shown edged in black on the plans attached to the enforcement notices, encompasses the established timber yard, Area B and Area G, but excludes the Simms compound and the dwelling. The Land shown edged in black on those plans also encompasses other parts of the Land that are the subject of the other enforcement notices issued in July 2018 but which have not been appealed against or in relation to which the appeal was subsequently withdrawn. Those notices each allege a use or operational development that has a clear functional relationship with the established timber yard. By reason of the functional relationship between the established timber yard, Area B and Area G, as well as the Land to which the other enforcement notices relate, I conclude that as a matter of fact and degree the Land shown edged in black on the plans attached to the enforcement notices formed a single planning unit.
17. On the date on which the enforcement notices were issued, and again as matter of fact and degree, I conclude that the dwelling known as High Ridge Farm formed a separate planning unit. Similarly, that part of the unit of occupation in equestrian use (comprising the stables, menege and the paddocks) has no functional link with the land subject to the enforcement notice and is also a separate planning unit.
18. The Simms plant storage compound is a more complicated situation, insofar as Equestrian Fencing is a principal user of the plant and equipment operated by Simms, and effectively has control over one of the vehicles listed on the Operators Licence held by Simms. To that extent, the use of that land is functionally related to the established timber yard. The operator of Simms plant storage compound did not appear at the Inquiry to explain his operation in more detail but, on the limited evidence before me, it appears that the compound functions as separate entity that is capable of operating, and on occasion does operate, independently of Equestrian Fencing. I am also mindful that, although contained within the unit of occupation, the Simms plant storage compound is physically separated from the other uses taking place on the unit of occupation. For these reasons, and as a matter of fact and degree, I conclude that the Simms plant storage compound is also a separate planning unit.
19. It is of course possible that the planning unit(s) within a unit of occupation may change over time as the nature, location and intensity of primary uses changes and fluctuates. In my view that is clearly the case here. The series of aerial photographs provided by the Council, together with the evidence of

the witnesses who gave evidence at the Inquiry, illustrate how the planning unit(s) on this unit of occupation evolved over time.

20. In granting the Certificate of Lawfulness granted in September 2009 (City Council Ref: 09/01384/LDC), the City Council must have been satisfied that the manufacturing, assembling, storage and sale of timber products (together with the other uses cited in that certificate) had been taking place by at least September 1999. An aerial photograph dating to the year 2000 shows activity in that part of the site now occupied by the established timber yard, and also shows two Nissen Huts in that area that I understand were subsequently removed in, around or after 2011.
21. That photograph shows a mobile home in the position now occupied by the dwelling known as High Ridge Farm, sitting within its own curtilage. The photograph also shows the two buildings in what I have called Area B (now the workshops) and, whilst there is an access linking those buildings to the established timber yard in broadly the same place as now existing, there is no dispute that both of those buildings were being used as stables at the time. To the north of those buildings is the stable building referred to above, a horse walker and the original menege. The photograph does not show all of the unit of occupation but the paddocks towards the southern end of that unit of occupation are clearly visible in the photograph.
22. An aerial photograph taken in 2005 shows that little had changed by that time. The activity in the established timber yard had clearly intensified compared with the situation in 2000 but remained entirely within the area covered by the Certificate of Lawfulness later granted in 2009. The mobile home is still in situ and, at around that time, the City Council granted a Certificate of Lawfulness for the use of that mobile home for residential purposes (City Council Ref: 05/01032/LDC). There is no evidence of the Simms plant storage compound being in place at that time. All the stable buildings are in place and, whilst the link to the established timber yard is still evident, the photograph shows that the stable buildings were still served by a separate vehicular access from Hospital Road. The horse walker and the menege are present, and paddocks are visible in that part of unit of occupation covered by the aerial photograph.
23. Whilst the aerial photographs show the buildings and open storage on the land, they do not necessarily indicate the use of that land. In this regard, the appellant believes that the paddocks were, and still are, in agricultural use and have not been used for equestrian purposes continuously for a period of ten years. In his view, this must be so given that the absence of a Certificate of Lawfulness for that use.
24. I must, however, reach my conclusion on the planning unit based upon the evidence available to me. In that respect, Mr Dennis indicates in his evidence that his father reared pigs on the land starting from around 1982 but that by early 1990 the pig farming business was no longer profitable. In her evidence, Mrs Cobden indicated that she kept horses/ponies in the then empty pig buildings until around 2003, and ran a livery business from there. It was her evidence, supported by that given by Mrs Dennis, that the Hursley Hambledon Hunt livered their horses there until the winter of 2006. Having regard to that evidence, together with the physical presence of the menege and the horse walker shown in the aerial photographs, I conclude on the

balance of probability that the paddocks, stables, horse walker and menege were in equestrian use in 2005.

25. From the aerial photograph taken in 2005, it would appear that the uses described above were not physically separated to any great extent at that time. However, the evidence before me indicates that these uses were clearly functionally separate and distinct from each other. Consequently, I conclude that in 2005 at least the unit of occupation comprised three planning units: (i) the established timber yard; (ii) the mobile home and (iii) the remainder of the land, including all the stables, the horse walker, the menege and the paddocks, was in equestrian use.
26. It is on the basis of the above that I approached the question of nullity, and also the appeals on grounds (b), (c) and (d) insofar as they are relevant to each appeal.

Nullity

27. By way of context, and before reaching any conclusions on the arguments advanced by the appellant in this respect, the first point to make is that the planning unit formed by the land edged black on the plan to which the enforcement notices relate is a very complex one. The primary use taking place within that planning unit is contained in a number of separate buildings and extends across various parts of the planning unit. Moreover, the primary use is interposed by various uses that may properly be regarded as being associated with primary uses taking place on other planning units within the single unit of occupation. I can therefore fully understand the problems that the City Council faced when drafting these enforcement notices, and am mindful that the City Council got itself into difficulty when it attempted to draft a single enforcement notice to cover the entire planning unit (insofar as I found that notice to be a nullity).
28. The modern approach to the question of nullity is to be found in the judgment of *Oates v SoCLG and Canterbury*¹, which drew extensively upon the preceding case law in relation to nullity. A number of principles emerge from this judgment, including that the test in *Miller-Mead*² is best understood not as one of 'hopeless ambiguity' but rather as a failure to tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. The judgment in *Oates* also indicates that a degree of uncertainty does not necessarily render it non-compliant with statute and that the notice should be read as a whole. Overall, the judgment in *Oates* indicates that the question of nullity should not be approached in a way which is unduly technical or formalistic. Moreover, as His Honour Judge Waksman QC pointed out, context is everything.
29. I address first the 'central problem' that the appellant considers to be of fundamental importance. Although the City Council does not identify the planning unit in the enforcement notices, it has subsequently made its position clear: it argues that the established timber yard comprises a single planning unit, and that the remaining areas within the area edged in black on the plans attached to the enforcement notices, together with the buildings adjoining the menege, constitutes a separate single planning unit. Although I

¹ *Oates v SoCLG and Canterbury* [2017] EWHC 2716.

² *Miller-Mead v MHL* [1963] 2 WLR 225

take a slightly different view, believing that the City Council has fallen into the trap of not properly considering the unit of occupation as a whole, I consider that the planning unit identified by the City Council was sufficient for it to identify the lawful planning uses that were taking place at the relevant time and to compare those to the uses taking place on the date the enforcement notices were issued.

30. I find nothing wrong in the City Council directing separate enforcement notices to attack uses on different parts of the planning unit that it had identified. Although criticised by the appellant as pre-dating *Burdle* and having no apparent currency in the Planning Encyclopedia, the judgment in *Hawkey and Others v SoSE* [1971] 22 P&CR 610 is good authority for the proposition that an enforcement notice does not have to be directed at the planning unit as whole, nor indeed to identify it. Similarly, whilst noting the reservations expressed by the appellant, the judgment in *Richmond-upon-Thames LBC v SoSE & Beechgold Ltd* [1988] JPL 396 is in my view good authority for the proposition that the question as to what or what was not a planning unit is not critical at the stage of allegation.
31. It therefore seems to me that the seven enforcement notices issued by the City Council in July 2018 were each carefully directed towards the particular area where 'the action is taking place', in accordance with the judgment in *Hawkey*. In the light of the difficulties that the City Council found itself in when attempting to issue a single notice to cover the whole planning unit (as the City Council perceived it to be), that seems to me to be an eminently sensible and practical approach to take in this particular context.
32. Having been presented with a total of seven enforcement notices (of which only three remain relevant for present purposes), I see no reason why the notices cannot stand together. The breach of planning control alleged and the requirements to comply with each separate notice must be ascertained from within the four corners of that document. The enforcement notices issued each attack different parts of the planning unit and I therefore see no reason why they should be considered to be mutually exclusive. There are, I accept, some defects with the individual notices to which I return below. However, as a matter of principle, provided that they comply with the principles set out in *Oates*, issuing a number of separate enforcement notices does not mean that each individual notice should not stand on its own merits.
33. Taking each notice in turn, Notice B describes the lawful planning use as a mixed use having a primary equestrian use and a secondary use ancillary to the residential dwelling. Pausing there, the allegation is wrong to describe a mixed use where there is one primary use with a secondary ancillary use. A mixed use must have two or more primary uses where one use is not ancillary to the other, although there may be ancillary uses associated with each primary use. Furthermore, activities carried on within a single planning unit cannot be incidental or ancillary to activities carried on outside that unit.
34. The reference in the allegation to the 'secondary use ancillary to the residential dwelling' can only refer to High Ridge Farm which, I have concluded, is a separate planning unit in its own right. It follows that the 'secondary use ancillary to the residential dwelling' cannot be an ancillary use and must itself be a primary use. I therefore consider that, upon closer analysis, the notice was correct to allege a mixed use albeit the description of

that mixed use was not correct. To my mind, this particular aspect of the notice illustrates the complexity of this particular unit of occupation, in which uses taking place in any one planning unit overlap into other planning units having a different primary use. This gives primacy to the approach advocated in *Oates* to the effect that the question of nullity should not be approached in a way which is unduly technical or formalistic, and which I have adopted here.

35. With that approach firmly in mind, there is no reason why the recipient of the notice would not have understood with reasonable certainty that the allegation was referring to an existing use of this part of the site that related to the dwelling known as High Ridge Farm. I will consider below whether the notice can be corrected in this respect but ultimately the question as to whether that description is correct or not could be tested under an appeal on ground (b). It follows that the notice is not a nullity in this respect.
36. Moving on to the mixed use alleged to be taking place, as a matter of ordinary language the uses described at (a), (b) and (c) are clearly set out. Consequently, in my view the appellant would have had no difficulty in understanding what was being alleged on 'first opening the envelope' and then being able to mount a defence against the notice.
37. I take the appellant's point that the ancillary uses alleged (d) and (e) are not so clearly stated. There is an immediate difficulty insofar as activities carried on within a single planning unit cannot be ancillary or incidental to activities carried on outside that unit. As drafted, the primary use of equestrian use alleged in (d) becomes 'use ancillary to the equestrian use' but, because the primary equestrian use to which the use is said to be ancillary is taking place on another planning unit, that cannot be right. Similarly, the 'secondary use ancillary to the residential dwelling' becomes 'use ancillary to the adjoining dwelling' and, even setting aside the introduction of the word 'adjoining' in that sentence, that cannot be right either.
38. However, adopting an approach that is not unduly technical or formalistic, the wording used by the City Council clearly conveys the message that the equestrian use is considered to have ceased to be a primary use of this planning unit. The fact that the equestrian use in that scenario is considered to be associated with the primary equestrian use taking place on a different planning unit within the same unit of occupation does not negate that message, albeit it does require some clarification. In my view, the main message that the City Council is seeking to convey in the notice is apparent from the four corners of the document and the recipient of the notice would have been able to, and in fact did, challenge that through appeals on grounds (b) and (c). The same applies to the 'use ancillary to the adjoining residential dwelling' which, whilst lacking somewhat in precision, is clear as to its intent.
39. Overall, then, and adopting the modern approach to the question of nullity advocated in *Oates* that should not be approached in a way which is unduly technical or formalistic, I am satisfied that Notice B told the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. I will consider later whether the notice is capable of being corrected and/or varied to rectify some of the uncertainties to which the appellant refers, but I am nevertheless satisfied that Notice B is not a nullity.
40. Turning to Notice D, I have absolutely no difficulty with the phrase 'not associated' in the second limb of the allegation at paragraph 3 of the notice.

The meaning of 'associated' is clear as a matter of ordinary language, and I see no reason why the recipient of the notice would not have understood what was being alleged in the notice in that respect. Neither do I have any difficulty with the reference to 'two goods vehicles'. It is difficult to know how the City Council could have been more precise in that respect: for example, stating the registration number of the vehicles (even if known) would render the notice vulnerable from changes in the vehicles used. Consequently, for all practical purposes, the term 'two goods vehicles' distinguishes the use from private cars and, in conjunction with the term 'not associated', defines the alleged use with sufficient precision and clarity to enable the recipient to understand the breach of planning control that is being alleged.

41. Where I do have some difficulty is in the way in which the requirements at paragraph 5 of the notice do not precisely follow through from the breach of planning control alleged in paragraph 3. There is, in particular, some inconsistency between the wording in those two paragraphs. However, when read as a whole, and given that the allegation in paragraph 3 of the notice is clear, I consider that any uncertainty in relation to the requirements of Notice D does not take it outside the scope of 'reasonable certainty' and does not make the notice a nullity in the language of *Oates*.
42. Notice G suffers from the same the defects as Notice B in terms of describing an existing mixed use where there is one primary use with a secondary ancillary use. I again take this to be a consequence of the complexity of the various uses taking place in the unit of occupation as a whole and does not render the notice a nullity. The appellant again takes issue with the use of words such as 'commercial' and 'associated', but these are ordinary words in every day usage, and there is no reason why the recipient of the notice should have had difficulty in understanding what was meant in this particular context.
43. There is a slight discrepancy between the breach of planning control alleged in paragraph 3 of the notice and the requirements at paragraph 5, but only insofar as the word 'any' has crept into the requirement at (a). Apart from that, the requirements of the notice flow directly from the alleged breach of planning control. I therefore consider that Notice G tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it. It follows that, adopting the approach in *Oates*, Notice G is not a nullity.
44. It is important at this point to draw the distinction between my conclusions here and those in relation to the previous notice issued in March 2017. (APP/L1765/C/17/3174806). In this respect, the key difference is in the requirements to comply with the notices and in particular how the various constituent parts of the allegation feed through into those requirements. The requirements of the notice issued in March 2017 were either not set out with sufficient clarity or went beyond the breach of planning control alleged. By contrast, helped no doubt by the decision of the City Council to target individual parts of the planning unit rather than rely upon a single notice, the requirements of the notices issued in July 2018 largely flow directly from the breach of planning control alleged. Consequently, notwithstanding a degree of uncertainty in some places, each of the three enforcement notices now before me tell the recipient with 'reasonable certainty' what the breach of planning control is and what must be done to remedy it.

45. Finally in this context, the appellant initially referred me to the judgment in *Sarodia v L.B. Redbridge* [2017] EWHC 2347 (Admin) in which the court cited the guidance of Lord Denning MR in *Miller Mead* in relation to misrecitals. However, it was indicated in closing submissions that the appellant was not pursuing that point and I have therefore not considered it further.
46. In summary on the question of nullity, I conclude that the relatively minor errors and, in some places a degree of uncertainty, do not place the notices in that territory. Consequently, in my view the correct approach is consider whether the notices can be corrected and/or varied in those respects without causing injustice. I turn to that question now.

Corrections and variations

47. Although I have found that none of the enforcement notices before me are nullities, I must go on to consider whether the defects in the notices can be corrected without causing injustice. If they cannot, then the notices must be considered invalid and set aside. I shall therefore consider each individual notice in turn.
48. In relation to Notice B, as indicated above, the notice is correct to describe a 'mixed use' but the reference to 'secondary use ancillary to the residential dwelling' leads to some uncertainty as to the precise meaning and could be clearer. The Council has suggested that the allegation could be amended to '....including equestrian purposes and use connected with to the adjoining residential dwelling', that being the wording used in *Reed v SoSCLG* [2014] EWCA Civ 241. I will adopt that wording but, to reflect the particular circumstances in this case, will replace 'adjoining residential dwelling' with 'the dwelling known as High Ridge Farm'.
49. Having corrected the 'from' part of the alleged breach of planning control in that respect, it then becomes necessary to correct the 'to' part of the allegation in paragraphs 3(d) and 3(e) of the notice to correlate with that.
50. In addition, there is some uncertainty over the term 'commercial vehicles' in paragraph 3(c) of the notice. In my view, the adjective 'commercial' adds nothing to the meaning of the allegation there and the words 'not connected with or ancillary to' in that paragraph are sufficient in themselves to convey the meaning intended. I shall therefore delete the word 'commercial' from paragraph 3(c), as well as from the attendant requirement at paragraph 5(c).
51. Subject to the proposed correction of paragraph 3(c), the mixed use alleged to be taking place at (a), (b) and (c) of paragraph 3 is clear but those set out at (d) and (e) run into the problem that activities carried on within a single planning unit cannot be ancillary to activities carried on outside that unit. I will therefore correct these by deleting the reference to 'ancillary' and describe them as taking place in relation to uses taking place in association with uses taking place on other planning units in the unit of occupation or in connection with the dwelling known as High Ridge Farm, as appropriate.
52. In terms of Notice D, the requirements at paragraph 5 of the notice do not precisely follow through from the breach of planning control alleged in paragraph 3. In particular, the requirement at paragraph 5(a) includes the additional words 'and all associated operations', and the requirement at

paragraph 5(b) becomes 'all goods vehicles' rather the 'two goods vehicles' alleged in paragraph 3(b).

53. On reflection, I find that the words 'and all associated operations' are a logical extension to the alleged use as goods vehicle operating centre and can remain. However, the Council has clearly identified that only two vehicles are parked in connection with the alleged use as goods vehicle operating centre, being those covered by the Operator's Licence held. I consider that the requirement at paragraph 5(b) should reflect that. I shall vary the notice accordingly.
54. The allegation in Notice G suffers from the now familiar problem that activities carried on within a single planning unit cannot be incidental or ancillary to activities carried on outside that unit. As in relation to Notice B, I will correct paragraph 3(a) of the notice to broadly follow the wording used in the *Reed* judgment but will again relate it specifically to the dwelling known as High Ridge Farm.
55. As with Notice B, the inclusion of the term 'commercial vehicles' in paragraph 3(b) of the notice introduces a degree of uncertainty. I shall therefore similarly delete the word 'commercial' from paragraph 3(b), as well as from the attendant requirement at paragraph 5(a).
56. There is, in my view, nothing defective about the plans attached to any of the notices. This matter was briefly raised in the appellant's Statement of Case in respect of some of the notices but was not pursued at the Inquiry.
57. I am satisfied that none of the relatively few and minor corrections and variations to the notices that I propose to make fundamentally change the meaning or purpose of those notices. I am therefore satisfied that no injustice would be caused by making those corrections and variations. It follows from this that none of the notices before me are invalid and all three notices can stand subject to correction and/or variation.

Appeal A: the appeal on ground (b)

58. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters have not occurred. An appeal on ground (b) is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
59. In relation to this ground of appeal, the pertinent part of the alleged breach of planning control is that set out at paragraph 3(b) of Notice D: specifically, a goods vehicle operating centre not associated with the lawfully permitted use of the land, including the parking of two goods vehicles on the Land. Two points flow from this.
60. Firstly, the notice seeks to attack only the goods vehicle operating centre insofar as *it is not associated with the established timber yard* (my wording and emphasis). It follows that any vehicle movements generated by the goods vehicle operating centre that are associated with the established timber yard would be an integral part of that lawful use and not be caught by this allegation. This would include vehicles parked in that area.

61. This leaves only those vehicles operated not in association with the established timber yard. Logically, any movements not associated with the established yard would for the most part involve transporting plant and equipment stored in the Simms plant storage compound. The latter is too small for the goods vehicles to be routinely parked within the compound, but the evidence given to the Inquiry was that the goods vehicles used for movements not associated with the established timber yard (as well as those goods vehicles that are) are usually parked on part of the access between the established timber yard and Area B. That is not within the area covered by the enforcement notice, as shown hatched in red on the plan attached to the notice.
62. Although local residents had evidence of vehicle movements entering and leaving the site, there was no evidence that could positively link the goods vehicle operating centre with activities that were not in connection with the established timber yard once the vehicles had entered the site. Consequently, whilst the burden falls upon the appellant with this ground of appeal, neither the Council nor local residents could offer any evidence to cast doubt upon the evidence given by the appellant that the alleged use has not occurred in the area covered by the notice. Accordingly, I conclude, on the balance of probability, that the matters stated in the notice have not occurred and that the appeal on ground (b) should succeed.
63. In these circumstances, Notice D will be quashed. Consequently, the appeal on ground (f) that has also been made as part of the appeal against this particular notice does not need to be considered.

Appeals B and C: the appeals on ground (b)

64. The appellant's case on this ground is the same for both Appeal B and Appeal C. It is therefore convenient to take them together. The appellant's case is simply that the lawful use of the land is not equestrian, such that the 'from' part of the alleged breach of planning control is incorrect.
65. There is, it seems to me, a massive and striking inconsistency in the appellant's position in this respect. On the one hand, the appellant initially contended that the alleged equestrian use is incorrect and that the lawful use of the land is for agriculture. Indeed, the appellant's appeal on ground (b) is entirely predicated on that view.
66. On the other hand, a large part of the appellant's narrative in relation to the appeals on ground (d) is that the workshops now used in association with the established timber yard were converted for that purpose from stables. In this respect, there is the evidence of Mrs Cobden that she kept horses/ponies in and ran a livery business from those buildings, and that the Hursley Hambledon Hunt livered their horses there. This evidence is supported by that given by Mrs Dennis. For reasons that I set out later, I have serious reservations about some aspects of appellant's narrative in relation to his appeal on ground (d), particularly in terms of when the use of the buildings as workshops began. By contrast, the evidence that the buildings were being used as stables before the use as workshops commenced is consistent with other evidence and, in my view, for that reason can be relied upon.
67. Moreover, aerial photographs consistently indicate the presence of a menage and a horse walker on the land at that time. Both of these facilities are

inextricably linked to an equestrian use as distinct from an agricultural use for, say, the keeping of horses for use in the farming of the land.

68. To be fair, the appellant did qualify his position by indicating that, in the absence of a planning permission or a Certificate of Lawful Development, it was not possible to form a view on the lawful use of the land. In support of that, the appellant points to an appeal decision relating to this site dating to June 2003 in which the Inspector declined to form a view of the lawful use of the land in the absence of a Certificate of Lawful Development (APP/L1725/A/02/1104686). However, the Inspector's comments were made in the context of a planning appeal under section 78 of the 1990 Act in which the Inspector did not have the evidence before him to reach an informed view.
69. As part of this enforcement appeal under section 174 of the 1990 Act against a notice that alleges a material change in the use of the land, I am required to form a view on the lawful use of the planning unit(s) as a preliminary step. By contrast to the Inspector in 2003, having gathered sufficient evidence to do that, I am in a position to take an informed view on this matter and as indicated above consider that the lawful use of the land covered by two notices is for equestrian purposes.
70. I conclude that the City Council was correct to allege a change of use from an equestrian use in these notices. I therefore conclude that, on the balance of probability, the matters stated in Notice B and Notice G have occurred. Accordingly, the appeals on ground (b) both fail.

Appeal B: the appeal on ground (c)

71. The ground of appeal is that, in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control.
72. Given that the lawful use of the land subject to this notice is an equestrian use, the change of use to a mixed use that includes the manufacturing and assembly of timber products constitutes a significant change in the nature and character of the use of that land. It is therefore more likely than not that such a change of use constitutes a material change of use, and therefore requires planning permission. Indeed, Mr Stone accepted that in answer to my question on the point. It is worth adding that my conclusion would have been exactly the same had I found the lawful use of the land to be agriculture.
73. I conclude, on the balance of probability, that the matters stated in the notice do constitute a breach of planning control. Accordingly, the appeal on ground (c) fails.

Appeal B: the appeal on ground (d)

74. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of ten years beginning with the date of the breach. The test in this regard is the balance of probability and again the burden of proof is on the appellant.

75. Because the City Council had previously purported to take enforcement action against that same use with the issuing of an enforcement notice on 29 March 2017, the 'second bite' provision under section 171B(4) of the 1990 Act comes in into play. Consequently, the appellant must show that the use commenced ten years before the date on which the original notice was issued. The relevant date for that purpose is therefore 29 March 2007.
76. The essence of the appellant's appeal on this ground is that the workshops were first used for the construction of timber products commencing in or around November 2006, and have been continually used for that purpose ever since. I am mindful in this respect that the date of November 2006 is only a few months prior to the relevant date of 29 March 2007 by which the appellant must show that the use had commenced.
77. The evidence relied upon by the appellant is solely that given by the witnesses, under oath, at the Inquiry. That evidence was not supported by any documentary evidence. The consistent narrative that arose from those witnesses and their written statements is that until 2006 the two Nissen Huts that then stood on the Hospital Road frontage were used for the manufacturing of timber products. By that date, the Nissen Huts were said to be in poor condition. In 2006, Mrs Cobden fell pregnant with her second child and decided to terminate her livery arrangements with the Hursley Hambledon Hunt. With no other parties interested in pursuing the livery business, the opportunity therefore presented itself to move the manufacturing of timber products out of the poor conditions within the Nissen Huts into the by then redundant stable buildings. In addition to providing more space and better working conditions, the stable buildings offered greater opportunity for improvement as and when finances permitted.
78. Even before considering the evidence of the individual witnesses in detail, my initial impression was that the narrative presented by the appellant and the witnesses appearing on his behalf had an internal and compelling logic to it. That narrative then appeared to gain further credence when the individual evidence of the witnesses is considered.
79. In her evidence, Mrs Cobden pointed out, quite understandably, that she could place the timing of these events by the birth of her second child. She had occasion to go into the workshop buildings in late 2006 and was clear in her recollection that she saw work taking place there using the same equipment (which she described as 'a jig') that was previously used in the Nissen Huts. Mrs Cobden also indicated that the people working in the buildings were making panels, buildings and gates.
80. The evidence given by Mrs Cobden is supported by that given by Mrs Dennis, who is equally clear about the timing of these events by reference to the birth of second granddaughter. Mrs Dennis described how she had occasion to go into the stable buildings from time to time, both before they were converted into workshop use and afterwards. She described how, in the late summer of 2006, the internal stables were taken down and items for the manufacturing process moved in. She described the latter as including benches, jigs and machinery. Mrs Dennis also indicated that fencing panels were then made in the workshop buildings rather than the Nissen Huts, and that the buildings had been used for that same purpose since then.

81. The appellant, Mr Dennis, reiterated that the removal of the equipment from the Nissen Huts commenced in 2006 and that he was directly involved in that himself. I was particularly impressed by Mr Dennis' precise recollection of the equipment involved which, he indicated, comprised of one wooden jig; one metal jig; cross cut saws, a compressor, general hand tools, a bench saw and a planer. Mr Dennis also explained the construction of the two stable buildings and how they had to be modified before they could be used for the manufacturing of timber products.
82. The evidence given by Mr Haniszewski was equally clear. Mr Haniszewski has been employed as gate and panel fence maker by what is now Equestrian Fencing since May 2006. As part of his evidence, Mr Haniszewski indicates that when first employed he worked on a jig in the Nissen Huts but that after a few months his jig and machinery were moved into the converted stable buildings. I note that the 'after a few months' referred to by Mr Haniszewski correlates with the time period of circa November 2006 indicated by other witnesses but could, just as easily, be interpreted as extending beyond the relevant date of 29 March 2007.
83. The evidence given by Mr Ruffel and by Mr Hood is consistent with that given by the above witnesses. Mr Ruffel explained that he maintained and repaired horseboxes belonging to the Dennis family. He recalled that on one occasion when visiting the premises in late 2006 he purchased a quantity of metal and wood that had been removed from one of the stable buildings. Mr Hood explained in his evidence that he purchased a house close to the appeal site in 2006 and had gates made for that property, which he collected himself from within the workshops.
84. The evidence of the appellant's witnesses is in support of a narrative which itself has an internal logic and consistency. The evidence is related to specific and memorable events: for example, the birth of a child, moving house and starting employment with a new company. Association with those events tends to add to the reliability of that evidence.
85. However, throughout, and particularly in relation to the date on which the manufacturing of timber products was transferred from the Nissen Huts into the workshops, the appellant's witnesses were reliant upon their memory of events that took place some thirteen years ago. Cross-examination of those witnesses revealed that there was often a 'window' of time in which the events described could potentially have taken place, in one case extending to some three years. Given that the date of November 2006 is very close to the relevant date, 'windows' of that or indeed any duration become significant.
86. Against that evidence, the Council is in the position whereby none of its officers who gave evidence have first-hand knowledge of the appeal site prior to January 2015. There is, however, the applications and subsequent appeal decision in relation to replace what are described as *the existing buildings* for the manufacture, assembly, storage and sale of timber products to take into account (my emphasis)³. I have emphasised the words *the existing buildings* in the description of the development for which planning permission was applied because, in my view, those words connote the entirety of the buildings used for the manufacture and assembly of timber products. There

³ For convenience and in the interests of clarity, I have abbreviated the description of development applied for to focus just on those elements of most relevance to this ground of appeal.

is, for example, no reference in that description of development to replacing *some of the buildings* being used for the manufacture and assembly of timber products. This becomes important when considering firstly the application drawings, and then the findings of the Inspector on appeal.

87. The sequence of events is that planning permission was granted for a replacement building for the manufacture, assembly, storage and sale of timber products in October 2010 under City Council reference 09/02607/FUL. Planning permission was then granted on appeal in November 2011 for an amendment to that scheme (City Council reference 11/00238/FUL).
88. The 'block plan as existing' drawing prepared in connection with the first of these applications, Drawing No #061/004 dated December 2009, identifies the two Nissen Huts as 'Manufacturing & Assembly' but identifies the workshops as 'stables'. Mr Dennis sought to explain this by suggesting that the architect had used a generic plan from a previous project, and that he (Mr Dennis) had not noticed this until brought to his attention as part of these appeal proceedings.
89. Whilst I have no evidence to directly contradict Mr Dennis' explanation, I do not find that explanation to be convincing. The drawing was made, albeit possibly based on a previous generic drawing, specifically to support a planning application for a replacement building for the manufacture and assembly of timber products. It is highly detailed drawing, with the various uses of all the existing buildings being annotated in a consistent typeface. Although outside the 'red line' area of the application site, the workshops (and High Ridge Farm) are annotated in that same typeface. It therefore seems probable that, generic plan or otherwise, the uses of the various buildings annotated on that plan on were surveyed and recorded at the same time. Moreover, as 'an existing drawing' submitted as part of a planning application, the City Council (and later the Inspector) were entitled to rely upon that plan as an accurate record of existing uses on the site.
90. My mind then goes back to the description of development applied for and the term *the existing buildings* therein. The application drawing, which is titled as being prepared for Mr D Dennis, show the two Nissen Huts as 'Manufacturing & Assembly', these being the only two buildings annotated on the drawing as being in that use. Two points the flow from this. Firstly, the application drawings are identifying the use of the two Nissen Huts for manufacturing & assembly as of December 2009. That is some three years after November 2006, the date on which, according to the evidence given by Mr Dennis and Mr Haniszewski at the Inquiry, the jigs and other machinery were moved out of the Nissen Huts and into the workshops.
91. The second point is that, taking the description of development and the application drawings together, it is in my view more likely than not that the two Nissen Huts did represent the totality of *the existing buildings* used for manufacture and assembly of timber products as at December 2009. This would be consistent with the identification of the buildings in Area B as stables on that drawing on the basis that the use of the workshops for manufacturing and assembly had not, in fact, commenced by that date. My views on this point are reinforced by the findings of the Inspector in relation to the appeal against the refusal of application 11/00238/FUL, to which I now turn.

92. In that decision (APP/L1765/A/11/2156006), the Inspector refers specifically to the indoor manufacturing taking place in 'two Nissen hut-like buildings close to Hospital Road' during his site visit on 18 October 2011. On my reading, all the Inspector's reasoning in that decision is entirely predicated upon his understanding that the indoor manufacturing and assembly was taking place in those two buildings, and that it was these buildings that the new building was intended to replace. Whilst those present at the site visit could not be certain that the Inspector looked inside the Nissen Huts, he would not have concluded that manufacturing and assembly was taking place in those buildings unless he had good reason to do so and evidence to that effect. That is a finding to which I attach substantial weight.
93. There is no reference in the Inspector's decision to the indoor manufacturing and assembly taking place in any other buildings on the unit of occupation, including the workshops. This would be entirely consistent with the description of the development that was before the Inspector at that time. It is also evident from those who were present during the Inspector's site visit, including Mr Dennis, Mr Cox and Mr Lunn, that the Inspector did not stray beyond the 'red line' that he was concerned with and did not look into the workshops.
94. The corollary is that the reference to the 'two Nissen hut-like buildings close to Hospital Road' in the Inspector's Decision can only mean the two Nissen Huts from which, according to the evidence given by Mr Dennis and Mr Haniszewski, the jigs and other machinery were removed in or around November 2006. One explanation could be that the new jigs and machinery were moved into the Nissen Huts at a later date, but that is not the evidence before me. The appellant's clear evidence to this Inquiry was that the Nissen Huts had become unsafe and leaking⁴, and were only used for the storage of wood sheets once the jigs and machinery had been removed in 2006⁵. That does not accord with the Inspector's finding some five years after the date on which manufacturing in the Nissen Huts is said by the appellant to have ceased.
95. The Inspector's conclusions in that respect are supported in the representation from Mrs A.S.Long dated 18 March 2019 in relation the recent planning application proposing a change of use of redundant agricultural buildings to workshops for the production of wood products (City Council Ref: 19/00242/FUL)⁶. In that representation, Mrs Long indicates that the production of wood products used to be located in the old 'Nissan Huts' (sic) until at least 2015. Although Mrs Long admits to not knowing where manufacturing has taken place since the Nissen Huts were demolished, her representation is further evidence that the appellant's narrative is not correct in terms of when the manufacturing was moved out of the Nissen Huts.
96. The Inspector's decision in 2011 therefore casts serious doubt over the evidence given by Mr Dennis and Mr Haniszewski and, to my mind, makes that evidence less than reliable. By association, that then casts doubt over the evidence given by the other witnesses insofar as they relate to the moving of the manufacturing from the Nissen Huts. As a consequence, the narrative presented to me, notwithstanding its internal logic, begins to unravel.

⁴ Mr Dennis written statement

⁵ Mr Haniszewski written statement. In giving evidence in-chief, Mr Dennis described the use as 'general storage'.

⁶ For convenience, this is an abbreviated version of the description of development applied for.

97. As an aside, I note that the description of development applied for in planning application 19/00242/FUL refers to "redundant agricultural buildings". That is itself not consistent with the appellant's narrative that the workshops were converted from stables used in the livery operated by Mrs Cobden. It is inconsistencies such as this and that relating to the use of the Nissen Huts that lead me to question the accuracy of the appellant's narrative and the reliance that I can place on that narrative.
98. There is then the unfortunate matter of the dead cat which, according to Mr and Mrs Parker, they collected from High Ridge Farm on behalf of a neighbour on 17 October 2007. This is again a date that can be pinpointed with some accuracy because the owners of the dead cat, Mr and Mrs Batchelor, were known to be on holiday at the time, such that the unpleasant task of collecting the dead cat fell to Mr and Mrs Parker.
99. The significance of this episode is that, whilst collecting the dead cat, both Mr and Mrs Parker recall seeing a horse in one of the buildings that the appellant claims were being used as a workshop by that date. At the time, they were standing near the entrance to the mobile homes that existed prior to the construction of High Ridge Farm as it is today. In her evidence, Mrs Parker gives a credible explanation as to why she focused her attention on the horse(s) in order to take her mind off the prospect of having to tell her neighbour about the dead cat. They also recall speaking with a lady attending the horses there. It is significant, in my view, that both Mrs and Mrs Parker describe with some precision where they claim to have seen the horse. Indeed, Mrs Parker has provided an aerial photograph annotated to show not only that building but also exactly where she was standing at that time.
100. The building that both Mr and Mrs Parker identify is that closest to the mobile home. It was put to Mr Parker in cross-examination that the horse he saw on that date was actually in the stable building deeper into the unit of occupation which, it was suggested, would also have been in his line of sight. However, the mobile home in situ at that time was located considerably further forward and closer to Hospital Road than the present High Ridge Farm. The stable building located deeper into the unit of occupation also sits back closer to eastern boundary than the building closest to the mobile home. Using the aerial photographs taken in 2000 and 2005 as my reference point, it is my judgement that the stable building located deeper into the site would not, in fact, have been visible from the position in which Mrs Parker indicates that she was standing when she saw the horse.
101. In his own written representation, Mr Batchelor confirms the events referred to by Mr and Mrs Parker, and confirms the date of October 2007 for those events. He also comments that, when visiting Mrs Dennis shortly thereafter to thank her for her kindness, it was "obvious that the stable blocks were not at that time being used for the manufacturing of timber products but were being used as designated stables". Mr Batchelor did not appear that the Inquiry and his evidence was not tested. Nevertheless, his evidence does tend to support that given under oath at the Inquiry by Mr and Mrs Parker.
102. It therefore appears to me that, more likely than not, Mr and Mrs Parker did see a horse in the 'workshop' building closest to the mobile home in October 2007. That being the case, the building could not, as the appellant claims, have been used as workshop from November 2006.

103. Four other pieces of evidence support the probability that Mr and Mrs Parker did see a horse in the 'workshop' building closest to the mobile home in October 2007. I have considered them individually here but I am also mindful of their collective value in evidential terms.
104. The first of these pieces of evidence are the photographs of that building taken in July 2009. Those photographs show that this building still exhibited many of the features associated with use as a stable on that date, and was substantially the same as it appeared in a photograph taken on 23 March 2006. The date on which that latter photograph was taken is of some importance for comparative purposes because, on the appellant's own case, it pre-dates the stripping out of the building in the late summer of that year to make space for the use of the building as a workshop.
105. In particular, the photographs taken in July 2009 show the building having stable doors in the west elevation (that being the elevation which would have been visible to Mr and Mrs Parker in October 2007) much the same as they appear in March 2006. It is only later photographs that show the doors and windows in this building to have been altered to conventional windows and/or doors. I acknowledge the evidence given by the appellant's witnesses to the effect that changes to the building were made gradually over time, and as and when finances permitted. Nevertheless, the photographs of the building taken in 2009 are consistent with the account given by Mr and Mrs Parker, and therefore lend further credence to their account of the events that took place some two years previously.
106. The second piece of evidence is the rate relief for livery sought by Mrs Dennis in April 2008. I take the appellant's comment that the City Council had an opportunity to provide more detailed evidence in respect of that claim, but did not do so. However, that misses the point. The key point is that in April 2008, some two years or so after the appellant claimed that the livery of horses had ceased, there is a claim for small business rate relief in relation to a property overtly described as 'Livery Yard, High Ridge Farm'. The detail surrounding that claim is of less importance than the fact that the claim was made at all, because the mere fact that claim was made directly contradicts the evidence given at the Inquiry that the livery had ceased. This reduces the credibility of that evidence, and further chips away at the reliance I can place on the narrative presented to me.
107. The third piece of evidence is that given by Mrs Petal Rainer in a sworn affidavit dated 19 October 2018. The affidavit is properly formatted and witnessed and, whilst there was no opportunity to test the evidence given through cross-examination, I nevertheless attach considerable weight to it. In her affidavit, Mrs Petal Rainer describes visiting the 'yard' (her term) on ten occasions between June 2007 and July 2008, each linked to holidays that she took during that period (two visits per holiday, one before and one after). The significance of that is twofold. Firstly, it provides a clear link to known dates that are precisely set out in the affidavit. Secondly, and in my view of particular significance, the reason why Mrs Rainer visited the yard was because on each occasion she asked Mrs Dennis to look after her own horse whilst she was on holiday. This meant that Mrs Rainer is likely to have visited the yard itself and therefore witnessed first-hand and at close quarters what was taking place there.

108. Against that backdrop, it is Mrs Rainer's evidence that the yard was only used for equestrian purposes. She describes the whole ambience as giving the impression of stabling and activities relating to the day to day routines of looking after horses. She also describes horses being ridden out and using the menage. Therefore, on my reading, what Mrs Rainer is actually describing in her affidavit is a livery in operation. That is entirely consistent with the photographic evidence of the building in 2009, and with the claim for rate relief made by Mrs Dennis in April 2008.
109. Furthermore, Mrs Rainer indicates that there was no sign of the stables being used as a workshop during that period, and that the timber and fencing business was carried out in the "old Nissen huts alongside Hospital Road". The first observation is consistent with the evidence of Mr and Mrs Parker that there was a horse in the building closest to the mobile home in October 2007. The second observation is consistent with the findings of the Inspector that the Nissen Huts were used for the manufacture and assembly of timber products in October 2011.
110. The fourth and final piece of evidence in this respect is to be found in the Design & Access Statement submitted as part of a letter dated 2 February 2007 by Mr Stone acting in the capacity as agent for the submission of a planning application for a replacement dwelling at High Ridge Farm (City Council Ref: 07/00008/FUL). In that Design & Access Statement, Mr Stone describes the curtilage and the siting of the dwelling as being "between the existing equine buildings and the timber yard".
111. In February 2007, the mobile home for which the replacement was sought stood directly between the workshops (the stables as they then were) and the timber yard. Therefore, to my mind, the description in the Design & Access Statement can only be reference the workshops. I acknowledge that Mr Stone did not himself set foot in the workshops until 2016 but, even so, it is reasonable to conclude that Mr Stone took his description from a conversation he had with Mr Dennis in the context of application 07/00008/FUL. The description of the workshops as 'existing equine buildings' in 2007 is further evidence that the use of the workshops for manufacturing and assembly did not take place in November 2006 as suggested in the appellant's narrative.

Conclusion on the appeal on the appeal on ground (d)

112. I initially found the narrative presented to me by the appellant to have an internal logic and to be compelling. However, once other photographic and documentary evidence is taken into account, a very different picture emerged. In particular, I cannot ignore the findings of the Inspector that the manufacture and assembly of timber products was taking place in the Nissen Huts in October 2011. That finding directly contradicts and undermines a key part of the appellant's narrative, specifically that the manufacture and assembly of timber products was moved from the Nissen Huts into the stable buildings in or before November 2006.
113. From there, the appellant's narrative quickly unravels. The evidence that the livery business ceased in 2006 is contradicted by the application for rate relief some two years later, and by the observations of Mrs Rainer during that same period. There is then credible evidence that Mr and Mrs Parker did see a horse in the building closest to the mobile home in October 2007, evidence that tends to be supported by photographs of the building in 2009. That

evidence is itself entirely consistent with the description of development for the planning application that proposed a replacement building for the manufacture and assembly of timber products submitted in 2009. It is also consistent with the identification of the workshops as stables on the drawings submitted with that application and as the existing equine buildings in the 2007 application.

114. The photographic and documentary evidence dovetails neatly with the evidence of local residents, and tells a story that has its own logic and consistency to it. Therefore, from a position that was initially compelling, other evidence available to me casts serious doubt on the authenticity of the narrative presented by the appellant. I have had regard to the other evidence that is before me, including the comment from a representation dated 4 September 2017 from a C M Wilkinson quoted by the appellant asking why it has taken ten years "to stop this illegal blot on the landscape". However, whilst that may superficially point to a period of ten years having elapsed since the use began, that is a high-level comment dating to before the current enforcement notices were issued. In any event, I take that comment to be primarily a criticism of the City Council rather than a detailed analysis of the situation on the ground. Consequently, neither that evidence nor any other that I have seen alters the conclusion that I have reached.
115. I conclude, on the balance of probability, that the use alleged in the enforcement notice had not commenced within a period of ten years from the date that on which the notice was issued. It follows that the City Council could take enforcement action in respect of that breach of planning control. Accordingly, the appeal on ground (d) fails.
116. It further follows from the above that, in my view and on the balance of probability, the planning unit as it exists today did not exist in March 2007. It is not for me to speculate exactly when the current planning unit did form, and is sufficient to note that the creation of the new planning unit would have required planning permission when it did take place. Furthermore, having reached that conclusion, there is no need for me to consider whether there was a subsequent intensification in the use of that planning unit, sufficient to bring about a change in the character of that use. In that context, I heard from Mr Lunn and from others expressing their opinion that there has been a considerable increase in very heavy traffic over recent years. However, whilst I noted the points made with interest, in view of my findings above, that evidence does not now fall to be considered.

Appeal C: the appeal on ground (d)

117. In comparison with the evidence available in relation to Notice B, there is comparatively little evidence pertaining to the use alleged to have taken place in the area subject to Notice G. That area is covered in passing by the same narrative presented by the appellant in relation Notice B, but without much in the way of detail. In any event, for the reasons stated in relation the Notice B, I have serious reservations as to the reliance that I can place on that narrative.
118. The aerial photographs taken in 2012 and 2013 do not show much in the way of storage of timber in that area but the former photograph is of poor resolution and both represent only a snapshot in time. Moreover, neither

relate to the early part of the relevant period. For those reasons, I hesitate to draw any conclusions on the basis of those aerial photographs.

119. Neither do the notes of the site visit by a Council officer (Mr Jenkinson) in April 2011 assist greatly. Those notes record a need to investigate operations in the 'adjacent farmyard', that being the area in question here, but do not specify what those operations were. In any event, the note relates to a specific date in April 2011 and is therefore of no assistance in terms of the early part of the relevant period.
120. The only evidence available to contradict that of the appellant is that of Mrs Rainer, who describes the yard as only being used for equestrian purposes in 2007/2008, and as having the ambience of stabling and activities relating to the day to day routines of looking after horses at that time. In my view, that is itself sufficient to cast doubt on the appellant's version of events.
121. As indicated above, the burden of proof on ground (d) falls upon the appellant. In this case, I consider that the appellant has not discharged that burden of proof with evidence. I consider that the appellant has failed to show, on the balance of probability, that the Council was not in a position to take enforcement action in respect of the breach of planning constituted by the matters stated in the notice. Accordingly, the appeal on ground (d) fails.

Conclusions

122. For the reason given above, I conclude that Appeal A should succeed and Notice D will be quashed.
123. However, I conclude that Appeal B and Appeal C should not succeed. Notice B and Notice G will be upheld with corrections and variations.

Formal Decisions

Appeal A Ref: APP/L1765/C/18/3208707 (Notice D)

124. It is directed that the notice be varied by:
- deleting the words 'all goods vehicles' in paragraph 5(b) of the notice and replacing them with the words 'the two goods vehicles'.
125. Subject to that variation, the appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/L1765/C/18/3208721 (Notice B)

126. It is directed that the notice be corrected by:
- deleting the words 'secondary use ancillary to the residential dwelling' in paragraph 3 of the notice and replacing them with the words 'use connected with the dwelling known as High Ridge Farm'
 - deleting the word 'commercial' at paragraph 3(c) of the notice.
 - deleting the words 'Use ancillary to the equestrian use' at paragraph 3(d) of the notice and substituting there the words 'Equestrian use in association with the equestrian use taking place on another planning unit in the unit of occupation.'

- deleting the words 'Use ancillary to the adjoining residential dwelling' at paragraph 3(e) of the notice and substituting there the words 'Use connected with the dwelling known as High Ridge Farm'.

127. It is directed that the notice be varied by:

- deleting the word 'commercial' in paragraph 5(c) of the notice

128. Subject to those corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal C Ref: APP/L1765/C/18/3208865 (Notice G)

129. It is directed that the notice be corrected by:

- deleting the words 'use ancillary to the residential dwelling' in paragraph 3 of the notice and replacing them with the words 'use connected with the dwelling known as High Ridge Farm'
- deleting the words 'Equestrian use together with use ancillary to the residential dwelling' at paragraph 3(a) of the notice and substituting there the words '(i) Equestrian use and (ii) Residential use in connection with the dwelling known as High Ridge Farm'
- deleting the word 'commercial' at paragraph 3(b) of the notice

130. It is directed that the notice be varied by:

- deleting the words 'commercial vehicles,' in paragraph 5(a) of the notice

131. Subject to those corrections and variation, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR

APPEARANCES

For the Appellant

Mr Wayne Beglan

Of Counsel, instructed by Mr
Robert Locke, Solicitor

He called:

Mr Dan Dennis

Appellant

Mrs Victoria Cobden

Westbury Manor Farm, West
Meon

Mrs Janet Dennis

High Ridge Farm, Hospital
Road, Shirrell Heath

Mr Haniszewski

Employee of Equestrian
Fencing

Mr Roly Ruffell

Hayling Horseboxes, Hayling
Island

Mr Russell Hood

Kingfisher Cottage, Pricketts
Hill

Mr Eric Cox

Planning Consultant (retired)

Mr Richard Stone

Planning Consultant

For the Local Planning Authority

Ms Tara O'Leary

Of Counsel, instructed by Ms
Laura James, Solicitor,
Winchester City Council

She called:

Mr David Townsend

Team Leader, Planning
Enforcement Team,
Winchester City Council

Ms Sarah Castle BA (Hons) Dip TP MRTPI

Principal Planning Officer,
Enforcement Team,
Winchester City Council

Interested Persons

Mr Michael Lunn

Scourie, Twynhams Hill,
Shirrell Heath

Mr David Parker

Ffwrwm Ishta, Bishops Lane,
Shirrell Heath

Mrs Gaynor Parker

Ffwrwm Ishta, Bishops Lane,
Shirrell Heath

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ List of appearances for the Local Planning Authority
- 2/ Copy of representation by Mr Lunn dated 13 October 2018
- 3/ Signed copies of the statements made by the appellant's witnesses
- 4/ Statement of Common Ground
- 5/ Representation by Mr David Parker
- 6/ Representation by Mrs Gaynor Parker
- 7/ Appellant's opening remarks on the notices (dated 7 May 2018), together with copies of the judicial authorities referred to in those remarks
- 8/ Extract from the Encyclopedia of Planning Law and Practice
- 9/ Local Planning Authority submissions on the notices (dated 6 May 2018)
- 10/ Appellant's remarks on the Planning Notices (dated 8 May 2018)
- 11/ Appeal Decision APP/L1765/A/11/2156006 dated 18 November 2011 in relation to High Ridge Farm, Hospital Road, Shirrell Heath, Southampton, Hants S)32 2JR
- 12/ Copy of the Decision Notice in relation to planning application 19/00242/FUL dated 22 July 2019 refusing planning permission for, amongst other things a change of use redundant agricultural buildings to workshop for the production of wood products.
- 13/ Copy of representation dated 18 March 2019 in relation to planning application 19/00242/FUL by Mrs A.S. Long of Firhill, Bishops Lane, Shirrell Heath

- 14/ Copies of the application drawings submitted with planning application 19.00242/FUL (at my request and for information only)
- 15/ Case law in relation to 'intensification' insofar as it relates to the material change of use of land.
- 16/ Closing submissions on behalf of the Local Planning Authority
- 17/ Closing submissions on behalf of the appellant.