The Planning Inspectorate

Appeal Decision

Inquiry Held on 12 and 13 October 2021
Site visit made on 13 October 2021

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2021

Appeal A) Ref: APP/D0121/X/21/3267423
Devils Elbow Farm, Hillend, Locking BS24 8PG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr John Reed against the decision of North Somerset Council.
- The application Ref 19/P/1520/LDE, dated 18 June 2019, was refused by notice dated 25 February 2020.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is:
  1) The change of use of part of a building to form a self-contained dwellinghouse; and
  2) The change of use of two former residential caravans to dwellinghouses and associated operational development; and
  3) The change of use of land to use for open storage (Class B8).

Appeal B) Ref: APP/D0121/C/21/3268230
Devils Elbow Farm, Hillend, Locking, Weston-super-Mare BS24 8PG

- 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 John Reed against an enforcement notice issued by North Somerset Council.
- The enforcement notice was issued on 21 January 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land from a mixed agricultural, equestrian use to a mixed agricultural, equestrian and the siting of a caravan for residential use (edged red on the attached plan and excluding the area coloured blue).
- The requirements of the notice are:
  1. Cease the use of the land for the siting of a caravan for residential use,
  2. Remove the caravan (edged green on the attached plan) and remove all resulting materials from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Appeal C) Ref: APP/D0121/C/21/3268229
Devils Elbow Farm, Hillend, Locking, Weston-super-Mare BS24 8PG

- 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 John Reed against an enforcement notice issued by North Somerset Council.
- The enforcement notice was issued on 21 January 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change of use of part of a building to a single dwelling house (edged red on the attached plan).
- The requirements of the notice are:
  1 Cease the residential use of the dwelling (edged red on the attached plan and identified by the ground and first floor plan attached)
  2 Remove the dwelling within the barn, remove all domestic features and remove all resulting material from the land
  3 Remove all domestic items from the land
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Appeal D) Ref: APP/D0121/C/21/3268232
Devils Elbow Farm, Hillend, Locking, Weston-super-Mare BS24 8PG

- 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 John Reed against an enforcement notice issued by North Somerset Council.
- The enforcement notice was issued on 21 January 2021.
- The breach of planning control as alleged in the notice is without planning permission, the material change in use of the land from a mixed agricultural and equestrian use to residential (edged red on the attached plan).
- The requirements of the notice are:
  1 Cease the use of the land for residential use
  2 Remove the converted caravan and all resulting materials from the land.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Decision Appeal A)

1. The appeal is dismissed.

Decision Appeal B)

2. The enforcement notice is quashed.

Decision Appeal C)

3. The enforcement notice is quashed.

Decision Appeal D)

4. The enforcement notice is quashed.

Application for costs

5. At the Inquiry an application for costs was made by Mr John Reed against

North Somerset Council. This application is the subject of separate Decisions.

Preliminary Matters

6. All evidence at the inquiry was given on oath.

7. With respect to Appeal A), the application form did not specify what was being applied for other than to by reference to the "application supporting documents". In the header, above, I have therefore used the description as included at section 1 of the application supporting statement, as agreed in my opening of the inquiry.

Reasons

Current layout and uses

8. My starting point for assessing the issue of lawfulness and also the form of the notices is what the planning unit or units are on the site and what it or they are in use for, with respect to primary uses and other activities. My pre-inquiry note raised various matters regarding these issues. It is necessary to understand the present situation when determining whether what has happened previously has involved a breach or breaches of planning control.

9. It has been held that the planning unit is usually the unit of occupation unless a smaller area can be identified which, as a matter of fact and degree, is physically separate and distinct and occupied for different and unrelated purposes. The concept of physical and functional separation is key to this.

10. It was clarified by the appellant, Mr Reed in giving evidence, that he owns the whole of the area covered by the LDC application site plan. That plan covers the same broad extent of land enclosed by a red-line on the LDC application plan and the notice subject to 'Appeal B)'. On the latter, the area containing dwellings within the centre of the site (coloured blue on the notice plan) and referred to by Mr Reed and others on occasion as the "class Q[1] land", is excluded.

11. The 'class Q' land includes new dwellings that are well advanced in their construction. The Council has confirmed that they consider that these form a separate planning unit. The point during construction and readiness for occupation at which they would form separate planning units is also a matter of fact and degree. Based upon the evidence and what I saw it is a reasonable view to take that the 3 dwellings being so well advanced are outside of any wider planning unit. Mr Reed may still own them but they appear to be largely functionally separate from the remainder of his land. As such, although not excluded on the LDC plan or the 'Planning Unit Plan' presented at the inquiry (document 1), the appellant does not take issue with this.

12. The 'Appeal B)' plan is therefore in my view, a good initial step for assessing the relevant planning unit. It is broadly the area of the appellant's occupation too although there are complications to this which I will explain below.

[1] Various references have been made to land subject in the past to an application made with respect to The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), Schedule 2, Part 3, Class Q "agricultural buildings to dwellinghouses". For ease of reference I will also refer to this as the 'class Q site'. However a different planning permission was subsequently given for these dwellings which are not authorised by 'class Q' but that was nevertheless, a reference that became a convention within the inquiry.

13. The track from Banwell Road provides some sub-division of the site. To the north, there are presently large fields that slope up to the carriageway of the A371. These fields have a degree of detachment from the rest of the site due in part to some trees and shrubs close to the centre but also because there is a grassed bank which defines the distinct change in levels and enclosure from the track. The Statement of Common Ground in addition to 'document 1' indicates that the fields to the north of the track are agricultural and whilst owned by the appellant, he is not a farmer and agricultural activity has been limited. There is no clear functional link between those fields and the rest of the site other than the use of the track to gain vehicular access. Other than these and the 'class Q' dwellings, there is very little preventing access around all of the site.

14. At present, the storage of building materials takes place extensively in the open on what had previously been constructed as a horse-arena or 'manège' in the south-east corner of the site. This includes blocks, pallets of slabs, full dumpy bags and stone amongst other things. On the land close to the gated entrance to the arena there is a large pile of rubble, hard-core as well as building-sand stored under a tarpaulin. The paddock to the north of the arena was not in clear active use but the covering of rough grass is consistent with it still being available for agriculture. An aerial photograph (Council appendix 11) dated 27 June 2018 indicates that some cropping has taken place within that field. Part of this field has been taken into the 'class Q' area.

15. To the western side of the 'class Q' dwellings is a partly hard-surfaced and partly loosely gravelled area between those dwellings and the large, detached building which is the subject of the notice to which 'Appeal C)' relates. That large building is in 2 conjoined parts. On the hard surface between the buildings are the 'Willerby' and 'Atlas' units. It is not disputed that these were brought onto the site as 2 static-caravans. It is now disputed whether they remain caravans or have become buildings. The 'Willerby' unit is the subject of the notice in 'Appeal B)' and the other, the 'Atlas' unit, is the subject of the notice in 'Appeal D)'. These units are not currently occupied by the appellant but he retains ownership of them and controls their occupancy.

16. Close to the southern side of the 'Atlas' unit is a large container, what appeared to me to be the former back of a lorry. This contained various items such as old television sets, furniture but also some building materials such as water pipe and various construction miscellany. Positioned perpendicularly to the 'Atlas' and this lorry-back is a shipping container within which are multiple scaffold boards and ladders. That shipping container is at least partially within a field to the south which has generally become overgrown around its margins. There is no physical separation of that land from the adjoining parts of the site that I could see, other than due to the height of the vegetation. This land is indicated on the additional 'document 1' showing the appellant's interpretation of planning units, as "agricultural land". There are also a couple of small timber sheds on that land.

17. That field extends along the southern/south-western boundary and up to the north-western boundary. Between the field and the large building, as well as parked commercial vehicles and a touring caravan, there are 3 further shipping containers and a lorry-back on a loose-gravel surface. That gravel surface appears on the ground as well as within aerial images to have gradually encroached into the field. These are used for storing various building materials

such as insulation, gabion wire-baskets, some machinery, scaffold components amongst others. To the north of these containers, on the western side of the large building, is an area with a grassed surface which had some external storage of scaffolding, site fencing and other miscellaneous mainly metal items. A concrete path leads through this grassed area to a modest stable block constructed of timber and corrugated metal, which also contains some storage of building materials such as insulation sheets.

18. The large building is subdivided into 2 main-parts. The southern part is split into 3 bays. These contain building materials such as wire-baskets, adjustable metal props, drainage pipes, water pipes, drainage covers and channels, inspection chambers, various timber and boards as well as large machinery including a digger and a dumper. There is also a large fuel tank. The building also has a small WC accessible from outside.

19. Outside, attached to the front of the building are racks with scaffolding and ladders. The concrete hard-surface in front of the large doors also had further equipment such as a cement-mixer, gas bottles, tool-boxes and other containers on it. The doors lead into an expansive internal floor area of the largest, northern part of the building. There are stalls along both sides and the 2-storey part of the building where the appellant lives is prominently positioned at the north-western end. The storage inside the building is of a wide variety but there is a substantial amount of building materials and equipment including large vehicles or plant, cement-mixers, high pressure gas cylinders along with maintenance tools. There are also office filing cabinets and motorbikes, timber of various sizes, mainly roughly sawn or chopped.

20. The residential accommodation is over 2 floors at the end of the building. This is accessed either from the rear, grassed area where materials are stored or via the large internal area which is also extensively used for storing industrial items but also what appears to be domestic or personal items. On progressing through from the internal storage-space, the living accommodation starts off with a room with tools as well as domestic items such as a large chest freezer and then becomes gradually more clearly domestic. The ground floor appears to be the more active living space with the 2 rooms on the first floor being mainly in use for storage of what appeared be primarily domestic paraphernalia such as clothes, furniture, toys, compact-discs and books.

21. I need to make my assessment on the basis of what existed at the time the notices were issued and the LDC application was submitted. That assessment also needs to evaluate the nature of the uses across the planning unit or units and any operational developments that may affect the uses. From the information before me and the evidence that I heard at the inquiry, what I saw at my visit reflects the situation at both of those points in time.

22. Residential occupation within the building is not entirely distinct from the rest of the building. There appears to be an intermingling of the residential use within and around the building. This includes storage of domestic and non-domestic items in the margins of the internal residential area, inside the former stable area, outside including on the area that the appellant has referred to as a garden, along with what are more clearly building materials and machinery strewn around the site. I do not consider that this residential accommodation is a distinct single dwellinghouse within the building or even within a self-contained part of the building, it is residential accommodation within a building

that is also used for another primary purpose as well as for Mr Reed's things that may not be directly linked to his work as a builder and stonemason.

23. With respect to the residential use of the 'Willerby' and 'Atlas' units, the nature of those will also affect how the use of the site should be described. It is a matter of fact and degree as to whether any works carried out to them has at some point resulted in them becoming buildings.

24. The 'Willerby' unit appears from the outside to be a static caravan albeit with timber steps constructed up to the doors, a skirt around the bottom of the unit and I am told it is also attached to the ground by way of chains. These timber steps are secured to the concrete hard-surface by metal straps but do not appear to be connected to the external walls of the unit. These do not clearly affect the mobility of the unit and they wobbled when I touched them. There is no suggestion from the appellant that the chassis has been removed. From the description provided it appears to me that the unit could be easily disconnected from any services as well as chains and then lifted or towed.

25. The 'Atlas' unit has a similar appearance and has a set of brick and concrete steps up to the side door although they are not obviously secured to the unit. I could see underneath via a missing panel of the skirt and the unit still appears to be on a chassis with a tow-bar still visible externally at one end. A chimney has been constructed which connects through a hole in the wall to a stove inside the unit. That chimney, constructed mainly of solid concrete blocks on the concrete hardstanding, is alongside the unit. Whilst the chimney is very close to and partly touching the external wall of the unit and is connected via a hole to the internal stove, it would appear to be a simple matter to disconnect this. The construction of the chimney has clearly involved distinct operational development but does not appear to hinder the removal of the unit itself. The chimney does not appear to rely upon the 'Atlas' unit for support. The connection to a flue-pipe is rather similar in my view to when caravans are connected to other pipework such as sewage and water-pipes and even if a hole were left, that would require a fairly simple repair.

26. I have considered both the 'Willerby' and the 'Atlas' units with respect to the established primary factors relevant when deciding what is a building. These are size, permanence and physical attachment to the ground. Furthermore, established case-law determines that for a structure that is prima facie a caravan to become a building, and thus operational development rather than a use of land, there must be a substantial degree of affixation to the land on which it stands.

27. Caravans are defined within the 1960 Act[2] as any structure designed or adapted for human habitation as they are capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer). The 1968 Act also provides the only maximum size definition for twin-unit caravans[3]. There is no dispute that the units are within those size parameters and neither unit has in my view lost its overall character as a caravan. They would both appear to be moveable and within the scope of the statutory definition. Although my conclusions on the 'Atlas' unit in

[2] s29 Caravan Sites and Control of Development Act 1960
[3] s13(2) Caravan Sites Act 1968

particular differs from both main parties, I have reached my judgement on the basis of the evidence and submissions as well as what I saw at my site visit.

Other primary uses

28. Mr Douglass for the Council suggested that the materials stored on the site are waste but in terms of what I saw that was not obviously the case. Materials were stored which looked to me to be mainly in good condition and suitable for utilising in building work which confirms the appellant's evidence. Given the stage of completion of the 'class Q' dwellings, the general type of materials that I saw would not obviously appear to be required in the completion of those. Some rubble is present in a large pile but this was a minor element and rubble is not always waste as it can have a useful purpose in the construction process. I found the appellant's explanation of the use of these materials credible. The storage of building materials, equipment and other items related to the appellant's occupation as a stonemason and builder are significant in terms of the space taken up outside as well as within the main building and various containers. In my view due to the amount of items and the extensive area of the site covered by them both in the open air and within containers and buildings, they cannot reasonably be considered as merely incidental or ancillary to the residential occupation of the site. I therefore find that the storage of those items, as a matter of fact and degree, is a further primary use of a large part of the site.

29. The appellant stated that equestrian and agricultural activities are not currently being undertaken although 'document 1' showing the appellant's views on planning units indicates agricultural use. The horse-arena is largely used for external storage now and is not available for horses with this having appeared from aerial images to have happened by 27 June 2018. The email to a Council officer dated 18 August 2016 from Mr Heppenstall on behalf the appellant (Council appendix 4) refers to the equestrian use having been operated between 2002 and 2010 and upon cessation that the site reverted back to sole agricultural use.

30. The field immediately to the north of the horse-arena appears to have been used for agriculture recently too, notwithstanding the encroachment of some curbing, fencing and loose surfacing in connection with the 'class Q' dwellings which has reduced the area available for agriculture. The remainder of the field could still be potentially used for agriculture as could the other currently overgrown field to the south of the large building. Furthermore, as I mention above a gravel surface with containers appears to have encroached gradually into one of the fields. Given the lack of buildings available for horses with the stables having been taken over by other activities, and the horse-arena being used primarily for external storage, equestrian use appears to have ceased by the relevant dates. Given that no stabling facilities appear to be available for horses and the arena is now used for a different purpose, it appears on the balance of probabilities that equestrian use has been abandoned.

Conclusions on current use and planning unit

31. In terms of the extent of the planning unit, whilst it is reasonable to exclude the site of the 'class Q' dwellings, there are few defined boundaries or hinderances to a free-flow of activities across the whole site. The agricultural land to the north is more distinct than the rest of the site and the appellant

does not farm that. I take the view that there is otherwise little functional separation across the appeal site, with the appellant being the occupier of it all and retaining ownership of land on which the caravan 'units' are positioned.

32. Whilst those caravans are occupied separately, I am content that they remain moveable within the statutory definition and that the appellant manages their occupation, retaining that functional link in the manner that caravan sites are normally controlled by the owner of the land. The land around and between them is also used for incidental storage or for storing functional items such as gas bottles as well as for parking but also in connection with the other surrounding activities. In the event that the caravan 'units' are more attached and immobile than the evidence indicates and therefore even if they are "dwellings", their occupation does not appear to be entirely severable from the wider use of the land. Their occupation relies on the land around them for storing ancillary items, not being within functionally separate areas.

33. The appellant's own residential occupation is not within a completely self-contained building but is within a part of a building that continues also to be partly used for his business storage and administration as well as for his residential purposes. The residential element is not clearly severable within a discretely identifiable planning unit from storage use within the building, the grass area to the west the large building or the other land.

34. It is not disputed that the equestrian use is not currently active and the buildings previously used are now used for other purposes as is the horse arena. Whilst there is no active agriculture at the moment this does not mean that it has been abandoned or discontinued even if it is dormant. The encroachment of storage and areas related to the new dwellings has not entirely overtaken those fields.

35. I therefore consider that there is presently a mixed use across the site. This is for agriculture, residential occupation within part of the large building, the siting of 2 caravans occupied for residential purposes and open storage as well as storage within the large building, other buildings and within containers.

36. Given these conclusions, in each of these appeals, I need consider the developments with respect to the time limits for taking enforcement action as set out in s171B of the Act. Given that I consider that there is a mixed use across the single planning unit (excluding the fields to the north) the question is when did the present mix of uses commence and, with respect to s171B(3), whether enforcement action was taken within 10 years.

37. However, before I can consider that question, I need to consider whether or not the notices to which appeals 'B)', 'C)' and 'D)' relate, correctly describe the alleged breaches of planning control and if not, whether it would cause injustice to either of the main parties if I were to use my broad powers of correction and variation under s176(1)(a) and (b).

The notices

38. The allegation on the notice subject to 'Appeal B)' describes a mixed use although does not refer to the residential use within the large building, does not refer to the storage use but includes within the red line on the attached plan all of the planning unit. Altering the plan to reduce the applicable area as

well as taking out reference to equestrian use would not be correct given the mixed nature of the use across the site. Extending the scope of the notice to incorporate the other primary uses within the overall mix would also be a significant matter that would change the basis of the notice entirely.

39. The allegation on the notice subject to 'Appeal C)' refers to the residential use within part of the large building but describes this as a "single dwelling house". As I explain above, as a matter of fact and degree, that accommodation is not in my view provided within a discretely self-contained dwelling as the residential use is entwined with other primary uses and is therefore part of the overall mixed use of the site. The red-line on the plan covers the whole building albeit with clarification given by also attaching the sketch floor-plans. The allegation is not correct given the facts on the ground and the evidence of what existed when the notice was issued.

40. The allegation on the notice subject to 'Appeal D)' simply refers to the change from a mixed use of agriculture and equestrian use, of ground-area covered by the 'Atlas' unit alone as a discrete planning unit. That is also clearly incorrect whether this is looked at as still being a caravan or a building used as a dwelling. In either scenario, the residential use is part of a mix of primary uses within the broader planning unit.

41. Each of the notices are defective in terms of the planning unit and how they describe the alleged breach of planning control. None of the notices describes the storage use across the site and each of them misses other parts of the mixed use or in effect identifies a smaller planning unit than is actually present on the ground. It has been held that it is not open to the Council to in effect decouple elements of a mixed use. Ironically, the previously withdrawn notice alleged a mixed use in a similar manner to the way I have described it above and the rationale for the change of approach was not fully explained. It is not possible to correct these notices without increasing their scope and extending their terms which could have implications for the grounds of appeal made and the approach taken by the appellant. It could cause injustice to the appellant to correct these notices.

42. I will therefore quash the enforcement notices. Appeals 'B)', 'C)' and 'D)' do not require further consideration. This does not prevent the Council from considering the taking of further action[4].

Consideration of Appeal A)

Main Issues

43. The main issue is whether the Council's decision to refuse the LDC was well founded taking account of the information that has been submitted. The onus of proof in LDC cases in upon the appellant and the standard of proof is on the balance of probabilities. If there is no evidence to contradict or make the appellant's version of events less than probable and this evidence alone is sufficiently precise and unambiguous, a LDC in the form requested should be granted. The planning merits of the use are not relevant to the consideration of this appeal which turns on matters of law.

[4] S171(B)(4)(b) of the Act

44. Furthermore, the Council considers that the appellant had relied upon 'positive deception' directly intended to undermine the regular operation of the planning process, that it therefore prevented the Council from taking enforcement action earlier and the appellant has profited from this.

Reasons

45. The appellant has described the use in the LDC application in 3 discrete parts:

i. The change of use of part of a building to form a self-contained dwellinghouse; and

ii. the change of use of two former residential caravans to dwellinghouses and associated operational development; -

and

iii. the change of use of land to use for open storage (Class B8).

46. This has therefore been made in terms which are different from how I consider the use is taking place and was taking place at the date of the application for reasons set out above. I cannot consider issuing a LDC for something completely different from that applied for but s191(4) allows some discretion. Although there are elements of the component parts of the description that are similar to my view of the uses across the site, there are also significant differences. In particular I consider a single mixed-use has occurred rather than separate uses within distinct planning units. However, rather than dismiss the appeal at this point, I consider that it is necessary to consider the component parts of the uses and then determine whether the way that they operate has changed materially over the relevant period and therefore whether the mixed use is lawful.

47. The time limits for taking enforcement action are set out in S171B of the Act. Given that there is a mixed use across the site, the appellant needs to demonstrate that the components of the mixed use as exist now have taken place continuously without having materially changed, for 10 years prior to the date of the application. The use would need to have commenced and been continuous since at least 18 June 2009.

Residential Uses

48. The appellant's only witness at the inquiry was himself. Other people who have been referred to such as residents of the site, those who have used it for keeping horses, his previous planning agent and other professional advisors did not appear.

49. The appellant states that the work to create what he refers to as a "dwellinghouse" and what is referred to in various documents as "the flat" within the large building on site were completed in 2003. Other evidence such as statutory declaration of Simon Carpenter and Lucy Jane Mealing indicates that the building was occupied. Those statements also suggest that when they were sworn on 5 March 2004 and 19 April 2004 respectively, the appellant was still in occupation of "a flat". No reference is made to a specific layout plan or the manner of occupation in those statements. For reasons I give above, whilst the residential use currently relies upon facilities that enable day to day

domestic existence, it is entwined with the business use of the site and is not a self-contained dwellinghouse as has been applied for. The nature of the occupation of "a flat" may have been different and this is not completely clear but the appellant did confirm that what he lives in now existed by 2003-2004.

50. The appellant in evidence showed a rather indifferent attitude to the significance of some documentary evidence presented by the Council. I am for instance being asked to agree that there was a residential use within the large building whilst Council records show that he was only paying Council Tax on a caravan elsewhere on the land. This is when the appellant admitted under oath that he did not pay all of the Council taxes due for the units that are being claimed are now lawful. I found that the appellant had little interest in adhering to official requirements which in my view undermines the veracity and reliability of what he said overall. Furthermore, there is also a trail of documentary evidence which casts significant doubt on the appellant's version of events. Unfortunately, the individuals involved in that correspondence were not available to give evidence.

51. I have been provided with a trail of emails from between 14 July 2016 to 18 August 2016. This trail starts with the appellant's then agent, Mr Happenstall making attempts to arrange a site visit with the planning officer in relation to the 'class Q' proposal. In the email from the planning officer dated 22 July 2016 which followed the site visit, questions were being asked about the use of the "agricultural unit". The email refers to the winding down of agriculture but that more information was required with respect to the use in 2013 due to the requirements of the 'class Q' provisions. Even if the terms "agricultural unit" and "site" were being used in the context of the 'Class Q' provisions, the questions asked by the planning officer clearly included requests for information about the broader site – "the whole landholding" as it was termed in the email to Mr Happenstall on 10 August 2016.

52. In that 10 August email, the officer pointed out their view that the "site appears to be in mixed agricultural/equestrian use". Furthermore, reference is made to the "buildings to the west side of the farmyard" being in the same agricultural unit and that their use needs to be considered, then referring to the planning permission for "retrospective stables and general storage building" which covered the large building on site where the appellant now lives. The full response provided on 18 August refers to what is termed an "ancillary equestrian business" being run between 2002 and 2010. Furthermore, upon cessation of the equestrian use "the site reverted back to a sole agricultural use" and later in the same paragraph that "the general storage use that was granted temporary consent by 04/P/3366/F was discontinued in accordance with the requirements of condition number 2 of the consent". There appears to have been a change in the way the site was used therefore in 2010, which is within the 10 year period prior to the application.

53. In response to a question from the planning officer in the 10 August email about "caravans on site" Mr Happenstall then went on to confirm that "these are being used for purposes incidental to agriculture". Mr Heppenstall also provided an explanatory email to the Council in January 2020 submitted during the processing period of a previous application. He says in that email that the Council's request for information didn't include a plan to explain which caravans were being referred to. Mrs Sutherland in this inquiry also doubted which

caravans this statement may have related to. If there had been any ambiguity to the trail of emails at that time, Mr Heppenstall did not flag that up at that point in time and I find the retrospective review of the situation to suit the purposes of the appellant now, improbable. I would expect a professional planning agent to flag up any lack of clarity contemporaneously within the trail of correspondence in 2016 given the importance for process then being undertaken.

54. Furthermore, I do not consider that a reasonable interpretation of the 2016 email trail to what is being said in relation to the use of the land is limited only to the "curtilage" of the building proposed for conversion within the context of the 'class Q' proposal. The supporting statement prepared by Mrs Sutherland's practice that was submitted with that proposal in 2016 also refers to the site as being "part of a larger agricultural landholding in the applicant's ownership". It goes on to describe a broader holding rather than just the building proposed for conversion and its curtilage. It also mentions Hillend Cottages outside of "the site" to the east but does not mention any residential use of the site itself which given the appellant's version of history now would have been significant and obvious at that time if they were occurring. Mrs Sutherland was the stated agent for the 2016 'class Q' application.

55. The documentation from 2016 cannot be construed as being correct for the purposes of the appellant's case now as well as for the purposes it was originally intended and the suggested ambiguity does not fit with my reading and comprehension of those documents. Furthermore, the appellant's own evidence on oath as well as their statutory declaration would indicate inconsistencies with what I am being asked to believe now and what was relied upon by the Council in 2016.

56. There are other inconsistencies with the documentation and the appellant's case. This includes Council Tax records which indicate that the appellant may have been resident in a caravan between November 2001 and February 2011 and shows that there is no Council Tax record for any residential use of the current accommodation within the large building. That may be due to the appellant's lack of attention to such matters but other evidence does cast some doubt over what I am being asked to believe about these circumstances now.

57. An ecological survey was prepared in 2016 as part of the 'class Q' proposal by a firm of ecological consultants. This report states that the buildings at the site "were systematically searched for evidence of bats…". Furthermore, the report refers to the large building ("building 2") and goes on to describe it in substantial detail. The nature of the construction such as the single skin corrugated steel roof sheets with translucent panels amongst other things are detailed. The report goes on to say that the building possesses multiple openings via the Yorkshire boarding but is constructed in such a way as to provide no hidden voids. Furthermore, "a thorough examination" was made of both buildings.

58. In giving evidence the appellant dismissed the suggestion that the ecologist having made such a detailed description of the building would have noticed something as obvious as the living accommodation that currently exists, on the basis that they were "just there to look for bats". An email from the director of the consultancy that prepared the report, not the surveyor who undertook the work, dated 8 September 2020 indicates that they were not acting under

instruction to "deliberately omit information relating to any residential accommodation" and that the survey "relates only to the building's suitability to support roosting bats". The appellant confirmed to me that he did not see a draft report and that his instructions to this and other professionals was limited.

59. There was not an opportunity to ask questions of the ecologist or the director of the consultancy but notably the 2020 email does not confirm that there was residential accommodation within the building at that time. Given the detail provided within the report, its purpose where residential occupation may well affect the ecological interests being surveyed and the professional status of the consultancy, it seems very unlikely to me that the professional surveyor would not have mentioned significant internal adaptations of the building had they been present. Even if the term "agricultural building" was used generically to explain its form rather than function, something as obvious as residential accommodation would have been too significant to have missed out. This again therefore does raise doubt about the appellant's version of events and the occupation of the building in 2016.

60. The 'Willerby' and 'Atlas' caravans have been on site since well before the material date. Their occupation and therefore the primary use of the land in part as a residential caravan site is less clear.

61. The evidence of use for residential purposes is undermined by the trail of emails relating to the 'class Q' proposal in 2016. Occupation of the 'Willerby' caravan is stated in the appellant's statutory declaration as being from 23 November 2000 until the date he moved into the "flat". After this he says that on 21 April 2003 a Mr Webber moved into the caravan and remained resident until 2018, beyond the material date. Whether or not this is true, Council Tax records indicate that there has been some occupation. The appellant's statements and evidence on oath indicate that this may have occurred since before the material date. However documentary evidence is inconsistent such as an incomplete trail of rent-books but also in the form of emails to the Council's Principal Enforcement Officer in September 2019 which indicate some gaps in occupation. As well as that, there are the other emails from the same agent in 2016 which cast significant doubt about there being residentially occupied caravans on site at that time.

62. The early occupation of the 'Atlas' unit was patchy with various tenants. However, occupation since before the material date, has according to the appellant's agents emails in 2019, been by the same tenant. Again however, this is undermined by the correspondence in 2016 regarding the 'class Q' application.

63. I consider that what is now being claimed about the continuity of residential use of the site both within the large building and the caravans, is undermined substantially by various documents particularly those from 2016. The appellant's evidence on these matters is not robust, reliable, precise or unambiguous.

Timing of open storage as well as storage within containers

64. The appellant is only making a case for outdoor storage in relation to a part of the land close to the entrance of the horse-arena. Again, the current storage

use covers a wider part of the planning unit and the area addressed by the appellant's evidence is more confined. The email trail from 2016 that I refer to above, does not clearly reference this part of the site. If I am to look charitably with respect to the email trail, it is less clear that the uses on the periphery of the appellant's overall landholding will have been in the forefront of the appellant's mind or that of his agent when entering into that correspondence. However, it may be some indication of the insignificance of outdoor storage across the site at that time, in stark contrast with what is the case now. This insignificance of outdoor storage in 2016 is supported by aerial images that have been submitted by both main parties.

65. The 2001 aerial image shows the site in a very different condition from the present time. With respect to the material date for the LDC this is not directly relevant, however, it does show a distinct contrast from how the site has changed since that time.

66. The 2005 and 2006 images and then the 2 June 2009 image which is closer to the material date do show what appear to be some materials, containers and possibly vehicles within the area outside of the horse-arena. The appellant in giving evidence has referred to the materials and machinery being moved in and out of the area and given what he does for a living it is understandable that he would use land in his ownership for storing various materials and machinery used in association with that. Within these images, the horse-arena area is clear of any obvious signs of being used for storage. The appellant's own aerial images dated 2013 and 2016 show outside storage constrained still within the smaller area next to the horse-arena although there are what appear to be some containers closer to the main building and 'class Q' building. However, by the time of the 2018 image, prior to the date of the LDC application, more formalised storage appears to have encroached into the horse-arena to a similar degree as what I saw at my site visit.

67. There appears in my view to have been a substantial increase in external storage within the 10 years prior to the application which may have built up gradually over time and which has moved out from the discrete area that the appellant refers to. Based upon the evidence submitted, the increased visual impacts from this enlarged area of external storage is a definable and substantial change in the character of the site which appears by this time to have been a single planning unit. It has made a further significant change to the way in which the site has been used since the cessation of the equestrian use. The precise time when this became this significant and primary use of the site is difficult to pin-down. On the balance of probabilities however, it is reasonable to take a view that it may have been since 2010 when Mr Happenstall's comments in the 2016 email trail indicate the equestrian use ceased but before 2018 given the aerial imagery from that time.

Conclusion

68. The residential use within the large building is not currently as a self-contained dwellinghouse and even if it has been in the past, it has become entwined with other primary uses on the broader site. Intermingled within this mix of primary uses is the use for the siting and occupation of residential caravans. Furthermore, amongst the mix of uses, the level of the storage use has expanded significantly within the 10 year period prior to the submission of the LDC application such that it has become a primary use rather than being

ancillary to other uses or de minimus. The nature of uses within the site now are different from those applied for but also, there appears on the balance of probabilities to have been a significant change in the character of the activities taking place so that within the 10 years prior to the application, I consider there has been a material change in use of the planning unit.

69. Given that I am dismissing the appeal, the appellant is not profiting from any deception whether positively or by omission, that may have occurred over the time of his ownership of the appeal site. The Council in my view is not prevented from taking further enforcement action as I have set out above.

70. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the "The change of use of part of a building to form a self-contained dwellinghouse; and 2) The change of use of two former residential caravans to dwellinghouses and associated operational development; and 3) The change of use of land to use for open storage (Class B8)" was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A Harwood

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mrs Sutherland	Solicitor instructed by Mr Reed

She called:

Mr Reed, the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Anderson	Solicitor to the Council

She called:

Mr Douglass, DipTP MRTPI FRGS FRAS	Planning consultant

DOCUMENTS

1 Appellant's 'Planning Unit Plan'
2 Document from application 04/P/3366/F
3 Print-outs from Planning Practice Guidance
4 Council corrections and plan