The Planning Inspectorate

Appeal Decisions

Site visit made on 14 November 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 November 2023

Appeal Refs:
APP/N2739/C/23/3320400 (Appeal A) and
APP/N2739/C/23/332401 (Appeal B)
Land at Dunelm Farm, King Rudding Lane, Ricall, York YO19 6QL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mrs Julie Gaskell-Horner and Mr Tim Gaskell against an enforcement notice issued by the former Selby District Council.
- The enforcement notice was issued on 14 March 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, the change of use of land from agricultural to residential use including the erection of a timber cabin dwelling with an associated domestic curtilage including a domestic amenity area, laying of hard standing turning and parking areas, and the siting of a storage container for domestic storage*.
- The requirements of the notice are to (1) permanently cease the use of the timber cabin as a dwelling; (2) demolish the timber cabin dwelling building including the removal of the decking area, all footings and utility connections associated with the building; (3) remove the storage container building from the Land; (4) remove the hardstanding turning and parking areas and return the area on which the hardstanding was laid to grass, with the sowing of grass seeds; and (5) remove from the land all materials and debris arising from compliance with the above requirements.
- The period for compliance with the requirements is respectively (1) 1 month (2) 6 months (3) 6 months (4) 7 months and (5) 7 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) (d) and (g) of the Town and Country Planning Act 1990 as amended ('the 1990 Act') and Appeal B is proceeding on grounds (d) and (g).

Summary Decisions: Appeal A succeeds on ground (a) and conditional planning permission is granted. Both appeals fail on ground (d) but nevertheless the enforcement notice is quashed.

Preliminary Matters

1. Since issuing the enforcement notice, local government in the area has been reorganised, with the former Selby District Council becoming part of what is now the unitary North Yorkshire Council. This makes no difference to my decisions on the appeals.

2. A separate notice was issued on the same day in relation to a larger parcel of land also at Dunelm Farm, but that has since been withdrawn and the appeals against that notice have therefore lapsed.

3. That notice was directed against the residential use of land including that of the present appeal site, but in requiring the residential use to cease it excluded the

area that is the subject of the present appeal from that requirement. I understand from the parties' cases (and the Council's withdrawal of the notice) that there would have been no outstanding requirements of the notice if it had come into effect. However, my understanding of section 173(11) of the 1990 Act is that any planning permission granted by virtue of the section must be conditional on the notice having come into effect. Otherwise, there are no requirements that could be complied with (which would in turn trigger the planning permission referred to in that section). Therefore, although that notice had apparently been drafted so as to underenforce against the use here, following the withdrawal of that notice without it having taken effect I do not find that the current appeal site benefits from any existing planning permission for residential use whether by the operation of section 173(11) or otherwise.

Main Issues

4. The main issue, in respect of the ground (d) appeals, is whether the change of use of the land and/or the erection of the timber cabin dwelling ('the cabin dwelling', by common consent a building, also referred to in this decision as the 'dwellinghouse') had occurred long enough ago to prevent successful enforcement action from being taken.

5. In respect of the ground (a) appeal, the appeal site lies in open countryside where, when applying local policies, new residential development may only be permissible in certain circumstances. The principal issue here is whether the cabin dwelling would meet the appropriate criteria to be an acceptable replacement dwelling. This would be in respect of a twin-unit caravan also located at the farm, but not on the existing appeal site, that is offered up for removal as a condition of gaining planning permission for the dwellinghouse. The further issue is whether the proposed terms of that removal, namely by the imposition of a planning condition, could be enforceable as well as necessary and reasonable.

6. If permission is not forthcoming, the main issue on the ground (g) appeals is whether the notice stipulates a reasonable period of time in order to comply with its requirements.

Reasons

The appeals on ground (d)

7. Judgment in *Caldwell v SSLUHC* [2023] EWHC 2053 (Admin) was handed down on 7 August 2023 and comments sought from the parties about any implications for these appeals. Here, the notice alleges the change of use of land from agricultural to residential and the Council have sought to characterise the erection of the dwellinghouse as being integral or ancillary to that change of use. The appellants by contrast say that the erection of the dwellinghouse is fundamental to and causative of the change of use. The difference matters because of the different immunity periods that presently apply to, on the one hand, operational development and, on the other, material changes of use.

8. The appellants' case is that the dwellinghouse was constructed over the winter of 2018-19 and has been lived in since the end of February 2019. Some documentary evidence is provided in support of this contention. This comprises statutory declarations made by the occupant and two others, some electricity bills and some photographs.

9. The declaration of the occupant to the effect that he has lived there since February 2019 is simply not credible in the light of the electricity bills that have also been provided. Although referring to 'caravan 2' I understand those bills to relate to the appeal dwelling: that is the basis on which they have been submitted. The first such bill dates from September 2019, relating to the period since 4 July 2019, but no electricity use is recorded during this entire period, the bill relating to standing charges only. The same applies to the bill rendered in October 2019, and to that in November. No use of electricity is recorded until the period beginning on 18 November 2019.

10. An invoice for the labour involved in constructing a 'timber clad caravan regs unit' is dated 21 February 2019, which according to the photographs supplied appears to post-date the construction works. The outer appearance of the dwelling is shown as being almost completed on 23 January 2019. However, no information is given as to the extent of any internal works, or whether or not the building carried all the necessary facilities for independent living at that, or any later, point. The statutory declarations do not assist in this respect.

11. Whilst I have no reason to doubt the veracity of the photographic evidence showing the shell of the building to have been complete by January 2019, or aerially in September of that year, there is no information supplied to support a finding that a substantially completed dwellinghouse, replete with all the facilities required to support day-to-day living, was in existence more than four years prior to the issuing of the enforcement notice. Therefore, whichever approach is taken to the question of limitation, I find that the development as alleged was not immune from enforcement action when the Council issued the notice. The appeals on ground (d) will fail.

The Appeal A appeal on ground (a): the deemed planning application

12. Policy H13 of the Selby District Local Plan is permissive of replacement dwellings in the open countryside upon meeting certain criteria. Those criteria may be summarised as requiring the existing dwelling, which should not be of architectural merit, to be meaningfully capable of habitation; an enforceable mechanism by which the existing dwelling would be demolished and removed; that the replacement dwelling should not be significantly larger than the existing one and have no greater adverse landscape impacts; and that the design and materials of the new dwelling should be appropriate to its surroundings.

13. Here, there is no existing 'dwellinghouse' but that is not what the policy refers to: it talks of replacement 'dwellings'. As the twin-unit caravan site ('the caravan site land') has the benefit of a lawful development certificate for its residential use, I see no real reason why it could not constitute a 'dwelling' for the purposes of policy H13, notwithstanding that it is not a bricks-and-mortar construction but is instead a lawful land use. It is in fact described as a 'dwelling' in the certificate.

14. On site I observed two separate caravans on the plot. Although comprising a land use, rather than a building, the residential use of the caravan site land, which involves the stationing of at least one caravan, nonetheless has a tangible presence in the landscape against which the relevant criteria of policy H13 may be assessed. The certificate also records that the use of an area of land adjoining what was then described as a twin-unit caravan, outlined on the

accompanying plan, is lawfully incidental to that residential use, such as for parking and turning, a yard area and bin storage.

15. The Council do not contend that the residential use of the caravan site land has been abandoned or is otherwise incapable of residential occupation; and nor do they contend that either existing caravan is of any architectural interest. The caravan site land lies some 10m away from the site of the cabin dwelling, and the Council dispute that the cabin dwelling could be a 'replacement' because it is on a different site. Subject to the mechanism of ensuring that the caravans are indeed removed and that the residential use of that site ceases, however, I do not find that the cabin dwelling would fail to fall within the scope of the policy. There is no express requirement for the new dwelling to be on the same site as that which it replaces: the policy is explicit that this may not be the case. Accepting that there must be some meaningfully proximate relationship between the two, however, I find that there is: the cabin dwelling is situated on the same farm, and is within the same ownership, as the caravan site land. As the Council note, they are only 10m apart. I find that there is a sufficient nexus between the new and the old so as to lie within the scope of the replacement dwellings policy H13.

16. The fourth criterion of the policy relates to the relative sizes of the dwellings and the impacts of the replacement dwelling on the landscape. Although the certificate is unrestricted as to the location of the caravan within its site, and as to the amount of incidental residential paraphernalia that could be associated with it, there is no suggestion that it might be developed significantly differently from what I saw on site. Obviously the use as a caravan site would not benefit from the generally available permitted development rights conferred upon dwellinghouses to construct outbuildings and the like.

17. The cabin dwelling measures 19.7m in length and 7m in width. It has a pitched roof with eaves which measure 2.9m above ground level and a ridge height of 4m above ground level.

18. It appeared a little larger than the cumulative dimensions of the caravans that I observed on the caravan site land, and is broadly commensurate with the limits on the dimensions of twin-unit caravans prescribed by legislation. The 1968 Act prescribes maximum dimensions for twin-unit caravans, which are 20m by 6.8m and with an internal height of a little over 3m (there being no express restriction on the external height).

19. The cabin dwelling lies on a larger plot of land than the caravan site land, and has a decking area to the rear to the full width of the dwellinghouse, housing garden furniture. Beyond it lies a grass lawn area. The dwellinghouse and decking are both finished in timber which appears appropriate to its rural setting. The cabin dwelling is significantly more attractive than the cumulative caravans on the caravan site land, one of which is also clad in timber but the other a white 'Boeing 32 x 12' appearing in a state of considerable disrepair. Although the cabin dwelling is somewhat larger than the caravans, it is not significantly so, and overall I find that their replacement by it would result in improvements to the appearance of the farm and would not result in the adverse landscape impacts that policy H13 seeks to avoid.

20. It follows that I consider the cabin dwelling to be capable of meeting the 'replacement dwellings' policy criteria of H13. If it does so, there is no need for me to consider any other policy basis on which the proposal might be

permissible, such as under SP2 of the Core Strategy which allows for new dwellings in the countryside in certain limited circumstances. Having considered that and other policies in the development plan, however, the cabin dwelling here would be unacceptable if policy H13 did not apply, because no other such criteria are met, and no reasons (including any contentions as to the local housing supply) are given which would justify a departure from the development plan so as to permit it otherwise. Having been put to an agricultural use previously, the site does not constitute previously-developed land.

21. However, in order to be satisfied that the proposal is acceptable under policy H13, I should need to be satisfied that there is a reasonable and enforceable mechanism by which the existing caravans are to be removed, that they are not to be replaced by any other caravans, and that the residential use of the associated site (shown on the plan attached to the lawful development certificate) permanently ceases.

22. The two sites are within the same ownership, and I saw on my site observation that neither caravan on the caravan site land is presently occupied. Therefore it appears to me (because there is no existing resident who might be otherwise displaced, and whose Human Rights or other interests might require consideration) to be a necessary and reasonable requirement for the caravans to have to be removed from their site. The condition proposed to me by the appellant, in terms that 'the twin unit caravan shall be removed from the land within 6 months of the date of this decision' does not go nearly far enough. It does not identify any particular caravan, it does not identify the land to which it applies, it does not require the residential use of the caravan site land to cease and it does not prevent its resumption even if it does so. There is no caravan, twin-unit or otherwise, on the present appeal site and so, as proposed, the condition is meaningless.

23. The appellants have resisted entering into a planning obligation under section 106 of the 1990 Act that could secure the caravans' permanent removal, the cessation of the residential use of that site, and the loss of the benefit of the lawful development certificate. I have considerable sympathy with the Council's case that such an obligation should be required here. However, I have come to the conclusion that the requirement to cease the use of the caravan site and to remove the caravans from the land identified on the certificate can be secured (although in a different way) by imposing a planning condition.

24. To move the caravans onto any other land at Dunelm Farm for a residential use would, save in very limited circumstances, amount to a separate breach of planning control capable of enforcement by the Council, and I do not find that it would be reasonable to prohibit this by the operation of a planning condition. However, it would be reasonable to require the removal of the caravans from their present site and to cease the residential use of that site, so effectively losing the benefit of the certificate of lawfulness, as the quid pro quo for obtaining the benefit of permission for the cabin dwelling.

25. I shall achieve this by imposing a condition requiring the demolition and removal of the dwellinghouse that I am permitting if and in the event that certain conditions apply. I am conscious that it is highly unusual for planning conditions to require the demolition and removal of built development that is intended to be of permanent construction, but this is a rare case where such a condition appears to me reasonable in the circumstances. It strikes me as

inherently more reasonable (and enforceable) than a positive obligation, as suggested by the appellants, to terminate the existing lawful use rights available to the caravan site land. It would give the appellants a choice as to which development to take advantage of (but not both) and would give the Council greater comfort in securing the cessation of one of the residential uses if the condition is not met, and in the case of any change in land ownership.

26. If the condition I am imposing is considered unreasonable, then I should make it clear that I consider the condition to be inseverable from the permission that I am granting. I find that the development for which I shall grant permission, having relied upon the Council's replacement dwellings policy H13 to justify it, would be unacceptable without the condition. I have had no less onerous way (save for the appellant's unworkable proposal, or the Council's desired planning obligation which is not on offer) suggested to me in which the outcome of securing only one residential site of the two might be achieved.

27. It is quite obvious that the caravans are being retained in situ in order to justify the cabin dwelling as a replacement. If permission is refused for the dwellinghouse then it appears likely that its occupant would instead take up residence on the caravan site land. The cabin dwelling is shown by the appellants to have been constructed, externally at least, over a period of only seven weeks during a winter period; it apparently involves no built foundations; and it is described in an invoice as a 'timber clad caravan regs' unit. Thus, although a 'building', it does not appear to me to be of such substantial construction that it would be unreasonable to have to demolish it if the caravan site use were to persist (or were to resume at any future point).

28. The overarching point is that there is in any event no requirement to demolish the dwellinghouse unless the caravan site land continues (or is resumed) to be used for residential purposes. Thus the condition I am imposing here gives effect only to what the replacement dwellings policy H13 requires. I do not think it unreasonable to impose terms requiring the conditional demolition of a dwellinghouse that, if the appeal were to fail and the notice to be upheld, would have to be demolished anyway.

29. On the subject of any other conditions to be imposed, a condition removing the benefit of permitted development rights to construct extensions and outbuildings is required in order to ensure that, as I have found, the dwellinghouse gives rise to no greater adverse impacts on the landscape than does the present caravan site. Similarly to withdraw any rights to construct additional fences or other means of enclosure, although noting that the appeal site land has been fenced already, and to prohibit the keeping of caravans or shipping containers on the appeal site.

30. Other conditions are suggested by the Council. I see no reason to impose a 'plans' condition, because the deemed application is made retrospectively. However, for the record, at the time of my decision the cabin dwelling on the site accords with the SCS plan 10-6-20 Gaskel, entitled 'Cabin and decking detail and location plan' found at appendix 11 to the Council's statement in these appeals.

31. I do however accept the Council's reasons for requiring drainage schemes and contamination investigations, together with remedial works if required, in order to ensure the suitability of the site for its use, and I shall therefore impose these conditions in the terms suggested.

32. It follows that, because I am granting a conditional planning permission for the cabin dwelling and the associated residential land use, the appeals on ground (g) do not fall to be considered.

Conclusion and Formal Decisions

33. In accordance with my reasons given above, the appeals on ground (d) do not succeed. As well as alleging the change of use of the land to residential and the erection of the cabin dwelling, the notice also refers to the 'siting' of a storage container. I do not understand any separate 'storage' use to form part of the allegation, or that the storage container in itself amounted to operational development. It has since been removed. I shall omit any reference to it in describing the development for which a deemed planning application, under the Appeal A ground (a) appeal, has been made.

34. For the reasons also given above, it is directed that the enforcement notice is quashed and a conditional planning permission is hereby granted for the making of a material change of use from agricultural to residential use including the erection of a timber cabin dwelling with an associated domestic curtilage including a domestic amenity area, laying of hard standing turning and parking areas on land at Dunelm Farm, King Rudding Lane, Ricall, York YO19 6QL, edged in red on the attached Plan A, subject to the following conditions:

    (1) The dwellinghouse hereby permitted, together with its associated decking area and boundary fencing, shall be demolished and removed from the land, the residential use of the land shall cease, and the land shall be restored to its former condition within three months of any of the following matters occurring:

        (a) The failure to remove, within one month of the date of this decision, the caravans from the land edged red on the attached Plan B;

        (b) The failure to cease any residential use of the land edged red on the attached Plan B upon the date of this decision;

        (c) The bringing onto the land edged red on the attached Plan B of any caravan or mobile home or other unit designed for residential occupation;

        (d) The continuation or resumption of any residential use of the land edged red on the attached Plan B.

    (2) Notwithstanding the provisions of any development order made under section 59 of the 1990 Act, including the Town and Country Planning (General Permitted Development) (England) Order 2015, (or any Act or order revoking or re-enacting that Act or Order) no extensions, garages, outbuildings, fences, gates, walls or other means of enclosure or other structures shall be erected, nor new windows, doors or other openings inserted other than those hereby approved.

    (3) No caravans or shipping containers shall be kept on the land.

    (4) Within three months of the date of this decision, a scheme for the provision of surface water drainage works and the provision of foul sewerage works, including an implementation timetable, shall be

submitted to, and approved in writing by the Local Planning Authority. Once approved, these schemes shall be implemented in accordance with the approved details.

(5) Within three months of the date of this decision, an investigation and risk assessment (in addition to any assessment provided with the planning application) must be undertaken to assess the nature and extent of any land contamination. The investigation and risk assessment must be undertaken by competent persons and a written report of the findings must be produced. The written report is subject to the approval in writing of the Local Planning Authority. The report of the findings must include:

i. a survey of the extent, scale and nature of contamination (including ground gases where appropriate);

ii. an assessment of the potential risks to:
- human health,
- property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes,
- adjoining land,
- groundwaters and surface waters,
- ecological systems,
- archaeological sites and ancient monuments;
- an appraisal of remedial options, and proposal of the preferred option(s).

This must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11'.

(6) Where required following the investigation and risk assessment undertaken as part of the above condition, within one month of the investigation and risk assessment being undertaken, a detailed remediation scheme to bring the site to a condition suitable for the intended use (by removing unacceptable risks to human health, buildings and other property and the natural and historical environment) shall be prepared and is subject to the approval in writing of the Local Planning Authority. The scheme shall include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

(7) Where a remediation scheme is approved under the above condition, the approved remediation scheme shall be carried out in accordance with its terms within three months from the date on which the remediation scheme was approved by the Local Planning Authority and a verification report that demonstrates the effectiveness of the remediation carried out shall be produced and be subject to the approval in writing of the Local Planning Authority.

Laura Renaudon

INSPECTOR

The Planning Inspectorate

Plan A

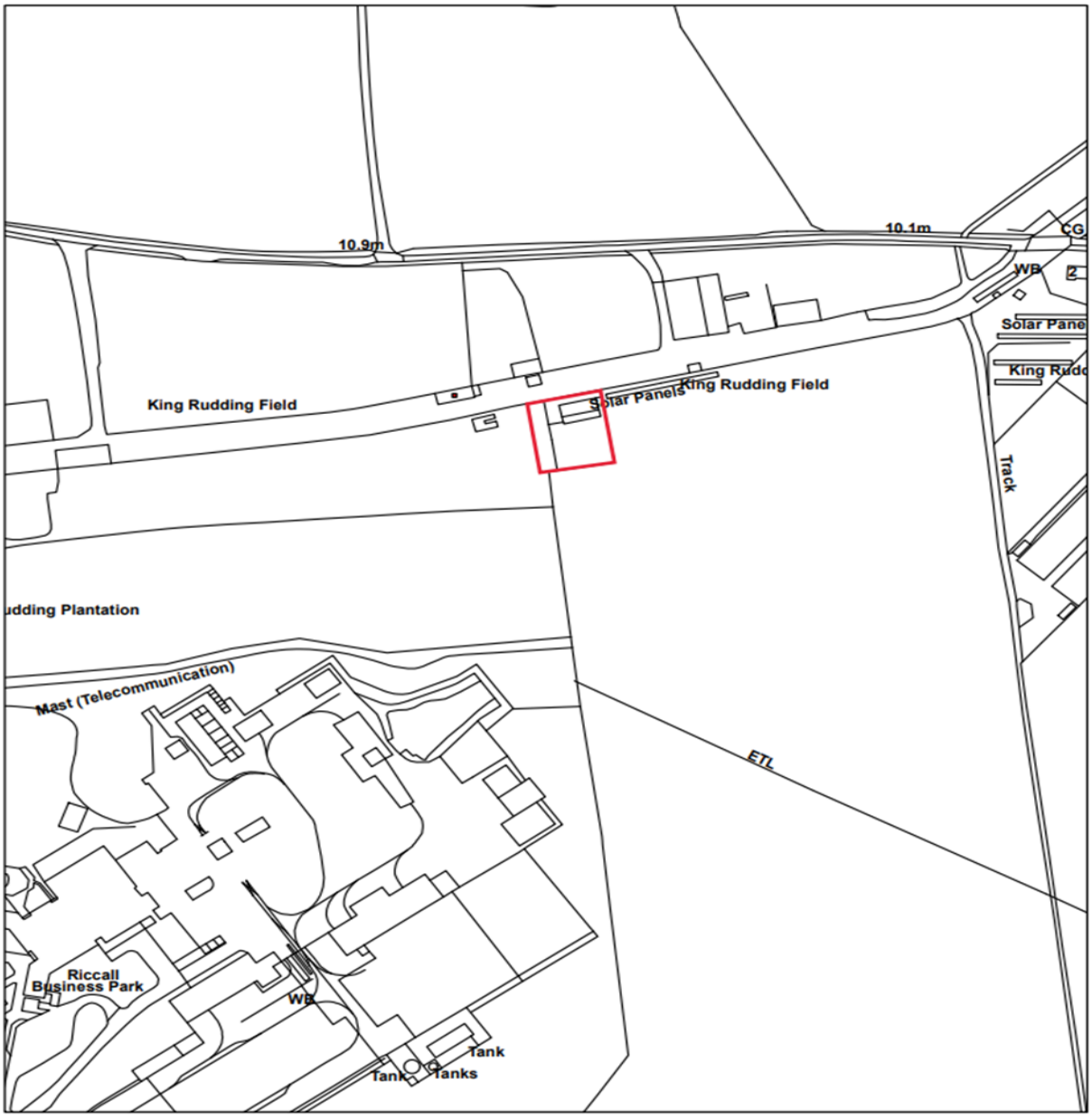
This is Plan A referred to in my decision dated: 29 November 2023

by Laura Renaudon LLM LARTPI Solicitor

Land at: Dunelm Farm, King Rudding Lane, Riccall, York YO19 6QL

Reference: APP/N2739/C/23/3320400 and 3320401

Scale: do not scale



The Planning Inspectorate

Plan B

This is Plan B referred to in my decision dated: 29 November 2023

by Laura Renaudon LLM LARTPI Solicitor

Land at: Dunelm Farm, King Rudding Lane, Riccall, York YO19 6QL

Reference: APP/N2739/C/23/3320400 and 3320401

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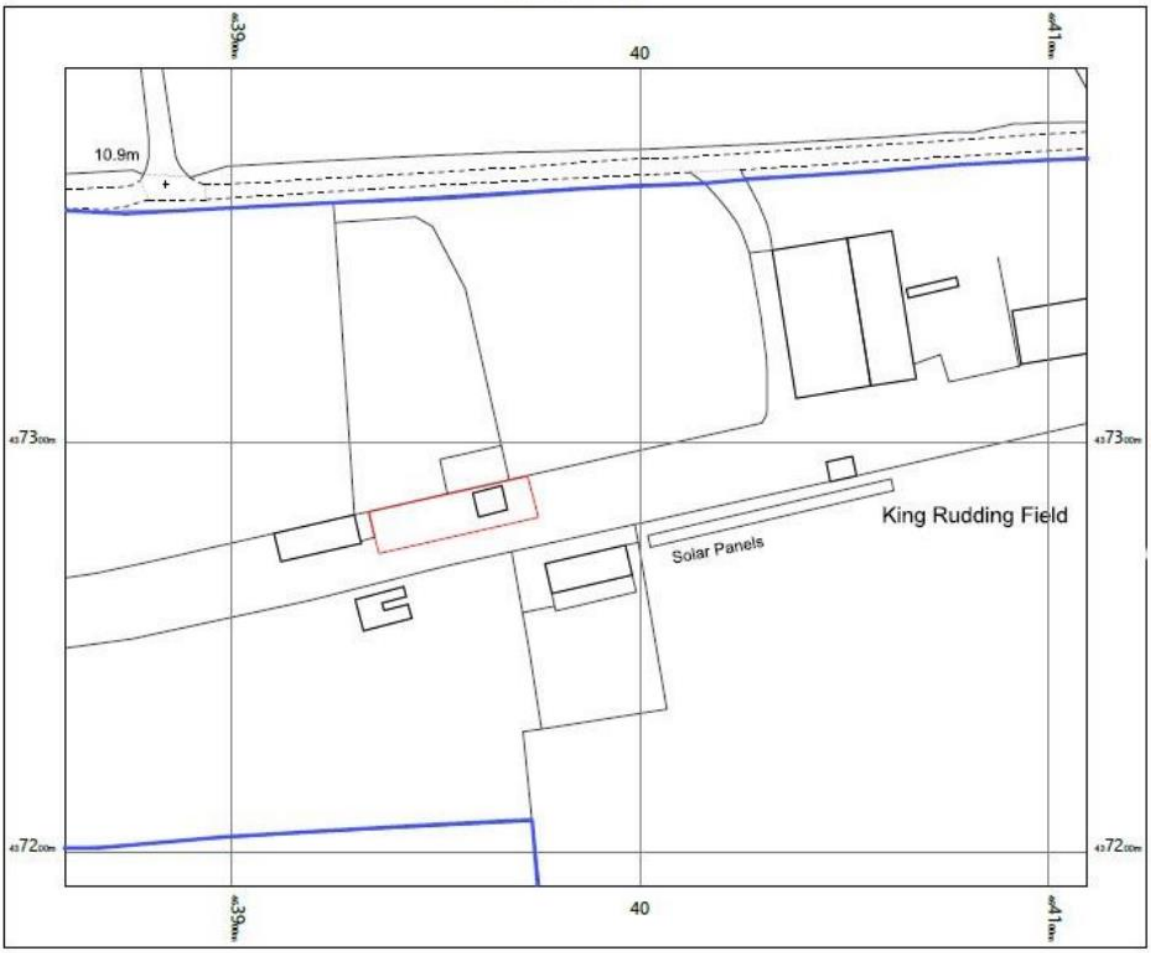
Location Plan