



Appeal Decision

Hearing Held on 6, August 2024

Site visit made on 7 August 2024

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2024

Appeal Ref: APP/C1435/X/23/3314606

**Ironside, Flitterbrook Lane, Rushlake Green, Heathfield, East Sussex, UK
TN21 9QH**

- 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 Andrew Long against the decision of Wealden District Council.
 - The application Ref: AMB/WD/2021/1384/LDE, dated 18 March 2021, was refused by notice dated 14 December 2022.
 - 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 part residential use and occupation of the land hatched black on attached plan.B1 outlined in red.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Mr Andrew Long against Wealden District Council. This application will be the subject of a separate Decision.

Preliminary matters

3. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance in the context of an appeal made under section 195 of the 1990 Act as amended. The appellant must show, on the balance of probability, that the development at the date of application (18 March 2021¹) is lawful.
4. The description of the development varies between the application form (as outlined in the banner heading) and the Council's decision letter which describes the development as "lawful part use and occupation of land as residential in excess of a 10-year period". The Pre-Hearing note sought

¹ The date stated on the application form.

clarification from the parties regarding this, and in response, within the signed statement of common ground (SOCG), the Council suggested the revised description: "Part residential use and occupation of land". During the Hearing, the appellant confirmed that he agrees with this wording. Therefore, I am satisfied that neither party would be prejudiced by this change, and I have determined the appeal on this basis.

5. In addition, I note that there are other uses (agricultural, parking, recovery, repair and storage of motor vehicles²) that are accepted to be going on. Whilst the description of the development does not refer to a mixed-use, it was clear from the discussions at the Hearing, that that's how the appellant perceives the existing use rather than separate primary uses.
6. The Council determined the LDC application based on the site plan submitted on 2 August 2021. However, a revised site plan, was submitted to the Council in October 2022, and submitted with this appeal. The appellant states that this plan reflects the planning unit for this LDC application and better reflects the situation on the ground. Since all parties have had an opportunity to comment, I am satisfied that neither party would be prejudiced by this. I have therefore determined this appeal on the basis of this revised site plan.
7. As this was a Hearing, and not an Inquiry, all oral evidence was not given on oath.

Main Issue

8. The main issue is whether the Council's refusal of an LDC was well founded. In particular, it is necessary to consider:
 - Whether the 2000 enforcement notice, as corrected by Appeal Decision reference: APP/C1435/C/00/1040220 dated 20 December 2000 (The 2000 Appeal Decision), approved residential use across Allis Farm including the land known as Ironside (the appeal site);
 - Whether the appellant has proved on the balance of probability that the use of the appeal site changed to part residential use and occupation on or before 18 March 2011 (that being 10 years prior to the date of the LDC application) and that the use then continued without substantial interruption for 10 years after the date of the change; and if so
 - Whether the accrued right was lost by any subsequent material change of use.

Reasons

Whether the enforcement notice, as corrected by the 2000 Appeal Decision approved residential use across Allis Farm including land known as Ironside

9. The appellant's first argument is that the residential use and occupation of the appeal site, known as Ironside, became lawful as a result of the 2000 Appeal decision which corrected and varied the enforcement notice on land known as Allis Farm. The parties agreed that the land known as Ironside, the subject of the current appeal, formed part of the land the subject of the 2000 appeal decision.

² Referred to in section E of the Appeal Form.

10. The original, unaltered, allegation in the enforcement notice³, stated: "without planning permission the change of use of the land for the storage, parking and repair of motor vehicles including inter alia, cars, lorries, vans, recovery vehicles, coaches, agricultural contractor's vehicles and an aircraft tug."
11. The requirements of the unaltered notice were:
- (i) Stop using the land for the storage, parking, and repair of motor vehicles.
 - (ii) Remove all motor vehicles from the land including, inter alia, all cars, lorries, vans, recovery vehicles, coaches, agricultural contractors' vehicles and an aircraft tug.
 - (iii) Remove from the land all plant, machinery, tools and equipment and all motor vehicles spare parts associated with the said unauthorised use.
12. The appeal against the 2000 notice succeeded in part on grounds (d) and succeeded on ground (g), with the time for compliance extended. The notice was corrected, and the requirements of the notice were varied. Subject to these corrections and variations the notice was upheld. The parties agreed during the Hearing that the corrected allegation of the enforcement notice, as a result of the 2000 appeal decision is:
- "Without planning permission change of use for agriculture, for residential use and parking and repair of motor vehicles including, inter alia, cars, lorries, vans, recovery vehicles, coaches, agricultural contractors' vehicles and an aircraft tug."*
13. The parties also agreed during the Hearing that the varied requirements of the 2000 appeal decision are:
- 1) a) stop using the land not hatched black on the plan attached to this decision for the storage, parking and repair of motor vehicles other than those required for the purposes of agriculture or residential use and
 - b) stop using the land hatched black on the plan attached to this decision for the parking of motor vehicles other than for the purposes of agricultural on the land, for the purposes of the residential use of Allis Farm or for the purposes of the repair of motor vehicles on the land hatched black on the plan attached to this decision.
 - 2) Remove all motor vehicles from the land not hatched in black on the plan attached to this decision, including, inter alia, all cars, lorries, vans, recovery vehicles, coaches, agricultural contractors' vehicles and an aircraft tug other than those required for the purpose of agriculture on the land or the residential use of Allis farm.
 - 3) Remove from the land not hatched black on the plan attached to this decision, all plant, machinery, tools and equipment and all motor vehicle spare parts associated with the said unauthorised use.
14. The appellant considers that the above corrections to the allegation did not include any requirements relating to a cessation or change in relation to

³ Dated 6 March 2000.

residential and agricultural uses inserted to the allegation. The whole of the land of Allis Farm was covered by the notice, as corrected. The appellant argues that the residential and agricultural uses of the whole of the land⁴ became lawful by virtue of Section 173(11) of the 1990 Act.

15. The appellant states that at the time of the 2000 appeal decision, the Allis Farm bungalow was occupied solely by his grandmother and that he resided in a converted coach on part of the land that became known as Ironside. However, there is very little corroborating evidence which demonstrates this in the form of photographic evidence or other documentary evidence. I appreciate that the Council's original 2000 notice and the 2000 appeal decision refer to the coach, as one of the vehicles parked on the land. Nevertheless, neither of these documents refer to the appellant's residential occupation of the coach. Furthermore paragraph 19 of the Inspector's decision specifically states, "*the bungalow and garden (of Allis Farm) occupied by the appellant and his grandmother*". It is important to note that all evidence at that Inquiry was taken on oath⁵, and it is highly unlikely that the Inspector made this statement based any assumption, as was suggested during the Hearing.
16. The Council also stated that they were unaware of any residential occupation of the coach at this time and there is no reference to the residential occupation of the coach in the three enforcement notices issued by them on Allis Farm in 2000. Furthermore, there was no ground (b) appeal⁶ at that time, suggesting that any of the motor vehicles, including the coach, were there for anything other than for the parking and repair of motor vehicles. As such, based on all the evidence before me I consider that the residential use of Allis Farm at the time of the 2000 appeal decision was the bungalow and garden of Allis Farm, which was included within the red line boundary of Allis Farm.
17. Furthermore, paragraph 19 of the 2000 Appeal Decision makes clear the need to include these additional lawful uses within the allegation. The Inspector states:

"19. First, it is clear that at the date of the notice the land was used not only for the purposes enforced against but for agricultural use. There is also a bungalow and garden occupied by the appellant and his grandmother. In my opinion it is possible to correct the notice to include reference to both agricultural and residential use without injustice to either party. This is done in the Formal Decision."
18. This clearly explains why the Inspector made the corrections to the allegation. If it is apparent in a material change of use case, such as this, that the notice did not describe all of the components of a mixed-use taking place on the site, and the additional components are lawful, the notice should be corrected, to describe the mixed use properly. Since the Inspector, made clear that the additional components were lawful (in this case the agricultural use and residential use of the bungalow and garden), the requirements did not need to be varied, and the prospect of planning permission being granted by virtue of s173(11), subject to the notice being complied with, would not apply to this scenario.

⁴ Allis Farm, including land known as Ironside.

⁵ Paragraph 2 of the 2000 appeal decision.

⁶ That those matters alleged have not occurred.

19. Furthermore, in relation to the lawful uses of Allis Farm and whether the 2000 notice has been complied with, the Council submitted additional evidence before the Hearing comprising correspondence in 2006 between the Wealden District Council's Principal Solicitor and the appellant. Those various correspondence from 2006, addressed correspondence to the appellant at 'Allis Farm', and included a response from the appellant, where he also described his address as 'Allis Farm'.
20. The final page of the appellant's reply to the Council of 4 April 2006 states:
- "My interpretation of the Inspector's Appeal Decision and the amended notice is that I can lawfully repair, park and store any motor vehicles on the area hatched black, and I can repair, park and store any vehicle for the purposes of agricultural or residential use on the land not hatched black. Furthermore, nowhere in the amended notice is a requirement to remove anything from within the area hatched black – stored or otherwise. It should be noted that nowhere in the amended notice is there a requirement to stop using the land hatched black for storage of motor vehicles, and this is in accordance with the Appeal Decision."*
21. The above response from the appellant to the Council's solicitor does not suggest any ambiguity with regard to 1) which uses the corrected notice authorised and also 2) the requirements of the notice. It is clear that the appellant understood, what the corrected allegation was and what steps he must do to comply with the notice. Indeed, this interpretation of the Notice is consistent with Paragraph 29 of the 2000 Appeal Decision which states:
- "Therefore, on balance, I have concluded that the appeal on ground (d) against the notice B succeeds to a limited extent. It is not possible to quash a notice only in part. Therefore the whole of it will be upheld but the requirements will be varied to exclude from them the storage and repair of motor vehicles within a defined area since these uses are now lawful on that land. I will also exclude, for the avoidance of doubt, the storage, parking and repair of vehicles used for agricultural or residential purposes within Allis Farm, and parking which is incidental or ancillary to the agricultural or the residential uses of the land."*
22. Following this letter from the appellant⁷, the Principal Solicitor's responded on 24 April 2006 stating that "I am pleased to advise you that, at the present time, there does not appear to be any breach of notice necessitating formal enforcement action." The Council also confirmed during the Hearing that they considered the 2000 appeal decision had been complied with.
23. Therefore, from the appellant's letter of 4 April 2006, it appeared at the time, some 5 years after the appeal decision, the appellant was clear with regard to the outcome of the 2000 appeal decision, the notice as corrected and varied, and the effect this had on the lawful uses of Allis Farm (which incorporates the land now known as Ironside).
24. The appellant's letter was in response to the Council's Principal Solicitor's letter seeking the appellant's view on the current use of the farm and, if appropriate, to take remedial action. Indeed, nowhere in that letter does the appellant make any assertion that the 2000 appeal decision corrected and varied the notice to allow residential use across the entire land known as Allis Farm.

⁷ Dated 4 April 2006.

25. The appellant refers to another appeal decision in Allerdale Borough Council⁸, where the Inspector explained that it is important an enforcement notice is legible on its face, without needing to infer or imply its meaning. I also agree with this. Nevertheless, for the reasons outlined above the corrected and varied 2000 notice is clear and unambiguous, as outlined by the appellant himself in his letter to the Council's solicitor on 4 April 2006.
26. I therefore conclude that, based on all of the evidence before me, and on the balance of probabilities, the 2000 enforcement notice, as corrected and varied by the 2000 Appeal Decision, did not by virtue of s173(11), approve residential use across Allis Farm, including land known as Ironside.

Whether the appellant has proved on the balance of probability that the use of the appeal site changed to part residential use and occupation on or before 18 March 2011 (that being 10 years prior to the date of the LDC application) and that the use then continued without substantial interruption for at least 10 years after the date of the change; and if so whether the accrued right was lost by any subsequent material change of use.

27. The appellant's case is that the part residential use and occupation of the land known as Ironside began on or before 18 March 2011 (that being 10 years prior to the date of the LDC application) and that the use then continued without substantial interruption for over 10 years after the date of the change. In support of the LDC application, the appellant has sought to provide evidence that the site has been occupied by the appellant in part residential use since 1997/1998.
28. However, the Council maintains its reason for refusing the application, which essentially is that there is insufficient and contradictory evidence to support this claim. They also consider that the creation of the operational development in 2014, comprising the erection of a building and occupied as a dwelling⁹ resulted in a material change of use of land and the loss of any accrued rights of a continuous use.
29. I shall focus on the appellant's own evidence, the starting point being Mr. Long's statutory declarations (x 2) dated 14 March 2021 and 2 August 2022 (the declarations) respectively. The declarations state that Mr. Long has owned and operated a motor vehicle repair and recovery business¹⁰ as well as carrying out agricultural operations on Allis Farm and subsequently Ironside, since the early 1990s. It also states that Mr Long resided continuously in a succession of mobile residential units on the land known as Ironside, the first of which was a coach he converted and resided in since 1997/1998. He then moved into a mobile military 'Brockhouse' which he converted for residential use in the summer of 2005, and resided continuously on various parts of Ironside, until December 2014 when he completed the construction of the building that was subject to 2021 Inquiry. He states that the building became his permanent residential accommodation between January 2015 and from the date of the second statutory declaration, 2 August 2022.
30. To corroborate this, correspondence relating to the leaving of Allis Farm and his acquisition of the land known as Ironside; a site plan and photographs of the

⁸ Appeal Ref: 3260841

⁹ The subject of the 2018 enforcement notice and 2021 appeal ref: 3218015

¹⁰ The subject of the 2000 appeal decision.

coach and appeal site, (as well as other pieces of documentary evidence) have been submitted which the appellant considers demonstrates that the part residential use and occupation of Ironside for more than 10 years. I will look at these in turn. There are also statutory declarations from family members¹¹ and letters from friends and acquaintances which support the LDC application and are generally consistent with the information set out by the appellant in terms of residential occupation of Ironside since 1998.

31. As outlined above, the appellant states that he was residing in the converted coach for more than two years, prior to the Council's enforcement notice relating to the 2000 appeal decision. However, there is some uncertainty regarding that date when the change of use to include part residential use took place.
32. The appellant's statutory declarations state that his occupation of the coach on Ironside began in 1997/1998. However, the eviction notice, entitled 'notice to quit' of 8 October 1999 appears to indicate that the appellant was still residing on the grandmother's Allis Farm bungalow in 1999. When asked about this the appellant stated that he was operating his vehicle recovery business from Allis Farm and that he had a number of motor vehicles, personal belongings and equipment parked and stored on Allis Farm, and that there was an agreement between the appellant and his grandmother, whereby in exchange for the transfer of ownership of part of Allis Farm to the appellant, the appellant would move all his business activities and associated vehicles and equipment to the land that became Ironside.
33. However, the notice to quit specifically states under the main heading "(By landlord or premises let as a dwelling)". The notice refers to the appellant as a tenant, and under the heading 'Information for the tenant', paragraph 1 states "*If the tenant or licensee does not leave the dwelling, the landlord or licensor must get an order for possession from the court before the tenant or licensee can lawfully be evicted*". Furthermore, a letter from the appellant's grandmother, J. E Adams-Acton, to Rix and Kay Solicitors, dated 20 June 2000, in reply to a letter regarding the "sale of land at Allis Farm" states that Andrew Long has vacated my property (Allis Farm). All of these statements, strongly indicate the appellant's residential occupation of the dwelling at Allis Farm in 1999 rather than Ironside.
34. Furthermore, there is no clear and convincing documentary evidence of the residential occupation of the coach in 1997/1998. Indeed, no dated photographs have been submitted clearly showing that the coach was converted for residential occupation at this time. The site plan and aerial photographs submitted by the appellant do not provide any clearer evidence of this. For instance, the earliest aerial photograph is dated 2004, some 6 years after the date when the material change of use to residential use allegedly took place.
35. These aerial pictures simply show that a number of vehicles and containers/structures, including the coach, parked across the site. Such structures and vehicles would be consistent with the enforcement notice and the 2000 appeal decision made lawful the parking and repair of motor vehicles on a small part of Allis Farm. Therefore, the site plan and the aerial photographs do not support the appellant's case.

¹¹ Mother, stepfather, brother and sister-in-law.

36. In contrast, the Council submitted an aerial photograph of Allis Farm in 1999 which clearly shows the appellant's coach outside the grandmother's bungalow and not on the land now known as Ironside. When asked about this, the appellant stated that he drove the coach a short distance to the bungalow so that his mother could make him curtains for the coach so that she would not have to "trek over" to Ironside. However, the appellant's mother could not recall when the curtains were made, but more importantly I observed that the appeal site is located adjacent to the bungalow and grounds of Allis Farm. Therefore, it is unclear why the coach would need to be moved a relatively short distance for this task to be carried out, which coincidentally happened to be moved the exact same time when the aerial photograph of 1999 was taken.
37. Furthermore, the only two photographs of the coach submitted as evidence, do not show any curtains within the coach, nor do they explicitly show any residential conversion and occupation of the coach. Therefore, the photographic evidence does not support the appellant's case, and indeed contradicts it. Neither these, the site plan submitted, nor the documents which show the separation of the land from Allis Farm demonstrate residential occupation for more than the relevant 10-year period.
38. In addition, the Inspector in the 2000 appeal decision specifically referred to the appellant residing with the grandmother in Allis Farm bungalow and gardens, and I note that all evidence at that Inquiry was taken on oath. Furthermore, there was no ground (b) appeal at that time, suggesting that any of the motor vehicles, including the coach, were there for anything other than for the parking and repair of motor vehicles
39. From the evidence before me, the date when the full-time residential occupation of Ironside commenced is therefore ambiguous. The supporting statements provided by various family members and third parties do not overcome this ambiguity. Taken together, all the circumstances give me no confidence that the evidence submitted regarding the date of the residential occupation of the coach was correct.
40. The appellant also contends that bank statements; driver's licenses; Wealden District Council handbooks and pay slips further demonstrate his full-time residential occupation of the land over the requisite period. I shall consider these in turn.
41. Bank Statements have been submitted over a period from December 2006 to March 2019 (in excess of 10 years) which are addressed to the appellant at Ironside. However, the appellant's statutory declaration of the 14 March 2021 states that he has always maintained two different addresses for his residential address and his business address. The main differences between these are the residential address includes 'Flutterbrook Lane' and omits 'A Long Recovery'. It is notable that the address on the bank statements omits 'Flutterbrook Lane' and therefore appears to follow the business address rather than the residential address.
42. Photocopies of the appellant's driving licences have also been submitted. The dates of when the licences and counterparts were issued, range from the March 2010 and the latest dated 15 August 2018, and therefore do not cover a period in excess of 10 years. Furthermore, similarly to the bank statements, the address stated on the licence also omits 'Flutterbrook Lane', and therefore also appears to follow the business address. As such, it is unclear and ambiguous

whether these bank statements and driver's licences provide clear and conclusive evidence of the appellant's residential occupation of the land, rather than his business use of the site, which was made lawful by way of the 2000 appeal decision. Therefore, I place limited weight on the bank statement and driver's licence records provided.

43. The appellant explains he was a district Councillor from 2002 to 2019 and extracts from Wealden District Council handbooks¹² lists the appellant's address as Ironside. However, despite the longevity of his time as a Councillor these documents only show his address listed as 'Ironside' in the handbooks dated 2014, and then in 2017 to 2019, and do not demonstrate on the balance or probability residential occupation over a continuous period of 10 years.
44. Furthermore, only 3 x payslips¹³ from Wealden District Council have been submitted over this period, which also lists the appellant's address as Ironside. Two of these are dated in 2011 and one dated in 2017 and thus, clearly also do not demonstrate residential occupation of the land over a continuous period of 10 years.
45. A further document was submitted during the Hearing in relation to an agreement between Wealden District Council and the appellant dated 24 June 2003 for hardware and software to be provided to the appellant, and this lists his home address as 'Ironside' on that particular date only.
46. However, a publication dated 10 April 2015 in relation to Wealden District Council election for May 2015 lists the appellant as a candidate and states that his home address was 'Allis Farm', and not 'Ironside'. Thus, whilst, the appellant was first elected as a Councillor in 2002, the submitted documentary evidence in relation to his work as a Councillor fails to provide clear and convincing evidence of continuous residential occupation of Ironside over any 10-year period. In fact, the later document contradicts it.
47. Given the insufficient and contradictory nature of the evidence as set out above, it is not clear when and if a change of use occurred to include part residential use and occupation of the land in relation to the mobile units of accommodation referred to as the 'converted coach' and 'Brockhouse' between 1997 to 2014. In 2002, 2006 and 2014 during the time when the appellant states he first resided in a converted coach and then the military Brockhouse the Council investigated residential use of the land and on all three occasions closed down the case based on no evidence of residential occupation.
48. In relation to 2006 enforcement investigation, the appellant submitted a planning application in the same year¹⁴ (during the period when the appellant now states he was residing on Ironside continuously since 1998 in first a converted coach and then the military Brockhouse). The application sought permission for a proposed "agricultural building to replace temporary structures". The address was given as 'Ironside'. However, within the application form I note that the appellant does not refer to any residential occupation of the land. On the contrary, in response to question 11.a) which asks for the present use of the land/buildings, the appellant stated

¹² Dated 2014; 2017-19 and another undated, which the appellant estimates is 2017.

¹³ Dated June 30 June 2011; 31 October 2011 and 31 July 2017.

¹⁴ Dated 16 June 2006.

"agricultural/repair park and storage of motor vehicles." This simply adds further uncertainty to the appellant's case.

49. Furthermore, as mentioned above, in the same year the Council's Principal Solicitor wrote to the appellant on 26 March 2006 regarding the Council's view on the lawful uses of Allis Farm. The appellant responded to this letter on 4 April 2006. It is notable that on his letter he stated that his address was 'Allis Farm' and not 'Ironsides'.
50. Indeed, in response to the Council's query regarding 'Cooks' Single Decker Coach and that it had not been moved since the time of the 2000 appeal decision over 5 years ago, Mr. Long's response stated:
- "I would refer you to Paragraphs 20, 21, 27, 29 of the Appeal Decision. In particular, Paragraph 29 states "Therefore the whole of it will be upheld but the requirements will be varied to exclude from them the storage and repair of motor vehicles within a defined area since these uses are now lawful on that land. The storage, repair or parking of this vehicle in the area hatched black is lawful."
51. Mr Long's reply to the Council in April 2006 stated that the 'Cooks' coach should be allowed to remain as it is for "the storage, repair or parking" which was allowed as part of the 2000 appeal decision. More importantly, nowhere does he state that he is and has been residing on Ironsides in a converted coach or the Military Brockhouse since 1997/1998. This is noteworthy, as based on the appellant's case during this application he believes that the 2000 appeal decision approved residential use across Allis Farm including the land now known as Ironsides. If this was the case, it is unclear why this was not made clear in his response to the Council or make his residential occupation of the land explicitly clear. The Council's Solicitor subsequently responded on 24 April 2006 stating that, *"at the present time, there does not appear to be any breaches of the notice necessitating formal action"*.
52. I have no reason to doubt Mr. Long's evidence that he was experiencing personal difficulties around this time. However, the above straightforward and clear responses about the use of the land for agriculture and the repair, parking and storage of motor vehicles do not suggest any ambiguity or confusion at the time. Furthermore, the application form applying for planning permission for the agricultural building was written some two months after his response to the Council's solicitor on 4 April 2006. It is difficult to see how a simple question asking for a description of the use of the site could be misunderstood.
53. Therefore, it is clear that in 2006, that the appellant believed the land use of the site was only for agriculture and for the parking, storage and repair of motor vehicles only. Based on the information supplied to the Council in 2006, it is not surprising that the Council found no breach of planning control with regard to the alleged residential occupation of the land. Therefore, it was the appellant who was responsible for the ambiguity regarding the land use of the site and the Council understanding that the site was not in residential use.
54. This casts further uncertainty on the appellant's assertion that the site was being used for part residential use and occupation of the land since 1997/1998. The supporting statutory declarations and supporting statements provided by family and various third parties, do not overcome this ambiguity.

55. An appellant's own uncorroborated evidence can be sufficient. However, the appellant's evidence is far from precise and unambiguous and is internally inconsistent. When considering the contradictory nature of all the evidence before me, I do not find the evidence to be sufficiently reliable to conclude on the balance of probability that the use of the site changed to part residential use and occupation on or before 18 March 2011.
56. The setting up of Council tax payment on the 14 August 2018 for the residential use of the land, shows that payments were backdated to the previous year to 14 August 2017¹⁵. This date corresponds with the erection of the building for use as a dwelling, which was the subject of an enforcement notice and the subsequent 2021 appeal¹⁶. The building contained all the facilities required for day-to-day private domestic existence, and it is clear that the appellant's occupation of the building, used as a dwelling, would be sufficient to constitute a material change of use to residential. Nevertheless even, if I were to accept the appellant's own account that he occupied the building from January 2015, that would not demonstrate 10 years of continuous residential use before the date of this LDC application, which is March 2011.
57. I therefore conclude that the appellant has failed to discharge the burden on him to show on the balance of probability that the use of the site at Ironside changed to part residential use on or before 18 March 2011, such that the refusal of the LDC was well-founded. In these circumstances, I need not consider whether the use then continued for at least 10 years after the date of the change, or whether the accrued right was lost by any subsequent material change of use.

Conclusion

58. For the above reasons, I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the part residential use and occupation of the land was well-founded, and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR

¹⁵ The date the appellant advised the Council tax department that he began living in the dwelling.

¹⁶ Appeal Ref: 3218015.

APPEARANCES

FOR THE APPELLANT:

Andrew Long, Appellant,
Monica Adams-Acton, Mother of the appellant and resident of Allis Farm
Sasha Long, Brother of the appellant and resident of Allis Farm.
Proctor Taylor, Stepfather of the appellant and resident of Allis Farm
Mr Hugo Robbins, former employer of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Battams, Senior Planning Officer, Wealden District Council
Niall Mileman, Senior Enforcement Officer, Wealden District Council

Documents submitted during the Hearing.

1. Letter to Councillor A. Long of Allis Farm, from the Mr Johnson, the Council's Principal Solicitor, dated 29 March 2006.
2. Letter to Mr Johnson, the Council's Principal Solicitor, from Andy Long of Allis Farm, dated 4 April 2006.
3. Letter to Cllr A. Long of Allis Farm, from the Mr Johnson, the Council's Principal Solicitor, dated 24 April 2006.
4. Statement from Mr Andy Long (in response to the Council's late evidence submitted on 31 July 2024).
5. The agreement between Wealden District Council dated 24 June 2003 and Andrew Patrick Long relating to Hardware and Software.
6. Fire and Rescue Service Incident Handover Form dated 15 December 2010.
7. Planning application form for planning application ref: WD/06/1791 dated 16 June 2006 for an "Agricultural building to replace temporary structures".
8. Appellant's costs application.
9. Council's costs response.