

Appeal Decisions

Inquiry held on 20, 21 February, 6, 7 August 2024

Site visit made on 8 August 2024

by Grahame Kean B.A. (Hons) Solicitor, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 12 February 2025

Appeal A Ref: APP/E2001/C/23/3324050

Appeal B Ref: APP/E2001/C/23/3324051

Appeal C Ref: APP/E2001/C/23/3323978

**The Meadows, Acey Lane, Preston, East Riding of Yorkshire HUI2
8TN**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, against an enforcement notice issued by East Riding of Yorkshire Council.
 - Appeal A is made by Mr Roy Hetherington.
 - Appeal B is made by Andrea Hetherington.
 - Appeal C is made by Mr Mark Marsden of Beverley Building Society
 - The notice was issued on 10 May 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission erection of a dwellinghouse and associated driveway and hardstanding and material change of use of land from livery use to mixed use for residential purposes and livery use.
 - The requirements of the notice are:
 1. Cease the residential use of the Land; and
 2. Demolish the dwelling-house; and
 3. Remove all demolition waste from the Land; and
 4. Remove the driveway and hardstanding (shown outlined in blue on the attached Photograph 1) from the Land; and
 5. Remove the shed and greenhouse from the Land; and
 6. Remove all underground services from the Land and the above ground fuel tank; and
 7. Remove all domestic items from the Land.
 - The period for compliance with the requirements is: six months from the date this notice takes effect.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a) (b) (d) (f) and (g) of the Town and Country Planning Act 1990 as amended (the Act).
 - Appeal B is proceeding on the grounds set out in section 174(2)(b) (d) (f) and (g) of the Act.
 - Appeal C is proceeding on the grounds set out in section 174(b) and (f) of the Act.
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Summary of Decisions

1. Appeals A and B succeed in part and the enforcement notice is upheld as varied in the terms set out below in the formal decision. Appeal C is dismissed.

Costs applications

2. Applications for an award of costs were made (1) by the appellants in Appeals A and B against the Council; (2) by the Council against the appellants in
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Appeals A and B; and (3) by the Council against Beverley Building Society in Appeal C. These are the subject of separate decisions.

Preliminary matters

3. At the inquiry, the case on behalf of Mr and Mrs Hetherington (Mr and Mrs H) was put by Miss Allen; Mr Garvey took the lead on behalf of the Council. I am grateful to both counsel, as well as to Mr Mowles on behalf of Beverley Building Society (BBS) for the helpful and courteous way in which they endeavoured to assist me in the course of the inquiry.
4. In this decision when I refer to the appellants, I mean the appellants Mr and Mrs H in Appeals A and B respectively, unless I refer to "all" the appellants by which I mean those in Appeals A, B and C. I refer to the appellant in Appeal C as BBS.

Procedural matters

Ground (b)

5. The appellants' evidence prepared for the inquiry disclosed an appeal on ground (b), not originally set out in the appeal form. As no injustice would be caused to any party I accepted this additional ground of appeal, made on the basis that there was no mixed use as alleged in the notice. BBS's ground (b) appeal is also considered below.

Ground (c)

6. The appellants originally pursued a ground (c) appeal regarding the driveway, hardstanding, shed and greenhouse, alleging these items were lawful permitted development. At the inquiry, the appeal on this ground was withdrawn.

Ground (d)

7. The appellants also pursued a ground (d) appeal regarding the physical fabric of the dwelling and as a separate matter the material change of use alleged in the enforcement notice (notice). At the inquiry the appellants made it clear through their expert planning witness, that it was not their case that the use of the dwelling was lawful owing to the passage of time. The historic residential use of the appeal site was provided for context but was said to be relevant to the ground (b) appeal regarding the allegation of a mixed use of land.
8. Accordingly, I would have dealt with ground (d) only as regards the erection of the dwellinghouse, driveway and hardstanding. However, in closing, Ms Allen firmly re-stated her clients' position, initially made in appeal statements, and carried through into the planning witness' proof of evidence, that land had been in use for residential purposes at least 10 years prior to the notice being issued and that, as now submitted the material change of use of land to residential use was immune from enforcement action. Consequently, I must deal with that contention as part of the ground (d) appeal even although it was understood, including by Mr Garvey, to have been withdrawn during the inquiry.
9. A "concealment" argument was put by the Council. It considered that if the use of the dwelling were found to be immune from enforcement, such use had been concealed. As the case for residential use immunity was apparently withdrawn, the Council did not pursue its case on concealment. In any event, my reasons

for rejecting the case for wider residential use immunity, described below, make it unnecessary to consider concealment further.

Factual background

Planning history

10. In 2006 planning permission was granted, Ref 06/08643/PLF for the erection of stables, stores and tack room, manege and parking area for private use. On 29.2.2012 permission (2012 permission) was granted, Ref 11/00357/PLF to extend the stables, relocate the manège, change the use of the land to a livery with horse box and trailer storage and site temporary living accommodation. A memorandum from the Council's valuation and estates surveyor commented on the application before it was approved. It included the following:

*"I would expect the business to be able to achieve a profit level by the time that an application is submitted for a permanent dwelling that the business is capable of achieving a net return equivalent to that of a minimum wage in addition to servicing the construction of a permanent dwelling, a rent equivalent for the land and buildings, and also providing a sufficient surplus to meet the reinvestment needs of the business."*¹

11. A variation to permission 11/00357/PLF was approved on 31.3.2016, Ref 16/00361/VAR to allow the continued siting of temporary living accommodation until 31 March 2017.
12. On 26 April 2017 the appellants were granted planning permission, Ref 16/03328/PLF for the erection of a permanent dwelling in connection with the livery business (the 2017 permission). The original proposal was for a dwelling of some 215m². The Council considered this was not commensurate with the size and viability of the business, so the appellants submitted revised plans with a reduced floorspace of 186 m² which were then approved. Details required by conditions as to materials, boundary treatments and archaeology were approved, Ref 17/30289/CONDET on 4.8.2017.
13. Other conditions were attached to the 2017 permission to: ensure that it remained available to meet the needs of the business or agriculture/forestry if the equestrian activity ceased to operate; restrict permitted development rights by way of extension of the dwelling, erection of outbuildings; and prevent conversion of the roof space into additional living accommodation. The conditions aimed to keep development commensurate in size with the holding.
14. There were unsuccessful attempts to retain the dwelling as built. On 24 May 2023 an application, Ref 23/01069/CLE for a lawful development certificate (LDC) for erection and use of a C3 dwellinghouse was refused. On 7 June 2023 the Council returned an application, Ref 23/00093/VAR to vary condition 9 (approved plans) of the 2017 permission seeking to allow changes to the approved dwelling to remain in place. The enforcement notice had been issued on 10 May 2023 and served on the appellants the following day.

Site and surroundings

15. The appeal site is in open countryside between Preston village to the east and the outskirts of Hull to the west. The site is on the west side of Acey Lane and

¹ CD10.41

comprises a livery business with a U-shaped range of stables and tack room and manege to the north. There are paddocks to the north, east and southeast. A row of terraced houses lies c50m to the south with dog-boarding kennels and a house further south. Acey Farm, Acey Cottage, Field House Farm and Westdale House Farm are over 100m to the north. Agricultural fields lie to the east, north and west of the site.

16. The dwelling referable to the 2017 permission, is in the northeast corner of the site adjacent to Acey Lane and north of the access off Acey Lane. Land around the dwelling is mown grass. Within its curtilage are a shed, greenhouse, oil tank and parking area. Accommodation in the dwelling in situ is across three floors within a brick-built building of two storeys plus accommodation in the roof space, under a grey tiled roof with uPVC windows.

Building work

17. The appellants purchased the appeal site in 2005. It had no buildings on it, they graded and reseeded it and permission was granted in 2006 for a livery use, associated stables and works. In 2012 permission was granted for a bigger stable yard to develop a business from the use, which was for 12 full liveries (apart from exercising). A full business case was provided, and the permission included a temporary dwelling. The appellants had already sited a single unit static caravan on a flat piece of land within the appeal site, facing Acey Lane, towards the end of 2012. The caravan was connected to services including a septic tank that took waste from a toilet in the stable yard. The caravan was occupied around early 2013. Council tax was paid on the caravan from February 2013, and it remained on site whilst the dwellinghouse was being constructed. Google earth images indicate that the caravan remained in place until it was removed between March 2020 and June 2020.
18. James Bourke was an approved inspector for building control purposes, recommended by Mr Wright. Mr H said he was told by Mr Wright *"it would go smoother, and he made sure the building complied with building regulations. He sent men round to check on progress."* Mr Bourke's initial notice to the Council's building control section was dated 21 June 2017. It stated that planning permission had not yet been granted for the work. However, the permission had been granted on 26 April 2017. The site plan accompanying the notice was the correct approved plan showing the footprint and location of the proposed dwelling house.
19. In their statements Mrs H said that she had nothing to do with the building process and Mr H said that he employed a builder to build the house, probably in mid-2017. The builder was one Duncan Smith, but Mr H was unsure if he was still in business and the last time he tried to contact him was probably 15 months ago. Mr H said that the builder *"got a groundworks man called Stewart to set out the house on site with pegs and I left them to it"*.
20. After the enforcement notice was served Mr H said that he:
- "got Derek Wright out to check the levels of the house and the flood protection measures. He drew a plan showing the levels of the lane the land and the floor of the house. It also shows the special blockwork we used."*
21. Mr Wright's occupation appears to be drawing up architectural plans for projects. There is no evidence that he is a qualified architect although that is

no bar to drawing accurate plans, which is often done by architectural technicians. Mr H also said this of Mr Wright:

"Derek Wright who drew the plans also came out to site a few times during the build. I was offshore when the founds [foundations] was done and when I got home they had been completed."

22. There are considerable disparities between the plans approved as part of the 2017 permission and what is now built on site. When questioned, Mr H's position was that he was unaware of the differences and was not responsible for them. He stated that the first time he was shown something he understood was when the architect dropped some plans off to him. According to his statement Mr H knew nothing about planning or building and could not read or understand plans. For example, he said *"I have no idea why the kitchen is longer than it should be either. Derek Wright told me it is about 3 feet longer than it should be"*. Mr H added:

"I do know that the original plans submitted by Derek Mr Wright were for a larger house and the Council asked us to make it smaller. I did not discuss the size of the house with the builders we just gave him [sic] plans".

23. The footprint of the dwelling as built is set back further from the front of the site where the approved plans show it should have been built. Mr H said *"I don't understand how this has happened. The position of the house was set out by a surveyor...I paid a builder to build the house and left him to it."*
24. At the inquiry I was handed two plans dated 14 May 2017 and 16 May 2017 that had been drawn by Mr Wright. They had been sent by him to Mr H, attached to an email dated 1 June 2017. These plans postdated the approval of the 2017 permission and were not the approved plans. The email stated:

"Hi Roy,

Please find attached the revised drawings with the door & window sizes added. I have included the bi-fold doors etc. If all ok I will run 12 copies off and drop off tomorrow."

Supervision by BBS

25. The appellants could not afford to build the house from their own savings, whether from the business or otherwise. They applied for a mortgage from BBS. The monies were released in stage payments. BBS used Griffin Toomes (GT) a civil, structural and architectural consultancy to inspect the building work. Mr H stated that *"an engineer visited the site at least 3 times during the works and I have a certificate signed by Steve Hirst, Director of Griffin Toomes, which says he has visited the site, checked the works and they are in accordance with the drawings."*
26. There was a mortgage valuation report dated 11 August 2017 signed by Giles Peacock a chartered surveyor who inspected the property on 7 August 2017. He noted the project was at foundation stage only. He stated that *"the surveyor has seen the 'Full Planning Permission' for the dwelling (Ref PP-05531306) and the working drawings referred to in the same."* There was no report of any deviation from the plans. He noted that condition 2 restricted occupation to a rural worker which would greatly restrict the marketability of

the dwelling. The current valuation was nil and Mr Peacock estimated the value at £225000 when complete.

27. Mr Peacock noted in his August 2017 report that there was no NHBC certificate, that he understood there would be an architect's certificate and a guarantee, but "*the valuer* [presumably referring to himself] *has not got details of the same, this must be investigated*" He also recommended "full" retention of the mortgage monies until completion of the building works.
28. Mr Peacock also wrote to BBS on 18 May 2018 stating that the property was at "*full shell stage with services at first fix*". He valued the property in that state at £180000 and recommended "*a further [sic] stage release of funds*" attaching photographs which are very dark. However, a considerable drop between the door and ground level is noticeable on the south elevation. They also clearly show several differences from the approved plans even at that stage, such as extra windows in the south elevation, new rooflights and enlarged window on the ground floor of the west (rear) elevation, and extra patio doors to the rear.
29. A Professional Consultants Certificate (PCC) was also obtained by BBS dated 26 June 2017, from Mr Hirst, a chartered engineer. In it he acknowledged that the certificate is relied on by the purchaser of the property as well as by the mortgage lender when making a mortgage advance. He confirmed that he had appropriate experience in monitoring construction of residential buildings.
30. A commonly understood use of PPCs is to provide mortgage-ready certification for newly built properties. It therefore has a limited use when considering partly built projects. The PCC is completed in a very generalised and imperfect way, for example the date of the last inspection should have been completed but no date is given and, confusingly it purports to certify that the property had reached the stage of completion, which at the date of the certificate ie 26 June 2017, was patently untrue. The work could barely have begun by then. Mr Hirst certified that "*I was originally retained by James Bourke who is the developer in this case*". That statement is questionable since Mr Bourke was as noted, the independently approved inspector for building regulations purposes².
31. Nevertheless, Mr Hirst was able to certify that he himself visited the site, "at appropriate periods" to "*the current stage*" (whatever that might have been) *to check progress against drawings approved under building regulations and conformity with drawings/instructions issued under the building contract.*" There was in fact no written building contract.

Final certificate, gas and electrical works

32. A final certificate in relation to the completion of the dwellinghouse was issued on 26 June 2020 by Mr Bourke who sent a copy to Mr and Mrs H the same day. The covering letter referred to the erection of the dwellinghouse and, also in the heading, stated that the works being referred to excluded gas work and electrical work. The body of the letter referred to the final certificate (for the erection of the dwellinghouse) "*together with the information required [ie by the building regulations] which relates to the proposed work at the above address.*"
33. The documents sent with the final certificate included a letter from Ideal Boilers to Mr H dated 31 January 2020 enclosing a gas safety certificate, stating that it

² Now replaced by Registered Building Control Approvers under the Building Safety Act 2022.

"confirms that the work recently undertaken at your property has been carried out by a Gas Safe registered business". According to the certificate the work, installation of a gas-fired boiler was completed by a Mr Stockdale, of Abbey Gas Services, on 23 January 2020³.

34. Also included was a Building Regulations certificate of compliance in relation to installation of electrical circuits, issued with a completion date of 31 January 2020⁴. This was an EIC (electrical installation certificate) which is required for new build properties. Although the work appears to be completed by January 2020, it not sent by Mr Bourke to the Council and the appellants until 26 June 2020.

Other evidence

35. Mr H elaborated on his occupation, in his statement as a deckhand. At least as of now, he is a deck foreman, leading a small team concerned with off-shore loading, off-loading, and so forth. He is responsible for advising his team with respect to risk assessments to control crane operations. This was in essence a self-build project where an individual builds their own dwelling or contracts with a builder to create a custom-built dwelling. There was no project manager as such who planned and co-ordinated the trades and professionals involved in the project, other than Mr H as landowner. I have seen no written agreement between the appellants and any other person who did construction work for them.
36. Some photographs taken by Mr H as the works progressed show that the shell was completed and watertight by 12 February 2018. He was aware that they had to raise the floor level of the house to make it safe in case the land flooded. Engineering bricks were used and special blocks on the ground floor internal walls. Mr H said *"the house looked a bit up in the air so we got a groundworks man out and he levelled the soil around it to make it look a bit more natural."*
37. The appellants have stated that their son S and grandson M moved into the dwelling in the spring of 2019 and this was where, from February/March 2019 S is said to have spent time there, washing and using the microwave in the utility kitchen as the main kitchen was not completed. The photograph dated 20 March 2019 shows the sink in the utility room but with no taps fitted. It was said by Mr H later in oral testimony that this was only the position for one day as taps were then fitted.
38. Google street views of May 2019 show the static caravan on site with gas bottles, sheds sited next to the static caravan, washing hung out on the caravan decking, guttering installed, no porch, no raised patio, no steps up to front door, no electric box installed, and a liquid petroleum gas (LPG) tank on site. Another set of views taken in June 2021 show the built porch, raised patio constructed, electricity box installed, and sewage disposal pump on site.
39. Mr H said that *"[Mrs H] and I moved into the house in Nov/December 2019 and the caravan was taken off-site sometime later as it was a difficult sell"*. Mrs H stated that *"When they were fitting out the house we still lived in the caravan and then we lived a bit between the two."* Mrs H also said in oral testimony that the dwelling was slept in around March/April 2019 and she knew this because it

³ CD.10.25.

⁴ CD 10.26.

was coming into spring and there was no need for heating. Council tax was paid on the caravan to 30 September 2019 and the dwelling brought into Council tax on 1 October 2019. As for S and M, they moved into rented accommodation at the end of April 2024.

40. The photograph dated 4 April 2019 shows a considerable gap between the ground level and cill of the door at the side of the property where the porch was eventually built. Since May 2019 there have been several additions or alterations to the property. The ground immediately at the rear of the dwelling remained to be developed and this became the rear patio. Mr H said it was always his intention to do these works. The porch added to the side door on the south elevation was initially described as an "*afterthought*" by Mr H and there was also intended to be some form of steps to access the door and steps to the rear and front doors on respectively, the west and east elevations. The gap between the ground and the door is significant, as seen in the images.⁵
41. Mr H stated that initially he used temporary steps to get in and out of the property owing to the raised doors. Later in his oral testimony Mr H considered that permanent steps were "*the last to be finished as we had expenditure throughout the house*" and they "*didn't have the money to finish that side of it*". He accepted that what was there now (ie the house with permanent steps up to the doors) was what he would have wanted had he had the money to finish it earlier.
42. Initially it was said that the house was substantially complete by 12 February 2018⁶. Then it was claimed that it was so completed in February 2019 and fit for human habitation. Mr and Mrs H were said to be living between the caravan and house until November or December 2019. Mr H accounted for the delay as due to the kitchen not being finished until later that year.
43. Mr Shipley, a property inspector dealing with Council tax visited the property on 3 or 4 occasions during its construction. He usually saw Mr or Mrs H and it was apparent to him that building work was ongoing and they were living in the caravan which was first made liable to Council Tax on 1 December 2013. On his visit on 12 September 2019 the property appeared to him almost complete. He asked when they expected to be moving into the property and was advised that this would be by 1 October 2019. Of this visit he said "*from memory there were still no paths, patio or porch and the site was very muddy.*"
44. The final certificate purports to specify the optional requirement M4(2)⁷ for accessible and adaptable dwellings. These minimum standards for accessible housing in new build developments include level access to the main entrance. Approved document M is well-known guidance as to how to comply with the building regulations for stepped approaches that form accessible routes in and around dwellings. The certificate appears incorrect in this respect because an optional requirement only applies where a condition to that effect is imposed on new development as part of the process of granting permission. It is commonplace nowadays for permissions to specify M4 requirements in new build properties, but the 2017 permission imposed no such condition. Where no condition is imposed dwellings still need to meet the general default requirements of M4(1) for "visitable dwellings". The statutory requirement is

⁵ For example, Appendix HW.1,(CD 10.20, HW1 dated May 2019.

⁶ Appellants' planning witness proof of evidence para 5.15.

⁷ See CD9.9, para 5(b).

that reasonable provision should be made for people to gain access to and use the dwelling and its facilities.

Alleged discovery of the unauthorised development

45. Mrs H put in her statement:

"The first I knew there was a problem with the house is when we had a valuation. The lady measured up and asked if the house was built in accordance with the plans. I replied yes and she asked me if I was sure because her measurements slightly differed. I later mentioned this to Roy (as he wasn't there at the time) and he said he would have the house measured."

46. Mr H said in his statement that he *"had no idea the house wasn't built in the right place until the council said it was [ie not so built] in early 2023."* He also stated:

"Towards the end of 2022 we had a valuation done of the house, more for curiosity than anything else. A lady came out and measured the house with a laser and indicated to Andrea that the house was slightly bigger [later clarified to mean bigger than the approved plans]. I was worried about this so contacted a planning consultant called James Gellini to help us out."

47. Later, in a pre-inquiry response to my questions I was informed that this was possibly an Abigail Rowe of Fine and Country estate agents. This has never been confirmed. Mr H told the inquiry that the valuation lady was *"Elizabeth Rowley, maybe"*.

48. Mr Gellini emailed the Council in November 2022 to ask the Council if matters could be regularised by treating the variations as a non-material amendment. He claimed the differences were "very minor" but that was not so. The Council required a s73A application which Mr Gellini relayed to the appellants on 9 December 2022, with details of where the Council had said the dwelling was built differently from the approved plans. He told the appellants that the architect, presumably meaning Mr Wright, needed to amend the new as-built plans as they were also wrong in various details.

49. Mr Gellini was also advised by the Council⁸ that the dwelling as built was larger than previously approved, so the application needed *"to include a revised Equine related dwelling functional and financial needs appraisal which justified the increase in the size of the dwelling"*. No revised appraisal has been done.

50. The matter was taken up by solicitors who applied on 4 April 2023, Ref 23/01069/CLE for a lawful development certificate (LDC) to establish the lawfulness of the dwellinghouse. The application was refused on 24 May 2023. An attempt was made in June 2023 to retain the development by planning application, Ref 23/00093/VAR to vary the approved plans condition on the 2017 permission, so as to permit the changes to remain in place. The application was returned as invalid on 7 June 2023, as the Council considered that the 2017 permission had lapsed, therefore there was no permission that could be the subject of a s73 application.

Differences between the as-built dwelling and approved plans

⁸ Email dated 1 December 2022.

51. The appellants accepted that the dwelling as built deviated substantially from the approved plans, it was outside the application site boundary delineated by the 2017 permission and was bigger than that which was approved.
52. Plans of the house said to be as-built were provided to the Council on 4 January 2024 just before the inquiry started. They showed a total floor area of some 231m² for the ground and first floors only, ie excluding the additional accommodation created in the roof space. The plans were those drawn up by Mr Khan for the appellants in October 2023. They were not entirely accurate. For example, compared with Ms Jensen's photographs⁹ taken in April 2023, the chimney/finial features are noticeably taller and more prominent, the windows on the west elevation are different, and the terrace and boundary wall at the rear can be seen in place, none of which features in Mr Khan's later drawings. The so-called as-built plans also only relate to the approved footprint rather than the larger footprint in situ. Although they may be partially accurate, taken as a whole in my opinion they should not be relied on.
53. However, the planning witnesses helpfully assisted in making sense of the many and varied plans produced before and during the appeals. Ms Jensen gave the appellants key dimensions including the floor level. Given limited resources the appellants did not provide more plans but said that if Ms Jensen was happy with her measurements "*we will need to go off the drawings already provided and her measurements*". Therefore, the Council produced a note with detailed plans showing overlays of the as-built, originally approved and approved plans for the dwelling.¹⁰
54. The as-built plans including the second floor, extend to 281m² gross internal floorspace (GIA). The dwellinghouse has been significantly extended at the rear in both storeys and is wider than approved. The ridge line is 605mm higher than as approved, and discrepancies exist in the height of the eaves relative to the first-floor windows, the chimney on the south elevation, size of porch, and proportion of window and door openings. Solar panels, roof lights and windows have been added, a Juliet balcony and three new sets of patio doors. Also visible on site is a large patio terrace constructed at the rear with a boundary wall, the dimensions of which can be seen measured on the overlay plans.
55. Mr H has stated that he was aware that the plans did not show an attic or third storey. The plans for a terrace at the rear of the dwelling were not approved and Mr H said this was "a total afterthought" and put there because the entrance to the house was "quite high up" so they had a patio built but he wasn't aware it needed planning permission. Mr H added that they were using temporary steps to get in and out of the house at all the entrances. The steps up to the front of the dwelling were installed "*maybe in the last 2 years*".
56. The Council wanted to see the size of the dwelling substantially reduced but the appellants would not agree to this. Mr H said he could cut off the attic space, remove the rooflights and take the staircase out but "*taking the end off and making the house smaller over two storeys would cost a fortune which we cannot afford.*"
57. Mr H denied having discussed with his advisers making the kitchen bigger. Asked how he had not noticed the difference with the approved plans, he said

⁹ CD7.8

¹⁰ CD12.4, CD12.5 and CD12.6, 13 February 2024.

that he would not have noticed. He added that he was led to believe the differences were marginal, he had asked Mr Wright about the kitchen who said there was not a great deal of difference. He (Mr H) had never looked at the floor sizes and he had been nothing but truthful with the planning officers.

58. When Mrs H was asked with whom they discussed the plans, she said it was Mr Wright, all three of them together. They had to go through all the things from him to put to the Council to approve. They *"didn't really discuss changing any plans."*

Appeals A, B and C on ground (b)

59. Mr and Mrs H's case is that given the physical and functional separation of the equine business from the curtilage of the dwelling, which latter area is said to have formed much earlier than when the dwelling was completed, there can be no mixed use and therefore the matters alleged to have occurred in breach of planning control have not occurred in fact.
60. The target of the notice, namely the dwelling and associated works specified in the notice, has always been clearly stated. The equine business itself is not subject to enforcement action. There is no confusion as to the terms of the notice. If there were, the notice could easily be amended to exclude the area confined to the equestrian structures and uses without injustice. There was some debate about the precise line of separation between the two uses but since for other reasons I am upholding the notice, the extent of residential curtilage to the dwellinghouse does not arise because the notice requires removal of the named associated works as they are found on the site.
61. On site I saw that fences were indeed in place demarcating what could be termed a curtilage area for the dwelling, but the way was generally open and accessible down to the livery yard and I am not persuaded there has at all times been such a fixed and precise separation that would justify altering the allegation from a mixed use.
62. The land with the dwelling is separately subject to a charge in favour of BBS. However, there are other examples of linkages such as the sometime connection of the electrical supply to the dwelling from the livery business, the use of toilets in the dwelling by livery workers (although there had been a toilet in the stable yard) and that it was said that the business could not continue without the dwelling (ie its occupants) providing security. On balance I find that the mixed use is correctly described as such in the notice.
63. The appeal on ground (b) made by Mr Marsden on behalf of BBS, is misconceived. BBS does not claim that the matters alleged in the notice are incorrectly described.
64. Consequently, none of the appellants' appeals on this ground succeeds.

Appeal on ground (d)

Operational development

65. An appeal on this ground is that at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The onus of proof is firmly on the appellants with the test being on the balance of probability. The appellants' own evidence does not need

corroborating by independent evidence to be accepted and if the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the appeal provided the evidence alone is sufficiently precise and unambiguous on the balance of probability.

66. Section 171B(1)(a) of the 1990 Act, as it then was, prevented enforcement action against operational development after the end of four years "*beginning with the date on which the operations were substantially completed*". The issue is whether the operations were substantially completed by 10 May 2019.
67. The appellants submitted various dates during the appeals, as to when substantial completion was demonstrated. It was initially claimed that the dwelling was substantially completed on 12 February 2018, then 18 February 2019 and in the alternative, it was fitted out internally and used for domestic activities before 10 May 2019. The photographs dating from March 2018 to March 2019 were put to the Council in July 2023 by the appellants' then solicitors who claimed that they demonstrated that at this time the building was substantially complete. The grounds of appeal and written evidence refer to completion during 2018, later corrected to 2019. In closing it was said that substantial completion was demonstrated by clear evidence of day-to-day facilities by late 2018 and that the evidence taken as a whole demonstrated that the building was substantially complete in late 2018.

Discussion of case law

68. In the leading case of *Sage v SSETR and Maidstone BC [2003] UKHL 22* Lord Hope of Craighead held, specifically in relation to the issue of substantial completion, that:

"6... regard should be had to the totality of the operations which the person originally contemplated and intended to carry out. That will be an easy task if the developer has applied for and obtained planning permission. It will be less easy where, as here, planning permission was not applied for at all. In such case evidence as to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design.

7. If it is shown that... a building...was always meant to be incomplete, then one must take the building when he has finished with it as it stands. It would be wrong to treat it as having a character which the person who erected it never intended it to have. But if it is shown that he has stopped short of what he contemplated and intended when he began the development, the building as it stands can properly be treated as an uncompleted building against which the four-year period has not yet begun to run.

8. It must be emphasised that it is not for the inspector to substitute his own view as to what a building is intended to be for that which was intended by the developer. But that was not what the inspector did in this case. It was not just that the building looked to him like a dwelling house that was in course of construction. His conclusion was supported, in his view, by an application which Mr Sage had made in 1994 to use the building for tourist accommodation and by his finding that that remained Mr Sage's stated intention. These matters were relevant to the question which he had to decide, and in my opinion he

was entitled on the facts which he found to reach the conclusion which he did..."

69. Lord Hobhouse, after discussing the inspector's treatment of the uncertainty in that case as to whether the structure was intended to be agricultural, rather than domestic, said (paragraph 14):

"The inspector rightly did not investigate the intentions of Mr Sage at various stages in the history nor the uses he had made of the structure from time to time. The character and purpose of a structure falls to be assessed by examining its physical and design features. The relevance of the assessment is to determine whether or not the building operation is one requiring planning permission."

70. There is no such uncertainty in this case. It is common ground that the building was intended to be erected and used and has been used as a dwellinghouse.

71. Later, Lord Hobhouse cited authorities that underlined the holistic structure of planning law, and at paragraph 24 stated:

"The same holistic approach is implicit in the decisions on what an enforcement notice relating to a single operation may require. Where a lesser operation might have been carried out without permission or where an operation was started outside the four-year period but not substantially completed outside that period, the notice may nevertheless require the removal of all the works including ancillary works."

72. In Sage there was no substantial completion because, looking at the whole operation, construction of the dwellinghouse was unfinished and further building operations were needed to complete it. The character and purpose of a structure were to be assessed by examining its physical and design features, objectively, and not through an investigation of subjective intentions.

73. Thus, the appellant asserts that it is not for me to "investigate the intentions" of the Appellant "at various stages in the history", in the case of a dwellinghouse substantial completion would involve the carrying out of works essential for a completed dwellinghouse and the question is one of fact and degree as to whether or not the whole operation of creating a building has been substantially completed. (I was referred to Lord Hobhouse in Sage, at paragraph 20). This paragraph should be read as a whole:

"The Court of Appeal rejected this conclusion for two reasons. Keene LJ (in paragraph 26) said that so long as the structure had progressed to the stage where it could be said to have an interior, ie, as Mr Sage's counsel put it, say 3 or 4 walls and a roof, exception (a) could be applied and the developer could potentially take advantage of it. Schiemann LJ (in paragraph 37) thought that the Council's argument introduced a subjective element:

"I can see no policy reason why we should construe s.55(2)(a) as limited in its application to buildings which have been completed according to some notional plan."

I do not accept either argument. It is not a question of referring to 'some notional plan'. Ex hypothesi, the erection is an uncompleted dwelling house; what is involved is its completion as a dwelling house by carrying out works essential for a completed dwelling house. The approach of Keene LJ not only

does violence to the language used in exception (a) but also would make a mockery of planning control by inviting abuse and evasion."

74. If Lord Hobhouse was setting out a universal test of "works essential for a completed dwellinghouse" without reference also to the developer's intentions that a particular form of dwelling house was contemplated, that is not made clear, but I note that his remarks about carrying out an operation fully in accordance with a planning permission were obiter (see *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 30). In *Hillside* Lord Sales and Lord Leggatt in a joint opinion clarified (paragraph 62) that:

"The ratio of the decision is that, for the purpose of section 171B(1) of the 1990 Act, building operations carried out without planning permission are not substantially completed until construction of the whole building contemplated by the landowner is substantially completed. It was the requirement to have regard for this purpose to the whole of the development contemplated by the landowner which was characterised as a "holistic approach"" (emphasis supplied).

75. The principle reflected by their Lordships was precisely that enunciated by Lord Hope in paragraph 6 of *Sage* as noted above. Thus, it does seem necessary to have regard to what was contemplated by the owner or developer. The appellants emphasised the relevance of what was said in *Gravesham BC v SSE* (1984) 47 P&CR 142 as to the test of a dwellinghouse, namely that "its more distinctive characteristic is its ability to afford to those who use it the facilities required for day-to-day private domestic existence." The Council did not disagree that *Gravesham* was also relevant to consider.
76. *Gravesham* was a case where it was necessary to consider the meaning of a dwelling house for the purposes of deciding whether the permitted development (PD) legislation applied to the building under consideration. The ratio of the case was that it was a question of fact for the purposes of the PD in question, and that a distinctive characteristic of a dwelling-house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. It is not a case directly applicable to the issue of "substantially completed" in s171B(1)(a). At issue was the character of the building more than the timing of its completion. For PD rights to apply to a building Article 3(5) provides its own limitation on the applicability of PD in that it requires a lawfully completed development. Therefore, whether a building dwelling has the facilities for day-to-day existence is one factor to be considered when assessing whether operational development is "substantially completed" but not a determinative factor in assessing the position in accordance with paragraphs 6 and 7 of the judgment in *Sage*, above.

Whether substantially completed

77. The Council is criticised for relying on the test for substantial completion said to be that all operations originally intended fully in accordance with the permission should be complete, whereas this could not apply to the porch and terrace which were not shown on the plans and were afterthoughts. There had to be a line between "finishing touches" which objectively assessed could be separated from the totality of the operations which the person originally contemplated and intended to carry out. As such, the appellants' case rested on the erection of a dwelling without planning permission and it was not possible or appropriate to rely entirely on approved plans to fix what was

intended, but it was also right to consider what constitutes a dwellinghouse by reference to the provision of facilities for day-to-day existence.

78. In my view however, the totality of the operations which the appellants originally contemplated and intended to carry out must have included the permanent and not the temporary provision of steps to form an accessible entrance at the outside doors of the dwellinghouse. Mr H accepted that it was always his intention to make them permanent.
79. The appellants knew that a house of the size initially sought was unacceptable so they had to amend their plans to obtain planning permission. What was eventually constructed was a dwelling larger than the amended proposal including a new porch entrance to the side and a large built up patio terrace to the rear with 3 new sets of patio doors, increased fenestration.
80. I have had to consider whether it is likely that practical completion of the dwelling occurred earlier than the certificate date. Completion notices are sometimes backdated. If a certificate were withheld due to outstanding fees or the like, that might justify backdating but clearly that did not occur¹¹.
81. As a matter of fact and degree temporary steps around the entrances to the dwelling cast considerable doubt as to whether the dwelling had been substantially completed by May 2019, that would afford the facilities required for day to day existence as contemplated by the appellants on the evidence they gave and having regard to the approved plans and those subsequently made by Mr Wright, which clearly imply permanent steps and/or a ramp up to the entrance doors.
82. The appellants submitted that no case law stipulates for safe means of access as a day-to-day facility, and there was no evidence that temporary steps were unsuitable since they were used by builders and certain members of the family. However, the temporary nature of the steps confirms that a permanent construction was always intended and indeed required according to the approved plans, if not building regulations. The final certificate was only issued after the permanent steps had been provided (and as envisaged by the 2017 permission).
83. The Hetheringtons intended to build a property of a particular kind, a dwellinghouse with features some of which were discussed with Mr Wright who was responsible for drawing up the plans and amending them, whether they accurately reflected what was approved or not. A lot of Mr H's oral testimony was extremely vague in relation to evolution of the project, he stated that he did not remember several matters. The explanation of how the departures from the approved plans were discovered is not credible in my view. Why an estate agent who was asked to come out to value a property, would have found it necessary to inform themselves of approved plans is unexplained. Estate agents in my experience do not acquire this kind of knowledge for a first-time valuation unless they have notice of a possible issue with the development.
84. The additional plans drawn up by Mr Wright after permission was granted for the dwelling appear to show in part what his clients then really contemplated. The plans are attached to Mr Wright's email to Mr H of 1 June 2017. Drawing 3414/P5 shows the ground floor and first floor at plan perspective. Among

¹¹ The late evidence CD13.1 included a fees receipt for provision of certificates dated 4.10.2018, but it relates to the BBS' consultant engineers responsible for approving release of mortgage monies.

other things it shows that the approved ground floor windows at the rear are to be replaced by three sets of patio doors opening out onto a terrace of steps around the property. The porch (added later) is not shown.¹² Drawing 3414/P7 also dated 16 May 2017 shows the now contemplated elevations. They show two extra windows inserted in the ground and first floor of the south elevation. Although the steps at the rear are extended all around that elevation, no terrace or boundary wall is shown at this stage. However, it is significant in my view that Mr H stated that what was there now was what he would have wanted had he the money to finish it earlier.

85. It was not until the static caravan was removed that the remainder of the works appear to have been completed, including the construction of the porch, steps and the raised patio. The aerial images show that it is probable in my view that these works were carried out between Sept 2019 and June 2021. Also, between these dates an electrical box was installed to the property, a pump was provided for the sewage disposal system, a log burner was provided, and a waste pipe for the kitchen. Building regulations approval was not obtained for the installation of electric circuits until 31 January 2020 as was the case for the gas-fired boiler.
86. The foregoing factors support the contention that the dwelling was not habitable and substantially completed by May 2019.
87. The building works that continued past the Spring of 2019 were probably part of a continuous operation to finish the dwellinghouse so that it could be properly used without temporary expedients such as makeshift steps to gain access to the house, a temporary electricity supply and so forth. The appellants asserted that a house need not have its own electricity supply, as opposed to one shared with their own business, to be substantially completed. I would agree it is not necessarily a determining factor but a matter of fact and degree having regard to all the circumstances. The EIC meant that the required electrical inspections were carried out, the electrical system was properly installed and maintained for the dwelling itself which, prior to the issue of the EIC was unlikely to be the case. The absence of a waste pipe from the kitchen also casts some doubt on whether there was a properly functioning waste disposal system in place by May 2019. At this date other matters intended to be carried out were not completed, such as a fully working sewage system, electricity, heating, a working kitchen and working bathroom, all significant operations on the land. The information from the installers and building control inspector strongly suggests that these were not all provided until 2020 but were necessary to complete the dwelling as the appellants intended.
88. There seems no good reason to doubt Mr Shipley's recollection of events, including what he observed of its unfinished state. His notes suggest that he was told by the appellants they would not move in until October 2019. The dwelling was apparently lived in by Mrs H for three weeks and by S and M from about March 2019. Mr H said the delay in him and Mrs H moving in was due to the kitchen not being finished until later that year. It is probable that not only this but the other incomplete items described above played a part in their considerations.

¹² The two main bays, at ground and first floor, excluding the narrower central portion of the building, have the same width of 4877mm in the approved plan and drawing 3414/P5 save only that in the latter at ground level the figure of 4879mm has replaced the approved width. This may be an error.

89. I find from the evidence described and the above considerations that it is more probable than not that the dwelling was not substantially completed until after 10 May 2019.
90. In their evidence the appellants have focussed on the dwellinghouse but have not considered in any detail as far as concerns this ground of appeal, the other operational development alleged in the notice. An initial statement explaining the grounds of appeal, did assert that the hardstanding had been in place for more than 4 years before the notice was issued, however this was not substantiated in the planning evidence. Mr H told the inquiry that the shed was erected 2 or 3 years ago, after the house was built.
91. Therefore, the case for immunity regarding operational development is not made out.

Residential use of the appeal site

92. For it to be too late to take enforcement action against the material change of use of the land to a mixed use to include residential purposes, in effect the residential element must have continued in breach of planning control for at least ten years prior to the enforcement notice being issued, ie since 10 May 2013. The appellants have lived on the site since February 2013 following planning permission granted on 29 February 2012 which included permission for the "siting of temporary living accommodation" to expire after four years, ie by the end of February 2016.
93. The temporary residential use of the land continued after this initial period due to permission being granted on 31 March 2016, conditioned to require removal of the temporary accommodation and restoration of the land on or before the expiry of one year from the date of the consent, ie by 31 March 2017. Such residential use of the land would only become unauthorised and therefore subject to enforcement action when the permission expired. No breach of planning control could take place during the period when the use was permitted.
94. It is argued that when the caravan was first sited on the land, it was not in the position shown on the approved block plan and therefore the appellants were in breach of the approved plans condition, ie Condition 13 of permission Ref 11/00357/PLF and moreover "*in breach of the planning permission as a whole*"¹³. The reason for imposing the condition was "*for the avoidance of doubt and to ensure that the development hereby permitted is carried on in accordance with the approved details in the interests of the character and amenity of the area and the provisions of the development plan.*"
95. Considering the significance of the difference between the approved siting and the actual position of the caravan, as I am required to do (see *Commercial Land v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1264 (Admin) and by analogy with what was there said in relation to operational development), variations from the approved plans need not be fatal to the development being commenced. The difference in siting in this case is not fatal to the permission, or that part of the permission being effectively commenced, or the particular use being instituted to use the language of the planning regime. The importance of a mis-sited building or

¹³ M Ferguson proof of evidence para 5.5

structure may vary greatly¹⁴ but that is not the case here. The degree of alteration required would have been simply to move the static caravan a few metres to where it was supposed to be according to the block plan.

96. Institution of a use pursuant to a planning permission is a once and for all event but the siting of the caravan, although it remained in position in breach of condition 13 of permission Ref 11/00357/PLF, was not as the appellant's planning witness put it, in breach of the permission as a whole. It was not development carried on without the benefit of planning permission.
97. The next point raised by the appellants is that it was not in fact a caravan that was approved but a modest temporary "structure" since the plans showed a timber structure with a brick plinth and a raised roof section providing a place of safety. This had been necessary to achieve a more permanent structure than *"residential use of a caravan [which] is considered to be a highly vulnerable use"* in a flood zone 3 area¹⁵. Nevertheless the description of the development ("siting") and its time-limited nature clearly mean that non-operational development is involved in the context of the permission.
98. In the event of course the Hetheringtons simply placed a static caravan on the land. Whilst this may not have met the specifications of the structure as submitted, it clearly fell within the scope of the description of the development as the siting of temporary living accommodation. The reasons advanced for it being operational development were said to be due to:
- "the elevations submitted and approved, which showed a timber twin unit on a concrete base with brick plinths. The proposed residential accommodation included a fixture attached to the roof with a raised platform, providing an upper floor. The chassis of the temporary dwelling was to be anchored to the concrete slab by bolts between the steel support tripods to both the slab and continuous beam to the chassis base."*
99. s29(1) of Caravan Sites and Control of Development Act 1960 so far as relevant reads:
- "'Caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place to another (whether by being towed, or by being transported on a motor vehicle or trailer) and any motor vehicle so designed or adapted..."*
100. In looking at the purpose of approving the structure it was a matter of ensuring not permanence, but stability and strength to give resilience to a flooding event. This could be done without depriving it of its temporary nature or its manoeuvrability. If the structure as assembled for human habitation with extraneous elements removed mean that the remaining structure could be transported from one place to another, it will have met the statutory definition of a caravan. No evidence was given as to its capacity for being moved, whether eg by towing or by hoist, or that it could not be removed with the raised platform intact.
101. Turning to whether it is a building operation all relevant factors are taken into account, in particular size, degree of physical attachment and permanence. The approval encompasses the whole structure including brick plinths, the

¹⁴ See Richard Harwood's commentary in the JPL report of Commercial Land [2003] J.P.L. 358

¹⁵ Committee report (2012 permission) page 54, second paragraph

method of fixing it to the ground and the raised platform. Even so, it would not be difficult to take out the brick plinths, remove the bolts and release the structure from the concrete base. Given its relatively modest size, I see no reason why it could not be transported on its chassis or hoisted by a suitable vehicle. It cannot be seriously contemplated that the structure would have been destroyed or dismantled at the end of its permitted existence on site. Condition 2 requires it to be "removed" from the site. As to permanence, its life on site is limited to four years. Although a robust structure, this means it is unlikely to be operational development, particularly given its description in the permission.

102. Finally, it is said that the Council allowed the 2016 variation despite the apparent breaches of the 2012 permission which should have been known, yet the appellants continued to reside in the caravan and run the liveries, and the land around the caravan had a residential use not authorised by the 2012 permission. The caravan and its domestic enclosure was not identified as a breach of planning control and the dwelling was built on land, at least in part, used for residential purposes in connection with the caravan. All this, say the appellants, means that residential use of the land including the land on which the dwelling was built, (and therefore the mixed use) subsisted for a period in excess of 10 years.
103. I disagree. The breaches of conditions in the 2012 permission did not take the development outside the scope of the permission itself and could have been enforced against by a breach or breaches of condition. The application to renew the temporary siting of the accommodation was made before the expiry date of 28 February 2016, so the fact that it was not approved until after the expiry date did not prevent the lawfulness of the temporary living accommodation during the period between 1 and 31 March 2016.
104. The most that might have been established by way of an immune use was for temporary living accommodation without complying with conditions that required it to be of a certain specification and in a certain location. Further, even though the underlying lawful use continued between 2012 and beyond 2016, it would be a fallacy to treat the breaches of the 2012 permission as subsisting beyond the date of the expiry of that permission. The fact is that a new permission was granted in 2016. The appellants could not simply choose to ignore the new permission, it was valid and took immediate effect (see *Lawson Builders Ltd v Secretary of State for Communities and Local Government* [2015] EWCA Civ 122 esp para 35). The Council's report at the time claimed it would have to amend the description of the development but, comparing the two decision notices, plainly it did not. The wording of the approved plans condition was the same and other very minor amendments to conditions said to be needed to reflect the fact that the development had been undertaken, were not carried through into the decision notice.
105. In the first place s73 is a power to dispense with or vary conditions attached to a planning permission but it cannot be used to change the description of the development, see *Finney v Welsh Ministers* [2019] EWCA Civ 1868. Prior to the advent of Hillside and s73B a simple variation of a permission to carry on the development without complying with one or more conditions, results in a second permission. Here, the appellants did not even have a choice as to which to implement because they will be taken to have implemented the only one that remained extant. Therefore, for the purposes of time running for any

unlawful siting or use of a caravan in place of the specified structure, that must begin again from 2016. The second permission expired at the end of March 2017 and as the Council's enforcement officer correctly points out, the ten-year period for immunity with regard to the continued residential use of the land without planning permission could not have lapsed until the end of March 2027.

106. Therefore, the appeals on ground (d) do not succeed.

Appeal A on ground (a) and the deemed planning application

107. The development plan comprises the East Riding Local Plan (ERLP) adopted in April 2016. National policy is set out in the National Planning Policy Framework (NPPF) and in the National Planning Practice Guide (PPG).

Main issues

108. The main issues in dispute relate to:

- whether there is an essential need for a rural worker's dwelling;
- character and appearance of the development;
- whether the development is intentionally unauthorised; and
- whether the development complies with flood risk policy.

109. As a preliminary matter the appellants assert that the development is no more harmful than would have been built under the 2017 Permission. However, this is a case where it is agreed that the differences between the approved plans and the as-built dwelling are such as prevent the operations being operations comprised in the permission (Commercial Land at paragraph 31). The 2017 permission might have had relevance as a fallback, but it has lapsed. The appropriate baseline against which to judge the development is a site clear of a dwelling. The 2017 permission stipulated for various matters to be resolved which need to be re-appraised. A key point here was that in 2017 the Council found there was a need for a worker's dwelling next to the equine business, provided its size was commensurate with the holding.

Need for a rural worker's dwelling

110. ERLP Policy S4C seeks to impose conditions on development in the countryside, the relevant criterion being, subject to it respecting the intrinsic character of its surroundings, that it is "*agricultural, forestry or other rural-based occupational dwellings subject to demonstrating an essential need*".¹⁶

111. The supporting text for Policy S4 at paragraphs 4.43 to 4.47 are relevant. Paragraph 4.43 states that permanent dwellings for rural based enterprises will be supported where justified and commensurate with the size of the holding. This will include demonstrating:

- *A clear functional need for the dwelling, relating to a full-time worker(s) employed on the unit;*
- *The existing rural activity has been established for at least three years, has been profitable for at least one and is currently financially sound; and*

¹⁶ Another criterion supports equine development, however the key element relevant to the deemed application relates to the dwelling itself.

- *That the need for the dwelling cannot be provided by an existing dwelling which is suitable and available for occupation by the worker(s) concerned.*
112. Paragraph 4.47 states that evidence for the functional need should clearly demonstrate that having one or more workers available at most times of the day and night is essential for the proper functioning of the unit. For example, where workers are needed to meet welfare needs of vulnerable livestock or are needed to quickly deal with other emergencies that would otherwise lead to a serious loss of crops or products. Security issues can contribute to the functional need, but this factor cannot be used to justify a dwelling on its own.
113. NPPF/84 states that development of isolated homes in the countryside should be avoided unless among other things there is an essential need for a rural worker to live permanently at or near their place of work in the countryside. The PPG also addresses the question of how the need for isolated homes in the countryside for essential rural workers should be assessed. However, I do not consider this to be an isolated dwelling as explained further below.
114. The development plan policy is up to date. It does not support the principle of residential development outside settlements in the first place, whether or not the dwelling in question is isolated. There is a justified explanation set out for the application of the tests applicable in the countryside, including that rural areas in East Riding are subject to significant development pressure and there is a need to get the right balance between development and protecting the intrinsic character of the countryside. Therefore, I disagree that national policy should carry more weight, even if the parts cited to me apply to dwellings that are not isolated. I see nothing wrong in requiring a rural business to be planned on a sound financial basis using the criteria set out in the adopted development plan, despite the fact that it pre-dates the national policy.
115. Thus, there should be a clear functional need for the dwelling and the rural activity should be currently financially sound. I take account of the explanatory text in Policy S4 on such matters. It elaborates on "essential" need in the policy by highlighting a "clear functional need", an activity that is "currently financially sound", and in advising that the dwelling should be "commensurate with the size of the holding." These are matters of planning judgement.
116. "Commensurate" would suggest that the requirements of the business are included in the material considerations and, for the detailed reasons set out in Mr Milner's evidence, I accept that the Council has appropriately set out a range of 150 to 170m² for rural workers' dwellings save where a clear need justifies a departure. His approach is based on deducting fixed and variable costs, and looking for an appropriate return to land, capital and labour employed and is routinely applied in applications for rural workers' dwellings. The approved dwelling's size was reduced to a floor area of 186m² but still considered to be a large dwelling relative to the scale of the holding.
117. As noted above the as-built plans show a total floor area of some 231m², for the ground and first floors only. The appellants said they were willing to forego the accommodation in the roof space, but this still means the dwellinghouse under consideration is significantly larger than 186m². As noted, Mr H said that making the dwellinghouse smaller over two storeys was not an option.

118. The dwellinghouse has at least some 50% more floorspace than the rural worker's dwelling approved in 2017. Even if the roof space were blocked off, it still stands as a substantial dwelling in the countryside and is considerably larger than the average detached house in the East Riding area. Although its value would be discounted due to the agricultural tie, having regard to the valuation information supplied, I would agree that a reasonable estimate of the value of a dwelling of this size would be beyond the reach of most agricultural, equestrian, or other rural workers. The now outdated PPS7 stated that a financial test was necessary that would provide evidence of the size of dwelling which the unit can sustain. Policy S4 and the supporting text do not suggest in terms that the financing of the dwelling must be sourced from the earning capacity of the enterprise for which it is allegedly designed. However, it is clearly a factor to consider in determining whether the dwelling is "commensurate with the size of the holding" in the supporting text to Policy S4.
119. The Council does not accept that the full time equivalent (FTE) worker element of the business is met now. The appellant claims that the principle of residential development is supported by a well-established business, but the 2017 planning permission has lapsed and there has been a material change in the circumstances of the business as discussed in Mr Milner's evidence for the Council. His evidence is based also on this being an isolated dwelling in the open countryside so he considers national policy in that regard, however his conclusions are based on Policy S4 which is the key policy in this regard.
120. Mr Milner accepts that in previous applications a functional need was said to exist in relation to horses kept on a livery basis. He does not dispute that any functional need previously accepted would apply now. His analysis of the need for a FTE worker was that whatever functional need existed, the evidence was that it does not relate to a FTE worker and therefore the test is not met.
121. In the appellants' original appraisal for expansion of the stables and temporary accommodation, the target annual turnover for the business was £41,625 per year, with a stated profit before labour of £29,603 per year, found acceptable by the Council. In the later appraisal for the dwellinghouse, the business was now said to be operating on a part livery basis, with 12 horse places and the labour requirement was estimated at 1.44 FTE workers. The target profit before labour had been exceeded in two of the three years. Concerns as to the size of the dwelling, unduly large in relation to the size of the holding resulted in its reduction to a floor area of 186m² but it was still considered to be a large dwelling in comparison to the relatively small scale of the holding, yet the 2017 permission was still granted.
122. Mrs H detailed her daily stables routine in which she clarified that the "full livery" she offers is everything including keeping the horse exercised and fit, which she does not do at her age; the part livery she offers is attending to all the horses' needs except for riding or DIY which is less than this, depending on clients' requirements. Currently she has 9 part liveries and 2 DIY. DIY livery carries a much lower labour requirement than full or part-livery, however Mr Milner overestimated the extent of the DIY element based on a site visit by the enforcement officer on 26 April 2023 and it would be misleading to say as he did, that the business had "more recently operated on a DIY livery basis". Therefore, I discount his evidence based on 10 or 12 horses on a DIY livery basis.

123. That said, the Council insists that only the need for a least one whole FTE worker would meet the functional need. Mrs H's current hours are at least 7 hours per day. Applying methodology in the Equine Business Guide (EBG) generated 0.8 FTE worker now, and 0.98 FTE using 2016 figures, thus more than 0.8 with 12 full liveries but still less than a whole FTE worker.
124. The appellants did not provide an updated expert assessment of need although reliance is placed on their expert's previous report, that on-site residence is the only way to ensure security and meet the welfare obligations toward the stock. Mrs H's expertise in caring for horses was evident, and her view was that the yard could not operate without round the clock surveillance or at any rate without the house.
125. The characteristics of horses with their susceptibility to the illnesses and conditions as described to me, call for careful consideration as to the need for attention throughout the day, and night-time security on animal welfare grounds as outlined in the December 2016 report prepared for the appellants. In my view a critical aspect of need is whether someone must be on hand overnight, irrespective of how many hours are worked on average and so forth during the day. Mrs H told the inquiry that someone would need to be on site all the time no matter how many horses there were, and CCTV was not an option for her because some customers did not like it as it could be an invasion of privacy. In my view this is an unrealistic stance to take. Appropriate security and supervision measures including CCTV system and intruder alarms are a recognised alternative to a 24-hour presence on site, and CCTV systems can be tailored to the requirements of the business and needs of the customers.
126. I brought to counsel's attention two cases potentially bearing on the approach to financial need which they helpfully commented on. Both accepted that *Hunter v SSLUHC and Buckinghamshire Council [2023] EWHC 1068 Admin* found viability to be an objective test, in terms of a verifiable analysis and to impose the requisite degree of consistency. The appellants said this did not explain how the financial test should apply to a well-established enterprise, or a business that had gone through Covid and reminded me their case was based on the original business model and audited accounts.
127. The distinction between a prospective and established business is recognised in *Kerry v SSLUHC [2020] EWHC 908 Admin*, but the court there did not suggest that more weight should be given to existing businesses, rather, it was a matter for the decision maker. The Council submitted that whatever weight was given to this factor, it should not override the conflict with development plan and national policies for countryside development, visual and landscape harm and flood risk.
128. The financial viability of the livery business deteriorated after Covid. However, the elaboration of the essential test in the supporting text to Policy S4 focuses on, among other things whether the business is currently financially sound, so in other words whether the business is adequately established now, looking at the current circumstances. The previous business cases for the 2012 and 2017 permissions are out of date in that costs and the minimum wage have since increased. I accepted late evidence on financial information to the end of March 2024. It suggests that the income from the livery use is some £22,915. Mrs H now works about 8-9 hours every day all year round, with 9 part liveries and is assisted by a friend who volunteers her services when Mrs H

is not working. It is undisputed that the business belongs to Mrs H but Mr H "helps her out with jobs" when he is at home as does their daughter occasionally. Her hours would increase up to 9 hours per day if all 12 stables were occupied on part livery.

129. Taking account of current costs, the Council extrapolates from the data that the business would need to generate a net profit of over £35,492.60 per year, therefore the business is not financially sound. Using the income from livery and the hours worked, the derived hourly rate would be in the region of £7.40 per hour, well below the minimum wage. Mrs H accepted this but said the business was not at its full potential, however she thought it fair to say that there was no business case made now for the current operation.

Conclusion on essential need

130. Whilst the livery business currently operates at a nominal profit, this does not take account of the fact that the worker in question, ie Mrs H would have to be paid considerably lower than the minimum wage, or that a small but significant part of the total labour on site is voluntary. An objective standard of viability is appropriate. The Equine Business Guide is an appropriate benchmark for objective assessment which assesses a 0.98 FTE worker requirement using 2016 figures with 12 full liveries.
131. It might be unreasonable to take a strict approach to the requirement for a FTE worker as the Council did, however the size and scale of the dwelling is clearly not commensurate with the holding. Furthermore, the income would not support the costs of building the dwellinghouse in question and no evidence was presented as to what a notional rent would be or how it or mortgage costs would be factored into the viability analysis. The dwellinghouse owes its existence to the couples' joint savings and income and is not justified in these terms by the relatively modest scale of the holding.
132. Therefore, for the foregoing reasons the appellants have not demonstrated an essential need for the dwellinghouse that meets the aims of ERLP Policy S4C, by demonstrating a clear functional need for the dwelling, that it is currently financially sound and that it is commensurate with the size of the holding.

Character and appearance

133. The appeal site as described above is in the open countryside where ERLP Policy S4 A1 supports development where it is of an appropriate scale to its location taking into account the need to support sustainable patterns of development. Policy S4C also applies in that the relevant development that is supported refers to rural-based occupational dwellings, dealt with below, but is relevant here because the policy has a pre-condition that development respects the intrinsic character of its surroundings. The appellants dismissed the relevance of this "gateway" test, relying on the officer's report made for the 2017 permission, but this part of the policy is clearly relevant.
134. Policy S4C makes other references to a conversion or re-use of an existing building but, since the dwellinghouse is completely unauthorised, this part of the policy could not apply since, on a common-sense reading, the existing building should be established or exist pursuant to a planning permission. I am

unsure of the relevance of the Lee Valley case cited by the Council in closing¹⁷, it is more a matter of application of the instant policy.

135. The appeal site is surrounded, albeit at some distance, by several forms of development as the site and its surroundings are described by me above. The dwelling is not in my judgement an isolated home in the countryside for the purposes of NPPF/84 or the PPG. That does not detract from the force of the development plan policy itself in that Policy S4 applies to all development in the countryside, irrespective of whether it is deemed to be isolated.
136. I note the comments in the officer's report that preceded the 2017 permission, but the scale of the proposed dwelling had not been reduced and those comments must be received with caution as they are predicated on a reduction in the size of the proposed dwelling when the opposite has occurred. In this flat landscape which surrounds the site, the scale of the new dwellinghouse is unduly prominent in the vicinity, if not the wider landscape setting. The presence of trees and hedgerows in and around the site affords some mitigation but whether effective screening of the development could be achieved or not, the introduction of a substantial new dwellinghouse into an open field has an eroding effect on the open character of this countryside location.
137. Acey Lane is at the end of a pocket of sporadic development channelled between Neat Marsh Road to the north and Staithes Road to the south. The development limits of Preston village to the east of the appeal site, as set out in the policies map of the ERLP, are some distance away from the site. The nearest part of the village boundary comprises a spur along Staithes Road, distinct from the main built-up area. The appeal site is surrounded by less development at this western end of the corridor between Acey Land and Neat Marsh Road. Therefore I would hesitate to say the site is in the "urban fringe".
138. As a result, the intrinsic value of the countryside at and around the appeal site is enhanced compared to areas closer to the village boundary. The new dwellinghouse would in my opinion encroach into the rural and open nature of this area and without other justification, create an undesirable precedent through its urbanising impact on the character and appearance of the area. The development is therefore contrary to ERLP Policies S4 and ENV1 and NPPF/174 and NPPF/180(b) which seeks to recognise the intrinsic character and beauty of the countryside.

Intentional unauthorised development

139. The government's planning policy of 31 August 2015 made intentional unauthorised development (IUD) a material consideration in determining planning applications and appeals. It was laid in the House of Commons on 1 December 2015 as a written ministerial statement (WMS). A concern of the Government was that with IUD, there was no opportunity appropriately to limit or mitigate harm that may have already taken place. The WMS refers to such development involving local planning authorities having to take expensive and time-consuming enforcement action. Emphasis is placed on protecting green belt land, however the policy applies generally to all applications and appeals.

¹⁷ R. (oao Lee Valley Regional Park Authority) v Broxbourne Borough Council [2015] EWHC 185 (Admin)

140. Changes to the approved form of development in the 2017 permission were discussed at various stages after permission was granted, between the appellants, either Mr or Mrs H on the one hand and professional persons who had responsibility for certain aspects of the project, including Mr Wright who played a pivotal role in discussing with the appellants changes desired to be made to the approved dwelling. It is impossible not to conclude from the written and oral evidence that the appellants, or those acting on their behalf were unaware that the changes to the authorised development discussed after permission was granted should have been submitted to the Council as a variation of what was permitted. They intentionally or recklessly deviated from the approved plans. On balance I find it probable that there has been IUD and that matter carries some weight in the overall planning balance.

Flood risk

141. The appeal site lies within high-risk Flood Zones 2 and 3a (tidal and fluvial). The site was flooded in 2007. ERLP Policy ENV6, NPPF/14 and the Council's Flood Risk Supplementary Planning Document (SPD) applies a sequential approach to the location of new housing development, aiming to direct new development to areas at the lowest risk of flooding. The Council's Strategic Flood Risk Assessment (SFRA) and the Council's Flood Risk Sequential and Exception Test Supplementary Planning Document (Flood Risk SPD) are material considerations. Of particular relevance also is the site specific flood risk assessment (FRA) of 15 March 2017, section 7, for the 2017 permission.
142. There were no objections on flood risk grounds to the 2017 permission provided it was built in accordance with the FRA and conditions attached to the permission. However, as I have found that the development comprised in the deemed application proposal does not meet the essential need test for a rural worker's dwelling, in terms of flood risk policy, it is assessed as normal market housing development. The sequential test would be applied across the housing market sub-area where there would be larger areas at lower risk (Flood Zone 1) including land allocated for housing in the ERLP. The sequential test would therefore be failed in respect of this development.
143. Although it may have been built on the high point of the site, the unauthorised development imports a use classified as more vulnerable in flood risk terms, which includes buildings used for dwellinghouses. In Flood Zone 3a such uses are appropriate only if supported by a sequential test and exception test as well as a satisfactory site-specific FRA. As the sequential test cannot be met it is not appropriate to consider the exception test.
144. Even if the development were necessary on this location, NPPF/165 states that the development should be made safe for its lifetime without increasing flood risk elsewhere. The appellants rely on the dwellinghouse being built 600mm above ground level with a place of safety at first floor level and the FRA submitted prior to the 2017 planning permission. I agree a place of safety is available at first floor level and a condition might be attached to require a flood evacuation plan.
145. The FRA for the 2017 permission set out detailed mitigation measures¹⁸ such as a finished floor level (FFL) of at least 3.4 m AOD (which is 600mm above the average site level of 2.8m AOD). A site visit by Council officers confirmed the

¹⁸ Mrs Taylor, proof of evidence para 6.30.

(FFL) to be 300-400mm above ground level which did not appear to have been altered and that plug sockets in the kitchen were set at 450mm above the FFL. The submitted 'as built' plans drawn by Mr Khan indicate the planned and actual FFL was c600mm above ground level. The actual FFL annotated by Mr Khan appears to have been assumed and not surveyed by him. There is no updated FRA for this dwelling that is now in situ.

146. Mr Wright is understood to have been asked to return in late 2023 to check the levels. His drawing 4067/P4 is referred to by Mrs Ferguson but this is not submitted whereas drawing 4067/P1 made by Mr Wright on 8 November 2022 around the time when the s73 application was made to vary the plans condition, is submitted. Although clearly intended to show "as-built" details, the section depicts a "proposed" FFL with no actual figure.
147. However, the Council did survey the FFL by reference to AOD during a break in the sitting days and produced a plan¹⁹ that shows the lowest point of the FFL is 76mm short of the 600mm requirement at 3.324m AOD. I appreciate that neither side offered testimony from the actual surveyor but, given that the onus is on the appellants to show on the balance of probability that the required mitigation measures have been met, and the lack of any persuasive technical evidence to contradict the Council's more recent physical survey, I prefer the Council's evidence. Whether an increase could be effectively secured by condition has not been demonstrated. Therefore, I cannot be satisfied that all the measures required in the previous FRA have been met and, on that basis, I cannot be satisfied that development would be deemed safe for its intended lifespan.
148. I conclude that with no locational requirement for a dwelling the unauthorised development does not meet the sequential test and does not demonstrate on the balance of probability that the site is safe from the risk of flooding and would not increase the risk of flooding elsewhere. It therefore fails to comply with Policy ENV6, section 14 of the NPPF, the Council's SFRA and SPD on Flood Risk, and the NPPG relating to flood risk and the application of the sequential test.

Human rights

149. Throughout consideration of the deemed application, I have borne in mind the need to balance the impact on the private rights of the appellants, which would potentially involve the loss of their home and substantial investment made in it, and the general interests of the community.
150. The availability of suitable alternative accommodation affects the degree of seriousness of any interference with Article 8 human rights and should be considered as part of the proportionality assessment including, where applicable, the best interests of any child affected by this decision.
151. After the notice was issued, a welfare visit was offered which was declined, and guidance and assistance offered to the Hetheringtons during a telephone call was also not required. However, the officer did seek to make them aware that they could contact the Council should they require housing assistance in the future. I have no reason to suppose that given an appropriate period for compliance with the notice alternative accommodation would not be found for

¹⁹ Acey/E/S/001, 22 February 2024.

the family, or that application may not be made to the Council as housing authority with statutory responsibility for providing housing assistance.

152. In that latter eventuality the applicants would be facing homelessness and therefore be eligible for assistance, not be intentionally homeless and depending on the facts when presenting as homeless, possibly be in priority need. This would certainly be the case were M to be occupying the property. It was said that M's permanent residence was at the appeal site, notwithstanding that M and his father S had moved to rented accommodation, ostensibly on a temporary basis, since April 2024. Section 193 Housing Act 1996 provides that unless the authority refers the application to another housing authority, it shall secure that suitable accommodation is available for occupation by the applicant.
153. S is separated from the mother who lives in Hull. S works full time. M spent half of his time with his mother and the other half with S and his grandparents, the appellants who do not have formal responsibility for his care but help out by having M stay with them when S is working full time. I asked whether there was anything I should be aware of that went to the question of where Mason was ordinarily resident but told there was not. However, in closing Ms Allen submitted that the permanent residence of M was the dwellinghouse at the appeal site. I heard no evidence that persuades me that this is the case.
154. I also asked whether there were circumstances in either S's or his former partner's situation that were relevant to my considerations focussed on the best interests of the child and was told there were none. Clearly, it was being put to me that the appellants considered S and M still to be living at the Meadows and the move out was temporary. However, in the absence of more cogent evidence as to the permanent or ordinary residence of M, since he is not occupying the appeal site but is cared for elsewhere by his father and mother, the issue of the child's best interests does not arise.

Planning balance

155. The Council has no objection to the livery use of the land but when it granted permission for the dwelling, it could not have made it clearer, in conditions and the reasons for imposing them, the concerns it had about the need for the level of built development on the site to remain commensurate with the size of the holding. Without apportioning individual blame on any of the actors involved in the appellants' self-build project, those concerns were effectively ignored. There has been IUD and that matter carries some weight in the overall planning balance.
156. Operational development was not in accordance with the 2017 permission and there were several significant differences with the approved plans. The 2017 planning permission was never implemented as a result, and it lapsed. The new dwellinghouse encroaches into the rural and open nature of this part of the countryside and has an urbanising impact on the character and appearance of the area. The planning harm occasioned is not to be measured by the difference between the approved dwelling and the dwelling now in situ, because there is no justifiable fall-back position that relates to the approved dwelling. The development conflicts with ERLP Policies S4 and ENV1 and NPPF/174 and NPPF/180(b) which seek to recognise the intrinsic character and beauty of the countryside. Considering the nature of existing built development

in the vicinity which mitigates to an extent the overall impacts, the harm carries moderate weight.

157. Since the 2017 planning permission lapsed there has been a material change in the circumstances of the business and the principle of residential development to support a well-established business requires justification in accordance with the key development plan policy, ERLP Policy S4C. Policies for re-use of redundant or disused buildings are not relevant since they apply to lawful development.
158. There should be a clear functional need for the dwelling and the rural activity should be currently financially sound. The explanatory text in Policy S4 on such matters is relevant in explaining "essential" need by highlighting a "clear functional need", an activity that is "currently financially sound" and advising that the dwelling should be "commensurate with the size of the holding." The appraisal should be primarily objectively made whilst taking into account personal circumstances where relevant. The essential need test should be considered as for any other rural worker dwelling, such that it would not be fair or reasonable to take account of other sources of income that support a business that is otherwise not viable.
159. I have found that the dwelling fails the test of an essential need for a worker's dwelling and conflicts with Policy S4C by failing to demonstrate an essential need for the dwelling since there is no clear functional need for the dwelling, and it is neither currently financially sound nor commensurate with the size of the holding. The harm that is caused to the policy and the precedent it would set for future similar applications for new rural worker dwellings in the countryside without proper justification is considerable and should carry weight accordingly.
160. The appeal site is in flood zones 2 and 3a, parts of the site are subject to surface water flooding and the dwelling would be subject to the sequential test in NPPF/168. I have found that the site is unsuitable for the deemed application proposal due to the risk of flooding. It would not be in the best interests of the occupants to remain there if the potential for harm to their well-being remained given the unpredictable timing of flood events and the potential consequences of a flooding event at the site²⁰. The harm caused by permitting an occupied dwelling to remain at undue risk of flooding carries significant weight.
161. The evidence adduced for the appellants did not emphasise to any great extent the positive benefits of the deemed application proposal. In favour of the development is that a new dwelling would contribute in a limited way to the overall housing stock in the district.
162. Also, although not submitted as such to me, I have had regard to the speech of Lord Scarman who delivered the judgment of the House of Lords in *Great Portland Estates plc v Westminster City Council* [1984] 3 All ER 744, especially where he observed:

"Personal circumstances of an occupier, personal hardship, the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. It would be inhuman pedantry to exclude from the control of our development the human factor"

²⁰ Mrs Taylor, proof of evidence, para 6.30

... It can, however, and sometimes should, be given direct effect as an exceptional or special circumstance."

163. Mrs H's business is much more than a mere hobby. It provides a valuable service to her customers and adds value to the character of the local community. In my view although it is not a factor that, even taking into account ill-health and loss of business due to Covid, would have outweighed the objectively assessed essential need policy test, it is clearly a positive factor that carries weight in its own right. The impact of the enforcement action on the Hetheringtons has been severe. They have worked hard for several years and put their money into the dwelling and the livery business. Mr H stated that if they had to demolish the house then they would lose everything. I do not exclude these human factors. However, the responsibility for the position in which they find themselves is ultimately theirs. Despite the difficulties encountered in the business, I am not persuaded it is other than relatively modest in relation to the wider community. I give this factor moderate weight.
164. In the overall balance I find that the benefits of the development are outweighed by the harms caused by conflict with the key development policies of LP Policy S4, ENV1 and ENV6. Additional harm has been caused through the IUD. I have not found that the other considerations that I have taken into account are such as to indicate that my decision should be otherwise than in accordance with the development plan. Therefore, the appeal on ground (a) does not succeed.
165. I have reviewed the human rights of the appellants and I am satisfied that interference with the home and family life of the site's occupants in refusing permission is necessary and proportionate.

Appeals A, B and C on ground (f)

166. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any harm to amenity resulting from the breach. From the requirements of the notice, its purpose to remedy the breach of planning control.
167. I must consider obvious alternatives that could overcome the planning harm. The appellants submit that the harm appears to be the size of the dwelling, in particular the use of the attic space as domestic storage with windows, and that it is not clear what the actual harm is "other than it generates lower returns to capital in theoretical calculations". Therefore, I am asked to consider granting permission with conditions requiring removal of the staircase to the attic floor.
168. This ground has not at all featured in the appellants' planning witness proof and is made by submission without evidence. The harm caused by the dwelling is described in the appeal on ground (a) above. It goes much further than the use of the roof space and the appellants have not put forward any identifiable solution that would achieve the aim of the notice in remedying the breach of planning control at less expense. Even if the overall size of the dwelling were to be reduced, which the appellants are unwilling or unable to do, the development is unacceptable on its planning merits for other reasons.

169. BBS states on this ground that the requirement to demolish the dwelling is excessive and would have the perverse effect of leaving the Hetheringtons homeless and possibly requiring local authority assistance for future housing needs. I have dealt with this matter under ground (a).

170. For the above reasons therefore the appeals on ground (f) cannot succeed.

Appeals A and B on Ground (g)

171. The appeal on this ground is that the period for compliance with the requirements of the notice is too short and should be extended to 18 months to allow for the relocation of the business or the horses on the site, and to consider re-housing options, before then securing the services of a demolition contractor and carrying out the work. The Council is willing to extend the period stated in the notice from 6 months to 12 months.

172. In the circumstances a period of 12 months as now suggested by the Council, is a reasonable period to secure compliance with the requirements of the notice. This period would also give the Hetheringtons a reasonable opportunity to find alternative accommodation. I have been given no reason to doubt that the family could secure some form of alternative accommodation within a reasonable period albeit not one that would necessarily meet their aspirations. As far as concerns S and the child M, it is not said that their current rented accommodation, although said to be temporary, has a fixed period or is not extendable.

173. I will vary the notice accordingly. Therefore, the appeals on ground (g) succeed to that extent only.

Overall Conclusions

Appeals A and B

174. For the reasons given above I conclude that a reasonable period for compliance would be twelve months, and I am varying the enforcement notice accordingly, prior to upholding it. The appeals under ground (g) succeed to that extent.

Appeal C

175. For the reasons given above I consider that the appeal should not succeed.

Formal Decision

Appeals A and B

176. The appeals are allowed on ground (g), and it is directed that the enforcement notice be varied by the deletion of six months and the substitution of twelve months as the period for compliance. Subject to this variation the enforcement notice is upheld and in relation to Appeal A planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

177. The appeal is dismissed.

Grahame Kean

INSPECTOR

APPEARANCES

Appellants

Miss Nicola Allan

Barrister, Trinity Chambers

She called:

Mr Roy Hetherington

Owner

Mrs Andrea Hetherington

Owner

Maria Ferguson

MRTPI

Managing Director, Maria Ferguson Planning Ltd.

Mr Kevin Mowles

Beverley Building Society

Chief Operating Officer

Council

Mr Killian Garvey

Barrister, Kings Chambers

He called:

Hazel Walsh

BSc Hons Environmental Science, Advanced Professional Certificate in Investigative Practice (APCIP).

Planning Enforcement Team Leader

Adam Lewis Milner

BSc (Hons) MSc MRICS

Principal rural and estates surveyor

Mark Berry

Property Inspector, Revenue and Benefits Section

Miss Carly Jensen

PGCert, PGDip

Principal Planning Enforcement Officer

Mrs Victoria Louise Taylor

MRTPI

Planning Team Leader

ADDITIONAL DOCUMENTS

- AD1 Opening Statement on behalf of Appellant
- AD2 Opening Statement on behalf of East of Riding Yorkshire Council
- AD3 Core Document bundle
- AD4 Authorisation to issue notice, dated 10.5.2023
- AD5 A3/A4 versions of plans sent to LPA in January 2024
Includes A4 topographical plan 4067/P4 DGW, dated 1.11.2023 with AOD levels including 3.4m AOD at FFL, and indicating aerated thermalite blockwork, *the dwelling is not watertight above 600mm above FFL, with openable doors and windows*
- AD6 Email from Mr Derek Wright to Mr Hetherington dated 1 June 2017 and revised drawings dated 14 May and 16 May 2017.