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## Appeal Decisions

Site visit made on 21 August 2025

by Sarah Dyer BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18<sup>th</sup> September 2025

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### Appeal A Ref: APP/J0405/C/23/3322499

#### Plot 10, Sunset Park Homes, Whitfield Road, Brackley, NN13 5TD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Mr Ambrose Smith against an enforcement notice issued by Buckinghamshire Council.
  - The notice was issued on 11 May 2023.
  - The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission Ref: 08/01966/APP granted at appeal (Appeal Ref. APP/J0405/A/09/2097819) on 24 June 2009.
  - The development to which the permission relates is retention of utility/stable block.
  - The condition in question is no. 3 which states that:

The building hereby approved shall be removed from the land on which it is situated, and that land shall then be restored to its original condition before the development took place or to any other condition as may be agreed in writing by the local planning authority within a period of three months of the land ceasing to be used as a residential caravan site for gypsies.
  - The notice alleges that the condition has not been complied with in that the residential use of the building and Plot 10 of Dun Roaming/Sunset Park by persons who are not Gypsy/Traveller has invoked the requirement to remove the building.
  - The requirements of the notice are to permanently remove (demolish) the stable building, and its contents, shown annotated as 'stable building' on the attached plan, from the Land, and restore the land to its condition prior to the construction of the stables.
  - The period for compliance with the requirement is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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### Appeal B Ref: APP/J0405/X/23/3320808

#### Plot 10, Sunset Park Homes, Whitfield Road, Biddlesden, Buckinghamshire NN13 5TD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr A Smith against the decision of Buckinghamshire Council.
  - The application ref 22/02483/CPE, dated 8 July 2022, was refused by notice dated 6 March 2023.
  - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
  - The use for which a certificate of lawful use or development is sought is existing change of use of Stables Building into 3 no. separate residential units for a period in excess of 4 years.
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## Decisions

### Appeal A

1. It is directed that the enforcement notice is corrected by the deletion of the phrase 'within paragraph (a) of section 171A (1)' from Section 1 and its substitution with 'within paragraph (b) of section 171A (1)'.

2. It is further directed that the enforcement notice is corrected by the deletion of Section 3 and its substitution by:

On 24 June 2009 planning permission was granted under application ref. 08/01966/APP at appeal (Appeal Ref. APP/J0405/A/09/2097819) for the retention of utility/stable block at 10 Dun Roaming Park, Whitfield Road, Biddlesden, Bucks NN13 5TD, subject to conditions.

Condition 3 states as follows:

The building hereby approved shall be removed from the land on which it is situated, and that land shall then be restored to its original condition before the development took place or to any other condition as may be agreed in writing by the local planning authority within a period of three months of the land ceasing to be used as a residential caravan site for gypsies.

It appears to the Council that Condition 3 has not been complied with in that the residential use of the building and Plot 10 of Dun Roaming/Sunset Park by persons who are not Gypsies or Travellers has invoked the requirement to remove the building.

3. Subject to the corrections the appeal is dismissed, and the enforcement notice is upheld.

### **Appeal B**

4. Appeal B is dismissed.

### **Applications for costs**

5. An application for costs has been submitted by the appellant against the Council. This is the subject of a separate decision.

### **Appeal A - The Enforcement Notice**

6. I have a duty to get the notice in order and the power to make corrections on the basis that such corrections do not give rise to injustice.
7. Section S173(1)(b) of the Planning Act 1990 (the Act) provides that the enforcement notice 'shall state...the paragraph of s171A(1) which applies'. The enforcement notice has the title 'Breach of Condition Enforcement Notice', but the breach is alleged under paragraph (a) of s171A(1). This paragraph relates to the carrying out of development without the required planning permission. The correct reference is paragraph (b) which relates to a failure to comply with a planning condition. Given the enforcement notice title is clear this defect can and should be corrected provided that no injustice would occur. No injustice would arise to either party in this case and I shall make the correction.
8. Notwithstanding the foregoing, the enforcement notice contains all of the information required under Section 173 of the Act. The evidence before me indicates that the land to which the notice relates which is described in Section 2 aligns with the application site for the 2009 permission i.e. Plot 10 only.
9. The wording of Condition 3 attached to the planning permission granted at appeal which it is alleged has been breached is set out in Section 3. This section of the enforcement notice relates to the matters which appear to constitute the breach of

planning control. The reasons for issuing the notice which are set out in Section 4 refer to the correct immunity period and set out that the breach has been triggered by the use of the building and Plot 10 by persons who are not Gypsies or Travellers.

10. The requirements of the notice are set out in Section 5, and these align with the alleged breach of Condition 3 as they relate to the removal/demolition of the building but not to its use. The time for compliance has been set out in Section 6 and at least 28 days are provided between the date when the notice was issued and the date when it takes effect in Section 7.
11. The reasons for issuing the enforcement notice refer to the use of the building. The use is controlled by Condition 1 of the planning permission, however there is no reference to Condition 1 in the alleged breach of planning control. Nonetheless, read as a whole the enforcement notice contains all of the information needed by the recipients so that they know what they have done wrong and what they need to do to remedy it. Whilst the reasons for issuing the notice are not confined to Condition 3, they are relevant in part and meet the requirements of s173(10) of the Act.
12. It is not appropriate for me to amend the Council's reasons for serving the enforcement notice. However, I shall correct Section 3 to bring together the relevant elements of the breach of planning control for clarity.
13. The appellant considers that the framing of the notice by the Council has placed him in a position of prejudice because he has been unable to make an appeal on ground (a) for the residential use of the building. However, the Council's decision that it was expedient to serve the notice in respect of the building but not its use is not a matter which is before me. I must confine my determination to the breach as set out in the notice and not any other breach which under a ground (a) appeal would give rise to a Deemed Planning Application for a different development.
14. Similarly the appellant alleges that the Council has evolved its case such that it is now alleging that a material change of use of Plot 10 has occurred and that conditions attached to a recent planning permission relating to Plot 10 have been breached. Again these matters are not referred to in the enforcement notice which is before me and do not form part of my consideration of this appeal.
15. The appellant also considers that he has been prejudiced because he is unable to seek planning permission for the actual breach which is occurring in respect of the use of the building. The scope of the enforcement notice is a matter for the Council, and it would be unreasonable for me to expand the allegation to include reference to Condition 1 in any event as this would give rise to injustice. There is a power to decline to determine an application to remove or vary a condition under Section 70C of the Planning Act 1990, but this would not apply in respect of Condition 1 because it does not constitute any part of the matters specified in the enforcement notice as constituting a breach of planning control.
16. Even if I could correct the enforcement notice to include reference to Condition 1, success on ground (a) would only result in planning permission for the original development, being the stable/utility block without compliance with Condition 1. It would not make any material change of use of the building lawful.

17. The appellant also contends that the immunity period as set out in the enforcement notice is incorrect because in his view a four year immunity period applies in this case. He refers to appeal decisions for Land at Mayfield, Stadbrook Lane (Appeal Refs. APP/P1615/C/08/2075254 and APP/P1615/X/08/2072608, APP/P1615/X/2083871) (the Mayfield Appeal Decisions) in this regard.
18. There is a key difference between the circumstances which gave rise to the Mayfield Appeal Decisions and the appeal which is before me. In the Mayfield case the allegation referred to both a condition controlling the use of the straw bale house and a condition requiring, amongst other things, its removal once the use of the land ceased to be carried on by the business. However, the alleged breach of planning control in this case only relates to the condition which requires removal of the building once the land ceases to be used as a residential caravan site for gypsies. As I have set out above, there is no reference to Condition 1 which controls the use of the building in the allegation. Thus the Mayfield Appeal Decisions are not directly comparable to the appeal before me.
19. As the allegation concerns a breach of condition which does not relate to the use of the building as a dwellinghouse, the correct immunity period is ten years as set out in the enforcement notice.

#### **Ground (b)**

20. An appeal on ground (b) is on the basis that the matters set out in the enforcement notice have not occurred. To succeed on ground (b) the appellant has to show the residential use of Plot 10 by persons who are not gypsies and travellers has not occurred so as to trigger the requirement to remove the building to comply with Condition 3.
21. The appellant refers to the planning history of Plot 10 in support of his appeal. In August 2006 planning permission (Council Ref. 06/00699/APP) (the 2006 permission) was granted for the provision of 10 plots on an existing gypsy site. The site location plan includes the appeal site (Plot 10) and other land. The 2006 permission was subject to a condition (Condition 2) limiting the use of the land and occupation of the mobile homes to gypsies and another condition (Condition 5) limiting the number of caravans on each plot to no more than one mobile home and one touring caravan.
22. In June 2009 planning permission was granted under application ref. 08/01966/APP at appeal (Appeal Ref. APP/J0405/A/09/2097819) (the 2009 permission) for the retention of utility/stable block. An appeal against an enforcement notice ref. 08/00017/CON3 was considered at the same time (Appeal Ref. APP/J0405/C/09/2100307) which was quashed, and planning permission was granted for the deemed planning application.
23. The 2009 permission for the retention of the utility/stable block related only to Plot 10 as does the most recent planning approval, which was also granted on appeal (Appeal Ref. APP/J0405/W/22/3295757) on 23 December 2022. (the 2022 permission). The 2022 permission permitted the retention of five static caravans on Plot 10. There is a condition limiting the number of caravans on the pitch to five and their occupation to gypsies and travellers, but the application did not seek a change of use of the land because it was already an established gypsy and traveller site.

24. The 2022 permission does not supersede the 2009 planning permission for the retention of the stable/utility building and there is no evidence before me to demonstrate that Condition 3 which was attached to the 2009 permission has been removed or varied.
25. In its reason for issuing the enforcement notice the Council refers to the residential use of the building and Plot 10 by persons who are not gypsies/travellers. It is clear that in the Council's view use of either the building or the caravans on the site by people who are not gypsies/travellers triggers the requirement to remove the building in order to comply with Condition 3. Given that both the 2009 permission and the 2022 permission relate to the same land, this approach is appropriate.
26. The appellant considers that on the basis of the planning history of Plot 10 there has been no cessation of use as a residential caravan site for gypsies and the requirement to remove the building, as set out in Condition 3, has not been triggered.
27. The Council has provided a comment form from the application for the LDC which is the subject of Appeal B. This is from a tenant who was living in Unit 10C. They do not state whether or not they are a gypsy but do confirm that in August/September 2021 they were asked questions by an officer in the Council's enforcement team including their name and the country they came from. The Council has not provided a copy of the answers provided by the tenant.
28. The Council goes on to state that it established that three residents of the nine mobile homes on the site also said that they were not gypsies or travellers as part of its canvas of sites in September 2021. This could indicate that Plot 10 is no longer a gypsy/traveller site. Whilst not part of the allegation in the enforcement notice, this matter is relevant to whether the requirement to remove the building has been triggered by virtue of Condition 3.
29. The appellant has not supplied any evidence to counter the arguments made by the Council and he does not need to do so provided that he is able to provide his own evidence to demonstrate, on the balance of probabilities, that there has been no breach of Condition 3. In that respect the appellant provides no evidence beyond reference to the planning history of Plot 10 which in itself does not demonstrate occupation as a gypsy/traveller site.
30. For the reasons set out above the appeal on ground (b) does not succeed.

#### **Ground (f)**

31. The appeal on ground (f), in this case, is on the basis that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control. The appellant considers that a more appropriate requirement would be to cease the use of the building as residential dwellings, remove the internal works and complete the development in accordance with the 2009 permission.
32. The purpose of the enforcement notice is clearly to remedy the breach of planning control and not to remedy any injury to amenity caused by the breach. There is no appeal on ground (a) and in those circumstances, and where the purpose of the

enforcement notice is to remedy a breach of planning control, a lesser step than demolition of the building would not remedy the breach.

33. For the reason set out above the appeal on ground (f) does not succeed.

### **Ground (g)**

34. An appeal on ground (g) is on the basis that the compliance period set out in the enforcement notice falls short of what should reasonably be allowed. The appellant argues that whilst the building is capable of removal within the six month compliance period specified in the enforcement notice this period is too short to allow for the expiration of the tenancy agreements with the current occupiers or eviction notices to be served.

35. During my site visit I observed that one of the units is unoccupied but the other two have people living in them. There is no information before me regarding whether the occupiers include children or if they have any protected characteristics. Nevertheless upholding the notice would require demolition of the building and the current occupiers would lose their homes. This would amount to an interference with their rights under Article 8 of the European Convention on Human Rights as incorporated into the Human Rights Act 1998. But as a qualified right such interference may be justified if it is found to be necessary in the public interest and proportionate.

36. I have not been provided with any tenancy agreements for the current occupiers, but tenancy agreements have been provided which relate to previous occupiers. Where a 'rolling tenancy' has been agreed the tenancy can be terminated provided that the tenant is given two months notice. The fixed term tenancy agreement does not have this facility. The Council states that a section 21 notice gives a tenant two months but has not provided any further explanation of this.

37. The appellant also refers to experiences encountered by other landowners at the wider site in evicting non-traveller tenants from mobile homes in his Final Comments. However, he does not provide examples of this to justify his request that the compliance period is extended.

38. There is very limited evidence to support the appellant's contention that the compliance period is too short and to demonstrate that the current occupants could not relocate within the 6 month compliance period. The National Planning Policy Framework states that effective enforcement is important to maintain public confidence in the planning system. The limited evidence before me does not outweigh the public interest in this case and my decision not to extend the compliance period is a proportionate response to the potential for the current occupiers to lose their homes in this instance. For that reason the appeal on ground (g) does not succeed.

### **Appeal A - Conclusion**

39. For the reasons given above, I conclude that Appeal A should not succeed. I shall uphold the enforcement notice with corrections.

## **Appeal B – The Lawful Development Certificate**

### **Main Issue**

40. The main issue is whether or not the Council's decision to refuse the application was well-founded.

### **Reasons**

41. The appellant seeks to establish that the use of the stables building as three separate residential units is lawful. The Act establishes that uses are lawful at any time if no enforcement action may then be taken in respect of them. The appellant is not seeking to establish that the use of the appeal site does not involve development nor that it does not require planning permission. His contention is that the time for enforcement action has expired.
42. The Council refers in its Statement of Case to the application being submitted to prove immunity from enforcement action under condition 1 of the planning permission granted under reference 08/01966/APP, which is the 2009 permission. However the application for the LDC was not made under Section 191(1)(c) of the Act under which a failure to comply with any condition or limitation subject to which planning permission has been granted can be established as lawful.
43. There is no evidence before me to suggest that there was an agreed change to the reason for the application or the description of the existing use after the application for the LDC was made and that is reflected in the First Schedule in the Council's decision notice.
44. Section 193(5) of the Act provides that any LDC granted under s191 or s192 shall not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted, unless it is described in the certificate. Consequently, any non-compliance with Condition 1 of the planning permission would be unaffected by an LDC being granted in accordance with the application as made.
45. Turning to the facts of the case, where the alleged change of use took place before 25 April 2024, the development would be immune from enforcement if no action was taken within four years of the unauthorised change of use of each unit to a single dwellinghouse. Therefore, the appellant needs to show that the appeal building changed to the use described in his application on or before 8 July 2018 (that being four years prior to the date of the LDC application) and that the use of each unit as an independent dwelling then continued for at least four years after the date of the change, without any substantial interruption.
46. The residential units are described as 10A, 10B and 10C by the appellant and I shall follow the same convention.
47. The appellant has submitted four statutory declarations (SDs) and other evidence in support of his application. The SDs have been witnessed and signed by a solicitor. There is reference to the Statutory Declarations Act 1835 and a declaration that the contents are true.

### **The appellant's evidence**

#### *The appellant's SD*

48. The appellant says that planning permission was granted for the stables in 2009. He has provided a number of photographs which show works being carried out to the building between 3 October 2016 and 15 February 2017.
49. The 'Day One' photograph has a date stamp which is unclear, but the appellant says is dated 3 October 2016. It shows what appear to be stable doors in the building. There are date stamped photographs from 20 October 2016, 25 October 2016, 28 October 2016, 2 November 2016 and 28 November 2016 which show works being carried out both inside and outside the building.
50. Photographs which are dated 15 February 2017 show fully fitted kitchen units, a shower/washbasin and part of the exterior of the building where two doors replace the stable doors. Another photograph shows all three entrance doors in the building, this has no date stamp, but the appellant says it is also dated 15 February 2017. A bed is shown in another photograph, but the year is missing from the date stamp.
51. There are other photographs where the date stamp is not clear, but the year appears to be 2017. These show kitchen units being installed and wires which have not been connected to plugs.
52. The appellant states that since the conversion works were completed the building has been 'residentially occupied' since 1 March 2017 and utilities, water and electricity have been paid, and post delivered to each individual unit. He says that he has old and existing tenancy agreements of residents living in units 10A, 10B and 10C over the past four years.
53. The appellant says that he fitted all the windows and doors, kitchens and bathrooms and carried out painting and decorating himself. He bought materials, furniture and fittings and white goods from Farthinghoe Recycling and Reuse Centre.
54. The appellant describes how electrical work was carried out by an electrician. The company did the first and second fix and issued a five year certificate dated 10 February 2017. He states that new certificates were issued for each unit dated 13 October 2022.

#### *Witness 1's SD*

55. Witness 1 has provided three SDs, one of each unit. He says that he carried out first and second 'fix' work in the building in January and February 2017 and issued five year electrical certificates for each separate unit on 10 February 2017. He states that he has visited the property over the past 4 years, including to install USB sockets to unit 10B on 5 January 2019 and a new light switch on 4 June 2018 in unit 10C. He states that he issued another electrical certificate for each unit on 13 December 2021.
56. Witness 1 says that 'the converted stables building has been in occupation since 1 March 2017.

#### *Witness 2's SD*

57. Witness 2 delivered post to units 10A, 10B and 10C in his capacity as a Royal Mail postman since 15 October 2019. He states that the stables building has been in occupation since 15 October 2019.

### *Witness 3's SD*

58. Witness 3 says they moved into unit 10C Dunroamin Park on 20 May 2018 and that the name was changed to Sunset Homes around the beginning of 2020. There are no utility bills in their name because all bills were included in rent save for a coin operated electricity supply. They refer to working locally and to moving out on 21 December 2021.

### *Evidence in respect of Unit 10A*

59. The following evidence relates specifically to Unit 10A:

- A signed tenancy agreement between the appellant and a tenant (Tenant 1) is provided. This is dated 1 April 2017 but has not been witnessed. The tenant address is given as Unit 10B in the signature section, but the agreement relates to Unit 10A. It is a 'rolling tenancy' with no end date. The tenant is responsible for paying Council Tax, water and sewage charges, and for gas, electricity and telephone charges.
- An invoice for a Monthly Clean by a cleaning company at Unit 10A is addressed to Tenant 1, dated 1 November 2017 and stamped 'paid'.
- Another tenancy agreement between the appellant and a different tenant (Tenant 2) is provided. The tenancy term is set from 21 October 2022 to 21 October 2023. The tenant is responsible for paying charges for electricity, internet, cable and telephone and the appellant, as landlord, is responsible for water/sewer and alarm systems payments. The tenancy agreement is not signed by Tenant 2, but they have signed an acknowledgement of receiving a copy of it on 21 October 2022. The landlord's signature is not witnessed.
- A Certificate of Inspection for fire protection is dated 22 August 2022 and an undated photograph of a fire extinguisher is provided.
- A Gas Safety Record for the water heater and cooker is dated 27 September 2021 and signed as received by the appellant.
- A record of drainage callouts on 5 January 2019 and 7 July 2020 is submitted which are addressed to people for who tenancy agreements have not been provided.
- Invoice for installation of payment coin meter dated 5 March 2017 addressed to the appellant.

### *Evidence in respect of Unit 10B*

60. The following evidence relates specifically to Unit 10B:

- A signed tenancy agreement between the appellant and a tenant (Tenant 3) dated 22 March 2017 on a rolling tenancy agreement. The responsibility for payments for utilities is the same as for Tenant 1. The signatures are not witnessed, and Tenant 3 identifies their address in the signature section as Unit 10B.
- Another signed tenancy agreement between the appellant and a different tenant (Tenant 4) dated 1<sup>st</sup> 12<sup>th</sup> 2021. There is no end date shown on the agreement. The responsibility for payments for utilities is the same as for

Tenant 1. The signatures are not witnessed, and Tenant 3 identifies their address in the signature section as Unit 10B.

- Document setting out a final bill for electricity charges for the period 3 October 2019 to 12 August 2020. 12 August 2020 is shown as an actual meter reading, but others are shown as by the customer. The document is entitled 'For electricity at 10 Dunroamin Park, Dunroamin Park Brackley NN13 5TD' but it is addressed to the appellant at 10 Unit B.
- A Certificate of Inspection for fire protection is dated 22 August 2022 and an undated photograph of a fire extinguisher is provided.
- A Gas Safety Record for the water heater and cooker is dated 27 September 2021 and signed as received by the appellant.
- An invoice for an Oven Clean by a cleaning company at Unit 10B is addressed to Tenant 3, dated 5 January 2018 and stamped 'paid'.
- A record of drainage callouts on 4 April 2017 for Tenant 3 and on 18 December 2021 for Tenant 4 are provided.
- An invoice for installation of hot water cylinder dated 1 November 2017 addressed to the appellant.
- Invoice for installation of payment coin meter dated 5 March 2017 addressed to the appellant.
- Invoice for replacement of sockets for USB dated 5 January 2019 addressed to the appellant.

#### *Evidence in respect of Unit 10C*

61. The following evidence relates specifically to Unit 10C:

- A signed tenancy agreement between the appellant and a tenant (Tenant 5) (Witness 3) dated 20 May 2018 on a rolling tenancy agreement. The responsibility for payments for utilities is the same as for Tenant 1. The signatures are not witnessed, and Tenant 5 identifies their address in the signature section as Unit 10C.
- An invoice for a Final Clean by a cleaning company at Unit 10C is addressed to a person for whom a tenancy agreement has not been provided, dated 18 January 2018 and stamped 'paid'.
- A Certificate of Inspection for fire protection is dated 22 August 2022 and an undated photograph of a fire extinguisher is provided.
- A Gas Safety Record for the water heater and cooker is dated 27 September 2021 and signed as received by the appellant.
- A record of a drainage callout on 10 October 2018 for Tenant 5.
- Invoice for installation of hot water cylinder dated 1 November 2017 addressed to the appellant.

- Invoice for installation of payment coin meter dated 5 March 2017 addressed to the appellant.
- Invoice for fault finding and replace switch dated 4 June 2018 addressed to the appellant.

#### *Other evidence*

62. The following additional evidence has been provided but is not specific to a particular unit:

- A copy of an email from National Grid confirming that the works to install the new electricity supply were carried out in July/August 2020.
- Letter from Tingewick Fuels dated 7 July 2022 stating that deliveries have been made to the site since 2012 and Plot 10 including to the static caravan and the converted stable block since March 2017. This is not in the form of an SD.
- Receipt from Farthinghoe Recycle Centre addressed to the appellant and dated 20 September 2016 listing five windows, three doors, three fridge/freezers, three kitchen work tops/units and three toilet systems.
- Receipt for three hobs, extractor fans and ovens, bathroom panels and three shower doors and three electric showers dated 10 January 2017 and addressed to the appellant.
- Invoice for installation of under counter water heater dated 10 January 2017 addressed to the appellant.
- Photographs of and news story about Farthinghoe Recycle Centre.
- Images from Gumtree website including some queries on availability of items.
- Photographs of refurbishment works annotated with the following dates, 1 October 2022, 4 October 2022, 5 October 2022, 7 October 2022, 10 October 2022 and 20 October 2022.
- Photographs of payment coin meters inside kitchen units.

63. The appellant also made a statement regarding the electrical certificate. This is not in the form of an SD. He says electricity was cut off at the property in August 2020 and he had to have a new supply to serve number 10 including units 10A, 10B and 10C. He explains that this is the reason the new certificates were issued a year early although the old certificates still had almost a year remaining at that time. He said the old certificates had been lost or discarded and his electrician issued a copy of the old ones with BS7671.

#### **Assessment of the evidence of use of 10A, 10B and 10C as separate residential units**

##### *The conversion of the building to Units 10A, 10B and 10C*

64. The appellant says that the conversion works were completed, and the units have been occupied since 1 March 2017.

65. The photographs which the appellant refers to demonstrate that works were being carried out at the stable building between October 2016 and 28 November 2016 and photographs from 15 February 2017 show changes to the stables both internally and externally. Whilst all three entrances are shown as domestic in nature the other photos are not annotated to demonstrate that all three units had been refurbished.
66. The receipt from Farthinghoe Recycling and Reuse Centre refers to three sets of kitchen units and fridge/freezers which is consistent with the refurbishment works involving all three units and the date of the receipt is shortly before the appellant says the refurbishment works began. Similarly the number of appliances referred to in the receipt for other electrical equipment dated 10 January 2017 is consistent with the time when Witness 1, the electrician, was carrying out the first and second fix work and when he issued the first electrical certificate.
67. The evidence on the dates when the electrical certificates were issued is confused. There is agreement between the appellant and Witness 1 that the first certificates were issued on 10 February 2017 and that they are for five years duration i.e. valid until 10 February 2022. Evidence is provided that demonstrates that a new electricity supply was installed in July/August 2020. The appellant says that this caused him to seek new certificates. The appellant says new certificates were issued dated 13 October 2022, but the electrician states the date as 13 December 2021. These dates are inconsistent with each other and neither aligns with the dates given for the installation of the new supply. Copies of neither the first nor the second electrical certificates have been provided.
68. The invoices for the installation of the payment coin meters are dated a few days after the date when the appellant says occupation first occurred. However, it is possible that the date of an invoice does not reflect the date when the works were carried out so these facilities could have been available earlier in March.
69. The date of the invoice for an under counter water heater (10 January 2017) coincides with the time when works were taking place but only refers to one heater and the unit number is not provided. Invoices for the installation of hot water cylinders in Unit 10B and 10C are dated 1 November 2017 but there is no equivalent invoice for Unit 10A. The appellant has not provided any explanation for the disparity in dates.
70. Given the information before me, on the basis of probability Unit 10A had all of the facilities for day to day living by the time that the appellant says that all of the units were occupied (1 March 2017). However, this is less clear in respect of Unit 10B and Unit 10C given the lack of clarity in the availability of the hot water cylinders. The October/November 2016 to February 2017 photographs do not assist in this respect because they are not annotated in terms of which unit is shown on the photograph of the kitchen.

#### *The occupation of Unit 10A*

71. There is a tenancy agreement between the appellant and Tenant 1 but no first hand evidence from Tenant 1. The tenancy agreement is dated from 1 April 2017 which is inconsistent with the date when the appellant said all of the units were first occupied, 1 March 2017.

72. The second tenancy agreement which has been provided in relation to Unit 10A does not cover the period when the appellant said Unit 10A was first occupied as it relates to 2022/23. Furthermore its value is undermined by the lack of signature of the tenant. Similarly the evidence by the postman, the Certificate of Inspection for fire protection, the gas safety record and the record of drainage callouts do not support the appellants contention that Unit 10A was first occupied on 1 March 2017 because all are related to periods of time after that date.
73. Save for the tenancy agreement and the Monthly Clean invoice for a single month there is no evidence of Tenant 1 occupying Unit 10A. Thus the appellant is almost entirely reliant on the contents of his SD and that of Witness 1 in relation to the occupation of Unit 10A for at least four years after 1 March 2017.
74. Even if, based on the limited evidence from the appellant, I conclude that Unit 10A was occupied from 1 April 2017 there is limited information to show that occupation was without substantial interruption for the four year period. The records of callouts for drain clearance indicate that people were using Unit 10A as living accommodation but the Certificate for fire protection and the Gas Safety Records are likely to evidence maintenance but not necessarily occupation.
75. The second tenancy agreement relates to the period 21 October 2022 to 21 October 2023. Its commencement coincides with the end of the period during which the appellant has provided evidence that refurbishment was taking place. However, there is limited clarity to be derived from an interpretation of the photographs provided about when the refurbishment works were started or how long Unit 10A was unavailable while they were undertaken.
76. The provision of a payment coin meter could explain the absence of evidence of electricity bills, but it is not evidence of occupation in itself.

#### *The occupation of Unit 10B*

77. Only two tenancy agreements have been provided and there is no first hand evidence by the people who were living in Unit 10B. The tenancy agreement is dated from 22 March 2017 which is inconsistent with the date when the appellant said all of the units were first occupied, 1 March 2017.
78. The other shortcomings of the evidence in respect of Unit 10A are repeated in the case of 10B. For example, the records of callouts for drain clearance indicate that people were using Unit 10B as living accommodation but the Certificate for fire protection and the Gas Safety Records are likely to evidence maintenance but not necessarily occupation.
79. The final bill for electricity charges, contains information which is inconsistent with the appellant's description of events. It is addressed to the appellant at Unit 10B but the appellant has not said that he lived in the unit at any time. Also, the charges relate to 10 Dunroamin Park which is the address of the wider plot. There is also an inconsistency between the bill and the use of payment coin meters which is not explained.
80. Even if I accept that the final electricity bill relates to Unit 10B it only covers the period 3 October 2019 to 12 August 2020 as opposed to the longer period that the appellant says Unit 10B has been occupied i.e. from March 2017.

81. There is also no explanation of the delay between when the appellant says Unit 10B was occupied (March 2017) and the invoice for the installation of the hot water cylinder (November 2017). This could imply that there was no hot water in Unit 10B at that time but there is a record of a drainage call out on 4 April 2017 suggesting that it was occupied.

#### *The occupation of Unit 10C*

82. There is a SD from a tenant who occupied Unit 10C who is Witness 3. Witness 3 confirms that they occupied Unit 10C from 20 May 2018 until 21 December 2021.
83. Witness 3's evidence highlights an inconsistency. The appellants states that all occupiers of the units were responsible for utilities including water and electricity. The tenancy agreements also refer to tenants being responsible for water and sewage charges, gas, electricity and telephone charges. However, Witness 3 says that they were only responsible for electricity payments via the coin meter.
84. The invoice for a Final Clean could indicate that Unit 10C was let to a tenant before Witness 3 but there is no evidence in the form of a tenancy agreement to clarify this or how Unit 10C was being used between the final clean in January 2018 and Witness 3 moving in in May 2018.
85. The invoice for the replacement switch could demonstrate that Unit 10C was occupied in June 2018 but this has not been verified by Witness 3 who says they were living there at that time.
86. The lack of clarity around the installation of the hot water cylinder is the same as in relation to Unit 10B. Also, in common with the evidence of occupation of Unit 10A and Unit 10B the evidence by the postman, the Certificate of Inspection for fire protection and the gas safety record do not support the appellants contention that Unit 10C was first occupied on 1 March 2017 because all are related to periods of time after that date.
87. The other shortcomings of the evidence in respect of Unit 10A and Unit 10B are repeated in the case of 10C. Again, the records of callouts for drain clearance indicate that people were using Unit 10C as living accommodation but the Certificate for fire protection and the Gas Safety Records are likely to evidence maintenance but not necessarily occupation.

#### **Appeal B - Conclusion**

88. In order to achieve success on the appeal the appellant needs to show that the change of use of the building into 3 no. separate residential units occurred on or before 8 July 2018 and that the use of each unit as an independent dwelling then continued for at least four years after the date of the change, without any substantial interruption. The Council has provided limited evidence to contradict the arguments which have been made by the appellant. However, this does not remove the responsibility from the appellant to provide evidence which is precise and unambiguous. In this case, based on my assessment of the evidence, I find that the appellant's evidence is not sufficiently precise and unambiguous such that the balance of probability rests in his favour.
89. The appellant and Witness 1 say that the building has been in residential use since 1 March 2017. The photographs which show the refurbishment works are mainly date stamped and consistent with those works being carried out in 2016/2017. The

lack of annotation of the photographs results in them lacking precision in terms of demonstrating when each unit was available for occupation. This combined with the evidence relating to the installation of water heaters in Unit 10B and Unit 10C casts doubt on whether all three units had all the facilities necessary for day to day living by March 2017 as suggested by the appellant. Nevertheless, the evidence supports the contention that Unit 10A was capable of occupation.

90. The evidence on occupation of the units is limited in respect of all three units. Much of the evidence falls outside the period between March 2017 when the appellant says the units began to be occupied and 8 July 2018.
91. The evidence of occupation of the units is partial and imprecise. There is evidence of activities such as safety checks and cleaning being carried out, but this does not demonstrate that the units were occupied. The incomplete record of tenancy agreements without evidence of rent being paid or first-hand evidence by more than one tenant (Witness 3) constitutes evidence which is imprecise and ambiguous. The inconsistencies between persons and addresses on the tenancy agreements and electricity charges also cast doubt on how the units were occupied and by whom.
92. The focus of the appellant's SD is the works to convert the building to the units. He makes limited reference to the continuous occupation of the units. Whilst he attempts to explain the anomaly in respect of the new electricity supply, there remains an inconsistency between the dates when he says new electricity certificates were issued and the recollection of Witness 1 in his SD. The SDs provided by Witness 2 and Witness 3 are of limited value given the timescales when they were at the site.
93. Unit 10A appears to have been ready for occupation at the time when the appellant says it was first occupied. However, the evidence of occupation prior to 8 July 2018 is limited to a tenancy agreement and one invoice which do not demonstrate a continuity of occupation of Unit 10A over a four year period.
94. The evidence from the appellant and the witnesses is restricted by the lack of any information to corroborate the limited statements which they make about the continued occupation of each of the units. Taking the evidence in the round, it has not been precisely and unambiguously established that the building has been in use as three residential units for a period of four years prior to the date of the LDC application without any periods of significant interruption.
95. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for change of use of Stables Building into 3 no. separate residential units at Plot 10, Sunset Park Homes, Whitfield Road, Brackley, NN13 5TD, is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

*Sarah Dyer*

INSPECTOR

