



Appeal Decisions

Inquiry held on 14, 15, 16, 29 April, 21 and 23 July 2026

Site visit made on 15 April 2026

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 October 2026

Appeal A Ref: APP/E2001/C/25/3370890

Appeal B Ref: APP/E2001/C/25/3370891

Appeal C Ref: APP/E2001/C/25/3370892

Appeal D Ref: APP/E2001/C/25/3370893

Appeal E Ref: APP/E2001/C/25/3370894

Appeal F Ref: APP/E2001/C/25/3370895

Grange Farm, Laytham Road, Foggathorpe, East Riding of Yorkshire YO8 6PR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the Act”) against an enforcement notice (“the notice”) issued by East Riding of Yorkshire Council.
- The appeals are made by Foggathorpe Estate Limited (Appeal A), Mr A Savage (Appeal B), Mr R Anderson (Appeal C), Mr R Glover (Appeal D), Ms A Tarasenko (Appeal E) and Mr D Fielder (Appeal F).
- The notice was issued on 25 June 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of four dwellinghouses being #3, #4, #5 & #6 The Barns, Grange Farm, Foggathorpe YO8 6PY and the associated material change of use of agricultural land to residential use and associated operational development to facilitate the material change of use, being the erection of timber fencing and creation of areas of hardstanding.
- The requirements of the notice are: (1) Cease the residential use of the land edged red; (2) Demolish the buildings, known respectively as 3, 4, 5 & 6 The Barns, Grange Farm, Foggathorpe YO8 6PY; (3) Remove from the land edged red all areas of hardstanding (including but not limited to paving slabs), timber fencing, and domestic chattels (including but not limited to sheds and astroturf/fake grass); and (4) On completion of (2) and (3), remove all resultant waste.
- The periods for compliance with the requirements are: (1) 8 months; and (2) - (4) 10 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f), (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- Appeals B, C, D, E and F are proceeding on the grounds set out in section 174(2)(b), (d), (f), (g) of the Act.

Summary of Decisions: Appeals A, B, C, D, E and F are dismissed and the notice is upheld with variations in the terms set out below in the Formal Decisions.

Applications for Costs

1. Applications made by East Riding of Yorkshire Council against Foggathorpe Estate Limited, Mr A Savage, Mr R Anderson, Mr R Glover, Ms A Tarasenko and Mr D Fielder and by Foggathorpe Estate Limited, Mr A Savage, Mr R Anderson, Mr R Glover, Ms A Tarasenko and Mr D Fielder against East Riding of Yorkshire Council are the subjects of separate Decisions.

Preliminary Matters

2. The Inquiry sat on 6 days, including a virtual session, although no evidence was heard on 29 April. Evidence was given on affirmation.
3. A revised National Planning Policy Framework (“the Framework”) was published after the inquiry closed. The parties were afforded an opportunity to comment on its implications for the appeals.

Appeals A, B, C, D, E and F – the appeals on ground (b)

4. The appellants dispute the description of the breach of planning control as the erection of 4 dwellinghouses. For the appeals to succeed on this ground, they need to demonstrate, on the balance of probabilities, that this had not occurred when the notice was issued.
5. The 4 dwellinghouses contain a mix of original and new fabric and were formed in a single development project. The appellants contend that the building works involved in this were a conversion of the existing built form with works of repair and rebuilding as necessary. Whether that is correct, or the building works constituted the erection of new dwellings, as alleged, is a matter of fact and degree.

Units 3 and 4

6. These stand where there had been 2 livestock pens under a former tiled foldyard roof. Unit 3 also incorporates part of the route of a former passageway through the foldyard. Andrew Collins, who had owned the site until 2019, appeared at the inquiry and confirmed that the pens had been enclosed by blockwork walls and covered by a sheet roof that lay beneath the foldyard roof. The northern wall was the rear wall to the farmyard and included 2 openings, one from each pen, for cattle to be moved into an external yard area. The southern wall contained 3 similar openings and was tied into 2 brick columns that supported the foldyard roof.
7. There are no contemporaneous drawings of the pens. A drawing showing them, entitled ‘plans and elevations prior to storm damage’ was produced in October 2025 by Christopher Finn, who also appeared at the inquiry. This post-dates the works and is based on information that had been provided to Mr Finn.
8. David Fielder also appeared at the inquiry and affirmed that the foldyard roof had collapsed following damage incurred during Storm Lorenzo, which struck in early October 2019. However, that is contradicted by an aerial image taken before the storm in September 2019. Although the resolution of the image is not very good, it is apparent that half of the foldyard roof had been removed, exposing the part where units 3 and 4 are now. The sheet roof is also absent. The shadows cast by this part of the site indicate that nothing of the former southern wall remained, apart from the 2 brick columns, while it appears the northern wall was intact. It is therefore clear, contrary to Mr Fielder’s evidence, that much of the original fabric had been removed from this part of the yard before Storm Lorenzo struck.
9. When Mr Fielder was asked about the September 2019 aerial image at the inquiry, he said he could not comment but went on to say that the remaining part of the foldyard roof ended in “a very straight line for storm damage.” I would agree that, if there had been any storm damage, it would be unlikely to have broken the roof apart so neatly. It is more likely that the neat break in the foldyard roof in the aerial image was a result of human intervention.

10. The southern wall was subsequently rebuilt. The pattern of openings in it and in the northern wall were changed, with domestic windows and doorways inserted. Both walls were extended to enclose part of the former passageway. Photographs taken by Mr Finn in August 2020, in which original sections of the northern wall are in brick and the new parts are in blockwork, indicate that as much as 40% of structural fabric could be new. This wall is now clad in timber. A new tiled pitched roof was erected over both units. This roof is materially different in form and higher than the former sheet roof, which had been below the valleys of the former foldyard roof.

Units 5 and 6

11. The available evidence indicates that unit 5 has undergone few external changes. The main ones are the replacement of a large opening with double doors and a window and alterations to the roof where the new roof over units 3 and 4 joins it.
12. Unit 6 has been completely re-roofed. Before the works, its main roof was a mono-pitch with cement sheets. It is now a dual pitch tiled roof with a different profile. A lean-to also had a mono-pitch cement sheet roof, and this has been replaced with a tiled roof with a different pitch that ties in with the main roof plane. The only identifiable elevational change of note is the replacement of a single opening with a door and window at the southern end of the lean-to.

Whether these changes constitute the erection of 4 dwellinghouses

13. The courts have held that, in principle, the retention of fabric from an original building does not preclude it being found, as a matter of fact and degree, that a new building has been formed and that the original building has ceased to exist.¹ Whether that has occurred is a matter to be determined according to the facts of each case.
14. Mr Finn surveyed the 4 units in August 2020 and calculated that some 23.23% of walls and 43.24% of roofs were new fabric. Photographs he took at the time confirm that joinery was yet to be inserted in door and window openings. The photographs give little detail of the interior of the buildings, but views through various openings indicate that they were empty shells. The later addition of joinery and timber cladding will have increased the proportion of new external fabric and subsequent internal works are likely to have added more new fabric overall.
15. While the appeals are made by several recipients of the notice, the prime actor in the works was David Fielder, a builder and director of the company that acquired the land in 2019. In his written submissions he states that the original buildings and their formation had no use in modern day farming, although he added that a diesel tank had stood within what is now unit 5 when he appeared at the inquiry.
16. Mr Fielder's planning consultant, Jennifer Hubbard, also appeared at the inquiry. She saw the buildings before the purchase and notes that they were of a type that had very limited use for modern agriculture. She therefore assumed that Mr Fielder would seek to put them to another use and gave him brief advice on permitted development rights for the change of use of agricultural buildings to permanent housing or holiday lets. While Mr Fielder affirmed that he was exploring all the possibilities for the buildings, no evidence that he sought advice about any other options from Mrs Hubbard or anyone else has been presented.

¹ *Oates v SSCLG & Canterbury CC* [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251.

17. As already noted, significant demolition works had been undertaken by the time of the September 2019 aerial image, before the alleged storm damage. The most likely explanation is that it was in preparation for the building works described above, which resulted in the 4 units as they are now. In Mr Fielder's words, "I resolved to remove the damaged and destroyed parts and to rebuild as required in a safe way that matched the buildings on the site."² While he maintained in his oral evidence that the building operations followed damage caused by Storm Lorenzo, that is disproved by the September 2019 aerial image. The appellants' evidence on this point is therefore not persuasive.
18. Mr Finn surveyed the buildings on 14 January 2020 but, unlike his August 2020 survey, no photographic records have been produced. When questioned about this, Mr Finn said that he must have taken date-stamped photographs, but he did not recall the visit, suggesting that he may have called by when in the area. However, the suggested informality of that approach is at odds with the detail of drawing 2903-12-01A,³ which he produced a month after the survey.
19. That drawing does not record the buildings as they were prior to the partial removal of fabric revealed in the September 2019 aerial image. That is most obvious in the way store 5 (now units 3 and 4) covers part of the route of the former passageway and so is depicted larger than it really was. The elevations also show the tiled roof over units 3 and 4 that had not existed in September 2019.
20. As described by Mr Collins, the livestock pens were not suitable for adaption to use as dwellinghouses. Apart from sections of the northern wall and the 2 brick columns, everything above ground level within those units is new and, by reason of building over the former passageway, on an enlarged footprint. The original northern wall was an exterior wall to the foldyard and therefore may be assumed to have originally had footings capable of supporting the weight of a tiled roof. However, the southern wall was internal to the foldyard and only had to bear the weight of a sheet roof. In these circumstances, and in the absence of further information, it has not been shown that there were original foundations capable of fully supporting the structures now comprising units 3 and 4.
21. Those units therefore cannot be reasonably described as anything other than new buildings. That is even allowing for the structural support that may be provided by any original subterranean elements and the retained above ground fabric.
22. While there is more retained fabric in units 5 and 6, it is important to consider the nature and extent of the works overall and that there is no evidence that those carried out on any unit were planned or executed in isolation. The accounts of the building works given by those who carried them out strongly indicate there was a project to create several dwellinghouses within the farm complex, including units that are not the subject of the notice. It is therefore appropriate to treat the part of the complex which the notice attacks as a single entity.
23. Viewed in that context, Mr Finn's calculations that some 23.23% of the walls and 43.24% of roofs were new fabric in August 2020 point to a substantially different built form. Furthermore, if the starting point for his calculations had been the existing buildings he had depicted in drawing 2903-12-01A, which are not the original buildings, the degree of change would be even greater. That is also before

² Proof of evidence of David Fielder paragraph 18.

³ Core Document 2.1 page 224.

the addition of joinery, timber cladding and any internal fabric after his August 2020 survey. While it appears some of the tiles from the foldyard roof were re-used in units 3, 4 and 6, that does not alter the fact that they form part of entirely new roofs.

24. Accordingly, the built form that was on the land affected by the notice prior to September 2019 no longer exists as a recognisable entity. While the amount of remaining original fabric varies from unit to unit, it is relatively modest when all 4 are considered. As a matter of fact and degree, a different, and therefore new, building comprising 4 dwellinghouses now exists and what fabric remains from the original building is fully incorporated in this new building.
25. For these reasons, the allegation set out in the notice, the erection of 4 dwellinghouses, is correct and the appeals on ground (b) must fail.

Appeals A, B, C, D, E and F – the appeals on ground (d)

26. The notice alleges operational development consisting of the erection of the 4 dwellinghouses and the material change of use of the land, including the part occupied by those dwellinghouses, to residential use. While the precise dates are disputed, it is agreed that construction was substantially completed before 25 April 2024 and that the residential use of the land also began before that date.
27. If a material change of use of a building to use as a single dwellinghouse was made before 25 April 2024, under transitional arrangements⁴ no enforcement action may be taken against it once 4 years have elapsed from when it occurred. However, that cannot apply in these appeals because, following their erection, the units were used as dwellinghouses from the outset, with no change of use.
28. Accordingly, the appeals on this ground will turn on:
- Whether the operational development of the erection of the 4 dwellinghouses was substantially completed 4 years before the notice was issued, on or before 25 June 2021. The onus is on the appellants to demonstrate this on the balance of probabilities and subject to consideration of the Council's argument that there was deliberate concealment.
 - Whether the material change of use of the land from agricultural use to residential use was made 10 years before the notice was issued, on or before 25 June 2015. The onus to demonstrate this on the balance of probabilities is also on the appellants.

The erection of the 4 dwellinghouses

29. Evidence from the appellants' witnesses indicates that the building work that resulted in the dwellinghouses as they now are began in or around October 2019. It was incomplete in August 2020, when the units are empty shells in Mr Finn's photographs. Photographs taken in October 2020 show doors and windows in units 3, 4 and 5 and preparatory work for the addition of timber cladding to the rear of units 3 and 4.
30. Photographs taken in January 2021 show doors and windows in all units. Interior photographs of unit 3 show a kitchen, bathroom, radiator and flooring. The final

⁴ Set out in the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

work to the exterior of that unit, the addition of render, is recorded in a photograph taken in March 2021.

31. In his responses to a planning contravention notice (PCN) in March and April 2024, Mr Fielder stated that each unit was substantially completed around a month before first occupation. According to the dates of first occupation he provided then, that would mean the units were substantially completed in July 2021 (unit 3), September 2021 (unit 4), February 2022 (unit 5) and August 2022 (unit 6). That is, of course, if each dwellinghouse were the result of a separate act of development.
32. The appellants now contend that the 4 dwellinghouses were substantially complete by January 2021, between 6 and 19 months earlier. When Mr Fielder was asked about this, he said the dates he gave in response to the PCN had been from memory, not from the evidence now available. It is not explained why his responses to the PCN suggested 4 different completion dates when he now says all the units were completed at the same time.
33. Evidence in support of the appellants' claim of substantial completion by January 2021 is ambiguous. Dwaine Johnson carried out electrical work on the units and appeared at the inquiry. He invoiced Mr Fielder for second fixing unit 3 on 1 January 2021 and then moved on to units 4, 5 and 6, invoicing for their second fixes on 27 March 2021. While this invoice does not support the claim of substantial completion by January 2021, it was issued before 25 June 2021. Mr Johnson affirmed that the electrical supply to the units was not metered at that time and that he returned later to install pre-payment meters. His invoice for that work, dated 9 June 2021, is also from before 25 June 2021.
34. A statutory declaration (SD) made by Robert Fitzgerald and an accompanying invoice to Mr Fielder confirm that carpets and vinyl flooring had been laid in units 5 and 6 by 15 January 2021, in unit 3 by 11 February 2021 and in unit 4 by 3 March 2021, the invoice date. While the later dates do not support the claim of substantial completion by January 2021, they are before 25 June 2021.
35. The appellants have also provided numerous invoices from a builder's merchant for supplies of goods. These cannot demonstrate when or where the items were used and most invoices are for goods to be collected. The smaller number marked for delivery carry a variety of addresses. Some 90, more than two thirds of the total, include the postcode DN14 7NU, which is over 3 km from the appeal site, and fewer than 20 identify Grange Farm as the delivery location. Why the delivery address for goods claimed to be used in constructing the dwellinghouses was in another postcode is not explained. Nevertheless, the invoices demonstrate that the goods were bought by Mr Fielder during the period in which he and others erected the dwellinghouses.
36. The invoices do not, however, support the claim of substantial completion by January 2021 because more than 50 are dated between February and May 2021. Mr Fielder states that some invoices, including all from May 2021 were for goods used on other sites. It has not been explained how he managed to establish this or, if some do relate to other projects, why they were presented as evidence in these appeals. Nevertheless, they all precede 25 June 2021.
37. Invoices from a DIY and Bathroom Centre dating between March 2020 and July 2021 have also been produced. While these were all in Mr Fielder's name only one, dated 12 May 2021, specifically references Grange Farm. However, he says that

the later invoices, which may include that one, relate to goods used on other units at Grange Farm or elsewhere. Again, it is not clear how he came to that view, nor is it explained why invoices now claimed to relate to other developments were presented as evidence in these appeals. The fact that an invoice from July 2021 has been presented as evidence must introduce doubt as to whether all 4 dwellinghouses had been substantially completed by 25 June 2021. Nevertheless, the vagueness of these invoices makes it difficult to afford much weight to them either way.

38. While they cannot directly assist with the date of substantial completion, 3 of 4 records of sums paid into electricity pre-payment meters confirm that electricity was being consumed before 25 June 2021. These records do not identify the properties in question, but they do list the email addresses of the person making each payment. One of these matches Aaron Savage, who made a SD stating that he moved into unit 3 in late May 2021 and began using the pre-payment meter when it was installed shortly afterwards, with his first recorded payment on 4 June 2021. The SD also states that occupiers Mr Savage calls Jack and Paddy moved into units 4 and 5 around the same time and 2 of the other pre-payment meter records include first payments on 4 and 7 June 2021.
39. While Mr Savage did not appear at the inquiry, his father, Mark Savage, did. Mr Savage senior's evidence confirms that his son moved into unit 3 in May 2021. While there is no record of Mr Savage junior paying Council Tax at the address before spring 2023, the absence of such evidence cannot prove that he had not been in occupation before then.
40. Another pre-payment meter record shows payments from 4 June 2021 onward. Justin Claybourn appeared at the inquiry, and his evidence identifies the person making payments at that time as Neil Morrow, also known as Paddy, an occupier of unit 5. The email address linked to payments until January 2021 appears to be that person. While there is some confusion about the surname, Mr Fielder using 'Moran' instead, both knew him as Paddy.
41. The appellants contend that the pre-payment meter records beginning 7 June 2021 relate to payments made by a person named Jack (or Jak) Brook, the initial occupant of unit 4. The records show that payments made by a person with a corresponding email address continued until 31 October 2021.
42. However, Council Tax records place a Jak Brook outside Foggathorpe, in postcode area DN14, on or about 17 May 2021, when he advised that he would move to another address in the same postcode area from 29 May 2021. A later Council Tax record from November 2021 indicates that he took a new tenancy within postcode area DN14 that month. While the Council submits that this demonstrates that Mr Brook was somewhere else in May 2021, I note that the Council Tax information from that month concerned a move that was yet to occur and there is no evidence that it subsequently happened. Furthermore, the November 2021 data does not state where Mr Brook had previously been living and the period May to November 2021 is consistent with when the appellants say he was at the appeal site.
43. The appellants accept that unit 6 was not occupied residentially until later, having previously been used as a welfare facility while work was being carried out on the adjacent farmhouse. Pre-payment meter records from 25 August 2021 onward include email addresses that appear to match the identified first occupiers, John

and Pamela Bond. However, while an incomplete dwelling would not normally be occupied, it does not necessarily follow that substantial completion coincides with first occupation. What must be considered is when all the facilities required for everyday living were in place and the dwellinghouse was therefore ready for residential occupation.

44. As already noted, Robert Fitzgerald's SD states that he laid flooring in unit 6 by 15 January 2021 and invoiced Mr Fielder for that work, and for his work on the other 3 units, on 3 March 2021. His SD is accompanied by photographs of the work carried out, including 2 taken in unit 6 on 3 March 2021 showing carpets newly laid. While this indicates the carpets in that unit were laid later than Mr Fitzgerald stated, his invoice for that work was submitted well before 25 June 2021. Furthermore, Mr Fitzgerald states that each unit was fully decorated and had kitchens, bathrooms and central heating fitted when he laid the flooring. That evidence counters any doubt that may linger from the DIY and Bathroom Centre's July 2021 invoice.
45. Flooring is one of the last things to be done when making a dwellinghouse ready for occupation. While only carpeted areas can be seen in the photographs Mr Fitzgerald took in unit 6, those he took in another one (which he identifies as unit 3) on 15 January 2021 show kitchen units and radiators in place, indicating that unit was, or was nearing, substantial completion. As with unit 6, there is a discrepancy between the dates of the work in Mr Fitzgerald's invoice and in his SD, but it remains that he had completed all his work at the appeal site by 3 March 2021. It is therefore more likely than not that kitchen units and radiators had been installed in unit 6 by 3 March 2021, when the carpets were laid.
46. Mr Johnson recalls eating food and using the fridge, cooker and electric kettle in the kitchen of unit 6 while he was fitting meters in units 3, 4 and 5. This would have been before 4 June 2021, the date of the first pre-payments. Mr de Cobain, Mr Claybourn and Mr Fielder make similar recollections in their proofs of evidence.
47. The Council points out that the evidence given by various witnesses for the appellants is confused in terms of the precise identity of some claimed occupiers and their move-in dates. It also refers to the absence of tenancy agreements from before 2023. There are also gaps or contradictions within the appellants' evidence in terms of photographs and the dates on which specific works are claimed to have been carried out or finished.
48. Furthermore, the differences between the dates given for substantial completion in Mr Fielder's responses to the PCN and in the appeals are significant, moving it from after 25 June 2021 to before that date. Nevertheless, and despite some minor inaccuracies in what the other witnesses involved in carrying out the works have stated, I find their evidence of the timing of those works to be consistent and reliable overall.
49. The appellants' evidence clearly indicates that individuals separately paid for electricity consumed in units 3, 4 and 5 from early June 2021. That is sufficient to demonstrate, overall and on the balance of probabilities, that those 3 units were occupied residentially, and so must have been substantially completed before 25 June 2021. The evidence of Mr Fitzgerald, Mr Johnson, Mr de Cobain and Mr Claybourn demonstrates on the balance of probabilities that unit 6 was capable of residential use, and thus also substantially complete, before 25 June 2021.

50. It is, however, necessary to consider the Council's assertion that Mr Fielder deliberately provided false or misleading information in his PCN responses with a view to delaying enforcement action and so gain immunity from it. It contends that this amounted to concealment, such that the immunity period set out in section 171B(1)(a) of the Act cannot be relied upon, in line with the judgment in *Welwyn Hatfield BC v SSCLG & Beesley* ("Welwyn").⁵ That judgment included application of the legal policy that no one should be allowed to profit from his own wrong.
51. In *Welwyn*, Mr Beesley deceived the local planning authority by securing planning permission for an agricultural building but instead erecting a dwellinghouse with the same outward appearance. He lived in the dwellinghouse undetected for 4 years, after which he applied for a certificate of lawful use or development, claiming immunity from enforcement action. The Supreme Court found that Mr Beesley's actions amounted to "positive deception in matters integral to the planning process (applying for and obtaining planning permission) and was directly intended to and did undermine the regular operation of that process." The Council suggests a parallel in these appeals, drawing my attention to the following extract from the judgment in *Welwyn*:

However, if a planning authority were to discover an unauthorised development or use, and the property owner were, in order to avoid enforcement action within the four years, falsely to assure the planning authority that the four years had not expired, and that he intended to remove or cease the development or use before they did, and so succeed in avoiding enforcement action during the four years, I very much doubt whether the owner could thereafter rely upon sections 171B and 191(A), merely because no criminal offence had been committed.

52. The parallel is not, however, as close as the Council suggests. First, the quote from *Welwyn* above includes reference to a false assurance that the breach of planning control would be rectified before enforcement action could no longer be taken. There was no such assurance in this instance. Second, the deception included 2 planning applications for the building as a barn, even though Mr Beesley always intended it to be a dwellinghouse. The other well-known instance of deliberate concealment referred to at the inquiry is *Fidler*.⁶ In that case, Mr Fidler secretly erected a dwellinghouse inside a false haystack that he only took down after he had lived in the dwellinghouse for 4 years.
53. There has been no comparable deception in these appeals; the works carried out were not disguised in any way. Indeed, unsuccessful applications for prior approval and planning permission for the change of use of buildings to dwellinghouses were made in 2021.⁷ While the details of those applications differed from what the notice alleges, notably that one application included units 5 and 6 (as they now are) but not units 3 and 4, there was no pretence that dwellinghouses had not been created. The Council's case on this point therefore turns on whether Mr Fielder's provision of incorrect dates of substantial completion in his PCN responses amounted to deliberate concealment.
54. In *Welwyn*, the Supreme Court suggested Mr Beesley's dishonesty was so far removed from almost anything else encountered in planning law that it appeared to

⁵ *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15; [2011] JPL 1183.

⁶ *R (oao Fidler) v SSCLG & Reigate and Banstead BC* [2011] EWCA Civ 1159.

⁷ 21/01965/AGNROT withdrawn 21 June 2021 and 21/04447/PLF refused 31 March 2022.

be a category all its own (except possibly *Fidler*, which was before a lower court at the time). It therefore expected the legal policy that no one should be allowed to profit from his own wrong to rarely arise in planning, although it is not confined to cases of physical concealment.

55. While the dates given in the PCN responses have proved incorrect, some by a significant margin, the information was given with the caveat, "All dates are approximate and to the best of my knowledge." In his oral evidence, Mr Fielder affirmed that he had been working from memory and had been truthful.
56. Mr Fielder did concede, as his responses to the PCN had indicated, that he had intended to let 4 years pass and so acquire immunity from enforcement action. However, that cannot be a wrong in the sense of the legal policy applied in *Welwyn*, otherwise the provisions of section 191 of the Act would not exist.
57. Accordingly, I cannot agree that Mr Fielder's questionable recollection of the facts in his PCN responses amounted to deliberate concealment or statements that he knew to be untrue. While those responses were matters integral to the planning process, I cannot conclude they amounted to positive deception. Section 171B(1)(a) of the Act therefore applies to the erection of the 4 dwellinghouses and the appellants have demonstrated, on the balance of probabilities, that the development was substantially completed before 25 June 2021.

The material change of use of the land to residential use

58. The material change of use of the land could only have occurred once the dwellinghouses were substantially completed and became capable of residential occupation in 2021. The appellants have produced no evidence of immunity in respect of this aspect of the breach and the appeals on ground (d) must fail for it.
59. The operational development of the erection of timber fencing and creation of areas of hardstanding has received only limited attention in the evidence presented by the parties. However, the completed fencing can be seen in photographs taken by Mr Fielder on 21 January 2021, and it is probable that the hardstanding areas it encloses had already been formed then, over 4 years before the notice was issued.
60. For these reasons, the appeals on ground (d) succeed insofar as they relate to the operational development of the erection of the 4 dwellinghouses and fencing and the creation of hardstanding. However, the appeals on this ground must fail in respect of the material change of use of the land.

Appeal A – the appeal on ground (a)

61. Following from my findings in the appeals on ground (d), the appeal on this ground need only be concerned with the material change of use of the land and the associated operational development to form the amenity areas to units 3, 4 and 5.
62. The main issues in this appeal are:
 - Whether the change of use and the operational development are appropriate to the countryside location having regard to the development plan's defined settlement network.
 - Whether they respect the character and appearance of the surroundings.

Reasons

The countryside location

63. The parties' submissions on this issue were understandably focused on the 4 dwellinghouses. The change of use of a rural building to use as a dwellinghouse may be permitted by Article 3 and Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order"). That did not occur in this case. In any event, a further distinction may be drawn because, unlike in this appeal, the permission granted by the Order is not subject to consideration of the sustainability of the location.
64. The East Riding Local Plan Update 2025 – 2039 ("the ERLP") has a clear strategy to focus development within locations with services, facilities, homes and jobs and served by the most sustainable modes of transport. The defined Settlement Network of such locations set out in policy S3 of the ERLP excludes Foggathorpe. Policy S4 of the ERLP supports appropriate development in other locations. The appeal site is outside the development limits of Foggathorpe, so part D of the policy, relating to the countryside, is specific to it. That part does not state any support for the change of use of agricultural land to residential use or operational development associated with it.
65. Therefore, the development plan does not support the change of use of land to residential use or associated operational development in this location, whether considered alone or linked to the erection of dwellinghouses. This aligns with policy S5 of the Framework, which states that only certain forms of development should be approved outside settlements. The list of those certain forms does not include the redevelopment or change of use of previously undeveloped land, in this case land that was in agricultural use or last occupied by agricultural buildings.
66. My attention has been drawn to residential developments permitted in other parts of Grange Farm, elsewhere in Foggathorpe at Willow Farm and Manor Farm, and at Field House Farm, Asselby. Those developments involved the conversion of buildings, which is not within the scope of this ground of appeal, and in the case of Willow Farm to tourism use. Insofar as it is necessary to compare them with the facts of this case, any formation of amenity areas to dwellinghouses would have been considered as part of a wider development proposal, not in isolation.
67. If any further comparison were necessary, the development at Asselby included the removal of portal framed steel buildings and so was considered to improve the visual amenity of the area, something not paralleled in the appeal proposal. Only limited information has been produced regarding Manor Farm, but aerial images confirm that the development was carried out in or before 2007. It was therefore permitted under different local and national policies that have not been identified or addressed in the evidence before me.
68. For these reasons, the material change of use to residential use in this location is contrary to and not supported by policies S3 and S4 of the ERLP.

Character and appearance

69. Assessment of the material change of use of the land, rather than the erection of the dwellinghouses, must focus on its visible aspects, being the garden areas to units 3, 4 and 5 and the associated fencing and hardstanding.

70. Those elements have a domestic appearance, unlike the prevailing character of the surrounding farmyard. However, the fencing screens the hardstanding from view and the nearby agricultural buildings obscure the fencing from public viewpoints. They are therefore of an appropriate scale and size to enhance the setting of the buildings.

Other matters

71. Policy DM8 of the Framework requires that if it is concluded based on evidence that unauthorised development was intentional, that fact should be given substantial weight in considering whether to grant planning permission. While there can be no doubt that the material change of use was made intentionally, the test must be whether it was known at the time that this would be in breach of planning control.
72. The Council maintains that the operational development was not undertaken to repair and maintain agricultural buildings, but with the intention of forming dwellings. I would agree, because, as noted, Mr Fielder considered the original buildings had no use in modern-day farming and took professional advice on alternative uses prior to purchase. It has not been shown that work on the project began with an agricultural use in mind. Indeed, that is highly unlikely given Mr Fielder's view about the needs of modern-day farming.
73. There can be little doubt that Mr Fielder knew that what he intended to do was subject to planning control, given his experience as a builder and the site-specific professional advice he had from Mrs Hubbard. He tried to secure prior approval for the residential use under Schedule 2, Part 3, Class Q of the Order in 2021⁸ but this was long after work had commenced, so prior approval could not be granted and the application was withdrawn. While reference has been made to an earlier application for prior approval, no record of it has been produced. In any event, correspondence⁹ indicates that any such application would have been made in 2020, again after work had begun. Nevertheless, this adds weight to the view that Mr Fielder knew the intended residential use was subject to planning control.
74. Accordingly, I conclude on the available evidence that the material change of use of land to residential use, and the associated erection of fencing and formation of hardstanding areas were intentional unauthorised development.
75. The East Riding Design Code (ERDC) sets expectations for the design of development and includes codes specific to the scale and form of amenity areas. The depth of those areas to units 3, 4 and 5 fall short of the 10 m set by code C46 and the expectation of a minimum garden size of 25 sqm is not met, not least as unit 6 has no such area.
76. While the adequacy and functionality of amenity areas must be considered in all instances, the illustrations within the ERDC suggest that the codes may have been drawn up primarily with new estate development in mind. Furthermore, I am not convinced that the ERDC can set a requirement for gardens of the specified dimensions in all circumstances, not least as flats of comparable size may have none. In principle, this might be addressed by the provision of a communal amenity area nearby, which the appellants refer to. However, that area is not within the land affected by the notice and I have no evidence that it is in the same ownership. It

⁸ 21/01965/AGRNOT.

⁹ Appellants' appendix 3 – email from Mike Roebuck to David Fielder dated 11 May 2021.

has therefore not been demonstrated that it could be secured by a conditional approval.

77. For the same reason, while the appellants have identified a location for storage of refuse and recycling bins on land not affected by the notice, I cannot be confident that it could be secured by a conditional approval.
78. While it was raised in the appeals on ground (f), the appellants' suggestion that the residential use could be approved but restricted to occupation for holiday use only should be considered here. In making this suggestion, the appellants refer to part B3 of policy EC2 of the ERLP, which is specific to tourism development that is part of a farm diversification scheme. The support given to such development in part B3 is subject to the proviso that "existing buildings are re-used where possible" (my emphasis) suggesting that the use of new buildings is not precluded.
79. No farm diversification scheme in which this might be part has been identified and, furthermore, the new buildings were erected as dwellinghouses, not for any agricultural purpose. Accordingly, this would not amount to farm diversification. Therefore, policy EC2 of the ERLP does not provide support for granting a restricted planning permission as suggested.
80. Compliance with the notice's requirement to cease the residential use of the land would result in the occupiers of the dwellinghouses losing their homes. This would interfere with their rights for respect for private and family life and protection of property¹⁰ incorporated in the Human Rights Act 1998. Those rights are qualified, meaning that they may be interfered with to secure a relevant aim. This requires that the rights of individuals are balanced against the legitimate interests of others and the wider public interest.
81. The appellants describe the 4 units as low-cost housing, mainly occupied by single people who had been in housing need. Current occupiers of all 4 units have some local connection, having previously lived in villages some 2 to 4 miles away and largely working in the local area and, in one case, with a child attending a nearby school. Those who made SDs refer to an absence or shortage of council housing in the local area and their difficulty in finding accommodation they could afford.
82. In his evidence, James Burley demonstrated that there has been a decline in properties to rent in the local area, leading to rising rent levels. In his professional opinion, the units are let at extremely attractive rental levels that appear to be below market value. I have no reason to question this evidence, but it is important to note that what Mr Burley described does not constitute affordable housing, as defined in the glossary to the Framework. If the appellants had put forward a means of ensuring that, the residential use could, in principle, draw support from part D4 of ERLP policy S4.
83. As it is, the current rent levels are entirely at the landlord's discretion. Critically, no means by which they could be assured in future, or even that the dwellinghouses would remain rental properties if the appeal were to succeed has been proffered. Thus, while I recognise the benefit of the current rent levels to local people, I can only afford limited weight to this factor.

¹⁰ Under Article 8 of the European Convention on Human Rights and Article 1 of its First Protocol.

Conclusion on ground (a)

84. As noted, the material change of use is not supported by policies S3 and S4 of the ERLP, which are integral to the development plan's vision for sustainable development to meet local needs. The material change of use therefore conflicts with the development plan as a whole and policy S5 of the Framework. I attach significant weight to this as a factor against the grant of permission.
85. In accordance with policy DM8 of the Framework, as I have found that the unauthorised material change of use was intentional, I must attach substantial weight to this as a factor against the grant of permission for it and the facilitating operational development of the fencing and hardstanding.
86. Set against the above matters, the effects of the visible aspects of the material change of use are not harmful and may be considered to avoid conflict with policy ENV1 of the ERLP. However, the avoidance of harm is a neutral factor and cannot reduce or outweigh the wider harm of new residential use in a location lacking facilities, homes and jobs and not served by the most sustainable modes of transport. Nor can it alter or outweigh the substantial weight to be afforded against granting permission for intentional unauthorised development. Furthermore, the operational development of the fencing and hardstanding was undertaken to facilitate the material change of use, so the two cannot be separated.
87. Because it cannot be secured through the deemed planning application before me, the fact that the units are let at attractive rates cannot, of itself or in combination with other matters, outweigh the identified harm.
88. The suggested restriction of occupation of the dwellinghouses to holiday use has not been demonstrated to be supported by policy EC2 of the ERLP. Accordingly, I can only afford limited weight in favour of granting permission with that restriction.
89. Taking all the foregoing into account, the weight against granting planning permission is not equalled or outweighed by any other factors. No convincing reason why the appeal should be determined other than in accordance with the development plan, which is consistent with the Framework's decision-making policies, has been identified. Accordingly, and considering all the evidence, planning permission should not be granted and the notice's interference with the occupiers' rights for respect for private and family life and protection of property is proportionate. The appeal on ground (a) must therefore fail.

Appeals A, B, C, D, E and F – the appeals on ground (f)

90. As the erection of the 4 dwellinghouses was substantially completed more than 4 years before the notice was issued, enforcement action could not be taken against it at that time. The notice's second requirement, to demolish the buildings (step 5.2) is therefore excessive and the notice will be varied accordingly.
91. I have also found that the fencing and hardstanding were substantially completed more than 4 years before the notice was issued. However, those works were plainly undertaken to facilitate the material change of use, as the notice alleges. It is also relevant to note that a change of use to residential use can occur without any amenity area being surfaced or enclosed, as with unit 6, which has no such area. As the fencing and hardstanding areas facilitated the change of use, but were not

fundamental to or causative of it, it is not unreasonable for the notice to require their removal in conjunction with the cessation of the residential use.

92. The appellants suggest lesser steps of alternative treatments to the fencing and artificial grass or to only remove the fencing and artificial grass. However, the stated reasons for issuing the notice confirm that its purpose is to remedy the breach of planning control, which includes the material change of use of agricultural land to residential use. The suggested lesser steps would not achieve that purpose.
93. The appeals on this ground therefore only succeed insofar as they relate to the requirement to demolish the buildings (step 5.2).

Appeals A, B, C, D, E and F – the appeals on ground (g)

94. The notice gives 2 periods for compliance: 8 months to cease the residential use and a further 2 months (10 months in total) to carry out all other requirements, including the removal of hardstanding, domestic chattels and resultant waste.
95. The appellants' principal argument relates to the 8-month period to cease the residential use, and Mrs Hubbard suggests this should be extended to 12 months. As noted earlier, many of the current occupiers have local connections and would benefit from remaining in the area socially and for access to work and education.
96. Other than a search made on Rightmove in September 2025, little information has been provided about the local housing market. However, it is uncontested that there is a shortage of one- and two-bedroom dwellings within the parish and little low-cost housing to rent in the area. Accordingly, it is likely that if all the occupiers were to move at the same time, they would compete for limited comparable housing opportunities. Extending the period to cease the residential use to 12 months would be tantamount to granting a limited period permission for something found unacceptable. However, 10 months would improve the occupiers' prospects of finding appropriate alternative accommodation in the area.
97. While the appellants also suggest the additional 2-month period to comply with the remaining requirements should be extended to 4 months, no reasons for that have been provided. In any event, as the requirement to demolish the buildings will be deleted, much less will need to be done in the further 2-month period, which is thus made more generous.
98. For these reasons, the appeals on ground (g) succeed in respect of the period to cease the residential use of the land and the notice will be varied accordingly.

Appeal A – Conclusion

99. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Appeals B, C, D, E and F – Conclusions

100. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the notice with variations.

Appeal A – Formal Decision

101. It is directed that the notice is varied in section 5 by the deletion of the words “5.2 Demolish the buildings, known respectively as 3, 4, 5 & 6 The Barns, Grange Farm, Foggathorpe YO8 6PY, as located with the area edged red on the attached plan and Google Earth image; AND”

102. It is further directed that the notice is varied in section 6 by:

- The deletion of the words ‘Step 5.1 above Within 8 months of the date this Notice takes effect’ and the substitution of the words ‘Step 5.1 above Within 10 months of the date this Notice takes effect.’
- The deletion of the words ‘Step 5.2 above Within 10 months of the date this Notice takes effect.’
- The deletion of the words ‘Step 5.3 above Within 10 months of the date this Notice takes effect’ and the substitution of the words ‘Step 5.3 above Within 12 months of the date this Notice takes effect.’
- The deletion of the words ‘Step 5.4 above Within 10 months of the date this Notice takes effect’ and the substitution of the words ‘Step 5.4 above Within 12 months of the date this Notice takes effect.’

103. Subject to the variations the appeal is dismissed, the notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeals B, C, D, E and F – Formal Decisions

104. It is directed that the notice is varied in section 5 by the deletion of the words “5.2 Demolish the buildings, known respectively as 3, 4, 5 & 6 The Barns, Grange Farm, Foggathorpe YO8 6PY, as located with the area edged red on the attached plan and Google Earth image; AND”

105. It is further directed that the notice is varied in section 6 by:

- The deletion of the words ‘Step 5.1 above Within 8 months of the date this Notice takes effect’ and the substitution of the words ‘Step 5.1 above Within 10 months of the date this Notice takes effect.’
- The deletion of the words ‘Step 5.2 above Within 10 months of the date this Notice takes effect.’
- The deletion of the words ‘Step 5.3 above Within 10 months of the date this Notice takes effect’ and the substitution of the words ‘Step 5.3 above Within 12 months of the date this Notice takes effect.’
- The deletion of the words ‘Step 5.4 above Within 10 months of the date this Notice takes effect’ and the substitution of the words ‘Step 5.4 above Within 12 months of the date this Notice takes effect.’

106. Subject to the variations, the appeals are dismissed, and the notice is upheld.

Mark Harbottle

INSPECTOR

APPEARANCES

FOR THE APPELLANTS:

Simon Randle

He called

David Fielder

Director, Foggathorpe Estate Ltd.

James de Cobain

Dwaine Johnson

DJ Electrical Contractors

James Burley BSc (Hons) MRICS
FNAEA

Director, RM English Estate & Land
Agents

Justin Claybourn

Andrew Collins

Mark Savage

Christopher Finn BA Arch, Dip Arch
RIBA

Finn & Finn Architect

Jennifer Hubbard BA (Hons) MRTPI

Jennifer Hubbard Town Planning
Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ben Fullbrook

He called

Christopher Ellis MSc MRTPI

Principal Planning Officer, East
Riding of Yorkshire Council

Robert Naismith BA CPE

Principal Planning Enforcement
Officer, East Riding of Yorkshire
Council

Appendix 1
List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/E2001/C/25/3370890	Foggathorpe Estate Limited
Appeal B	APP/E2001/C/25/3370891	Mr A Savage
Appeal C	APP/E2001/C/25/3370892	Mr R Anderson
Appeal D	APP/E2001/C/25/3370893	Mr R Glover
Appeal E	APP/E2001/C/25/3370894	Ms A Tarasenko
Appeal F	APP/E2001/C/25/3370895	Mr D Fielder