

TOWN AND COUNTRY PLANNING ACT 1990

**Statement of Case**

Appeal by Mr Stephen Willcox  
against Bath & North East Somerset Council's  
Enforcement Notice

PINS appeal reference
APP/F0114/C/25/3364346
APP/F0114/C/25/3364347
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Fry's Bottom, Chelwood, Bristol



Stephens Scown LLP  
Osprey House, Malpas Rd, Truro TR1 1UT

WILL-21491-1

This Statement of Case (SOC) is submitted in accordance with the requirements of the Start Letter. It is provided in addition to the material already submitted with the appeals.

### **Weigh Bridge House (WBH)**

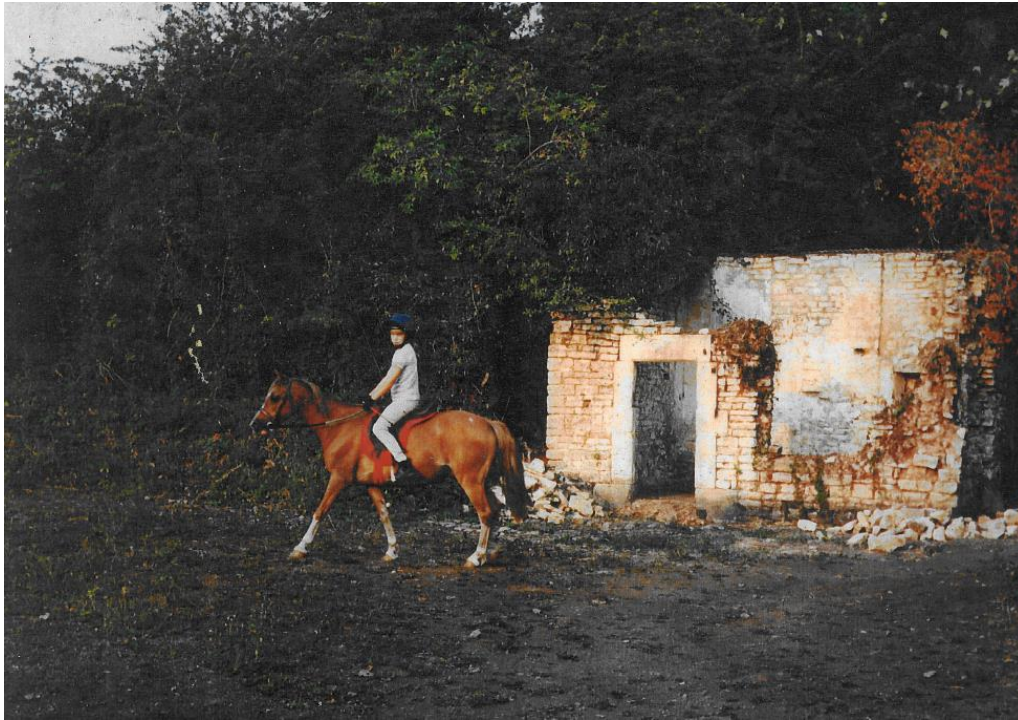
There is some necessary overlap between the council's allegation of a change of use to a mixed use including equestrian and WBH. This is because the buildings attached to WBH are and have been for decades used in association with the keeping of horses at the site.

On purchasing the site in 1995, the building was largely covered in weeds.



The enforcement is against the whole terrace (as it were) and so the evolution of the structure is important. Three and a half walls are present plus the door frame and lower part of the window frame in the fourth. This photograph was from around 1995 with the Appellant's daughter riding her horse.

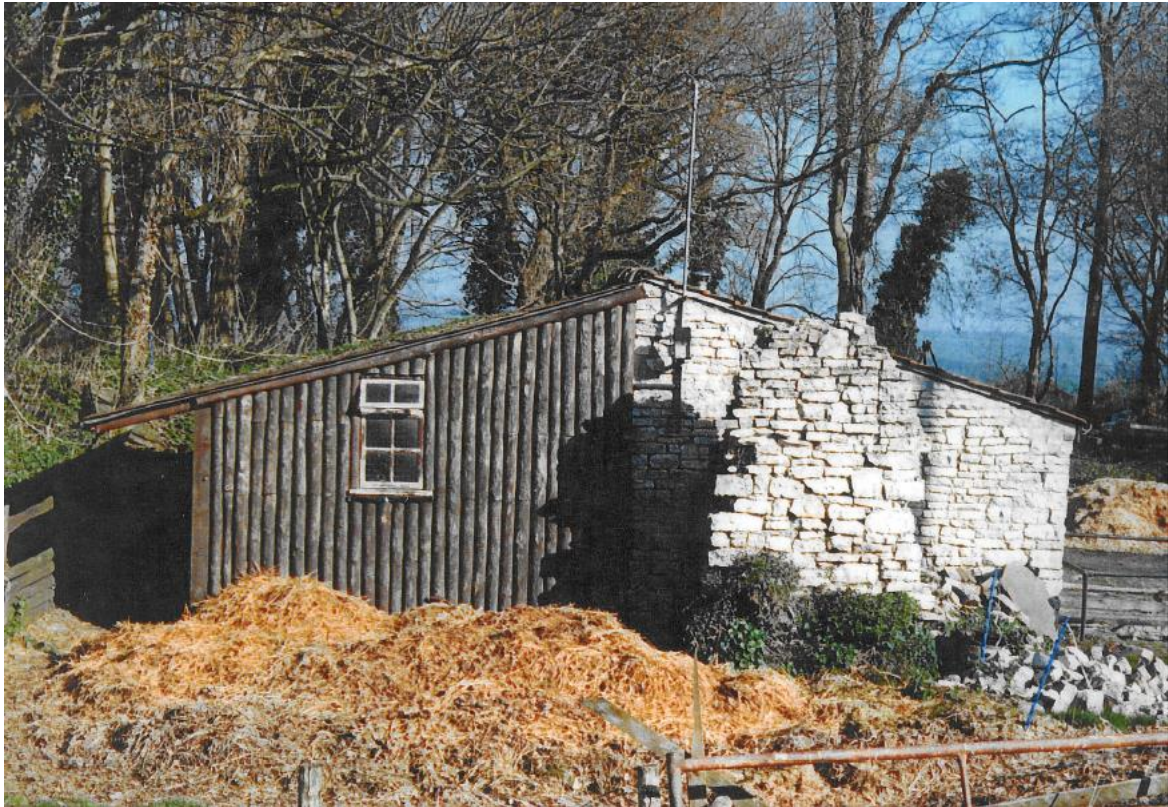




The building was restored and fitted with a pitched roof. A stable was mirrored to the rear.







To the rear of the stable block (left hand side) was a wooded bank.

By 2012, the site looked as shown in figure below.



Still at single storey there is the office and next to it is a tack store and feed store (all tiled roofs).



### **Equestrian use, stables, tack room and stores**

The tack room, equine equipment store, feed store and hay store are clearly associated with the horses kept at the site.

A lean-to stable can be seen. The ground floor structures, excluding WBH, have been used in association with the Appellant's daughter's keeping of horses at the site for at least 17 years. In 2004, her friend, Mary, was looking for somewhere to keep her horse. That horse was accommodated in what is now the tack shed. That horse was there for about three years until 2007. Since then, the tack room, feed store and hay store have been exactly as they are today.

Paragraph 5 of the EN relating to operational development (OD1) specifically states that "this does not require the demolition of the stables". As such, this statement does not cover the site's development from the stables as they were in the late 1990s to how they appear today (shown for the avoidance of doubt as at November 2019).



In approximately 2008, the area of the manège was extended. The fencing in the picture was necessary as the slope was such that the horses could have 'escaped' up the bank.





It was extended further in 2020, again with temporary fencing before the formal post and rail fence was installed.



The Appellant's daughter Lauren Mitchell (née Willcox) has kept horses and ponies at Fry's Bottom since September 1995. In September 1997 she acquired a second pony a Welsh cob called Pepsi. In December 1999 she was given a horse called Victor as a Christmas present from her grandmother. She would ride him in the woods all the time. In April 2003 she acquired a companion horse for Victor called Penny. Victor and Penny lived side by side in the stables at



the wood. She would spend many hours with them in the yard which had been extended out. She used to keep Penny fit by lunging her in the small yard, but she couldn't be ridden out because she was rather skittish. In September 2014 she took on a rescue horse. He needed lots of exercise to control his weight and so she would walk him around the woodland tracks in hand. In May 2016 she bought her dream horse, Jack. That horse had not had much exposure to people vehicles or machinery, but she still spent many hours walking with Jack around the woodland tracks. Lauren and her friend Sophie would ride and walk around the woodland tracks 3 to 4 times per week for recreation and to exercise their horses.

The hay store has been in use for approximately 17 years. During the nearly 30 years of owning ponies and horses at the woods Lauren has always walked the woodland tracks relying on them to exercise her horses and she still does.

Google Earth image from **April 2021**

This image shows the extent of the horse manège to the rear of the stables



Google Earth image from **September 2020**

Although partly in shadow and greater leaf at the end of the summer, this clearly shows the fencing at the boundary of the manège.





## **Firewood production**

The allegation is of a change to a mixed use including the production of firewood. Forestry, like agriculture, is a primary industry. Ideally, growing trees are felled once the sap has stopped rising (autumn and winter). Boughs suitable for timber are removed and stacked and the trunk is obviously stacked and the branches that remain are sold for firewood. In that sense, it is no different to the harvesting of grain and bailing of straw. Having put the effort into cultivating the crop, the forester wants to sell as much of what is felled as possible, whether through a single or multiple routes. As the Inner House of the Scottish Court of Session found in *Farleyer Estate v SSS* [1992] PLR 123 the removal and storage of the crop is part of the primary agricultural (or forestry) use and falls within the statutory definition; it is not merely an ancillary use. The question is whether the processing is reasonably consequential on the forestry operation of producing the crop to make the product marketable or disposable for profit (*Millington v SSE* [2000] JPL 297). One must have regard to ordinary and reasonable practice.

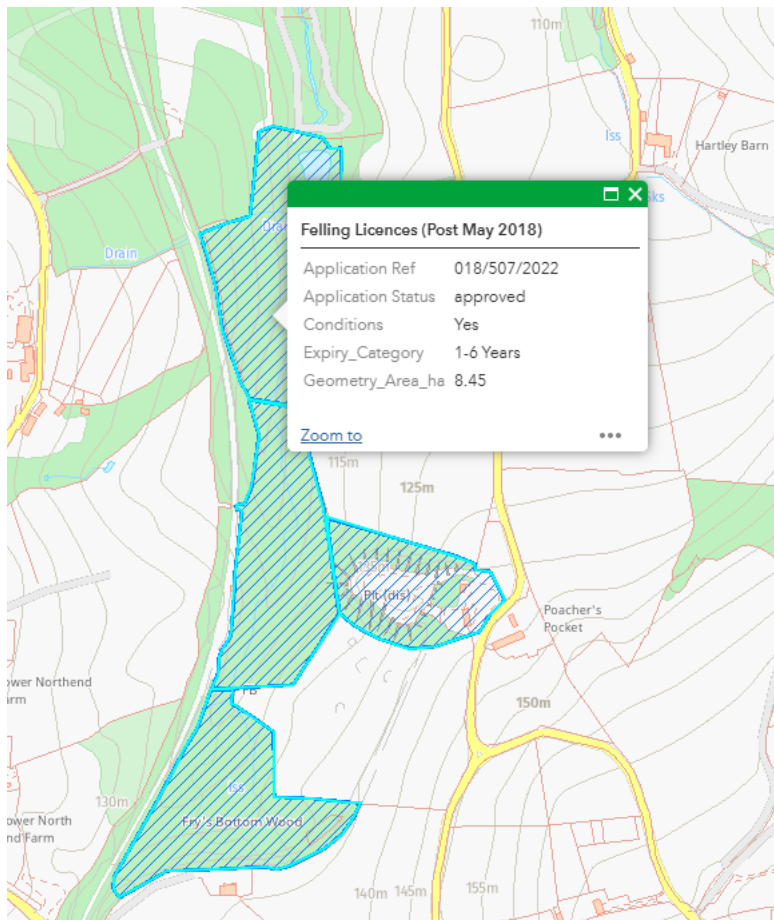
It is clearly not practical to move whole trees, branches and all, along the public highway for processing elsewhere and that is why it isn't done that way. It is difficult to see how, in any common-sense appraisal of the circumstances, the chopping and sale for firewood of the bits of a tree not suitable for creating timber board is anything other than part and parcel of the overall forestry operation. If not that, it is at least ancillary.

The enforcement notice is very clear that it is not preventing the forestry use of the land. Aside from the fact that the production of firewood is and has always been an intrinsic part of the forestry operation for the past 30 years the council is insistent that it is both a material change of use requiring planning permission and that it has only recently started.

The planning officer's own comments on the application for the forestry building (see separate Statement of Case) referred to the 2022 regulations as justification for the erection of the building. The officer notes:

**The application submissions indicate that the proposed building is to serve the wider land on which it is situated; the land as shown edged in blue on the location plan (identified under land title AV181253 as "The Land at Fry's Bottom Wood"). Accordingly, for the purposes of the following report, "application site" will refer collectively to the area of land edged in red (being the location of the proposed development) and the area of land edged in blue on the submitted location plan (being the wider land in the applicant's ownership and to which the building is intended to serve.**

It is inconceivable that the council was content to grant planning permission for a building to be used for drying firewood if, at that time, it believed that that use was unlawful. Condition 5 of the planning permission required the building to be used for "Forestry use only" and so the council must, at the time, have been content that all of the activities proposed to be carried out in that building and on that site constituted forestry.



## Waste Transfer Site

Waste is undoubtedly brought to the site, as it is used to create the hard surfaces necessary for the working of the forestry machinery. The Appellant benefits from a registered exemptions from the need for an environmental permit (registration reference WEX381044). That does not make the site a waste transfer station.

The site address for that exemption is Fry's Bottom and it covers U1: use of waste in construction (expires 5/9/2026), and D7: burning waste in the open (expires 5/9/2026).

The U1 covers use of waste in construction using suitable waste rather than virgin raw material. The Environment Agency guidance states that a person may use the U1 exemption if they are using waste to build a track using rubble. 5,000 tonnes may be used over the three-year period of the exemption including the following waste types:

10 13 14	Waste concrete and concrete sludge
17 01 01	Concrete
17 01 02	Bricks
17 01 03	Tiles and ceramics



17 01 07	Mixtures of concrete, bricks, tiles and ceramics not containing hazardous substances
19 12 05	Glass
19 12 09	Minerals (for example sand and stone) from waste management or water treatment facilities
19 12 12	Aggregates only

The D7 covers burning, in the open air, plant tissue and untreated wood waste from joinery or manufacturing.

Appended to this statement are invoices from S. J. Willcox enterprises to NEL Ltd and Weaver Demolition for charges for the receipt of waste at Fry's Bottom. Also appended to this statement is a letter from the council dated 22 June 2006 relating to the resurfacing of tracks. Together these evidence that the council was aware in 2006 of the use of imported materials for track reinforcement.

### **Storage**

Timber has been stored at the site as part of the operation of the forestry since the 1990s. This is consistent with felling licences issued by the Forestry Commission in 1995, 1998 and 2013.

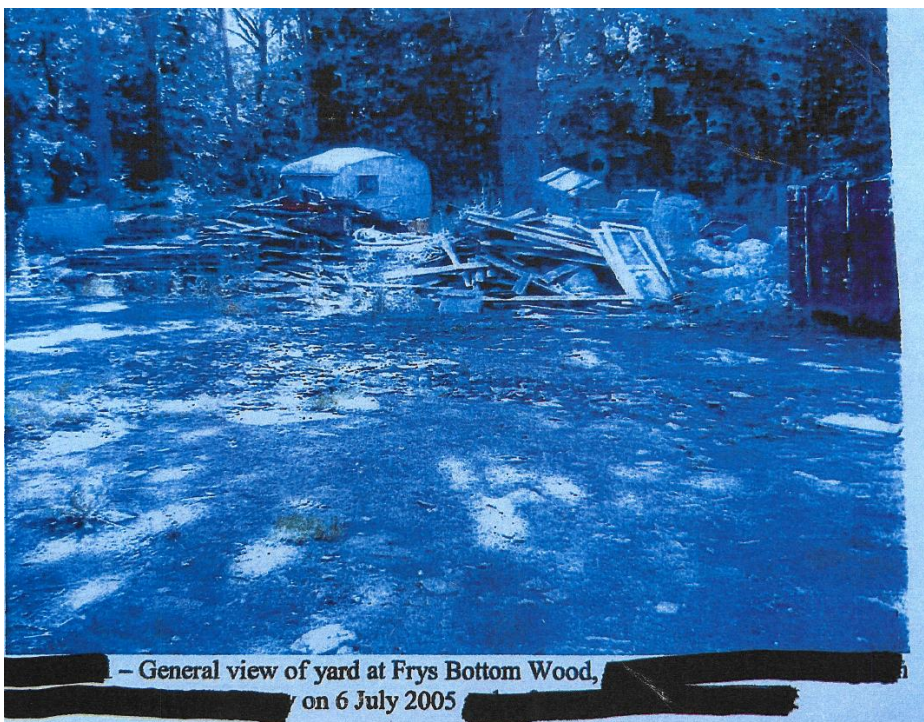
A further licence relating to Ash dieback is dated 15 December 2021 and expires on 7 June 2027.

If this is the breach that the council is referring to then it has been continuous since 1995 at least, as that is consistent with ordinary forestry practice in what the council must accept is an operational forestry business.





The area in the vicinity of the Weigh Bridge House has been used for open storage for decades including for caravans, vehicles, shipping containers, and plant and machinery. The below photograph is from 2005.



General view of yard at Frys Bottom Wood, on 6 July 2005



The below static caravan can be seen in satellite images from 2005.



Appended to this statement are invoices that have been found showing charges for the storage of shipping containers and other equipment covering the period from July 2004 to August 2005. The storage use has been on-going at the site for over a decade.