

Town and Country Planning Act 1990

Section 174 Appeal

Site Of Old Colliery, Fry's Bottom, Chelwood, Bristol, Bath And North East Somerset

Proof of Evidence - Edward Downing

Introduction

1. My name is Edward Downing, I am the Head of Planning at AGM Ltd based in Bath and have worked with the appellant, Mr Stephen Willcox, at Fry's Bottom since our first instruction in August 2021 as his planning consultant. I have visited the site on many different occasions since August 2021 up to the present day and have a good understanding on the site and its uses.

Appeal A (OD1)

Grounds B:

2. This section of my evidence addresses the Council's allegation that 'Without Planning Permission, the construction of a dwelling house' has occurred on site.
3. To my knowledge the former weighbridge house has never been used as a dwellinghouse by the appellant Mr Willcox and was never altered/extended for that purpose.
4. I understand the building is used for equestrian and forestry storage purposes.

5. I understand part of the building has previously been used as an office and signing in area for Trial Bike users.
6. The function of the building and its use as a previous office with current equestrian and forestry storage purposes, in my view, clearly shows it is not a dwellinghouse nor a dwellinghouse under construction and therefore, in my opinion, the enforcement notice should be quashed.

Appeal C (OD3)

7. This section of my evidence addresses the Council's allegation that 'Without Planning Permission, the importation of material and carrying out of Engineering Operations in the form of the construction of access tracks, and construction of dams in a water course.'
8. Grounds A:
9. In the event the Inspector would like to assess the appeal under Grounds A, please refer to Appendix 1 which sets out my OD3 Grounds A justification statement.
10. Grounds D:
11. It is my understanding works commenced on the tracks in 1995 when the appellant purchased the site with the main bulk of these completed by 1998.
12. It is my understanding the dams outlined in OD3 were completed in the winter of 2020 creeping into early 2021.
13. Under s.171B(1) & (3) TCPA 1990, engineering operations are immune after four years if substantially complete.
14. Appendix 3 shows dated photographic evidence (Google Earth Aerial) of the track in situ in 2018.
15. *Somak Travel v SSE* and *Handoll v SSE TR* [1998] stated that any subsequent maintenance does not reset the enforcement clock and therefore the appellants maintenance of these tracks, since 1998, cannot be enforced upon.

16. In conclusion, at the date of OD3 being issued, the time in which the LPA could action enforcement on the tracks had expired, accept 1G1 (appendix 3) which was created in 2022 but should be found permissible via Grounds A.

Appeal D (COU 1)

17. Grounds B

18. This section of my evidence addresses the Council's allegation that the land has undergone a material change of use from forestry to a mixed use, comprising forestry, storage, firewood production, equestrian use, motorbike trials practice, waste transfer, and associated structures.

19. I do not accept that the site constitutes a single planning unit in mixed use. The Council's approach wrongly combines a range of physically and functionally separate uses, which in fact take place within distinct planning units. This interpretation is contrary to established planning law, particularly the principles set out in *Burdle v Secretary of State for the Environment* [1972].

20. In *Burdle*, the Court held that the correct method for identifying a planning unit is:

1. The starting point is the unit of occupation;
2. If that unit is in a single primary use, with other uses ancillary to it, then that is one planning unit;
3. If there are two or more physically and functionally separate uses, then there may be multiple planning units, even within a single ownership.

21. In this case, the site is within one ownership but comprises distinct areas of land in differing physical form, use, access arrangements, and operational context, and does not function as a single integrated unit.

22. Physical and Functional Separation:

23. Firewood Processing

- Firewood production is part and parcel of the primary forestry use.

24. B8 Storage (Unit 2 - Appendix 5 and 6)

- Physically separate from the other units
- Used by separate users

25. Equestrian Use (Unit 3 - Appendix 5 and 6)

- A small paddock used for grazing two ponies belonging to the appellants daughter.
- Separated from other areas by fencing and gates.
- No stabling or commercial livery; use is personal, quiet, and isolated.

26. Forestry (Unit 4 - Appendix 5 and 6)

- This is the largest part of the landholding, consisting of mixed woodland with managed timber.
- Accessed via the main woodland track; no shared infrastructure with other uses. Separate access to the north of the site.
- Forestry operations (felling, thinning, replanting) are long-term and seasonal, with no daily occupation or crossover with other uses.

27. Motorbike Trials

- Enforcement notice in place and no longer in operation.
- Following the upheld enforcement notice trial bike days were originally allowed under schedule 2, part 4, class B of the General Permitted Development Order. These days were communicated to the Council but have since ceased voluntarily.
- There is no formal track, no structures, no spectators, and no commercial events;
- Previous usage was not integral to any other operation.

28. Each area:

- Has separate physical characteristics (woodland, equestrian paddock, storage yards);
- Is used for a different and unrelated purposes.
- Is accessed separately and operated independently;
- Is not materially interdependent with the others.

29. Rebuttal of the Council's Mixed-Use Allegation:

30. The Council alleges a single change of use from forestry to a mixed use. However, in law, a composite mixed use exists only where multiple activities operate together in a way that forms a single, indivisible planning unit. That is not the case here.

31. Key points:

- There is no commercial enterprise linking all these uses;
- The activities are independent, physically separated, and in the case of felling, seasonal;
- No part of the land is laid out or marketed for multiple activities simultaneously.

32. The uses do not form a coherent mixed-use planning unit. Rather, they reflect a series of separate, low-level uses, some of which are incidental or have ceased entirely.

33. The distinction between a mixed use and separate planning units is fundamental because:

- Enforcement action must be targeted at specific planning units and specific breaches;
- Immunity periods and evidence of use continuity differ depending on whether the use is part of a mixed use or a distinct unit;
- The planning impact and harm must be assessed per unit, not altogether.

34. It is inappropriate for the Council to aggregate all historic or minor uses across the landholding and assert a single, unauthorised mixed use.

35. Conclusion:

36. There is no legal or factual basis for the claim that the site has undergone a material change from forestry to a mixed use involving the listed activities. The activities cited by the Council:

- Are physically and functionally independent;
- Take place on separate parts of the site;
- Are not part of a composite or coordinated land use;
- Do not create a material change in the overall planning character of the site.

37. Therefore, the enforcement notice is misdirected and should be quashed.

38. Grounds A:

39. In the event the Inspector would like to assess the appeal under Grounds A, please refer to Appendix 6 which sets out my COU justification statement.