From: Richard Smith
Sent: 02 December 2022 17:11
To: Hilary Saunders
Subject: RE:

Sorry, meant to add, just for reference, that my conclusion on the case law is that the Ellis case from 2010 remains the relevant law, and I believe that case establishes that,
-as per T&CPA 1990- S171 B)3) and S191(1) and S191(4)
-where there has been 10 years unlawful use in breach of a condition or limitation but that unlawful use does not exist at the time of application, immunity is lost and the application should be refused
-where there has been 10 years unlawful use by virtue of some other material change of use, immunity is only considered lost at the time of application if there has been either abandonment of the unlawful use, a new planning unit has formed, or there has been some further material change of use.

As I mentioned, I find this an irritating and technical differentiation but I believe that is where the law is at with this.

Richard

From: Richard Smith
Sent: 02 December 2022 17:00
To: 'Hilary Saunders'
Subject:

Hilary,

Re: Haggit Howe

Further to our conversation, this is my rough draft of words to work with. . . .

From the available evidence and applying a balance of probabilities test, for the period from (date?) until the date of application (date?) the claimed caravan use has not occurred or existed, following the sale of the site and separation from the earlier planning unit, and the site has during that period been used as bare land (grassland). Therefore any earlier period of immunity that may have accrued for the site has been lost and there is no reasonable scope for the Authority to modify the description of the application. Therefore the present application is refused.

Richard

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