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The Planning Inspectorate

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Your Ref
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Local Planning Authority Refs
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Our Refs
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Date **E 3 JUN 1997**

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR J R CUSSONS
LAND AND BUILDING AT HOWDALE FARM, FYLINGDALES

1. I have been appointed by the Secretary of State for the Environment to determine these appeals against enforcement notices issued by the North Yorkshire County Council, for the North York Moors National Park, concerning the above mentioned land and building. I conducted an inquiry into the appeals on 25 and 26 March 1997. The evidence was taken on oath. Your client and the local planning authority each applied for an award of costs against the other party. These applications are the subject of separate letters.

THE NOTICES

2. (a) Both notices were issued on 30 January 1996.
- (b) The breach of planning control as alleged in the notices is, without planning permission, in the first notice, change of use of the building from agricultural use to use for residential purposes and, in the second notice, change of use of the building from agricultural use to a mixed use for residential and agricultural namely general agricultural storage.
- (c) The requirements of both notices are
 - (i) Stop using the building for residential purposes.
 - (ii) Remove from the building all fixtures, fittings, furniture and installations brought onto the building for the purpose of the unauthorised use.
- (d) The periods for compliance with these requirements are 3 months.

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RECYCLED PAPER

GROUNDS OF APPEALS

3. Your client's appeals were made on the grounds (a), (b), (d), (f), and (g) set out in section 174(2) of the 1990 Act as amended by the Planning and Compensation Act 1991. However, as the prescribed fees under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989-93 have not been paid to the Secretary of State and to the Local Planning Authority within the period specified, the appeals are proceeding on grounds (b), (d), (f) and (g) only. The deemed applications for planning permission under section 177(5) do not fall to be considered.

THE APPEAL SITE

4. The appeal site is a plot on rising ground to the south of the complex at Howdale Farm, in How Dale to the south of Robin Hood's Bay, where your client has erected a 2 storey building. To the north of the site is a yard with farm buildings to the east; to the north of the yard are a substantial modern barn then the old Howdale Farm farm house which your client sold with some 4.047 ha (10 acres) to Mr Bleach and partner in June 1989. From the main road, far to the west, the track to the site passes the access leading to land at Thorny Brow, where your client also farms, and to Fairview, a bungalow. By the track descending the hill to the south of the site is a plot the subject of another and unresolved dispute with the local planning authority about various agricultural development. From the farm complex a track runs northwards to Bridge Farm, an agricultural worker's dwelling, and a nearby farm building by a former railway line, along which your client has a permissive access in adverse weather to the public highway to the north-west; from Bridge Farm a narrow track runs northwards to the public highway.

5. The appeal building, about 13.68m x 7.74m x 3.42m to the eaves, is constructed of stone to the exposed north and west elevations and blockwork to the hillside elevations; the roof is tiled. There is a modest planting area close to the building. The extent of the holding has varied over the last few years as your client has bought and sold land; he has also farmed other lands. The appellant said that his family had lived in the appeal building since the autumn of 1991; they had never lived as a family at Bridge Farm although his 2 daughters had lived there for a time. After the local planning authority learned that the appeal building was inhabited they started enforcement action; your client made application for a lawful development certificate.

FARM DWELLINGS - THE BACKGROUND

6. Early in 1986 the local planning authority refused consent for a new agricultural worker's dwelling close to the former railway line which was to serve as an access; after discussion access was agreed to be via an existing track from the north. Later that year an Inspector rejected a similar project for a nearby plot on appeal. He accepted that another dwelling was needed on the holding, but found there was no suitable site for another dwelling adjacent to Howdale Farm, as Mr Schofield of ADAS had advised your client. The Inspector said that there may be scope for another dwelling near the existing complex; the areas around it were not excessively steep for building. He commented that the track between the then appeal site and Boggle Hole Lane was inappropriate as an access; the appellant claimed a legal right along it. The Inspector also commented on the relationship of the farm complex to Howdale Farm and the possibility of locating the proposed agricultural worker's dwelling there. However he considered that, for supervision and security, the new dwelling should be next to the proposed bull beef stock unit.

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7. In 1988 a third application for an agricultural worker's dwelling, now Bridge Farm, to serve a proposed bull beef stock unit in an adjacent building constructed the previous year was allowed on appeal. The Second Inspector was told that the then appeal site was the only location for the proposed dwelling; access to Howdale Farm during the winter was problematic and at times impossible, whereas the former railway line was always open. Furthermore, your client had said that there was insufficient land available in the immediate vicinity of the existing farm buildings at Howdale Farm to accommodate the proposed dwelling. The Inspector accepted this evidence and said that he had no reason to question the appellant's integrity; he must accept your client's assurance that he had no intention of sub-dividing the farm holding either then or in the future. Neither the Inspector nor the local planning authority were told that, when the three proposals for an agricultural worker's dwelling on the holding had been pursued, your client's wife had owned the bungalow, Fairview, which was then on the boundary of the holding. Your client has been involved with the local planning authority in respect of a number of other proposals, not all of which I shall mention. In my letter I refer to the relevant schemes.

THE DEVELOPMENT PLAN

8. My attention is drawn to no relevant policy in the Development Plan, namely the North Yorkshire County Structure Plan of 1995 and the North Yorkshire Moors Local Plan of 1992.

THE APPEALS ON GROUND (b)

9. In making submissions neither principal party made any distinction between the 2 notices.

The First Notice

10. From the evidence given by Mr Myers and from what I saw on my inspection of the site I am satisfied that the appeal building has been and is now used for residential purposes and for general agricultural storage. In the store behind the large door in the western elevation of the building I saw various farm materials, including a bale compressor, a post rammer and a fertiliser spreader. Mr Myers saw furniture and agricultural items in the then large store when he visited the site in 1989. As, in my experience, such substantial agricultural items are not usually kept in a dwelling, I have to conclude that the allegation in the first notice is not well founded; the building is not in residential use but in a mixed use as alleged in the second notice. The appeal against the first notice therefore succeeds on ground (b), and the first notice will be quashed.

The Second Notice

11. Your client said that the appeal building had been used from the first as a dwelling. When Mr Bleach, the purchaser of the old Howdale Farm farm house, had told Scarborough Borough Council in July 1989 that your client and his family were living in a caravan, which was overcrowded and uncomfortable, he decided to move into the appeal building as soon as possible. This statement I find inconsistent with his evidence that, in deciding the specification of the building, he envisaged its conversion, later, to residential use, once it had become established. He also gave written evidence that originally, until Mr Bleach complained, he intended to live in the caravan on a permanent basis, as he and his wife were looking to purchase another farm. The local planning authority accepted that the building has been used at times for residential purposes, but denied that the residential use had started 4 years before the notice was issued.

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12. In April 1989 Mr Fisher, the appellant's agent, had given notice to the local planning authority of intention to carry out development for agricultural purposes, accompanied by a plan of a chemical/fertiliser store/farm office/GP building on the appeal site, which had already been levelled and surfaced under an earlier notice of intention to extend the yard. The building would be 14m x 8m x 3.5m to the eaves, stone to the exposed north and west elevations and blockwork to the hillside elevations, with a tiled roof and a 4.5m x 3.0m door in the western elevation.

13. His agent's statement, that the appeal building was being erected for agricultural purposes, was made, your client said, without the appellant's authority. I consider that the local planning authority had no reason to mistrust the agent who they knew to be experienced and competent; they believed what he wrote. Inspection by their staff confirmed that the appeal building was being used for agricultural purposes; some of your client's furniture was also stored there. In connection with his other proposals for a residential caravan and redevelopment of the fold yard your client could reasonably expect local planning authority representatives to inspect the site.

14. Work started in April 1989; your client said that the majority of the building work had been completed in September, when Mr Fisher told the local planning authority that work had started; the information showed that the building would include a farm office and a secure chemical store. I find no reason to believe that Mr Fisher, then your client's agent, who was familiar with your client's holding, did not correctly describe what was happening on the site.

15. Mr Myers, then a Council Enforcement Officer in receipt of complaint, visited the farm complex on 10 July 1989. He found that the appellant and family, having exchanged contracts in March 1989 to sell the old Howdale Farm farm house and 4.047 ha (10 acres) had in April moved into a caravan located inside a dutch barn. He also noted that work had begun on the appeal building in line with the submitted drawings; he visited again on 14 September for a photograph of a stone panel at Bridge Farm. On 2 February 1990 he saw that the appeal building was complete in accordance with the drawings, having also a side door and windows as well as roof lights; in the gable end was a large door. There were various items of farm machinery in the building which had a small office and a lockable store at the eastern end where, your client said, he could keep the paperwork on the farm complex and chemicals and small machinery intact; furniture was being stored in the building until the new house was completed. Although Mr Myers did not examine the interior of the appeal building I would be surprised if he, an Enforcement Officer, had not noticed that your client had commenced a residential use.

16. Your client's application for a Certificate of Lawfulness in August 1995 stated that the use of the appeal building as a single dwellinghouse began more than 4 years before the date of the application. Supporting statements included the substantial completion of the building in autumn 1989; mains electricity was connected in December 1989 after the property was inspected by an official. The letter which accompanied the application did not mention that the building had been constructed as a dwelling. In June 1990 Mr Stott, who wrote about redeveloping the fold yard to form 4 dwellings, would reasonably have expected a responsible and diligent local planning authority to be likely to visit the location of a pre-application enquiry for a project of this scale in a National Park. Indeed your client's other proposals for development on the holding would have been likely to attract planners to the farm complex. Although the appellant said that he had kept a low profile, I believe the appellant who had warned them off his holding would not be likely to have lightly attracted officials there had he then been in clear breach of planning control.

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17. Argument that the appeal building differs materially from the building notified to the local planning authority carries little weight. The dimensions of the building are almost identical as are materials; it uses the same site. Building notification did not require details; only a floor plan and the exposed elevation were illustrated. I do not regard absence of doors and windows from the notification as significant; virtually any use of the notified building would require windows and, most probably, another door. In cross-examination your client accepted that toilet and washing facilities were commonly provided on a farm complex; chemicals could be harmful and calving could be messy. Once your client had sold the old Howdale Farm farm house and split off Bridge Farm into a separate holding there were no washing or toilet arrangements, which health and safety considerations make so desirable, available on the Howdale Farm complex.

18. Your client proposed to carry out office work and to store machinery in the new building, so I do not regard installation of central heating as unusual. Nor do I regard the size of the door in the western elevation of the appeal building as inconsistent with its description in the notification; it was to act as a store. I note that the appellant did not apply for a grant from the Ministry of Agriculture, Fisheries and Food as he feared an inspection would have been made.

19. Your client's experienced agent was familiar with the agricultural enterprise; the appellant said that his notification to the local planning authority had been bona fide. The appeal building was erected in accord with the notification, which was not concerned with an upper floor and internal fittings for central heating and washing facilities. A high specification for the general purpose agricultural building is not, in my opinion, inconsistent with its stated purpose. I am satisfied that the appeal building was erected in accordance with the planning process. I am also satisfied that it was brought into use as an office, store and general purpose agricultural building.

20. The evidence of Mr Bleach, by statutory declaration, supports my conclusion. Your client said that Mr Bleach was not present for long periods; he had other addresses. Nevertheless he was present at times, even if very rarely, as confirmed by the appellant's statement. Mr Bleach said that a building like a bungalow was being erected; the appellant and family were living in a caravan. He looked for the appellant in the appeal building, about 6 months after it was built, when one room was empty and another contained drums, he assumed, of agricultural chemicals. In the face of such clear evidence, including your client's, the appeal on ground (b) must fail.

THE APPEAL ON GROUND (d)

21. The appellant's wife put Fairview on the market shortly after the agricultural worker's dwelling at Bridge Farm was allowed on appeal; she sold it in August 1988. The appellant then notified the local planning authority of intention, first, to improve/provide a new track between Howdale Farm and Bridge Farm and, second, to extend Howdale farm yard by 20m x 13.75m. The notified farm yard extension would form the site of the appeal building. The appellant then gave notice of intent to reinstate over 800m of track between Bridge Farm and the Boggle Hole public highway to the north. In 1986 the Inspector had considered both tracks inappropriate.

22. In 1986 the appellant had notified the local planning authority of intent to erect a substantial bull beef stock building next to the former railway line; they decided to grant planning permission when the appellant satisfied them about his right of access to that site. However his licence to use the former railway line in adverse weather conditions was, as Scarborough Borough Council have confirmed, granted only to Howdale Farm. Indeed, when

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the licence was granted to him Bridge Farm did not exist. Your client said that this licence gave him access to his property as a whole, but he has produced no evidence to support this claim. Scarborough Borough Council, owners of the former railway line, confirmed in June 1996 that your client had no general permission for access to Bridge Farm via the former railway line.

23. Meanwhile, in May 1988 the appellant had notified the local planning authority of intention to surface a track to land to the west of Thorny Brow; without authority he constructed a large area of hardstanding at its western end. In 1991 he gave notice of intention to erect a general purpose agricultural building; argument between your client and the local planning authority about the need for planning permission followed. In discussion the local planning authority commented adversely on your client's attempt to sell the new dwelling, Bridge Farm, which did not disclose that it was intended for an agricultural worker. Notice was then given of intention to erect a silage clamp and open feeding yard on land at Thorny Brow. The local planning authority objected; the work continued. Appeal against an enforcement notice was unsuccessful; the building was removed. Notice of intent for a general purpose fold yard was made in 1995.

24. In 1995 the appellant's proposal for a building to the south of the site, higher on the hillside, was rejected. The following year a notice of intent for an agricultural storage building in the same field was made; the appeal against refusal has still to be determined. Your client's representations for that appeal argued a right of access over the former railway line which had previously been denied by the Scarborough Borough Council; they said that the access granted to your client was limited to the old Howdale Farm farm house. The appellant also said that the dwelling now known as Bridge Farm was not being actively marketed. Your client said the sale particulars produced by Cundalls, as recently as March 1997, were unauthorised, yet in May 1995 Cundalls placed an illustrated block advertisement for the dwelling in the Yorkshire Post.

25. Notice in 1988 of intention to erect a stone and tile chemical/fertilizer store/farm office immediately to the west of the Howdale Farm complex was not pursued because of concern about problems should chemical spillage pollute the watercourse. Later that year permission was granted to its new owner, Mr Bleach, for the change of use and alteration of a barn attached to the old Howdale Farm farm house to a residential annex. The local planning authority considered the conversion work unsatisfactory; they have not, so far, taken enforcement action.

26. In April 1989 Mr Fisher, your client's agent, notified the local planning authority of intention to erect a chemical/fertilizer store/farm office and general purpose building on the appeal site which had been levelled and surfaced under the earlier notice of intention to extend the yard. In September 1989 the agent told the local planning authority development had begun.

27. Mr Myers, who visited the farm complex in July 1989, found that the appellant and family, having sold the old Howdale Farm farm house, had moved into a caravan located inside a dutch barn. Mr Myers, an Enforcement Officer, noted that the caravan was being used as a temporary measure until their new house was complete. In my opinion that remark can have referred only to the recently permitted agricultural worker's dwelling at Bridge Farm. The appellant's agent, told that planning permission was necessary to retain the caravan, sought a temporary permission for 2 years. The application plan included the whole of the land and buildings at Howdale Farm within your client's control; some of the land and the house at Howdale Farm had by then been sold by your client. In January 1990 permission was granted to retain the caravan for one year.

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28. On 2 February 1990, when Mr Myers spoke to the appellant at the farm, the shell of the appeal building was complete. Mr Myers visited the new dwelling at Bridge Farm on 12 and again on 20 November when your client said that he was moving into the house within 2 weeks, and in any case for Christmas. Mr Myers was shown round the dwelling on which construction work was complete. He did not see the appellant's family at Bridge Farm but, having on a number of occasions since driven past the new dwelling there, was aware that it was occupied.

29. Mr Terry, a farmer at Stoupe Brow Cottage, regularly exercised his horse along the former railway line 2 or 3 times a week. He said that Mr Cussons moved into it some 4 to 5 years ago; it had an air of domesticity. He was able to see the appellant's family in the garden, mowing the lawn etc, on a regular basis; the appellant's green Landrover would be parked adjacent to the dwelling a lot of the time. In June 1994 he sent an invoice to the appellant at Bridge Farm for work carried out at your client's request. In July, when he called there to collect the money, the appellant's son answered the door. The appellant was out, so his son called his mother who was ironing; Mrs Cussons came to the door and handed the Mr Terry a previously prepared cheque. To my mind this is compelling evidence of a family at ease in their own home. Mr Terry added that he regularly saw your client, on his own or with his family, in their Landrover commuting between Bridge Farm and Fylinghall; often this would be in the morning taking children to school. Although he lived some 1.5 miles away Mr Terry could regularly hear the sound of your client's generator at Bridge Farm, sometimes during the day but mostly in the evening. Since April 1995 Mr Terry had not heard it; Bridge Farm had been empty since 1995.

30. Mr Hodgson, a farmer from Low Farm, said that your client's family had lived at Bridge Farm for 4 to 5 years. He had regularly seen the appellant's family at different times of the day. He referred to the children playing outside the house, riding bikes etc. The appellant's green Landrover was often parked outside the house, along with a tractor. Up to April or March 1995 Mr Hodgson would hear the generator at Bridge Farm running day and night up to 2300 hrs; although he lived at some distance the prevailing wind carried sound to Low Farm. Bridge Farm used to have a general air of habitation with, curtains in the windows and flowers in the garden.

31. Local postmen Messrs Bryant and MacKay said that at one time they used to deliver the appellant's post to the old Howdale Farm farm house. After it was sold they delivered the post, at your client's request, to a new building, which looked like a bungalow but was believed to be an office or garage, as there was no access to the appellant's new house at Bridge Farm. They accepted, first, that visibility through the large window, which callers at the front door of the appeal building have to pass, had been almost completely blocked by a piece of furniture within and, second, that further windows in that elevation and the front door were of obscure glass.

32. However, the postmen had to see the occupier if they had a larger item to deliver, and they would usually turn their vehicle in the yard to the north-west of the site, so obtained a general view of the appeal building. Until late 1994 or early 1995, when plants appeared on the window ledges of the appeal building, there was no obvious sign that it was occupied; since that time the garden around the building had become cultivated. Until 1995, if your client was not seen taking children to school, items of mail requiring his signature would remain undelivered; notice would be left for him to collect it. Recently it had been easier to find someone nearer the farm to sign for mail. Unless there was a Registered Priority Item all mail for Mr Cussons, regardless of how it was addressed, would be delivered to what the postmen regarded as the new workshop.

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33. I attach little significance to the documents, which your client produced, that had been addressed to him at Howdale Farm, for reference in an address to a dwelling at Howdale Farm is not evidence that anyone lives there. In my experience letters are customarily addressed in the form that the addressee requests; hardly any of the writers of those documents would have seen the site. Indeed the documents your client produced bear a variety of forms of address; various settlement names are used. Evidence by postmen that your client gave instruction for mail to be delivered to Howdale Farm just confirms that they were so requested not that it was the family's residence at a particular time; in any event their access to Bridge Farm was not always passable.

34. Many invoices from builders and suppliers refer to a new dwelling, and so again just reflect what your client told them. It is clear from the papers that the appeal building was fitted with full central heating; kitchen and bathroom fittings were installed. Electricity supply records do not show that the appeal building was a dwelling, merely that it was so described to the supplier.

35. I consider that the statutory declarations submitted on the appellant's behalf raise several questions, which could not be put to their makers. Dr Davies recounted what had been said to him by someone else. Mr Nurse spoke from personal experience and gave some dates and details but first visited the site in 1993. Mr Dobson started visiting in May 1993. Mr Elwess called in November 1996. Mr Winn, who said that the appellant's family lived at the site since December 1989, mentioned an oil delivery incident in November 1992 but referred to no other dates. Mr Batley's statement about the time the building had been lived in was in very general terms and lacked details. He saw lighting through the roof lights in the building but, in respect of Bridge Farm, the appellant had said that he often left the lights on there to deter malefactors. Lack of opportunity to test statements in the appellant's statutory declarations limits their weight.

36. Mr Cook, who visited the site in April 1990, confirmed that the appellant and wife were living there on a permanent basis; what factors led him to that conclusion are not explained. Your client's shotgun licence led to police examining the cabinet in 1990; the licence was renewed in 1993. That is not evidence that the building was at that time used as a residence, and the document from the police force was not specific about what would then have occurred. None of your client's witnesses were present at the inquiry to answer the questions their statutory declarations raised. The local planning authority called several witnesses who were questioned; their evidence withstood cross examination. Evidence about the occupation of the appeal building was given by the former Enforcement Officer, Mr Myers, and by local residents, Mr Hodgson and Mr Terry. Two postmen who work the area, Mr Bryant and Mr McKay, also gave evidence.

37. There was no criticism of the integrity or motive of any witnesses called at the inquiry by the local planning authority. Your client said that Mr Bleach was rarely at Howdale Farm, which is so located that little could be known by its occupants of events at the appeal building. I noted that the relationship between Mr Bleach and your client had deteriorated. Having bought the old Howdale Farm farm house, Mr Bleach told Scarborough Borough Council that your client and family had moved into a residential caravan which was draining effluent into his garden; a bungalow like structure was being erected. Mr Bleach, awaiting execution in India, did not speak at the inquiry. However his statement, which he had made around August 1995 to a Council Solicitor, he had recently reaffirmed in prison; delay in swearing meant that references to the current or to a previous year had to be adjusted. I shall attach appropriate weight to the evidence of Mr Bleach, bearing in mind the circumstances in which he completed his statement.

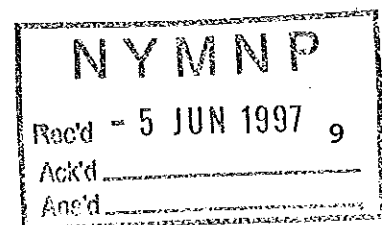
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38. As the vehicular access to the old Howdale Farm farm house, Mr Bleach's dwelling, passes hard by the gable of the appeal building which he had complained about, I would expect him to take a particular interest in its use. He had told Scarborough Borough Council that a building akin to a bungalow was being erected; the appellant and family were living in a caravan. He looked for the appellant in the appeal building about 6 months after it was built, when one room was empty and another contained drums, he assumed, of agricultural chemicals. About two years after it was erected he looked out of curiosity; the building was not being used as a residence. Mr Bleach's overall impression was that the appeal building lacked the sense of being lived in.

39. Mr Bleach gave written evidence that, when the caravan disappeared, the appellant moved into Bridge Farm, as he had told Mr Bleach he would. The track from the appeal building to Bridge Farm passes immediately by the old Howdale Farm farm house, where Mr Bleach lived. He could see the appellant and members of his family using the track on a daily basis. Whilst Mr Bleach at first came to Howdale only at weekends, as the property was improved he came more often and stayed for longer; from 1993 he tended to spend more time there and during the middle of 1991 moved in full time. Mr Bleach particularly remembered the appellant's youngest child walking the track between Howdale Farm and Bridge Farm on a daily basis until the end of 1994; to operate the cornmill which stands immediately behind the old Howdale Farm farm house someone would arrive in a Landrover from Bridge Farm. Mr Bleach confirmed that in 1995 the appellant's family went to Bridge Farm less frequently; he thought that they moved progressively into the appeal building towards the end of 1995 or the beginning of 1996. The movements between Howdale Farm and Bridge Farm diminished correspondingly. Only some months later was it obvious to Mr Bleach that the appeal building was occupied. Lights were on at night, curtains were pulled and rooms became domesticated by pictures and, occasionally flowers. The Landrover was parked regularly next to the appeal building or a farm building; until the beginning of 1996 the Landrover had not been kept there nor were lights kept on late.

40. I noted that your client had tried to maintain a low profile whilst living in the appeal building, presumably so that officialdom would not notice and he could take advantage of the 4 year rule. As Howdale Farm lies well away from the public highway in a sparsely populated area, I would expect pedestrian and vehicle movements to be so few as to be noticed. Moreover, Mr Bleach's written evidence was supported by testimony at the inquiry from local people. The photographs produced by your client show that the appeal building contained domestic items from shortly after its construction, as confirmed by Mr Myers, but keeping furniture in a building designed like a dwelling does not mean that it is being use as a residence. The early photographs were accepted by your client as dating, at the latest, from 1991; none were produced for the next few years until a substantial batch was taken in 1996 when enforcement was under way. Thus the photographic evidence did not account for the period between 1990-91 and May 1996.

41. The appellant said that the shell of Bridge Farm was substantially complete by the end of 1990; decorating took another year. It was semi-furnished and occasionally lived in for short periods by members of his family; his eldest daughter stayed there regularly at one time. At the inquiry the appellant said that his son stayed at Bridge Farm when operational requirements dictated ie he lived in one building and stayed at the other as convenient. Your client said that there was no heating then at Bridge Farm; there was the generator that witnesses used to hear.



42. Your client said that Bridge Farm would have been unacceptable as a residence, for it lacked mains electricity; his wife would have had to live at Howdale Farm, not rely on a generator. However your client also gave evidence that when the family moved into the caravan he and his wife would have stayed there on a permanent basis. At the inquiry your client agreed that the new dwelling at Bridge Farm, built for an agricultural worker, was very well equipped; the particulars of sale prepared for your client do stress the high standard of its specification.

43. In my judgment your client's case is not helped by his application for permission to retain the residential caravan for two years. Were he about to move into the appeal building in the autumn of or nearer the end of 1989, the residential caravan would not be needed for two years. A possible reason for him to retain the residential caravan for two years would be until his new dwelling under construction at Bridge Farm was ready for occupation. The appellant also said that Bridge Farm had probably not had a final Building Regulations inspection for use as a dwelling. Enforcement of the Building Regulations is not a matter within my jurisdiction, but the appellant gave evidence that his daughters had lived in Bridge Farm; his son stayed there.

44. In January 1991 the telephone directory gave numbers for Bridge Farm and for the farm office in the appeal building. The farm office was listed as 'Cussons J Richard Frmr, Howdale Farm'; the residential number was 'Cussons J R, Howdale Farm, Browside'. These were repeated in August 1992. In the new directory layout of January 1994 the farm office was in the business section and the Bridge Farm number in the residential section under Howdale Farm, Browside; these were repeated in the July 1995 directory. However in January 1997 there was no residential entry; the farm office entry was as previously. At the subscriber's request his entries had been altered between publication of the July 1995 directory and preparation of the January 1997 directory. I believe this evidence reflects the appellant's confused whereabouts.

45. Your client thought his solicitor, writing to Scarborough Borough Council in March 1992, was confused about which building he should refer to as your client's residence. The solicitor, a local practitioner and your client's agent, wrote that his client required access to the former railway line on a daily basis this being the main means of access to his residence. In my opinion the solicitor was clearly referring only to the dwelling by the former railway line, Bridge Farm. In the context of your client's other written and oral statements the local planning authority read the same meaning into the letter. From cross-examination your client, if resident in the appeal building when he claims, seems to have paid community charge for a dwelling in tax band 'G' not tax band 'E', which suggests that the valuation authority was also confused. As for argument that the appellant could not have lived other than at Howdale Farm, because of animal welfare and operational requirements, he has sought stock buildings elsewhere, notably on land at Thorny Brow, a location which, your client agreed, was one of the most inaccessible on his holding.

46. I consider that the inconsistencies in his dealings with the local planning authority and the Inspectorate must weaken confidence in the appellant's case. The proprietor of such an enterprise is fully justified in making the best use of his assets and, an entrepreneur, he must of course be prepared to respond to changing circumstances. Having sold off the old Howdale Farm farm house your client made three planning applications for an agricultural worker's dwelling, two of which he pursued to appeal, including one to inquiry, without disclosing that his wife owned Fairview, the bungalow on the boundary of the holding. Your client's wife clearly took an active role in his farming enterprise, and she gave also evidence by statutory declaration at the inquiry; his cross-examination showed that he had been closely involved in the associated conveyancing.

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47. The Inspector who allowed the appeal for the agricultural worker's dwelling, now Bridge Farm, was led to understand that a bull beef stock unit was going ahead; the holding would not be divided; the vehicular access from Howdale Farm was inappropriate; the licence to use the former railway line in inclement weather ensured unrestricted vehicular access to Bridge Farm. The Inspector was assured that there was no suitable site for a dwelling at the farm complex; the appellant then cleared a site for the appeal building and also proposed 4 new dwellings in the fold yard. The local planning authority produced sale particulars they received in August 1991 which showed that, before Bridge Farm, the agricultural worker's dwelling allowed on appeal, was completed, your client had tried to sell it, free of an occupancy condition, with approximately 0.8 ha (2 acres) of paddock/rough grazing and a further (4.047 ha) 10 acres of rough land. The appellant produced a letter from estate agents that, although draft particulars were prepared after a visit in May 1991, they were never instructed to act; he sought a valuation as he had hoped to buy the holding of his birth and someone he knew, an elderly farmer, was interested in Bridge Farm. Your client's wife sold the bungalow at Fairview and some adjoining land some 6 months after obtaining permission for the new agricultural worker's dwelling at Bridge Farm. Your client agreed that the bull beef stock unit, for which the adjacent new agricultural worker's dwelling at Bridge Farm was claimed to be required, had been used only occasionally. More recently your client sought other buildings on land on the hillside to the south of the site and at Thorny Brow. Your client did not disagree with the local planning authority that the Thorny Brow site in which he was interested is probably the most inaccessible from his present dwelling.

48. An Inspector found that the access to Bridge Farm was inadequate; your client assured the next Inspector that it was secured. Scarborough Borough Council confirmed that the licence to use the former railway line does not grant access to Bridge Farm which, when the deed was prepared, did not exist as such, but for the benefit of the original farmhouse at Howdale Farm.

49. I accept your client's assertion that an agricultural worker should not be expected to live in a low standard dwelling. I do not accept that the dwelling at Bridge Farm, justified for an agricultural worker, could be afforded by a typical agricultural worker. The appellant agreed; by your client's evidence the house at Bridge Farm is more spacious and better fitted out than is the appeal building. Within 15 months of obtaining permission, on appeal, to erect an agricultural worker's dwelling your client had sold off an dwelling on the holding, the old Howdale Farm farm house, built Bridge Farm to a very high specification for an agricultural worker's dwelling and split into two the holding. Your client said that his actions were in part justified by seeking funds to buy a farm where he came from. Considering that your client initiated the appeal I found that in many parts of his evidence, notably when being questioned, his recollection of events on his holding, tended to be so guarded as to appear obscure and evasive. When counsel for the local planning authority asked him to confirm details about the planning history of the enterprise your client, in my opinion, gave equivocal responses. Whilst time can, of course, dim anyone's memory, I do not consider that your client's evidence about his and his family's whereabouts, between leaving the caravan some time in 1989 until 1994, ring true. I attach greater weight to the case for the local planning authority, the case for which was strongly supported by several people who had no reason to bear witness against your client.

NYMNP	
Rec'd	- 5 JUN 1997
Ack'd	_____
Ans'd	_____

50. I do not accept that the appeal building was habitually used by your client or his family from the beginning of 1992 for eating, sleeping and usual domestic activities. It is possible, I believe that, on occasions over the period, your client and his family used facilities in the appeal building. Some household possessions had been put there as soon as it could accommodate them; it had water and electricity services, a heating system and a bathroom. I consider it very unlikely that any of the family lived in the appeal building until, at the earliest, the beginning of 1995.

51. There is compelling independent evidence that your client's family was centred on the new dwelling which he had built at Bridge Farm. That is what your client told Mr Myers, who was then the Council's enforcement officer, more than once; he would be in by Christmas at the latest. In my opinion the appellant's attempt to explain this point in cross-examination did not ring true. Mr Terry agreed that it was possible for your client to have lived in the appeal building before 1995; he thought it unlikely. Considering that the stock unit at Bridge Farm, for which the agricultural worker's dwelling was required, had been used only occasionally, I was not told why the appellant and his family spent so much time there, other than at lambing time, if they lived at the appeal site where the calving took place. Mr Hodgson was pressured that it was possible for the appellant's family to have lived at the appeal site but he had met the appellant's son and wife, not just his daughters, at Bridge Farm. Postman Bryant saw the front of the appeal building. He had been told that the access would be improved when the new house was finished; until then he should leave the mail at the office ie the appeal building. Both he and Postmen McKay believed that the appeal building was a farm office until late 1994 or early 1995 when it took on a domestic appearance; that was about the time when local residents testified that the generator at Bridge Farm stopped running regularly. The former occupant of Howdale Farm, his nearest neighbour, swore an affidavit that your client's family lived at Bridge Farm; no one suggested that, under sentence of death in India, he had any reason to tell lies.

52. To succeed on this ground of appeal, ground (d), the appellant has to show that, on the balance of probabilities, the breach of planning control took place 4 years before the notice was issued. Whilst normally the decision maker would not expect an appellant's case to be corroborated by independent evidence in order to be accepted, I consider that insufficient evidence has been presented to support the appellant's case in the light of the discrepancies in his various statements, which weaken his case, and of his reluctance to answer some questions. The local planning authority did not present direct evidence to contradict your client, but details of his whereabouts were amply detailed by several members of the public who attended to give evidence and who cast strong doubt on his case. I reach the firm conclusion, on the balance of probabilities, that your client's appeal against the second notice on ground (d) cannot succeed.

THE APPEAL ON GROUND (f)

53. I consider the appellant's argument has little substance; the notice is quite explicit in its requirements for compliance. In my opinion there would be little difficulty in identifying which fixtures, fittings, furniture and installations had been brought into the building for residential use. I endorse the local planning authority's suggestion that the removal of beds, dining tables, dining chairs and easy chairs is a start. The appellant is the person who knows best what is required to comply with the notice. I conclude that the appellant's appeal on ground (f) does not succeed.

NYMNP	
Rec'd -	5 JUN 1997
Ack'd	_____
Ans'd	_____

THE APPEAL ON GROUND (g)

54. The local planning authority maintained that there was no justification for extending the period for compliance. In my opinion an appellant is usually entitled to await the result of the appeal before taking action to comply with the notice. In the circumstances of this case I consider that a period of three months to cease the use of a building for residential purposes is unreasonable; the occupier of the site has to make various arrangements. I shall substitute a period of six months which, I am confident, gives the appellant adequate time to comply with the notice; according to his evidence his new dwelling at Bridge Farm is now available for occupation. In a very limited respect your client's appeal therefore succeeds on ground (g).

55. I note the comments by your client about the way in which the local planning authority have dealt with his projects, but local planning authority development control administration is outside my jurisdiction. I have considered all the other matters put forward in the representations, and the strong national expressions of support for small businesses in Planning Policy Guidance 4, but I find nothing more important than the considerations which form my decisions.

56. In addition I shall correct a typographical error in the notice by substituting 'into' for 'onto' in paragraph 5.(ii) of the notice. I am fully satisfied that to so exercise my powers of correction and variation, under section 176(1)(a) of the Town and Country Planning Act 1990, would not cause any injustice either to the appellant or to the local planning authority.

FORMAL DECISIONS

The appeal against the First Notice - Agency Reference T/APP/C/96/P2745/642117

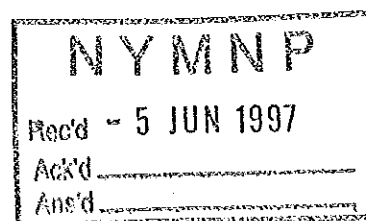
57. For the above reasons, and in exercise of the powers transferred to me, I allow your client's appeal, and direct that the enforcement notice be quashed.

The appeal against the Second Notice - Agency Reference T/APP/C/96/P2745/642118

58. For the above reasons, and in exercise of the powers transferred to me, I direct that the enforcement notice be

- (a) corrected by the deletion of the word 'onto' from paragraph 5.(ii) and the substitution therefor of the word 'into' and
- (b) varied by the deletion of the phrase '3 months' from the last line of paragraph 5. and the substitution therefor of the phrase '6 months'.

Subject thereto I dismiss your client's appeal and uphold the notice as corrected and varied.



RIGHTS OF APPEAL AGAINST DECISIONS

59. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against my decisions to the High Court are enclosed for those concerned.

Yours faithfully



C G WEST LLB ACI Arb FIMgt FCIS Solicitor
Inspector

NYMNP	
Rec'd	- 5 JUN 1997
Ack'd	_____
Ans'd	_____

APPEARANCES

FOR THE APPELLANT

Mr J N Robson

- Partner in Ward Hadaway Solicitors
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Newcastle upon Tyne NE1 3DX

who called

The appellant

FOR THE LOCAL PLANNING AUTHORITY

David Manley

- of Counsel instructed by Mr G L
Fell Solicitor to the North Yorkshire
County Council

who called

Mr J Myers

- Area Enforcement Officer with The
Environment Agency Suite B Thirsk
Business Park Station Road Thirsk
YO7 1PZ

Mr M Southerton
BA MRTPI

- Head of Development Control with
the North York Moors National
Park

Mr W Terry

- Stoupe Brow Cottage Farm Ravenscar

Mr L Hodgson

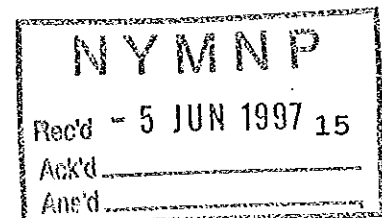
- Low Farm Fylingthorpe Ravenscar

Mr D I MacKay

- Flowergate Whitby

Mr D R Bryant

- 25 Kirkham Road Whitby



DOCUMENTS

- 1 - Lists of persons present at the inquiry
- 2 - Letter about the inquiry from the local planning authority to local occupants
- 3 - Response to the local planning authority's letter about the inquiry
- 4 - Local planning authority's pre-inquiry statement
- 5 - Appellant's pre-inquiry statement
- 6 - Appendices submitted by Mr Southerton
- 7 - Appendices submitted by the appellant
- 8 - Statutory declarations submitted by the appellant
- 9 - Statutory declarations submitted by the local planning authority
- 10 - Statement by Mr A Purkiss handed to the inquiry by the local planning authority
- 11 - Letter from Scarborough Borough Council handed to the inquiry by the appellant
- 12 - Appendices submitted with the appellant's further statement

PLANS

- A - Plan attached to the notices
- B - Illustrative plan of the area's planning history produced at the inquiry by the Council

