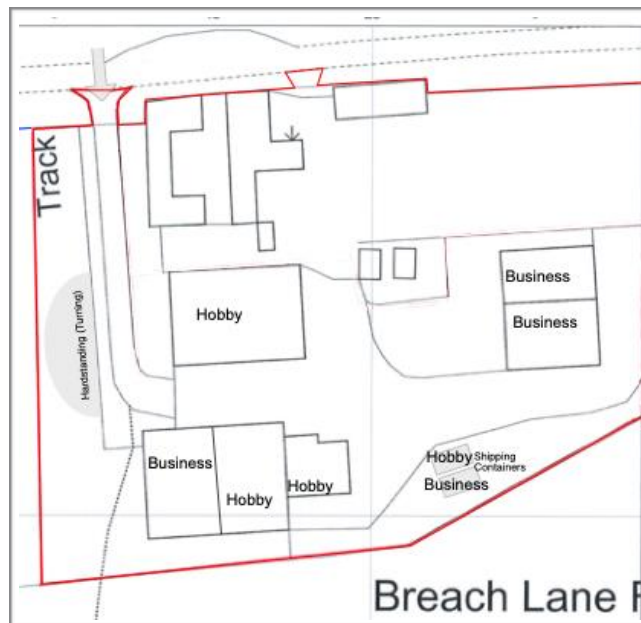


Planning Statement



**Breach Lane Farm, Breach Lane, Earl Shilton,
Leicester**

**Application for a Certificate of Lawful Use for
Breach Farm as a dwellinghouse with domestic
outbuildings, along with the farm buildings being
used for the restoration, storage and sale of
historic motor vehicles (as defined by the Historic
Tax Class). Barn 1 and Barn 3 east being used for
hobby purposes while Barn 2 and Barn 3 west
being used for business purposes.**

For Mr. A and M Deacon

March 2024

Contents

1	Site and Surrounds Description	3
2	Lawful Development	4
3	Planning History	6
4.	Legislation & Planning Practice Guidance	7
5	The Planning Case Outlined	8
6	Conclusion	13

1. Site and Surrounds Description

- 1.1. Breach Lane Farm, is located within an area of countryside off Breach Lane. The Lane runs south-east from Station Road in Earl Shilton to cross the A47. The appeal site is located on that part of the Lane that sits south of the A47. This part of the Lane is predominantly a single-track road with informal passing places.
- 1.2. The site, which measures 5,200 sq. m. comprises a two-storey farmhouse with associated buildings, originally built for agricultural purposes. These include 3 large corrugated metal barns, and a single storey brick barn with a tile roof.

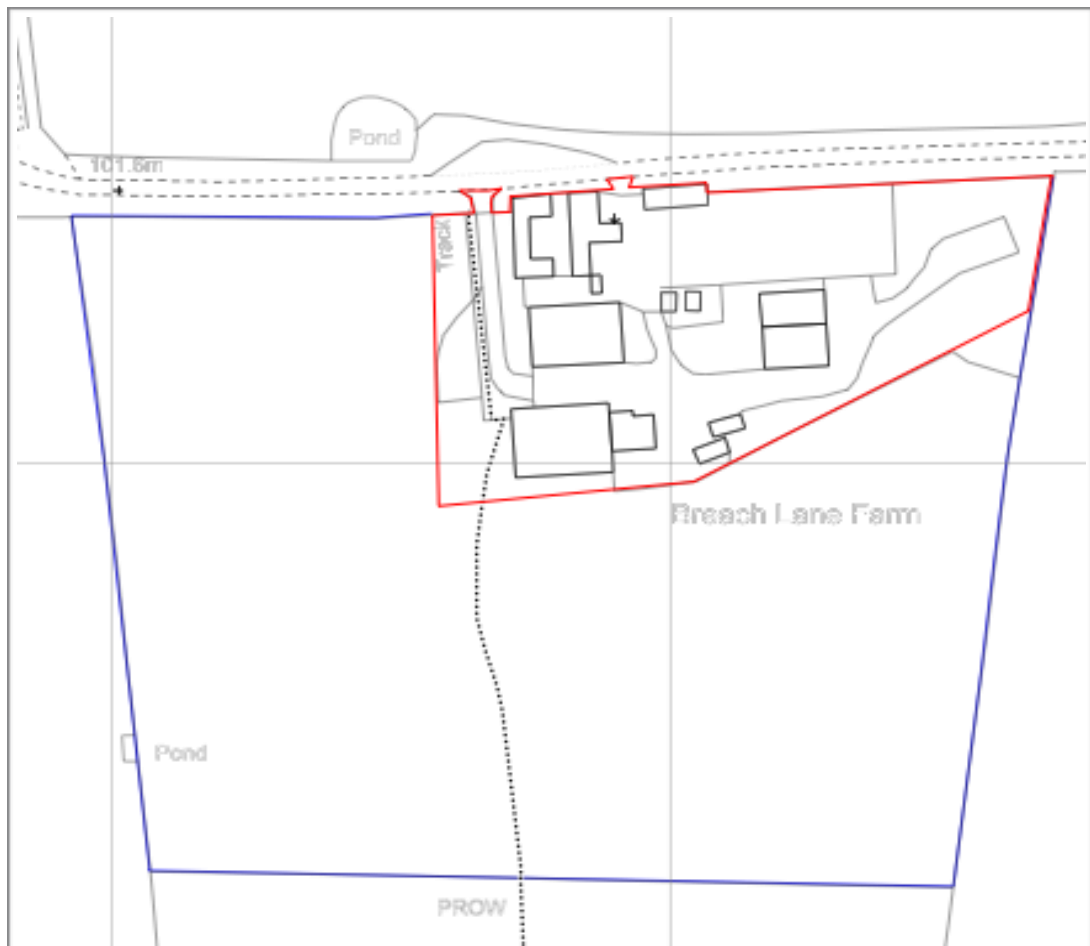
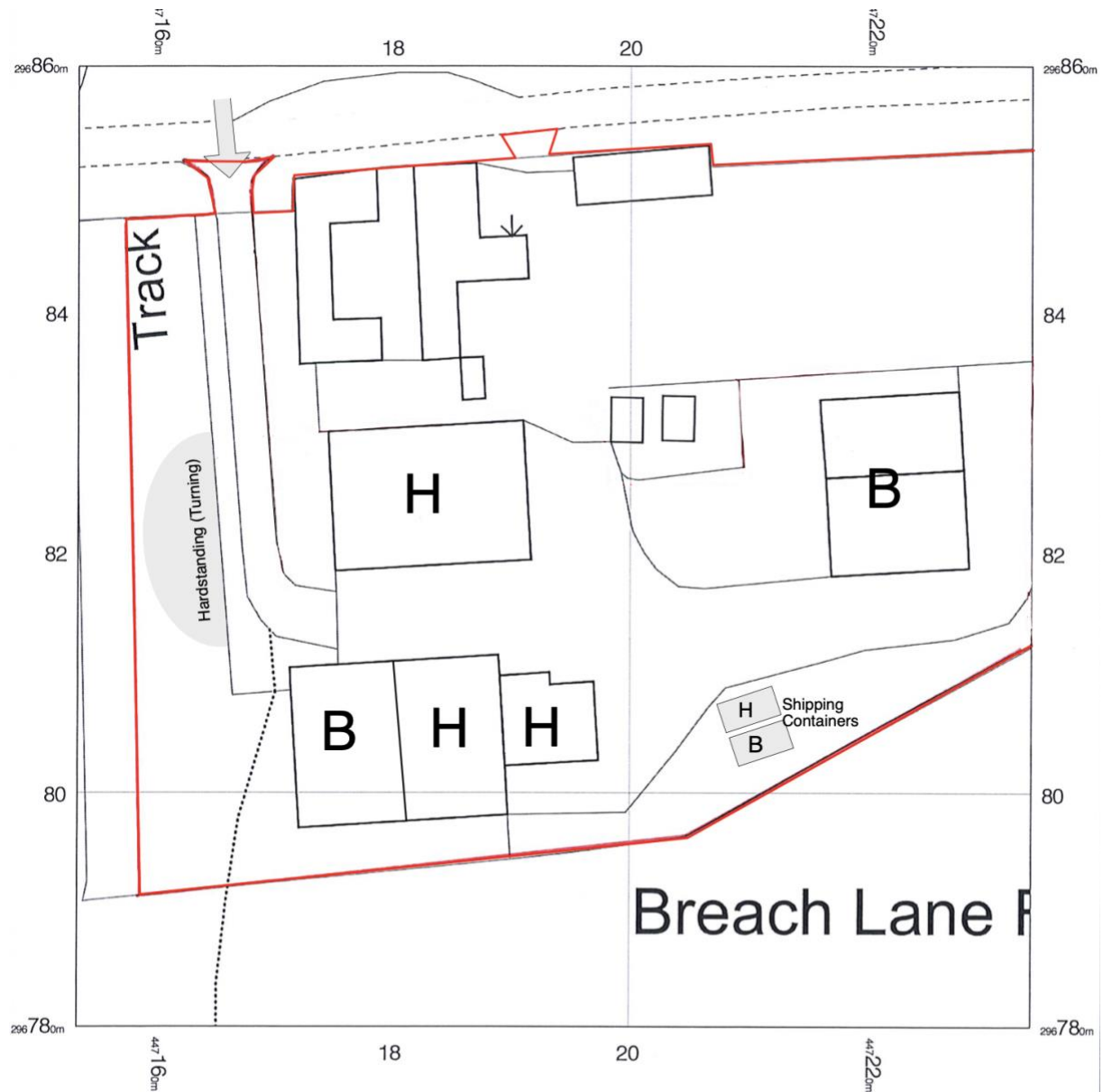


Figure 1: Existing Location Plan

- 1.3. The site has two gated vehicular access points onto Breach Lane. Opposite these accesses there is a lay-by / passing place. A public footpath runs southwards from Breach Lane within and parallel to the western boundary of the site. The neighbouring field to the west and south is within the same ownership as Breach Farm.
- 1.4. With the exception of the two-storey dwelling the single storey buildings, which have been on site for some considerable time are partly brick built, but largely consist of grey / green corrugated metal sheets. The small single storey buildings, adjacent the dwelling and used for domestic purposes, are brick built. The buildings were once used for cattle in association with surrounding fields, but this agricultural use has long since ceased.
- 1.5. The appeal site is surrounded primarily by agricultural fields. The primary exception to this is Stanmaur Farm Boarding Kennels, located 100m to the west of the site. The A47 is also located less than 100m north of the site.

2. Lawful Development

- 2.1. The site has been used for a number of years for a mixed-use for the restoration, storage and sale of historic vehicles and associated storage. This has been for both hobby and business purposes with the different aspect divided between different barns. The disposition is illustrated on the plan below.



B = Business Use

H = Hobby Use

3. Planning History

- 3.1. The following entries on the Council's website are considered relevant to this site.
- 3.2. **98/00044/COU** Siting of residential caravan for farm worker for a temporary period of 12 months. Withdrawn 11/06/1998.
- 3.3. **20/00632/FUL** Storage Container and hard standing (retrospective). Withdrawn 09/10/2020.
- 3.4. **20/01374/FUL** Change of use of land for the storage, repair, restoration and sale of vehicles, associated shipping containers and area of hard standing (mixed use) (part retrospective). This application was refused on 7th April 2022. The application was considered unsustainable development in the countryside and therefore contrary to policy DM4 part b) of the adopted SADMP 2016.
- 3.5. **APP/K2420/C/22/3304695 & 3304696**. These cojoined appeals related to without planning permission there has been a material change of use of the Land to a mixed use for the storage of containers; the storage, repair and refurbishment of vehicles (sui generis use); and, the laying of hardstanding.
- 3.6. These appeals were dismissed on 24th October 2023. The Inspector considered the evidence in support was limited and not sufficiently precise or unambiguous. He felt that there was significant ambiguity over when the change in use of the land occurred and if there has been any subsequent material change of use through the intensification of the use. He was not satisfied that, on the balance of probabilities, the change of use of the land to a mixed use for the storage of containers and the storage, repair and refurbishment of vehicles occurred continuously for a 10- year period prior to the date of the notice being served.
- 3.7. **22/01029/CLE** Certificate of Lawful Existing use of premises for restoration and repair of classic vehicles and associated storage. This application, which was submitted on 28/10/2022, had been held in abeyance awaiting the Inspector's decision for the above appeals. The application was refused on 19/12/2023.

- 3.8. The Planning Officer followed the same approach as the Inspector in the reason for refusal, as his decision was based upon the same evidence. Insufficient clear, precise and unambiguous evidence had been submitted in his opinion to demonstrate on the balance of probabilities that the buildings in question have been used continuously for the restoration and repair of classic vehicles and associated storage for a period of ten years up to the date of this application.

4. Legislation and Planning Practice Guidance

- 4.1. **Town and Country Planning Act 1990 (Section 191)** as amended by Section 10 of the Planning Compensation Act 1991. The Act provides that if a person wishes to ascertain whether any existing use of land or buildings is lawful, then he/she can apply to the local planning authority for a certificate to that effect.
- 4.2. **Town and Country Planning (Development Management Procedure) (England) Order 2015 (section 39)** explains that a Certificate of lawful use application must be made on a form published by the Secretary of State (or on a form substantially to the same effect) and must, in addition to specifying the land and describing the use, operations or other matter in question in accordance with those sections, include the particulars specified or referred to in the form.
- 4.3. Such a Certificate application must be accompanied by:
- (1) a plan identifying the land to which the application relates drawn to an identified scale and showing the direction of North;
 - (2) such evidence verifying the information included in the application as the applicant can provide; and
 - (3) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application.
- 4.4. **Planning Practice Guidance.** (ID: 17c-005, 006 & 009-20140306) An application must be accompanied by sufficient factual information/evidence for a local planning authority to decide the application, along with the relevant application fee. The application needs to describe precisely what is being applied for and the land to which the application relates. Without sufficient or precise information,

a local planning authority may be justified in refusing a certificate. This does not preclude another application being submitted later on, if more information can be produced.

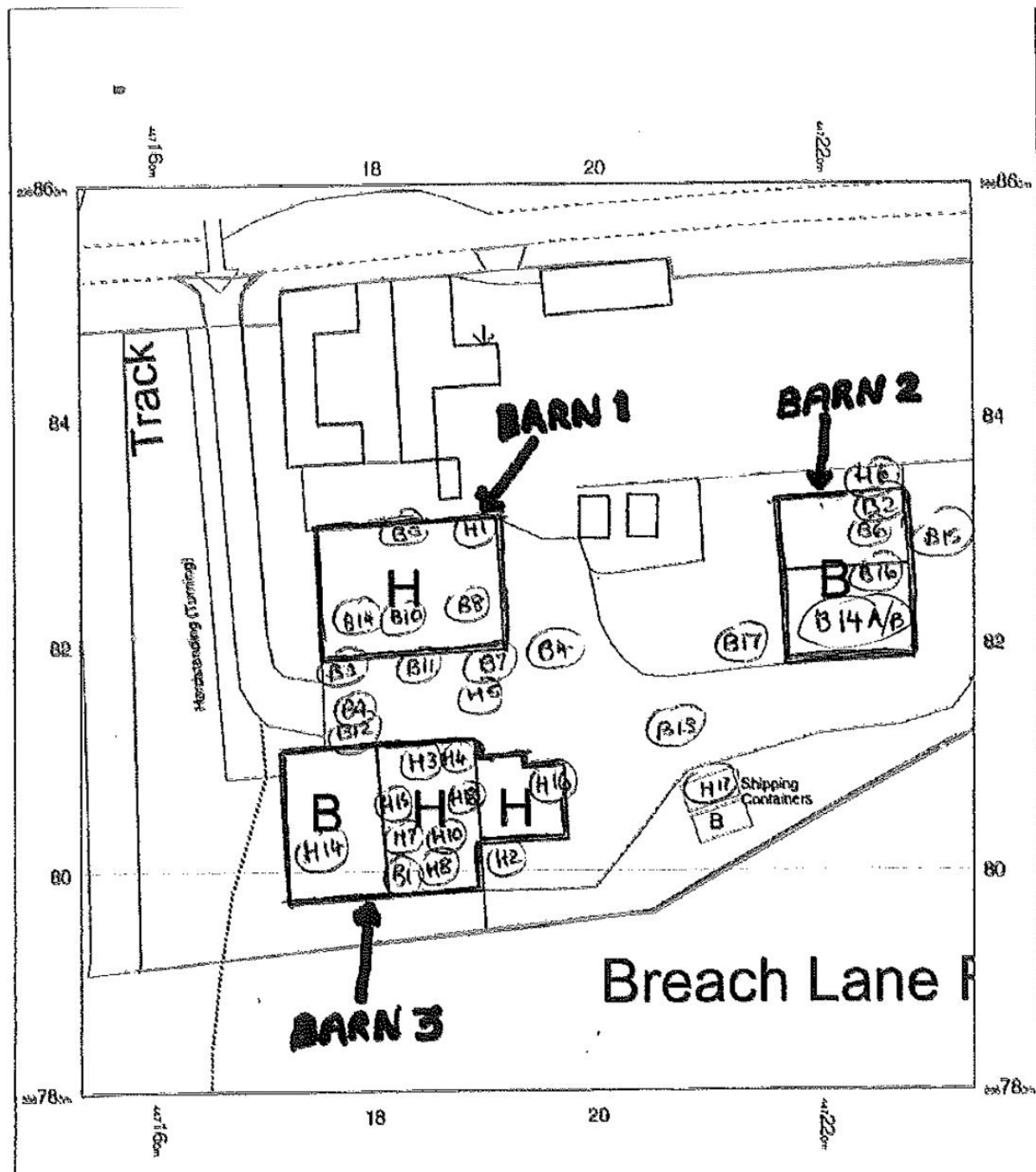
- 4.5. If a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability. The test on all the evidence available is on the balance of probability whether the use was lawful for planning purposes, at the necessary time (10 years before action) was taken by the Council) and continued throughout that time.

5. The Planning Case Outlined

- 5.1. In considering the application **20/01374/FUL** (see para. 3.4 above) the Planning Officer reported that: *"It is likely the barn buildings have been used for both hobby and business use in the past however sufficient evidence has not been provided to show the buildings have been used continuously for these respective uses for the last 10 years."*
- 5.2. Consequently, the Officer's report goes on to say, *"When assessed as a whole, it is considered that there is an absence of clear, precise and unambiguous evidence to demonstrate that, on the balance of probabilities, the buildings have been used as hobby/ business workshops continuously for the last ten years prior to the date of application. Therefore, there is insufficient evidence submitted to justify the grant of a certificate of lawful existing use in this case."*
- 5.3. An appeal: **APP/K2420/C/22/3304695 & 3304696** (see para. 3.5 above). The concluded the following: *"the evidence in support of the appeal is limited and is not sufficiently precise or unambiguous. There is significant ambiguity over when the material change in the use of the land occurred and if there has been any subsequent material change of use through the intensification of the use. Therefore, I am not satisfied that, on the balance of probabilities, the material change of use of the land to a mixed use for the storage of containers and the storage, repair and refurbishment of vehicles occurred continuously for a 10- year period prior to the date of the notice being served."*
- 5.4. The purpose of this section of the Planning Statement is to set out in clear, precise and unambiguous terms (along with the supporting

evidence) that on the balance of probabilities that the existing buildings have been used for some considerable time for hobby and business uses in the respective locations, as indicated on the plan in 2.1 above.

- 5.5. Unequivocal evidence to support the contention that different barns within the site have been used for hobby or business purposes respectively, as indicated on the plan in para. 2.1 is provided principally in the form of 10 statutory declarations. Two are from the two persons who jointly own the business AMD Four Wheel Drive and the remaining eight from visitors to the premises who have had dealings with the owners of the business as described in their respective statutory declarations.
- 5.6. The content of each is now summarized in turn to build up what I consider is a comprehensive, unambiguous and accurate picture of the activities at Breach Farm over the last 10 years in relation to Barns 1, 2 and 3 as shown on the plan below.



- 5.7. **Mike Deacon** is one of the two owners of the AMD Four Wheel Drive Business. His statutory declaration, like his brother's below first describes the background to how the company ended up at Breach Farm, first purchasing the property in 1997. He sets out in some detail

the history of the three Barns in terms of both their improvements and their usage.

- 5.8. **Barn 1** was improved in 1998 to make it more secure and weather tight and used mainly for the brothers' hobby vehicles.
- 5.9. **Barn 2** was originally an open pole barn in 1997, but progressively improved from 2004 to 2014. From 1997 it was used to secure historic vehicles in connection with the AMD business; initially for ones which were sold for restoration, but with the improvements restored jeeps were sold from the barn, as they would then be better protected by the weather.
- 5.10. **Barn 3** was improved in 1998. The usage was split with the eastern part used for hobby purposes, but the western part for vehicle and vehicle component storage for AMD four-wheel drive business. The plan in 5.6 is taken from Mike Deacon's Statutory Declaration to show the split of the buildings with H indicating principally hobby and B business use.
- 5.11. The Declaration also contains copious evidence of the usage of the barns for the specified purposes. There are numerous photographs, which are referenced on the same plan are referred to in 5.6 & 5.10 above as well as a schedule of 256 vehicles that have been sold from the farm by AMD between the summer of 2010 and the present day.
- 5.12. **Anthony Deacon's** Statutory Declaration supports his brother's review of the progressive physical improvements to the barns and their usage since 1998. It also confirms the relative splits between Barns 2 and Barn 3 west for storage, restoration and sale for the AMD business; and Barn 1, plus the eastern part of Barn 3 for personal / hobby use. As I would expect be inevitable there would be some overlap between the hobby usage and the business if space was at a premium in one of the barns. The principal usage though would be as described with ancillary usage for the alternative use on a periodic basis.
- 5.13. **Peter Stevenson** states that he visited Breach Farm on many occasions from 2009 onwards for both hobby and business purposes. He noted a number of vehicles for sale in Barns 2B and 3B as part of the business. He also discusses working on a hobby project (Stuart Tank) between 2010 and 2017.
- 5.14. **Andrew Palmer** is a Military Vehicle Inspector. He states that he has viewed numerous historic vehicles owned by the business in Barn 2, along with a few more in Barns 1 and 3 where there were also the Deacons' personal vehicles from January 2015.

- 5.15. **Antony Richards** recalls acquiring from AMD Four Wheel Drive two vehicle one in 2009 and the other in 2021, which were both located in Barn 2. He also worked as a volunteer on the restoration of the Stuart Tank in Barn 1 over the period 2012 to 2015.
- 5.16. **Trevor King** operates his own transport business (King 4x4). From January 2012 to January 2023 he has provided records and dates of 70 historic vehicles he has collected from Breach Farm in that time for customers of AMD Four Wheel Drive. While he collected from Barns 2 and 3 it was principally the former, Barn 2, where, as he states, *"jeeps for sale were tightly packed in."* He also notes that on many occasions during this period the Stuart Tank (a hobby project, see above) in Barn 3.
- 5.17. **Guy Thornton** visited Breach Farm between 2014 and 2018. In that time, he identified a number of jeeps in Barn 2. Again, he viewed the hobby project, the Stuart Tank, in Barn 1. He also points out that he looked to purchase 'rescue parts' from the company in Barn 3, although he does not identify, which part of that Barn he was referring to.
- 5.18. **Jonathan Skelton** is an experienced engineer and has provided a statutory declaration about his visits to the site from 2009 to the present day, including carrying out machining operations on various historic vehicles in Barns 2 and 3. To be fair he observed these historic jeeps of AMD Four Wheel Drive in all three barns, but it was clear that there were also hobby vehicles, including the Stuart tank at the site.
- 5.19. **Graham Newbold** visited the site on at least two occasions in 2016. The personal projects of the Deacon's were identified in Barns 1 and 3, while the historic jeep he purchased from AMD Four Wheel Drive was in Barn 2.
- 5.20. **Sally Bennett** along with her husband have undertaken business with AMD Four Wheel Drive for over 40 years. They have visited Breach Farm many times since 1998. They were a customer viewing historic land rovers in Barn 2 in 2012 and 2013 and socially subsequently to the present day. In that time, they also viewed hobby vehicles, including the tank referred to above.

6. Conclusion

- 6.1. Section 5 outlines the issue to be addressed and explains the additional evidence that is presented with this application.
- 6.2. It is accepted that the hard standing and storage containers cannot have the benefit of a lawful use, as they were installed / brought to site in the last four years.
- 6.3. The Inspector in the appeals (APP/K2420/W/3305795&6) states that:

“Overall, the evidence in support of the ground (d) appeal is limited and is not sufficiently precise or unambiguous. There is significant ambiguity over when the material change in the use of the land occurred and if there has been any subsequent material change of use through the intensification of the use (para.14). Therefore, I am not satisfied that, on the balance of probabilities, the material change of use of the land to a mixed use for the storage of containers and the storage, repair and refurbishment of vehicles occurred continuously for a 10- year period prior to the date of the notice being served.”

- 6.4. The Planning Officer follows the above approach in application (22/1029/CLE) where the application is refused as in his opinion:
- 6.5. *“There is insufficient clear, precise and unambiguous evidence submitted by the applicant to demonstrate that on the balance of probabilities the buildings within the red line shown on the Site Location Plan received by the local planning authority on 28 October 2022 has been used continuously for the restoration and repair of classic vehicles and associated storage for a period of ten years up to the date of this application.”*
- 6.6. What the substantial body of evidence now provides, in 10 statutory declarations, from not only the Directors of AMD Four Wheel Drive, but also 8 independent people that the buildings have been used in a substantial way since 1998. The essential scale of the usage has remained throughout this period, albeit it has grown incrementally, but not in a substantially different way from when it started and certainly not since October 2012. The schedule, with pictures where available of over 250 historic vehicles sold from the site and contained in both brothers’ evidence since 2012, shows both the scale and consistency of the activity.
- 6.7. The evidence goes further and details activities between the three different barns and further breaks it down into business or hobby use.

6.8. The Inspector at the appeal in para 22 of his decision states that:

Were I to allow the ground (a) appeal and grant planning permission for the development, the permission would also allow other vehicles to be sold, which may have a much wider market base, for example modern used cars.

A wider market base, for example modern used cars, is certainly not the activity that has been undertaken at Breach Farm. The vehicles have always been over 40 years old and helpfully there is a legal definition of such vehicles for Tax Purposes by the Driver and Vehicle Licensing agency (DVLA). They are defined as being within the "Historic Tax Class" (currently constructed before 1st January 1983), although rolled forward on an annual basis. Consequently, this Certificate of Lawful Use is applied for only such vehicles and therefore substantially limit the market base, which was a concern of the Inspector.

6.9. The Inspector correctly points out in para.7 that:

The relevant test of the evidence is 'on the balance of probability' (i.e. that it is more probable than not). If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous.

6.10. The weight and detail of evidence now provided (from multiple people who have prepared statutory declarations), as well all the tabulated and photographic evidence in a clear, precise and unambiguous way must demonstrate that on the balance of probabilities there is no good reason to refuse this application.

6.11. I trust that the Council will now be able to proceed to approve this application based upon the scale and amount of evidence presented in a clear and unambiguous way and backed by 10 Statutory Declarations. Clearly, if there any further queries or issues please do not hesitate to contact me.

Peter Wilkinson

BA MCD MA MPIA FIM FRTPI.

March 2024

