
Appeal Decision

Inquiry held on 14, 15 and 30 March 2017

Site visit made on 30 March 2017

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 April 2017

Appeal Ref: APP/X1545/C/16/3153960

Land at Oakfield Farm, Hyde Chase, Purleigh, Essex, CM9 6TN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Michael King against an enforcement notice issued by Maldon District Council.
- The enforcement notice, numbered 13/00260/CU, was issued on 13 June 2016.
- The breach of planning control as alleged in the notice is without planning permission use of barn for residential occupation.
- The requirements of the notice are:
 - 1) Cease the residential use of the land.
 - 2) Remove all internal walls and stairs.
 - 3) Remove all domestic appliances connected with the residential use of the building.
 - 4) Remove all residential fixtures and fittings, including kitchen cupboards, sink, mattress etc from within the building.
 - 5) Remove all residential paraphernalia from the land.
 - 6) Remove all resulting material and/or debris from the land.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

Procedural Matters

1. All witnesses gave oral evidence to the Inquiry after they had either taken the oath or made an affirmation.
2. The plan attached to the notice identifies an area of land which was originally purchased by the Appellant in February 2011. However, in March 2016 he sold a substantial part of the land. The barn to which the notice relates is located on the land retained by the Appellant. There was agreement by the Parties that the notice should be corrected by the substitution of a plan showing the extent of the Appellant's ownership as from March 2016 and I will correct the notice accordingly.

The appeal on ground (d)

3. In an appeal on ground (d) the Appellant is saying that at the time the notice was issued it was too late to take enforcement action. In this appeal this means that the Appellant has to prove on the balance of probability that the
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use of the barn for residential occupation began four years on or before the date of the notice, that is, 13 June 2012 and that the residential occupation has been continuous for that four year period.

The Appellant's case – main points

4. The Appellant purchased the land known as Oakfield Farm in February 2011. The barn in which the residential use takes place is a metal-framed 'Atcost' style agricultural barn which the Appellant understands was erected at some time in 2006 following a grant of planning permission¹. The majority of the barn remains in its original state with a mezzanine floor on the northern end. Prior to commencing works to alter part of the building into a dwelling there was a mezzanine floor on the southern end. Before he lived at the barn he was living at Fox Hollow, a house owned by his partner, Mrs Petersen.
5. The Appellant purchased the land with the intention of running a free range egg farm with his son. Almost immediately after purchasing the land the Appellant and his son commenced work on the southern end of the barn. This work included the erection of some internal walls and the provision of a bathroom/shower room and a kitchen. The works to convert the southern end of the barn into residential occupation, comprising an open plan kitchen/living/dining room, two bedrooms and bathroom, were completed in May 2011 and there has been someone in residential occupation since that time.
6. There had been some chickens on the farm prior to December 2011 when the Appellant took delivery of 349 laying hens and started the business. By this time his son had 'lost interest' in the venture and he took no further part in it. Unfortunately the egg business did not work out as the Appellant had hoped and it ended on or around 8 March 2013 and part of Oakfield Farm was sold off on 16 March 2016.
7. The persons living there have been: the Appellant's son since completion on 7 May 2011 until 6 December 2011; the Appellant since 12 June 2011 to 3 October 2013; and the Appellant and his partner since 4 October 2013 to the present time².

Planning history

8. There have been a number of applications for planning permission since the Appellant purchased the land. The first was in March 2011 for the siting of two hen houses and one mobile home which was refused on 23 June 2011³. The second was for the proposed use of land as a free range egg and Alpaca farm together with the siting of three hen houses, one food shelter and a log cabin for office and accommodation which was refused on 7 December 2011⁴.
9. A prior notification application for a proposed change of use from an agricultural barn to three dwellinghouses was refused on 15 July 2014⁵. An outline application for a proposed new dwelling and double garage with all matters reserved was refused on 5 December 2014 and dismissed on appeal on

¹ Ref:05/00563/AGR

² Grounds of appeal para 4.3

³ Ref: 11/00236/FUL - Appendix 2 Document 3

⁴ Ref: 11/00775/FUL - Appendix 3 Document 3

⁵ Ref: 14/00534/COUPA - Appendix 4 Document 3

14 October 2015⁶. And a Lawful Development Certificate application for the existing residential use of a section of a previous agricultural barn which has been in continuous use as a dwelling for a period of four and half years was refused on 5 May 2016⁷.

10. An application in 2016 for a change of use of an agricultural building to a B1 light industrial use was refused.⁸

11. I will comment on these various applications below.

Reasoning

12. The Inquiry heard oral evidence from the Appellant and a number of witnesses on his behalf. This oral evidence largely supported the main points of the Appellant's case as set out above. There were many matters covered in the evidence given by the Appellant and those in his support which caused me considerable concern about the veracity and reliability of the evidence that was given despite it being given on oath or after an affirmation had been made. I note the following in particular:

13. The Appellant produced an invoice for the kitchen and appliances dated 17 February 2011 with a delivery address for Oakfield Farm⁹. The Appellant explained that one of the reasons why he had put in a kitchen was that he had to wash the eggs that were being produced and then weigh and pack them. However, the kitchen I saw on my visit, which occurred after the close of the Inquiry, and which the Appellant says has been in place since early 2011 is a normal domestic kitchen and I find it extremely unlikely that it would have been suitable for washing, weighing and packaging the hundreds of eggs that the Appellant said he was dealing with on a daily basis.

14. The evidence about the reason why the Appellant went to live at the barn was not consistent. One reason given by the Appellant in his evidence to the Inquiry was that he had had an argument with Mrs Petersen about the egg farm and how much time he spent there and that was why he went to live there. Mrs Petersen confirmed that she had never agreed with the idea and that they had had arguments about it. The Appellant also said that he needed to be on site because the chickens and the business needed almost constant attention and that he worked from dawn till dusk. In this respect I note that the 300 plus chickens did not arrive at the farm until December 2011 and the bank statements show that there was no income from the enterprise until 2012. The Appellant said that although Fox Hollow was only five minutes away he was often dirty and smelly and he did not want to go into a nice house in that condition. However, in his statement the Appellant says that the argument with Mrs Petersen which led to him moving out was because she did not want his daughter, Ms Muldoon-King, to stay at Fox Hollow after the birth of her baby.

15. There is some inconsistency about the dates of occupation of the barn. In his statement the Appellant says he moved in in the end of May 2011 and that Ms Muldoon-King and her son stayed there from 27 May 2011 until 9 June

⁶ Ref: 14/00869/OUT and APP/X1545/W/15/3035769 Appendix 5 Document 3

⁷ Ref: 16/00179/LDE

⁸ Ref: 16/00657/FUL

⁹ Document 8

- 2011¹⁰; but in his grounds of appeal he says that he did not move in until 12 June 2011. Dates given by Mrs Petersen vary but these may relate to the Appellant coming and going. No evidence was given by the Appellant or Ms Muldoon-King about how they could be so specific about the dates.
16. Much of the documentary evidence presented by the Appellant related to the egg business and there was none that related to a residential use or the works to complete the residential accommodation other than the receipt for the kitchen; an invoice for plastering¹¹; and the appliances supplied in May 2014. It is of note that in his proof the Appellant says that he and his son did the all works¹² whereas Mr Patemen says in his statutory declaration¹³ that he did the plastering and installed the kitchen. The Appellant gave no explanation why he had the kitchen receipt but no others and it appears that it was Mr Pateman who produced the plastering invoice as an exhibit to his statutory declaration.
17. With regard to the television at the barn in the early period (2011), the Appellant said that he used to watch films on his computer because his only television was a small one from the caravan. This evidence later changed to a television and a DVD player and Mrs Petersen said he took a small flat screen TV from her house; Mrs Oliver recalled seeing a flat screen TV; as did Miss Taylor-King who used to watch it and who also used a DVD player while her partner and Mr King were working on her partner's go-kart in the barn. Whilst I accept that these events were a long time ago the inconsistent evidence goes to the credibility of the witnesses' evidence.
18. Ms Muldoon-King submitted a number of photographs of the residential accommodation at the barn being built. She said that she had taken them to monitor progress but there was no series of photographs that did this, only the 'works in progress' ones. Photographs 1 – 4 exhibited to her proof have been dated March/April 2011. In her evidence to the Inquiry she said that the dates had come from her old camera and that the dates had been written on the proof by the Appellant although in her proof she says that '[the dates] are approximate but accurately reflect [her] belief as to when they were taken'¹⁴.
19. The photograph produced by Ms Muldoon-King of her son and the Appellant dated 29 May 2013¹⁵ shows a bed, bed covering, bedside table and bedside lamp that bear a striking resemblance to those items shown in the photograph of a bedroom at Fox Hollow on the Right Move page dated October 2013¹⁶. Mrs Petersen had said that much of the furniture at Fox Hollow had been sold to the purchaser and it had not been moved to the barn. Although Ms Muldoon-King told the Inquiry that the resemblance between the items was coincidental and that the photograph was taken at the barn, this along with the many other inconsistencies in the evidence causes me to question the reliability of Ms Muldoon-King's evidence.
20. The Appellant told the Inquiry that Mrs Petersen had kept a diary in which she recorded details of her daily life and her feelings. Mrs Petersen confirmed that she had done so for a long time. Her evidence was that she had come across

¹⁰ Paragraph 36 of the Appellant's statement

¹¹ Page 194 of the Appellant's bundle

¹² Paragraphs 24 – 31 of the Appellant's statement

¹³ Page 192 of the Appellant's bundle

¹⁴ Paragraph 13 of Ms Muldoon-King's proof

¹⁵ Photograph 9 of Ms Muldoon-King's proof

¹⁶ Document 10

her 2011 diary a while before the Inquiry by pure accident when looking through the accounts of her former business. I note that at that time her partner of some 16 years was compiling evidence of events from 2011 onwards and the fact that she did not immediately turn to her diaries to remind herself what had been happening at that time and thereafter seems to me to be not credible. The extracts from her 2011 diary that have been provided do not describe the Appellant taking a bed, bedroom furniture, bedding and a television with him when he left her home which is what Mrs Petersen told the Inquiry in her oral evidence had happened. Given the detail in which other events are recorded, I also find this omission somewhat incredible. It is also of note that Mrs Petersen was unable to find any diary other than the 2011 one. Taking all of these matters into account I give the extracts from the 2011 diary, together with Mrs Petersen's oral evidence about the events of that time, very little weight.

21. Miss Taylor-King was not an impressive witness in that she was extremely vague and at times appeared reluctant to answer questions. Although she said she was confident about the date her father moved into the barn, April 2011, she was unable to be specific about many other matters. Her responses to questions about how often she visited her father at the barn ranged from weekly to not every single week but regularly. She was specifically asked about her visits to Fox Hollow and she mentioned visiting her father there but Mrs Petersen gave evidence that Miss Taylor-King had been a regular visitor and had also had manicures there. Miss Taylor-King did not remember if she had visited her sister while she was at the barn and she did not remember if she had seen her brother there.
22. According to the Appellant's evidence it was he and his son who had compiled the planning applications in 2011. Mrs Petersen said that Miss Taylor-King had also been involved and it is Miss Taylor-King's contact details that appear on the prior approval application and she confirmed that she had dealt with the correspondence. In the circumstances, given the nature of her evidence I give Miss Taylor-King's evidence little weight.
23. The Appellant produced a letter dated 12 March 2012 from him to Mr Johnson and Mr Few (Carp Baits¹⁷) in which he refers to him living in the barn. Carp Baits occupied the northern end of the barn at Oakfield Farm from early 2012 until August 2014. Mr Few's evidence was that he was at the barn Mondays, Wednesdays and Fridays for the hours 18.00 - 22.00 and most Saturdays between 09.00 - 18.00; he saw the Appellant feeding the chickens; he went into the domestic area to pay the rent; the Appellant was always there; he thought it was a dwelling; he didn't go upstairs; he could not describe the kitchen; he was not aware that eggs were cleaned elsewhere than in the kitchen but he also did not recall seeing eggs in the kitchen.
24. I noted on my visit that the area where Carp Baits were located was a totally separate area with a separate entrance from the southern area of the barn in which the residential accommodation is located. In my opinion, given the separation between them Mr Few and Mr Johnson could only have had a very limited knowledge of what was occurring in the other end of the barn. Mr Few's evidence does not assist the Appellant's case that he was living at the barn.

¹⁷ Page 173 of the Appellant's bundle

25. The letter of March 2012 also sets out the considerable expense that the Appellant incurred in getting the barn ready for Carp Baits with a supply of electricity and water. According to the letter the work was undertaken by the Appellant, his son and Luke. From other evidence it appeared that the Appellant's son had had nothing to do with the farm after December 2011 and Luke, who is Mr Turff, makes no mention of doing this work in either his statutory declaration for the LDC application¹⁸ or in his statement for this appeal.
26. The reason given by the Appellant why there were no utility bills for the barn before 2012 was that he had to sort out with the electricity company where the supply was coming from. Mr Few's business involved machines, which mixed the bait, running whenever he and Mr Johnson were there and there were also a number of fridges/freezers in use at all times. Mr Few said that the electricity bill was split 50/50 between Carp Baits and the Appellant. The earliest electricity bill produced is for the period October 2012 to December 2012 although it is inexplicably dated March 2013. It is in Mrs Petersen's name, which she explained was because she was the person who phoned Southern Electricity about the supply, the Appellant being too busy to do so. It is an estimated bill for £240.65 on which, in handwriting, the sum of £178.23 has been written. A bill for the period March 2013 to June 2013 is in Mr Johnson's name and it is for £66.30. The next bill for June to September 2013 is for £74.97. However, the bill for October 2013 to December 2013 has gone up to £207.31 and the April 2014 to July 2014 bill is for £392.88. It appears to me telling that the amount of electricity rose considerably from October 2013 which is about the time that Mrs Petersen moved into the Barn.
27. Neither Mr Few, nor Mr Johnson in his letter, make any mention of Mrs Petersen moving into the barn in late 2013 or any changes, particularly with regard to payment of electricity, that may have resulted from her occupation.
28. The Appellant's case focuses on the early part of 2011 when he says the residential element was constructed and when he began to live there. This is outside of the relevant four year period and it is of significance that there is little, if any evidence supporting the Appellant's case of use of the barn from late 2011 onwards save for the letter dated March 2012 from the Appellant to Carp Bait and the evidence of Miss Taylor-King. Both Mrs Petersen and the Appellant told the Inquiry that they had a 'stormy' relationship and the extracts from Mrs Petersen's diary refer only to events in 2011.
29. Although their relationship may have been stormy, the relationship between the Appellant and Mrs Petersen continued and there was evidence that, among other things, Mrs Petersen visited the barn; the Appellant visited her at Fox Hollow; she was also involved with the egg business to some extent in that she paid the cash takings into the bank; she arranged the electricity supply and bill for the barn in 2012; and although the Appellant paid for utilities she dealt with on-line payments of bills for Fox Hollow and other matters.
30. Taking into account the number of chickens that had to be cared for it seems to me likely that the Appellant may have stayed at the barn occasionally and there was evidence that there had been a caravan inside the barn. But given the other evidence I heard, and particularly taking into account the lack of

¹⁸ Page 189 of the Appellant's bundle

evidence from late 2011 until late 2013, I am not persuaded that he lived there, or that the accommodation during that period of time was the functional dwelling I saw on my visit. It seems to me likely that any overnight stays would have been part and parcel of the egg business use and not a residential use.

31. As submitted by the Appellant, it is correct that all of the witnesses gave consistent evidence that the Appellant's residential use of the barn began in early 2011 and that it has continued since that time but four of those witnesses are related to the Appellant and although Mr Few was independent insofar as he was not a relative he had been associated with the Appellant for some time for business purposes.
32. Their evidence was, in the main, anecdotal and it was of note that although they could remember most of what was in their proofs of evidence, especially with regard to dates in March/April 2011 all the witnesses said that it was a long time ago and they could not remember any other different details such as what sort of television there was, where the Appellant stored his clothes and what was in the kitchen. There is, of course, no reason why they should remember some of these things but given their certainty about events and dates around early 2011 and their considerable vagueness about any other times I have to question the accuracy of their recollections.
33. It is a matter for an Appellant as to how he presents his case but I find it surprising that although a number of statutory declarations were submitted in support of the LDC application there was none by the Appellant himself or Mrs Petersen and only the Appellant's family members and Mr Few attended the Inquiry. I accept that all family and personal relationships are different but the intermingling of accounts, the sharing of paperwork, and different responses from the witnesses about who did what for whom within the Appellant's family was to my mind an unusual state of affairs.
34. It is accepted by the Council that the residential use of the barn began in late 2013. It is the Appellant's case that it was 4 October 2013 the date that Mrs Petersen moved in before Fox Hollow was sold on 17 October 2013¹⁹. Mrs Petersen's evidence about what fixtures, fittings and furniture that have been added since then did not include the new washing machine and fridge/freezer supplied in May 2014²⁰, indeed she did not have any knowledge of these items at all. I accept that appliances such as these wear out and that some time has passed since May 2014 but I noted on my visit that the washing machine and the fridge/freezer in the kitchen were not Samsung appliances as stated on the customer order confirmation.
35. The Council received a complaint about the residential use in October 2013. The Appellant's evidence was that it arose because Mrs Petersen came and went from the property and because Hyde Chase is a private road her journeys were noticeable. He said that when he had been there alone he stayed there most of the time and did not travel. But I was told about the number of contractors/tradespeople who visited the site; the number of people who attended to buy eggs when the business was going; Mr Few and Mr Johnson of Carp Baits came and went as did their customers, often at unsociable hours; the Appellant had visits from his daughters, his son, his sister and her family

¹⁹ Mrs Petersen's statement paragraphs 24 and 25

²⁰ Page 203 of the Appellant's bundle

- and many others according to the evidence. Also according to Mrs Petersen's diary the Appellant was coming and going quite a lot. It therefore seems to me that something other than an increase in traffic movements occasioned by Mrs Petersen's occupation must have occurred to result in a complaint.
36. The Council's records show that the Appellant telephoned the Council Tax department on 11 January 2011²¹. In that conversation he said that he had moved into Fox Hollow on that day. According to Mrs Petersen they had been living at her father's property for some time until 2009 while Fox Hollow was being built. They moved into Fox Hollow in 2009 even though the house was not completed; the Appellant did work to the house while they were living there; and it was signed off by Building Control in 2011. The Appellant also said that he had been living at Fox Hollow for two years before he bought the appeal site.
37. The documents produced by the Council state that the Appellant also told the Council Tax department that he would be living at Fox Hollow alone for the present but his girlfriend may move in. As a result a single person discount was applied to the property. One Council Tax bill has been provided which gives the Appellant's name and shows the discount²². It was Mrs Petersen's evidence that it was her writing on the bill indicating payments which she had made on-line but for which the Appellant had paid. She said that what had been said/written was a mistake and it was unintentional.
38. In a letter dated received by the Council's Finance Department on 23 October 2013 the Appellant states 'please note that I no longer live at this address [Fox Hollow] as of the 17 October 2013. The property has been sold ...'²³. The Appellant could not explain why he wrote the letter in those terms.
39. In response to a Voter Registration Form sent to The Occupier, Fox Hollow in late 2011 the Appellant responded on 2 November 2011 by filling in the form with his name only in answer to the question that he was the only person likely to be living at the address on 15 October 2011 and entitled to vote. He responded in the same way on 28 August 2012 for October 2012²⁴. I find it difficult to accept the Appellant's explanation that he did not understand the question or Mrs Petersen's evidence that she had not seen the forms until the Appellant's solicitor showed them to the Appellant and in any event the Appellant knew she did not vote. The declaration that the Appellant signed states that it is an offence to give false information on the Form.
40. Whilst the Council Tax documents and Voter Registration Forms may be of little assistance in terms of where the Appellant was living, it is my opinion that these documents in isolation would lead to a conclusion that the Appellant had been living at Fox Hollow alone from January 2011 until October 2013. In addition the manner in which the documents and forms have been completed go to the reliability of the evidence given overall by the Appellant and Mrs Petersen.
41. Whilst I have no reason to believe other than Mrs Petersen's evidence that she owned Fox Hollow; she paid the mortgage; and the Appellant paid all the other

²¹ Appendix 6 of Document 3

²² Appendix 6 to Ms Brunt's proof

²³ Appendix 6 to Ms Brunt's proof

²⁴ Both Forms at Appendix 5 to Ms Brunt's proof

- bills, no documentary evidence was provided as to the ownership or sale of Fox Hollow and no utility bills were submitted.
42. I have a number of concerns about the various planning applications. The applicant in March 2011 was the Appellant's son with an address at Bridge Farm, Ongar and he describes himself as the sole owner of the land; but this was not the case and he is not named as owner on the land registry documents²⁵. The existing use of the land is said to be farm land and one storage barn. There were said to be no existing live-work units on the land but one was proposed.
43. The August 2011 applicant was also the Appellant's son who again gave his address as Bridge Farm and he again described himself as the sole owner. The existing use of the land was the same as before as was the situation with regard to live-work units although according to the Appellant's case by this time both he and his son were living at the barn. Documents provided to support the application include an invoice for poultry nets with the home address and delivery address stated as Ms Petersen at Fox Hollow²⁶ and an invoice for an egg hatcher sent to Mrs Petersen at Fox Hollow²⁷. Mrs Petersen gave evidence that she also kept hens at Fox Hollow at that time.
44. The Appellant's son was the applicant in the May 2014 prior notification²⁸ and his address was again stated as Bridge Farm. The evidence was that the Appellant's son had had no dealing with Oakfield Farm after he left in 2011. The use of the barn immediately before 20 March 2013 or its last use before that date is said to be 'storage of hay, farm equipment and plant. Processing, packaging and despatch of Oakfield Gold Free Range Eggs. Breeding of chickens for sale as P.O.L.' and the form also states that 'this unit is an agricultural barn'. The developer contact details give Miss Taylor-King's email address. It was on the site visit for this application on 12 May 2014 that the Council Officer records the residential accommodation in the barn²⁹.
45. The applicant in the August 2014 application was the Appellant who did not give an address but was c/o his agent. In response to question 10 the response was that there would be the loss of a 'redundant agricultural barn' as a result of the proposal³⁰ and the existing use of the site was also 'redundant agricultural barn'³¹. A photograph of the barn dated 10 October 2014 shows what appears to be a plain front door rather than the domestic one that I saw on my visit and the small window into the kitchen area that I also saw is not present³². The various documents connected with the application and the subsequent appeal, surprisingly in my view, make no mention of the residential use within the barn. Mrs Petersen said that Miss Taylor-King dealt with the planning matters and that she also typed the letters.
46. Whatever the shortcomings of the Council may have been I do not consider it likely that any Planning Officer who was considering applications for a chicken farm and a live-work unit would not have investigated further if they had seen

²⁵ Page 2 of the Appellant's bundle

²⁶ Page 72 of Document 3

²⁷ Page 73 of Document 3

²⁸ Page 97 Document 3

²⁹ Page 111 of Document 3

³⁰ Page 119 of Document 3

³¹ Page 120 of Document 3

³² Photograph 23 page 130 of document 3

the domestic style door that Mr Turff³³ and Mr Kent³⁴ both refer to as having supplied in April/May 2011. The domestic type door was not present in the photographs provided by the Appellant in the March 2011 application³⁵; or during a site visit on 28 April 2011³⁶; or in the photograph dated 10 October 2014.

47. From these various applications, which include proposals for living accommodation on the site, it is apparent that the Appellant knew that planning permission was required for a residential use. His explanation that he did not believe he had to specify any residential use at the barn because it was part of the business use is not credible.
48. On the basis of the evidence presented to the Inquiry by and on behalf of the Appellant the information contained in the prior notification was untrue, and whether it amounted to deliberate concealment of the residential use or not, it calls into question the reliability and veracity of the Appellant's, and those on his behalf, evidence before the Inquiry both written and oral, even though it was given on oath, after the making of an affirmation or in the form of a statutory declaration.
49. The Planning Practice Guidance³⁷ advises that 'If an authority has no evidence itself, nor any from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided that the appellant's evidence alone is sufficiently precise and unambiguous to justify allowing the appeal on the balance of probability'.
50. For the reasons given above I find that the Appellant's evidence, and that on his behalf, and taking into account the evidence given in relation to Council Tax, the Voter Registration Forms and the various planning applications, is not sufficiently precise and unambiguous to satisfy the required burden of proof.
51. The Council and the Appellant made submissions on whether the Appellant could not rely on the four year immunity rule by virtue of deliberate acts of concealment. However, both Parties agreed that this matter only needed to be considered if I found that that Appellant had proved his case that the residential use began before 12 June 2012 and had continued for four years since that date. As I have found that the Appellant has not proved his case, it is not necessary for me to address the detailed legal arguments put forward by both the Appellant and the Council in respect of concealment.
52. The appeal on ground (d) fails.

Conclusions

53. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice with corrections.

Decision

54. It is directed that the enforcement notice is corrected by:

³³ Page 118 of the Appellant's bundle

³⁴ Page 200 of the Appellant's bundle

³⁵ Photograph 1 page 22 Document 3

³⁶ Photograph 9 page 29 Document 3

³⁷ Planning Practice Guidance: Lawful Development Certificates paragraph 006 – although in respect of an application for an existing use LDC the advice is relevant to a ground (d) appeal

- a) the deletion of the words 'edged in red' in part 2 of the notice and the substitution therefor of the words 'hatched black'; and
- b) the deletion of the plan attached to the notice as Annex 2 and the substitution therefor of the plan attached to this decision.

Subject to these corrections the appeal is dismissed and the enforcement notice is upheld.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr D Whipps LATPI	Solicitor
He called	
Mr M King	The Appellant
Mr B Few	Former occupier of northern part of the barn
Mrs S Oliver	The Appellant's sister
Miss S Taylor-King	The Appellant's daughter
Mrs S Petersen	The Appellant's partner
Ms E Muldoon-King	The Appellant's daughter

FOR THE LOCAL PLANNING AUTHORITY

Mr M Fraser	Counsel
He called	
Mr M Leigh BA(Hons) MRTPI	Group Manager for Planning Services
Ms L Brunt	Corporate Fraud and Enforcement Team Leader

DOCUMENTS SUBMITTED AT THE INQUIRY

- Document 1 - Statement of Common Ground
- Document 2 - Amended enforcement notice plan
- Document 3 - Additional submission in response to the Appellant's proof of evidence, submitted by the Council
- Document 4 - Email dated 10 March 2017 from the Council to the Appellant, submitted by the Appellant
- Document 5 - *Bonsall v SSCLG and Rotherham MBC and Jackson V SSCLG and Westminster CC* [2015] EWCA Civ 1246, submitted by the Appellant
- Document 6 - Appeal decision APP/X1545/C/16/3145308, submitted by the Appellant
- Document 7 - Bundle of documents for LDC application, submitted by the Appellant
- Document 8 - Copy of receipt dated 17 February 2011, submitted by the Appellant (a better copy of page 38 of the Appellant's bundle)
- Document 9 - Officer's Report for LDC application, provided by the Council at the request of the Appellant
- Document 10- Extracts from Rightmove, submitted by the Council
- Document 11- Photograph of water meter, submitted by the Appellant

DOCUMENTS SUBMITTED BY THE ADVOCATES AT THE INQUIRY

- Document A - Opening statement on behalf of the Council
- Document B - Opening statement on behalf of the Appellant
- Document C - Closing statement on behalf of the Council
- Document D - Closing statement of the Appellant



Plan

This is the plan referred to in my decision dated: 21 April 2017

by Gloria McFarlane

Land at: Oakfield farm, Hyde Chase, Purleigh, Essex, CM9 6TN

Reference: APP/X1545/C/16/3153960

Scale: Not to scale

