
Appeal Decision

Inquiry held on 28 March 2017

Site visit made on 28 March 2017

by Simon N Hand MA

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

Decision date: 24 April 2017

Appeal Ref: APP/J9497/C/16/3150827

Land at Little Down, Sigford, Newton Abbot, Devon, TQ12 6JS

- 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 Graham Williams against an enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice was issued on 11 April 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the material change in use of the Land from agriculture to a mixed use for agriculture and residential purposes, including: (a) the siting of a portacabin used for residential purposes, sited in the approximate position shown edged in blue on the Plan; and (b) the use of part of an agricultural building for residential purposes, shown edged in green on the Plan together referred to as the Development.
 - The requirements of the notice are 5.1 Permanently cease using the Land for residential purposes; and 5.2 Permanently remove from the Land the portacabin shown edged blue on the Plan; and 5.3 Permanently cease any non-agricultural use of the building shown edged in green on the Plan; and 5.4 Permanently remove all non-agricultural chattels and paraphernalia from the Land.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (d), and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is corrected: by the deletion of the allegation and its replacement by "without planning permission the material change of use to residential use of the portacabin and those parts of the barn labelled "residential" on the attached plan which together are referred to as the Development"; by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice; by the deletion of the requirements and their replacement by "5.1 Permanently cease using the Development for residential purposes. 5.2 Permanently remove all residential chattels and paraphernalia from the Land". Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

Costs Application

2. An application for costs was made by the appellants against the Authority and is the subject of a separate decision.

The Inquiry

3. All evidence at the Inquiry was taken on oath.

The Identification of the Correct Planning Unit

4. After the close of the Inquiry I gave the parties the opportunity to make further representations as to the correct planning unit. The Authority argues the site is actually in a mixed use for residential and non-agricultural workshop and timber business. The residential element of that mixed use did not begin, as is agreed, until 2010, so the mixed use has clearly not been going on for the required 10 years.
5. The appellant argues the Authority were fully aware of the workshop use since their visit in 2005, the disclosure in the PCN and the statement of case for the appeal and accepted the purpose of the inquiry was to determine whether 4 years could be shown for the occupation of part of the barn and the portacabin. It is implicit therefore that they accepted the residential element of the barn and the portacabin formed a separate planning unit, otherwise the four year argument would have been irrelevant. Further evidence for the Authority's position is that they agreed at the Inquiry they could issue a separate notice to deal with the workshop part of the barn so they clearly considered it was a separate planning unit.
6. The appellant goes on to argue the residential use and the workshop/timber business use are not linked and neither is ancillary to the other, they are separate uses occupying separate parts of the site. The two parts of the barn are not accessible from each other, each has a separate entrance and they are used for distinct purposes.
7. The principle authority for defining the planning unit is Burdle¹ which set out three propositions. Firstly, that whenever it is possible to recognise a single main purpose of the occupier's use of his land to which secondary activities are incidental or ancillary, the whole unit of occupation should be considered. Secondly, it may equally be apt to consider the entire unit of occupation even though the occupier carries on a variety of activities and it is not possible to say that one is incidental or ancillary to another. This is well settled in the case of a composite use where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land. Thirdly, it may frequently occur that within a single unit of occupation two or more physically separate and distinct areas are occupied for substantially different and unrelated purposes. In such a case each area used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit.
8. In this case the Authority is arguing the second proposition is correct and the mixed use is residential and workshop/timber business, essentially a live/work unit has been created. The Appellant is arguing the third proposition that the residential use and the non-agricultural use are physically separate and distinct areas used for unrelated purposes. The Authority suggests that if I feel I cannot correct the notice to support their view without injustice then it should be quashed. The appellant argues the notice can be corrected as it only reflects what the Authority has already implicitly accepted.

¹ Burdle v Secretary of State for the Environment [1972] 3 All E.R. 240, 244

9. I agree with the appellant. It was agreed at the opening of the Inquiry that there was no mixed use of residential and agriculture and the appellant argued the Authority were deliberately under-enforcing by not mentioning the timber business/workshop. It was clear from the discussion the Authority was only concerned at this time with the residential use and I was urged to correct the notice to avoid any under-enforcement. The Authority did say they would consider issuing a separate notice to deal with the workshop/timber business depending partly on the outcome of this appeal. The Inquiry then proceeded on the basis that there was no need to consider the ground (b) appeal as the notice would be corrected and the ground (d) appeal was to ascertain whether there had been continuous residential occupation of the site for four years or more. I do not think that now it is possible for the Authority to argue there is composite mixed use on the site for which the correct time period is 10 years and that effectively the notice should be quashed. It could then be re-issued under the second bite provisions. Although both parties referred to the mixed use of the barn in their representations, there was no evidence presented at the Inquiry that the mixed use was an issue and the workshop/timber business was not discussed as this had been set aside for future consideration by the Authority. The Inquiry proceeded on the basis of the 4 year immunity period and this can only be the case if the residential element was a separate planning unit.
10. In my view the residential part of the site can be considered to be separate from the workshop/timber business for the reasons advanced by the appellant. There may have been some domestic storage in the workshop but that does not amount to a mixed use. It seems that most of the wood used for the business is imported to the site so there is no strong functional link between the land and the business. I shall treat the residential use as a separate planning unit from the workshop/timber business.
11. The appellant provided a more detailed plan showing the specific parts of the site being used residentially, the division of the barn and the location of the portacabin. I shall correct the notice to limit the allegation to the residential use of the barn and portacabin. As I saw on my site visit there is a clearly defined garden area to the south of the residential part of the barn. This is not shown on either the detailed plan or the enforcement notice plan nor does it form part of the allegation and I have no evidence as to when it was created. It will not form part of this decision.
12. A further issue with the notice concerns the portacabin. Part (a) of the allegation is "the siting of a portacabin used for residential purposes...". It was agreed at the opening of the Inquiry that the portacabin and the small extension added to it fall within the definition of a building. The evidence is also clear and it was agreed that the portacabin was on the land at the time the appellant purchased it in 2005. The enforcement visit in 2005 noted it was used for storage and as a tea/rest room. It is agreed in the statement of common ground that the residential use of the portacabin began in 2010, and this was after the appellant carried out conversion works to it. It is clear therefore the allegation should be the material change of use of the portacabin to residential use and I am able to correct the notice accordingly. I shall deal with the removal of the portacabin if necessary under requirement 5.2 on ground (f).

13. Given all the above corrections and variations there is no need to consider the appeal on ground (b).

The Appeal on Ground (d)

14. There is no dispute that the barn has been divided almost in half lengthways along its ridgeline and that the southern part has been converted into a residential use. The northern part is used as a workshop. I say divided "almost in half" because a blockwork structure protrudes into the workshop area in one corner to provide a shower/wet room for the residential part. There is no door between the residential and workshop parts of the barn. The barn contains an entrance way with a toilet and sink to one side, a large open plan sitting/dining room and kitchen, with a bedroom at the far end. Off the bedroom in a separate room is an en-suite shower room in the process of being converted into a wet room.
15. The portacabin lies across the other side of the access track to the north of the barn. This has a small extension added to its eastern end and is entered through this extension with a washing machine/utility area in front and a shower, toilet and sink in a small bathroom to the right. The main part of the portacabin to the left has been turned into a double bedroom.
16. There is no dispute that Mr Williams began work to convert the barn in 2011 and these works were complete by 26 July 2011 when Mr Williams moved in. Shortly before this Mr Williams also carried out the works to add the extension to the portacabin and turn it into a bedroom with a small utility and shower room. He says the work to the portacabin was complete by 21 August 2010 and there is no reason to disbelieve this. He says that he lived in the barn and that family and friends stayed in the portacabin. I heard that his sister, his two step sons and his parents all stayed with him from time to time, utilising a mix of the portacabin and the barn depending on their needs. In March 2015 Mr and Mrs Mudge, Mr Williams' mother and step-father, moved permanently into the portacabin and thereafter shared the facilities of the barn. None of this is controversial and I accept it describes what has happened on the site.
17. There is no dispute therefore that the barn and portacabin have together been used residentially and it is clear to me this use has gone on since July 2011. S171B(2) of the 1990 Act provides that no enforcement action can be taken in the case of a change of use to a single dwellinghouse after a period of four years beginning with the date of the breach. The key issue between the parties is whether a dwelling was created in the barn in July 2011? The only room that is in dispute is the en-suite shower room.
18. The case for the Authority is simple. When their enforcement officer, Mr Palmer visited the site on 23 September 2015 he did not see a shower in place. He was shown around the site by Mrs Mudge (Mr Williams was away in France working). His notes of the visit say that neither the portacabin nor the barn had all three elements necessary for day to day living. By that he means washing facilities, cooking facilities and a sleeping/living area. His notes go on to say "I was advised that the door leading off the 'bedroom' in the main building accessed the blockwork structure built into the workshop. That room was intended to be a wet room". At the Inquiry he remembered he looked in the doorway and just saw blockwork, a room clearly in the process of being created.

19. This view that the shower room was a new addition to the barn was reinforced by the responses to the PCN issued subsequent to the enforcement visit. Both PCNs are dated 30 October 2015 and filled in identically. Question 19 is "which of the following facilities currently exist in the Premises". All are ticked, but "Shower/bath" has the word "incomplete" written after it. The Authority argues that clearly there was no shower in the barn in September 2015 and that the shower room was incomplete. This must have been a new addition to the barn and up to then they assume the occupants of the barn used the shower in the portacabin.
20. At the Inquiry Mr Williams explained there had always been a shower in the barn, from when he first converted it. That shower was still in place when Mr Palmer visited and when the PCN was filled in. It is quite true that he was working on the shower to convert it into a wet room at that time and the wet room was incomplete, as they say on the PCN, and as Mrs Mudge told Mr Palmer. But that does not mean there was no shower there or that it was an entirely new facility. This version of events was supported at the Inquiry by Mrs Mudge and by Tracie Williams-Geldard, Mr Williams' sister. A neighbour, Mr Small, said that although he had not seen the shower, he was aware through conversations with Mr Williams that he had one in the barn.
21. On the balance of probabilities I find the appellant's version the more convincing. There is nothing in the written evidence that contradicts it, the site visit notes and the PCN can easily be read two ways, but there is nothing that says a shower did not already exist, that question was never put to Mrs Mudge or Mr Williams. It is possible to look into the shower room and not see the shower, which is round the corner in an alcove, which may explain Mr Palmer's failure to see it on site. I also note that despite taking photographs around the site Mr Palmer did not take a photograph of the incomplete shower room, the only important room in the barn. Mr Palmer explained it was pointed out to him as a future wet room which he took on face value. Mr Palmer had left the authority by the time the PCN responses were received so we do not know what he would have made of them, but it seems someone in the Authority jumped to conclusions, which could have been avoided had the correct questions been asked in the first place. Consequently, I find a dwelling was created in July 2011.
22. Having made that finding I do not need to consider the appellant's subsidiary argument that the *Gravesham*² test, on which the Authority relies, does not even require a building to have a shower or bath in order to be a dwelling.
23. The second argument put forward by the Authority was that even if the barn was a dwelling it had not been continuously occupied for the required 4 year period as required by *Swale*³. In that case it was held by the Court of Appeal that it was not sufficient for a barn to contain all the trappings of a dwelling it must also be actively used as a dwelling for the whole of the 4 year period. The Court held the use must be "affirmatively established". In this appeal the barn was occupied as a dwelling by Mr Williams from the 26 July 2011 onwards. But, Mr Williams left for contract work in France on 31 March 2015. His parents moved into the portacabin just before he left for France. They used the Barn as well as the portacabin, especially as the latter had no kitchen or sitting area. Tracie Williams-Geldard stayed in the barn when visiting her

² *Gravesham Borough Council v SSE* [1982] 47 P&CR 142

³ *Swale BC v FSS & Lee* (2005), JPL 886 (2006)

mother during this period. The Council have no evidence to suggest otherwise, in fact when Mr Palmer visited the site in September 2015 he found Mr & Mrs Mudge in the barn.

24. The four year period extends from 26 July 2011 to 26 July 2015. The last four months of that period is covered by Mr Williams' absence in France. However given the continued use of the barn by Mr & Mrs Mudge and by others, I consider that the use has been affirmatively established. For example, I do not see how the appellant could argue the barn was not being occupied as a dwelling had the Council issued an enforcement notice during that period. In my view the ground (d) appeal is successful for the residential use of the barn.
25. The appellant argues that it follows the portacabin has been used ancillary to the barn as overflow accommodation. The Council contend the portacabin is not within the curtilage of the barn (assuming the barn to be a dwelling) and so there are no ancillary use rights. However, as I determined above the portacabin is within the same planning unit as the barn and to use a building within the planning unit for the same use is not a material change of use. In this case the portacabin has clearly been used as part and parcel of the residential use. There has been no attempt to establish a separate use for example, and it has only been used effectively for overflow accommodation that has always been reliant on the barn for most of its day to day facilities.
26. The appeal on ground (d) succeeds and I shall quash the notice, as corrected. The appellant has requested that I also issue a lawful development certificate under powers granted by s177(1)(c) of the Act. However, such a grant is discretionary and I cannot consider it where no fee has been paid, as the fee for the ground (a) appeal would usually be appropriated to the lawful development certificate instead. The appellant is not disadvantaged as the residential use is rendered lawful on the basis of a successful ground (d) appeal by s191(2)(a). The appeal on ground (f) does not fall to be considered.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Amanda Sutherland LLb (Hons)
She called

Graham Williams	Appellant
Kathleen Mudge	Occupant of the site and mother of the appellant
Tracie Williams-Geldard	Sister of the appellant

FOR THE LOCAL PLANNING AUTHORITY:

Susan Mauger Solicitor Advocate
She called

James Aven	Planning team manager
Keith Palmer	Enforcement officer

INTERESTED PERSONS:

Robin Small	Local resident
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DOCUMENTS

- 1 Statement of Common Ground
- 2 Committee report recommending issue of the enforcement notice
- 3 2005 site visit notes
- 4 2015 site visit notes
- 5 Authority's closings



Plan

This is the plan referred to in my decision dated: 24 April 2017

by **Simon Hand MA**

Land at: Little Down, Sigford, Newton Abbot, Devon, TQ12 6JS

Reference: APP/J9497/C/16/3150827

Scale: not to scale

