



Appeal Decisions

Inquiry Held on 15th and 16th October 2019

Site visit made on 16th October 2019

by P N Jarratt BA DipTP MRTPI

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

Decision date: 26 November 2019

Appeal A Ref: APP/P1133/C/18/3192589

Appeal B Ref: APP/P1133/C/18/3192590

Land and buildings at The Buntings, Higher Woodway Road, Teignmouth, TQ14 9NR

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Jon Bown and Appeal B is made by Mrs Maria Bown against an enforcement notice issued by Teignbridge District Council.
- The enforcement notice, numbered 12/00345/ENF, was issued on 23 November 2017.
- The breach of planning control as alleged in the notice is the unauthorised change of use of part of the land from the lawful use for agricultural purposes to use for residential purposes in that the existing agricultural building (in the approximate position edged blue on the plan attached to the notice) is in use for residential purposes together with use of several caravans sited within the red line on the plan.
- The requirements of the notice are
 - a) Stop using the building in the approximate position edged blue on the plan as a dwelling and remove from the building all items associated with the residential use;
 - b) Stop using the caravans for residential purposes; and
 - c) Permanently remove the caravans used for residential purposes 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) (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
- **Summary of decisions: Notice varied and upheld.**

This decision is issued in accordance with Section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 5 November 2019

Procedural matters

1. All evidence was taken on oath.
2. A Statement of Common Ground was made available after the inquiry commenced (Document 11).
3. It is evident from the appellants' submissions that they have been extremely dissatisfied with the manner in which the Council as local planning authority has determined various matters in respect of The Buntings relating to enforcement investigations and an application for prior approval. They have unsuccessfully sought a judicial review of a committee decision to take enforcement action. They have also complained to the Local Government

Ombudsman who found the Council at fault for not providing information about the land for 7 months although no other fault was found in the Council's planning enforcement investigation.

4. It is not my role to comment on such matters or to attach weight to them in determining these appeals. However, it is for me to consider the grounds of the appeals on the evidence provided. Grounds (c) and (d) are legal grounds where the onus of proof rests squarely with the appellants and the standard of proof is on the balance of probability. No appeal has been made on ground (a), which is that planning permission should be granted for what has been alleged, and therefore the planning merits of the development are not relevant.

The appeal site

5. The site referred to in the notice is a relatively shallow, wedge-shaped site adjacent to Higher Woodway Road in open countryside. A vehicular access and a vehicle pull-in are towards the eastern part of the site, through which a public right-of-way passes. The site contains a general yard area, a small area of cultivation, various plants in containers and a number of outbuildings, a vehicle used for refrigerated storage, and some 5 caravans used variously as a chicken coup, wine making and storage, goat shelter and a former stockman's van adjacent to the barn. None of these vans appeared capable of serving their original purpose as overnight accommodation due to their condition internally and externally. A compost toilet and external sink are situated between the caravans. An open shed and a lean-to dog kennel are also on site. The site comprises part of a larger agricultural holding.
6. The building identified in the notice is single storey and about 180 sqm in area. It is primarily of timber construction with a low pitched corrugated roof having two flues projecting above the roof. There is a stone wall at the eastern end of the barn.
7. Internally the original purpose of the building is still evident as there is a series of former animal stalls, some still with half doors, that have been converted into rooms on one side and a generally open area on the other although this has been divided by two lockable, glazed-door partitions. The western end is occupied by Mrs Bown and her two children and comprises a boot room, shower room, kitchen, bedroom with a stove, and a living area with a large Aga. The eastern end of the barn, beyond the partitions, is occupied by Mr Bown and comprises two bedrooms, a 'winter' room, kitchen/shower room and living room with a stove/smoker at the end where a stone wall has been constructed since the agricultural need for the barn was superseded by the construction of another agricultural building elsewhere on the holding. Both parts of the barn have external doors.
8. The appeal property is occupied by the appellants and their young son and older daughter, who is at College elsewhere in the south west. The manner in which the barn is used for domestic purposes and the lifestyle of the appellants is, by their own admission, somewhat unconventional.

Relevant planning history

9. In August 2012 the Council received a complaint that a caravan sited on the appeal site was being used for residential purposes and that a charcoal

production business was being operated. A Planning Contravention Notice (PCN) was served but not returned.

10. Further investigations were carried out in 2013. Following notification that the barn had been banded for Council Tax for use for residential purposes, the Planning Committee resolved to take enforcement action requiring the residential use of the barn and the production and sale of charcoal to cease. This decision was subject to an unsuccessful judicial review but the enforcement notice was not served in order to allow for further investigations.
11. An application for prior approval of the proposed change of use of an agricultural building to a Class C3 dwelling house was handed to Council officers at their site inspection on 27 February 2015 but this was not validated or determined by the Council (Document 2).
12. Further PCNs were served in November 2015 and July 2016, the latter only being returned in April 2017 following Court action. The response indicated that the barn was being used for residential purposes along with 3 caravans sited next to the barn but that there had been residential use of the land since 2011.
13. The enforcement notice subject to this appeal was served, together with a s215 notice to tidy up the land.
14. An application for a certificate of lawfulness (LDC) (18/02506/CLDE) and a planning application for the retention of the barn as a dwelling (18/0743/FUL), were refused in May 2019 with the latter decision being subject to an appeal that has yet to be determined.
15. A further LCD application for the existing use of the barn as a dwelling was refused in August 2019.

The appeals on ground (c)

16. An appeal on this ground is that there has not been a breach of planning control. The appellants state that a notification of prior approval of the change of use of an agricultural building to a dwelling house under Class MB of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO)¹ was submitted by hand and the fee paid on 25 February 2015, with the 56 day determination period applying from this date. The application was made by Mr Bown.
17. Although the GDPO has been superseded by the current 2015 version, it is the Order in force at the time the development was done. Subject to provisions of the Order and Regulation 60-63 of the Conservation (Natural Habitats, etc) Regulations 1994, Article 3 (1) of the 1995 GDPO grants planning permission for various classes of development subject to any relevant exception, limitation or condition, and in respect of Class MB, subject to the prior approval procedure being followed.
18. Paragraph N of the 1995 GPDO sets out the procedure for applications which the appellants state has been satisfied. The written description indicates that the floor area to be changed is 98 sqm, but the percentage of the barn to be

¹ Now superseded by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

converted is unclearly written on the form as it could be either 50% or 60%. The proposal refers to the installation of recycled windows, and the construction of a stone wall, fire cupboard and chimney. The accompanying two plans indicate the site and that there would be 'no change' to the western end of the barn. The Council has drawn attention to the fact that the plans do not indicate the site as 'the building and any land within its curtilage' but I note Mr Bown's insistence at the inquiry that he had no need for the proposed dwelling to have a curtilage and that he explained his position on this point in the supporting statement to his application (Document 2). The Council wrote to Mr Bown on 11th March 2015 seeking further information regarding this, and referred to other matters including the incorrect fee having been submitted. As no response was received the application was therefore deemed to be invalid. However, I note that it was not until April 2017 that the application was declared invalid and the fee returned (although Mr Bown did not cash the cheque).

19. The appellants believe that the application met the statutory requirements, was validly made and refer to Murrell² in support. They consider that permitted development rights crystallised after the 56 day time period as there was no indication whether prior approval was needed (Orange PCS Ltd³). However, in view of the ambiguity in terms of the extent of the barn to be converted and the absence of a response to matters raised by the Council, the application was treated as invalid as it did not meet the procedural requirements for prior approval applications.
20. Even if there is a failure to respond to a notification within the prescribed period, it does not mean that a development gains planning permissions if it does not meet the conditions and limitations required by the GDPO.
21. Article 5 (b) of the 1995 GDPO states that permission granted by Schedule 2 does not apply in the case of a permission granted if, in connection with an existing use, that use is unlawful. In other words, an unlawful development cannot acquire permitted development (PD) rights. On the basis of Mrs Bown's evidence (considered in the ground (d) appeal below) the west part of the building was occupied by her and her children as a dwelling and had been so used as such since 23 May 2013. Prior to that, the use of the building had been for agricultural purposes as a barn. The eastern part at the time the application for prior approval was made was primarily in agricultural use as a hay store. However, as that application was the notification for change of use of part of that building which formed part of a larger building which contained an unauthorised use, it follows that it cannot benefit from PD rights. I am not persuaded by Mr Bown's claim that the eastern end of the barn would be a separate dwelling to that of his wife's occupation of the western end. In fact, I note that a planning application made by Mrs Bown in 2018 was for retrospective planning permission for the conversion of the whole building to 'a C3 dwelling'.
22. The plans indicate the construction of a new chimney extending the external dimensions beyond the original by 400mm which conflicts with paragraph MB.1(g) and which I do not consider to be *de minimis*, or covered by MB.1

² Murrell v SSCLG[2010] EWCA Civ 1367

³ R(Orange PCS Ltd) v Islington LBC [2006] JPL 139

(i)(i)(bb) as 'other services'. I have had regard to a recent appeal decision elsewhere in Devon in this regard.⁴

23. I do not share the Council's view that the eastern end of the barn was not 'a building used for agriculture and which is so used for the purposes of trade or business'. There is no requirement to provide accounts and the barn formed part of a registered smallholding. Although Mr Bown operated a business elsewhere and lived in Bristol, he visited the barn at weekends to manage the livestock and in the week his stockman carried out that role.
24. Planning permission can only be gained under Class MB if the site (the building and any land within its curtilage) was used solely for an agricultural use, as part of an established agricultural unit, on 20 March 2013. The Council highlights that the site has been used for a range of uses and not solely for an agricultural use and refers to Mr Bown's own admission that it has been used for agriculture, agroforestry, horticulture, charcoal production since 2011 and mushroom cultivation since 2013, to support this view. Mr Bown describes his method of agriculture to be that of permaculture. Certainly, there has been a mix of uses occurring up to the relevant date, including the use of the barn or caravans as overnight accommodation by workers on the holding, but not to the extent that these constitute a mixed use. From what I can assess, and on the balance of probability, the barn was being used as part and parcel of the agricultural use albeit for ancillary uses. Although the agricultural use has been low key I note that a stockman has been employed since 2011 which supports the appellant's position.
25. It is a condition of any planning permission granted under a general development order (Article 3(1)) which is likely to have a significant effect on a European protected site, that any such development shall not be begun until after the local planning authority has given written approval that following appropriate assessment, any significant adverse effect can be ruled out. No such notification was issued by the Council. The proposal was for one new residential unit within 10km of two protected sites and as such likely to have a significant effect. To avoid the need for a full site-specific appropriate assessment in such cases a schedule of contributions indicated that a sum of £943 would mitigate any adverse effect. The appellant did not pay that sum despite the Council writing to Mr Bown that he owed more but that was ignored. This alone indicates that the appeal on ground (c) fails.
26. Mr Bown considers that he has met the mitigation requirements through the widening of the nearby footpath and the planting of trees but nevertheless is still prepared to pay the outstanding amount.
27. I find it surprising that it was suggested at the inquiry that as the appellant is now prepared to pay the shortfall amount, as the Inspector I am able to act as the competent authority and indicate that the required contribution has been paid satisfying Reg 73 of the Habitat Regulations. This totally ignores the statutory requirements set out in the GDPO which represent more than mere technicalities.
28. The appellants consider that the issue of 'estoppel' arises in view of an officer's Planning Committee report of 26 September 2017⁵ at paragraph 12 referring to

⁴ APP/Y1138/W/18/3216073; LPA Doc 12b.

'if the planning application for Prior Approval for the change of use of an agricultural building (the barn) from agricultural use to a dwelling had been validated and determined, it is highly likely that it would have been approved as there was no grounds (sic) to refuse it.' I find the suggestion that the Council is estopped from enforcement action on this point to be of no merit whatsoever as the application had neither been validated, nor was the decision contrary to the officer's recommendation.

29. I therefore conclude that even if the application for prior approval had been validly made, it would not have met the limitations and conditions of Class MB of the 1995 GDPO for the reasons given above. The appellants have not shown on the balance of probability that use of the barn as a dwelling house benefits from planning permission and therefore a breach of planning control has occurred.

30. The appeal on ground (c) therefore fails.

The appeals on ground (d)

31. An appeal on this ground is that it is too late to take enforcement action because the change of use occurred more than four years prior to the service of the notice on 23 November 2017, and its use has continued unbroken since then.

32. Mrs Bown states that she started living in the western end of the appeal property with her children on 23 May 2013 and Mr Bown indicates that it had been converted by himself and a local farm hand⁶. The substantial nature of the evidence presented⁷, including the statutory Declaration of Rosa-May Bown, indicates on the balance of probability that this is the case.

33. However, the allegation in the notice relates to the whole of the barn which at the time of the Council's pre-arranged inspection of the property by Mr Hobbs and Mr Davies on 27 February 2015, appeared to have some evidence of residential occupation at the western end and non-residential uses at the other such as the storage of hay and the keeping of livestock, with some animals enjoying both ends of the barn.

34. In evidence, Mr Hobbs explained that there some items associated with residential use such as an Aga, sofa, table and chairs but they appeared to be in an open part of the barn used as a rest room that may accommodate an overnight stay, although there was no evidence of bedrooms or a bathroom. On the basis of what they had observed, the officers were both of the opinion that the barn was not been used as a dwelling, despite there being certain facilities available, these did not seem sufficient to allow a residential use to occur or to be of a sufficient level to constitute the creation of a dwelling. The claim that there were no beds or bedrooms at the time of the site visit, and that Mr Hobbs did not observe any partition between the west and east ends of the barn was strongly contested by the appellants at the inquiry and I note Mrs

⁵ LPA Docs 5e and 5f

⁶ Although Mr Bown stated in response to question S of the PCN dated 18 April 2017 that his wife and daughter had moved into the west end in August 2011, he accepted that this had been an error.

⁷ Including Council Tax bills from September 2013, other bills and invoices, statements from third parties. Appendices referred to in paragraph 3.1 of Mrs Bown's PoE

Bown's explanation that the absence of personal possessions represents her personal lifestyle.

35. No file note of the February 2015 site meeting, or the submission of any internal photographs taken at the time, were available to the inquiry. Mr Hobbs accepted that he had not viewed all the rooms, although he said that his colleague who has since left the Council had done so, and he could not recall the barn being divided internally by the glazed screens (although if they were open at the time, this is something that may not have registered).
36. Whereas Mr Bown does not accept that the building is in use as a single dwelling house but that it is presently two dwellings, Mrs Bown certified the direct opposite in her 2018 application for retrospective permission, which contradicts her statement at paragraph 5.9 in her PoE in respect of her husband requiring his own environment. I accept that there are lockable glazed partitions between both parts and they each have cooking and washing facilities. Mr Bown's evidence indicates that one of the rooms at the eastern end of the barn was available for the occupation of his son. Although a shared outside toilet detached from the barn does not necessarily determine whether a building is a dwelling, or for that matter, lead to a conclusion that it could not serve two dwellings, it adds weight to my conclusion about the nature of the building. As a matter of fact and degree, I consider the use of the eastern part of the barn for residential purposes to be more akin to a residential annexe to the more established residential use of the western end which is only separated by glazed screens that do not offer the privacy expected in separate dwellings. As the eastern part of the barn forms part of a larger single dwelling⁸ and was converted sometime in 2015, it is not possible for the building to have achieved immunity from enforcement action. Prior to 2015, at best the barn was in a mixed residential and agricultural use which would need to have been in that use for a period of 10 years to become immune from enforcement action.

Concealment

37. The Council alleges that the use of the appeal property as a dwelling house from May 2013 was deliberately concealed from the Council and this defeats immunity from enforcement action⁹. This is demonstrated through Mr Bown's response to a letter of 12 May 2014 regarding an enforcement report¹⁰; his failure to disclose at the February 2015 site visit that his wife and children lived in the barn¹¹ (albeit that he replied to a question as to whether he lived there); reference to a fridge/freezer being used to store meat for sale without indicating it was also used as part of the residential use; admitting he occasionally stayed in the building without mentioning his wife and children's living arrangements; providing, at best, an ambiguous response to the officer's letter following the site visit regarding residential use; the prior notification application provided no information about the use of the western part of the barn; and, his attitude to and failure to respond to PCNs.
38. Whether this amounts to deliberate concealment in the context of the Welwyn judgement as the Council believe or just the actions of an individual either

⁸ The west end of the barn appears to satisfy the Gravesham tests (Gravesham BC v SSE [1984] 47 P&CR 142)

⁹ Jackson v SSCLG and Westminster CC [2015] EWCA Civ 1246 and Welwyn Hatfield BC v SSCLG [2011] UKSC 15

¹⁰ LPA doc 10c

¹¹ The officers considered that the absence of personal possessions did not support a material change of use to a dwelling but on Mrs Bown's own evidence, she has few personal possessions.

trying to protect the home of his wife and children through a mistaken belief that all he needs to do is to spin out the process until the passage of time makes the use of the barn lawful, represent the ends of a spectrum. In reality, Mr Bown has chosen to be highly selective in the provision of information that the Council needed to carry out their enforcement duties. In his own words at the inquiry "I have not been untruthful, just not providing all the facts".

39. This has directly led to the Council concluding that a material change of use to a dwelling had not occurred when visiting the site in February 2015 based on what they observed and the responses provided by Mr Bown. Mr Bown explains his behaviour is down to medical issues over the last few years, although his health is now under control through medication (Document 6). Whilst this may go some way to explaining his behaviour, it does not justify it.
40. Mr Cannon, a local resident, acknowledged that there had been 'history' between himself and Mr Bown and considered that the appellants had known that the occupation of the property was unlawful and set out to frustrate the Council.
41. Taking all matters into account it would be easy to conclude that there has been positive concealment on the part of Mr Bown with the aim to deceive the Council. Against this must be weighed information provided to the Council by complainants about the alleged residential occupation of the appeal site; and it is difficult to believe that there was deliberate concealment by Mrs Bown bearing in mind that Council Tax was being paid for residential use of the building and the children were regularly transported or walking to their respective schools, amongst other things. Notwithstanding this, it was a remarkable coincidence that Mrs Bown and the children were staying at a local hotel for a birthday celebration on the date that Mr Bown had suggested as a suitable date for the officers of the Council to inspect the property.
42. The principles on deception and public policy derived from *Welwyn Hatfield* are: that positive deception is a matter integral to the planning process; that deception was directly intended to undermine the planning process; it did undermine that process: and, the wrong-doer would profit from the deception if the normal limitation period were to enable him to resist enforcement. On the evidence before me, and on the balance of probability, the appellants have carried out positive deception in order to undermine the planning process.
43. I have had regard to the appeal decisions referred to by the appellants but they were determined on the basis of the relevant facts of those cases which were site specific and different to the facts relating to these appeals.
44. In the light of my earlier conclusion that the building has not achieved immunity from enforcement action and that there has been deliberate concealment, the appeals on this ground fail.

The appeals on ground (f)

45. The appellant considers that as the caravans are no longer used for residential purposes, it would be going beyond what is necessary to require their removal.
46. At my site inspection it was evident that none of the caravans were being used as residential accommodation and I doubt if they could be so used now due to

their condition. They all seemed to be in use for a purpose associated with agriculture.

47. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and the requirements of the notice in this case do not exceed what is necessary to remedy the breach. However, whilst it is the case that the usual approach would be to require their removal, Mr Hobbs for the Council, accepted that if they were removed, they could be brought back onto the site if they were then used in connection with lawful use of the site. I agree with this pragmatic approach and believe little would be achieved in removing the caravans that have reverted back to agricultural use.

48. The appeals on this ground succeed and I shall vary the notice accordingly.

The appeals on ground (g)

49. The appellants believe that 24 months are necessary "given the disturbance that would be caused".

50. The appellants make reference to the Human Rights Act, the Children's Act and the Public Sector Equality Duty in respect of the loss of a home for the children and that it is necessary to have the best interests of the children at the forefront of the mind.

51. The appellants have a house in Bristol which is rented out and the compliance period provides adequate time for the service and expiry of a notice to gain access to the property. There is also a family owned property in Starcross and, in time, a new property at Starcross Garage will also be available, which has planning permission for three flats of which one would be for his daughter and another for Mr Bown and his family¹². It is not the case that the family would not have the ability to house themselves and I fail to see how any hardship would arise. Naturally, with all house moves, some disturbance would arise, but I see no reason why this should be materially different to the disturbance associated with the family's move to the appeal property in 2013, albeit that the children are older. Whilst the interests of the children are very important I note that the eldest daughter is at a college in Exeter and no evidence has been submitted indicating that a change to the younger boy's schooling would lead to an unacceptable level of disruption that could have adverse consequences.

52. I consider that the 12 month compliance period specified in the notice is a perfectly adequate time for the appellants to make alternative domestic arrangements. The protection of the public interest cannot be achieved by means which are less interfering of the appellants' rights. They are proportionate and necessary in the circumstances and hence would not result in a violation of the appellant's rights under Article 8 of the European Convention on Human Rights.

¹² Although Mr Bown under cross-examination said that he has no intention to stay in the flat as he cannot manage stairs.

53. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. One of the protected characteristics is that of disability which includes a physical or mental impairment that has a substantial and long term adverse effect on a person's ability to carry out normal day-to-day activities. Whilst I have had regard to Mr Bown's recent physical health problems and to the medical statement attached at Document 6, it does not follow from the PSED that the appeal should succeed.

54. The appeals on this ground fail.

Conclusion

55. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation.

Decisions

56. The appeal is allowed on ground (f) and it is directed that the requirements of the enforcement notice be varied by the deletion of the words "(c) Permanently remove the caravans used for residential purposes from the land". Subject to this variation the enforcement notice is upheld.

P N Jarratt

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY: Josef Cannon, of counsel, instructed by the Borough Solicitor

He called	
Stephen Hobbs	Senior Enforcement Officer
Anna Holloway BSc MSc	Senior Planning Officer
MRTPI	

FOR THE APPELLANT: Megan Thomas, of counsel

She called	
Mrs Maria Bown	Appellant
Jack Hodgkinson	Helper on the holding
Dean Moss	Friend
Andy Millar	Friend
Jon Bown	Appellant

INTERESTED PERSONS

Ms A Eden, District and Town Councillor
Robert Cannon, local resident

DOCUMENTS

- 1 Appearances (appellant)
- 2 Application documents for prior approval of proposed change of use of agricultural building to dwelling house
- 3 Opening statement by the LPA
- 4 Opening for appellant in each appeal
- 5 Young saver account statement; Regency Poultry receipt; unsigned statement of fact by Trevor Southam and Julie Southam (appellant)
- 6 Medical statement for Jon Bown dated 6/9/19 (appellant)
- 7 David Evans written evidence
- 8 LPA notification of inquiry date and venue
- 9 Sketch plan of part of appellant's agricultural holding (appellant)
- 10 Email from Nick Davies (LPA) to Jon Bown dated 9 April 2015
- 11 Statement of Common Ground
- 12 Extract of para MB of GPDO 1995 (appellant)
- 13 LPA closing submissions
- 14 Closing for appellants