
Appeal Decisions

Site visit made on 18 November 2019

by Jessica Graham BA(Hons) PgDipL

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

Decision date: 4 December 2019

Appeal A: Ref APP/J9497/X/18/3218382

The Old Stables, Middle Stoke Farm, Holne, Newton Abbot, Devon TQ13 7SS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs Pamela Melville against the decision of Dartmoor National Park Authority.
- The application Ref 0246/18, dated 8 May 2018, was refused by notice dated 13 July 2018.
- The application was made under section 191(1) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is unrestricted full-time residential use of The Old Stables.

Summary of Decision: The appeal is dismissed

Appeal B: Ref APP/J9497/C/19/3224891

Land at The Old Stables and Middle Stoke Farm, Holne, Newton Abbot, Devon TQ13 7SS

- 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 Mrs Pamela Melville against an enforcement notice issued by Dartmoor National Park Authority.
- The enforcement notice was issued on 5 February 2019.
- The breach of planning control as alleged in the notice is:

“Planning Permission reference 0049/01 (copy attached) was granted subject to conditions on 17 April 2001 by the Dartmoor National Park Authority to allow for full time residential use of both of the two flats on the Land, provided that the named owner/applicant and/or her partner are occupiers of one of the said two flats.

The following condition has not been complied with:
The permission shall be for the benefit of the applicant, Miss Pamela Neal, and her partner only, while she and/or her partner occupy one of the units/flats.

Planning Permission reference 9/26/008/94/02 (copy attached) was granted subject to conditions on 12 April 1994 by the Dartmoor National Park Authority to allow for the conversion of a redundant barn into two holiday flats on the Land.

The following condition has not been complied with:
The proposed holiday units shall be used solely as holiday accommodation ancillary to Middle Stoke Farm in connection with its use as an agricultural holding and shall not be occupied between 15 January and 15 March in any year.”
- The requirements of the notice are:

Unless Mrs Melville (nee Neal) and/or her partner/husband occupy one of these units,

cease the non-holiday residential use of The Old Stables and Middle Stoke Farm and ensure that the said flats are not occupied between 15 January and 15 March in any year.

- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(b),(c),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is allowed, and the enforcement notice is quashed

Costs application

1. An application for costs was made by Mrs Melville against the Dartmoor National Park Authority (DNPA) in connection with Appeal A. That application is the subject of a separate Decision Letter of even date.

Background

2. Both appeals concern a former agricultural barn at Middle Stoke Farm. In 1994 the DNPA granted planning permission ("the 1994 Permission") for the residential conversion of the barn to create two holiday flats, subject to three conditions.¹ Condition (a) was that the two flats should be used solely as holiday accommodation ancillary to Middle Stoke Farm in connection with its use as an agricultural holding, and should not be occupied between 15 January and 15 March in any year.
3. The permitted conversion was completed by 1996, and two flats created: a ground floor flat known as The Old Stables, and a top floor flat known as Middle Stoke Farm.
4. In 2001 an application was made under s.73 of the 1990 Act for "Removal of Condition (a) of Planning Permission 9/26/008/94/02 (holiday accommodation only) to allow residential use, Middle Stoke Farm and The Old Stables, Holne". The DNPA granted planning permission ("the 2001 Permission") subject to two conditions.² Condition (1) was that the permission should only be for the benefit of Miss Pamela Neal (the current Appellant) and her partner, "while she and/or her partner occupy one of the units/flats".
5. It is important to be clear from the outset that the effect of the 2001 Permission was NOT to remove condition (a) from the 1994 Permission. This is because the outcome of a successful s.73 application is the grant of a wholly new planning permission, rather than the amendment of an existing one. There are, then, two separate and distinct grants of planning permission relating to the two flats created by the conversion of the barn: the 1994 Permission, and the 2001 Permission. It is common ground that both permissions have been implemented, and both remain extant.
6. Central to both Appeal A and Appeal B is the question of whether or not the two flats have been occupied in accordance with condition (1) of the 2001 Permission. I shall therefore resolve this matter first, and then determine each of the appeals in the light of my finding.

¹ Ref 9/26/008/94/02 dated 12 April 1994

² Ref 0049/01 dated 17 April 2001

The question of occupancy

7. The 2001 Permission permits the residential use (rather than use solely for holiday accommodation) of both The Old Stables and Middle Stoke Farm, on condition that one of them is occupied by the Appellant and/or her partner.³
8. There is no dispute that The Old Stables has been continuously let out, for residential occupation by a series of tenants, since its creation in 1996. The disagreement between the parties is whether or not the Appellant and/or her partner have concurrently occupied Middle Stoke Farm throughout that period, in accordance with condition (1) of the 2001 Permission.
9. The Appellant contends that she and her partner have occupied the flat known as Middle Stoke Farm continuously since 1996. Her evidence is that in August 2014 they purchased a second home in Bude, which they use for holiday purposes, while continuing to occupy Middle Stoke Farm as their principal private residence: they keep their belongings there, supervise their local business interests from there, and it is their address for income tax, pension, and other official matters.
10. The Appellant advises that in December 2014 they took in a lodger on a "rent a room" basis. As I saw at my site visit, the lodger has the sole use of a bedroom with en suite bathroom; the Appellant and her partner have the sole use of two bedrooms and a bathroom; and the other facilities provided by the sitting room, dining area, kitchen, utility area and lobby are all shared. I understand that the first lodger was Ms Sue Blagburn, who has since moved on; a new lodger was in residence at the date of my site visit.
11. In support of her case, the Appellant has provided copies of correspondence from HMRC and The Pension Service addressed separately to her, and to her partner, at Middle Stoke Farm; correspondence from Nationwide Building Society and Torbay Hospital addressed to her partner at Middle Stoke Farm; a copy of the 2018/2019 Council Tax bill for Middle Stoke Farm; copies of letters dated March 2019 from South Hams District Council confirming that the Appellant and her partner are on the Register of Electors at Middle Stoke Farm (for election purposes only); and a copy of Ms Blagburn's "Lodger Licence", dated 18 November 2014.
12. The case made by the DNPA is that in various communications they received from the Appellant, the "address for correspondence" provided was that of her property in Bude, rather than Middle Stoke Farm. It also contends that Middle Stoke Farm was advertised as available to rent in 2011, and that from 2014 onwards, a company known firstly as "Adventures with Horses" and subsequently "Awareness with Horses CIC" was registered with Companies House at Middle Stoke Farm, and had a website identifying Sue Blagburn as running the company from that address. The DNPA also points out that "sources independent of the LPA have stated" that the Appellant occupies one of the flats on a very limited and occasional basis.
13. The occupiers of the neighbouring property, Middle Stoke House, contend that over the period 24 January 2018 to 1 December 2018, the Appellant

³ Enforcement action commenced by the DNPA in March 2018 was informed by the DNPA's erroneous interpretation of the 1994 and 2001 Permissions as permitting residential occupation of one flat by the Appellant and/or her partner, while limiting the use of the other to holiday occupancy. The DNPA subsequently accepted that this interpretation was incorrect.

and/or her partner visited Middle Stoke Farm 13 times, and stayed overnight on three occasions. They also contend that Ms Sue Blagburn was the tenant of the three-bedroom flat known as Middle Stoke Farm in its entirety, rather than a lodger within that flat, and have provided a print-out of the "property history listing" for Middle Stoke Farm on the "Zoopla" website, on which an unfurnished 3 bedroom flat is shown as listed for rent on 6 October 2011, and labelled "let". They have also provided extracts from Ms Blagburn's "Adventures with Horses" website; a screenshot of the Companies House website showing that business registered at Middle Stoke Farm; information from the "Zoopla" website concerning the Appellant's property in Bude; and copies of correspondence with Ms Blagburn and with the Appellant.

14. In weighing the evidence, it is important to be clear that (somewhat unusually, for a condition of this type) the terms of condition (1) of the 2001 Permission do not specify that one of the two flats must be occupied as "the sole or main residence" of the Appellant and/or her partner. Nor do they limit occupation to a quantified portion of each year, or between specified dates in each year. Rather, the condition simply requires that the Appellant and/or her partner "occupy one of the units/flats."
15. This being so, it is not necessary to establish whether or not the Appellant and/or her partner occupy Middle Stoke Farm as a main residence. The fact that there are periods of time when the Appellant stays at her other property, and visits Middle Stoke Farm irregularly, does not preclude her from being regarded as continuing to "occupy" Middle Stoke Farm. Neither does the use of her other property as an address for correspondence.
16. The contention that Ms Blagburn occupied Middle Stoke Farm in its entirety, as opposed to lodging there while the Appellant and her partner were in occupation, is said to be evidenced by the print-out of the property history listing from the "Zoopla" website. However, the Appellant states that the listing shown there in fact relates to The Old Stables. I note that The Old Stables is also a 3 bedroom flat, and "Middle Stoke Farm" is used as part of its address, but the small interior photographs provided on the website print-out are not of sufficient quality for me to determine, with any degree of confidence, whether they depict The Old Stables or Middle Stoke Farm. In any event, I regard the "Lodger Licence", signed by the Appellant and Ms Blagburn and dated 18 November 2014, as persuasive evidence that Ms Blagburn had the sole use of a bedroom with en-suite bathroom within Middle Stoke Farm and the shared use of other facilities, rather than occupying the flat in its entirety.
17. Given that Ms Blagburn appears to have occupied this lodging as her sole or main residence, it is not surprising that it is the address at which she registered her business, and the address she included on her web pages. Nor is this inconsistent with the Appellant's evidence that she and her partner continued to occupy Middle Stoke Farm while Ms Blagburn was lodging there.
18. In my judgment, the evidence currently before me indicates that on the balance of probabilities, the Appellant and her partner have occupied Middle Stoke Farm since its creation in 1996, and continue to do so.
19. I therefore conclude that The Old Stables and Middle Stoke Farm have been occupied in accordance with the terms of the 2001 Permission. There has been no breach of condition (1) to that Permission.

Appeal A

20. Where (as here) a LDC for an existing use is sought, the onus is on the Appellant to demonstrate that on the date of the application for the LDC, that use was lawful. Under the provisions of s.191(2)(a) of the 1990 Act, the use would have been lawful if, on that date, no enforcement action could have been taken against it.⁴
21. It is therefore necessary to consider whether or not (1) the unrestricted residential use of The Old Stables is lawful because it complies with existing Planning Permission; or (2) the use does not comply with existing Planning Permission, but the time for taking enforcement action against that breach has expired.
22. It is clear that there is no extant grant of Planning Permission which would allow the unrestricted residential occupation of The Old Stables. The 1994 Permission restricts its use, along with that of the flat known as Middle Stoke Farm, to holiday accommodation only. The 2001 Permission permits the residential use (rather than the use solely for holiday accommodation) of both The Old Stables and Middle Stoke Farm, on condition that one of them is occupied by the Appellant and/or her partner.
23. The unrestricted residential occupation of The Old Stables would therefore be in breach of both the 1994 and the 2001 Permissions. This means that there is no basis for granting an LDC on the grounds that the use at issue complies with an existing grant of Planning Permission.
24. The other potential ground for lawfulness is where a breach of planning control has taken place, and has continued beyond the relevant time limits for enforcement set out in s.171B of the 1990 Act. In other words, if the Appellant can demonstrate that The Old Stables has been occupied for unrestricted residential use, in breach of the existing Permissions, for longer than the relevant enforcement period then a LDC should be granted.
25. For the reasons set out above, I have found that the residential use of the Old Stables has not, in breach of planning control, been “unrestricted”. Rather, its residential use has been concurrent with the occupation of the other flat by the Appellant and/or her partner, and so has complied with the terms of the 2001 Permission. There has been no breach of planning control, and consequently no opportunity for that breach to gain immunity from enforcement through the passage of time.
26. I therefore conclude that there is no basis on which the unrestricted residential use of The Old Stables could be considered lawful, and so the requested LDC should not be granted.
27. The Appellant, and other interested parties, have made representations about the merits of permitting independent dwellings with unrestricted occupation on this site. However, my decision on the requested LDC cannot be influenced by those considerations: it is concerned only with whether or not the unrestricted residential use of The Old Stables is lawful. For the same

⁴ In the interests of clarity, it is worth noting here that the enforcement notice which is the subject of Appeal B was not issued until the year after the LDC application, such that on the date the LDC application was made, the requirement of s.191(2)(b) – that the use did not constitute a contravention of any of the requirements of any enforcement notice then in force – was met.

reason, I make no comment on whether unrestricted residential use might be acceptable in planning terms. That would be for the DNPA to decide, if an application for planning permission was made.

Conclusion on Appeal A

28. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the unrestricted full-time residential use of The Old Stables was well-founded, and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

29. This appeal against the enforcement notice is made on a number of grounds. The first of these is ground (b), which is that the alleged breach of planning control has not occurred as a matter of fact.
30. The first part of the breach of planning control alleged by the notice is that the flats known as The Old Stables and Middle Stoke Farm have been occupied in breach of condition (1) of the 2001 Permission. For the reasons set out in paragraphs 7-19 above, I have determined that the occupation of both flats has complied with the terms of this condition, such that there has been no breach of planning control.
31. In the interests of clarity it is worth noting that the second part of the breach of planning control alleged by the notice is that the flats have been occupied in breach of condition (a) of the 1994 Permission. While it is common ground that the occupation of the flats has not complied with this condition, this would only give rise to a breach of planning control if their occupation also failed to comply with condition (1) of the 2001 Permission. In other words it is only necessary, to demonstrate that a breach of planning control has not occurred, to show that the occupation of the flats has complied with the terms and conditions of *either* the 1994 *or* the 2001 Permission.
32. I have found that the flats have been occupied in compliance with the 2001 Permission, such that the alleged breach of planning control has not occurred. I shall therefore allow the appeal on ground (b).

Conclusion on Appeal B

33. For the reasons given above I conclude that the appeal should succeed on ground (b). Accordingly the notice will be quashed. In these circumstances the appeal under grounds (c) (f) and (g) of section 174(2) to the 1990 Act as amended does not need to be considered.

Formal Decisions

34. **Appeal A** is dismissed.
35. **Appeal B** is allowed, and the enforcement notice is quashed.

Jessica Graham

INSPECTOR