



Appeal Decisions

Site visit made on 3 August 2020

by **P N Jarratt BA DipTP MRTPI**

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

Decision date: 7 August 2020

Appeal A: APP/D0840/C/19/3224293

Appeal B: APP/D0840/C/19/3224294

The Shed, Bogsworgy Road, Townshed,, TR27 6ES

- 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 Huw Jones and Appeal B by Mrs Sally Jones against an enforcement notice issued by Cornwall Council.
 - The enforcement notice, numbered E19/00034, was issued on 29 January 2019.
 - The breach of planning control as alleged in the notice is the material change of use of a building to a use comprising residential purposes, and the building operations to construct a veranda extension and associated hardstanding, the construction of a shed with a mixed use comprising of a laundry and for butchery relating to the keeping of pigs and associated development.
 - The requirements of the notice are
 - (1) Cease the use of the land outlined in red on the plan attached to the notice for residential purposes.
 - (2) Cease the use of the building in the approximate position marked green on the plan for residential purposes.
 - (3) Remove the cooking facilities from the building in the approximate position marked green on the plan.
 - (4) Remove the bathing facilities from the building in the approximate position marked green on the plan.
 - (5) Remove from the land the timber veranda and associated hardstanding area in the approximate position marked yellow on the plan.
 - (6) Cease to use the building in the approximate position marked blue on the plan for the purpose of laundry and butchery relating to the keeping of pigs.
 - (7) Disconnect and remove all services connected to the building in the approximate position marked blue on the plan.
 - (8) Remove from the land the building in the approximate position mark blue on the plan.
 - (9) Remove all materials and debris from the land resulting from compliance with requirements 1-8 above .
 - The period for compliance with the requirements is 6 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (b), (d), (g) of the Town and Country Planning Act 1990 as amended. Appeal B is proceeding on the grounds set out in section 174(2) (b), (d), (g) but as the prescribed fees in Appeal B have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
 - **Summary of decisions: notice varied, appeals dismissed and planning permission refused.**
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Appeal C: APP/D0840/X/19/3224296

The Shed, Bogsworgy Road, Townshed,, TR27 6ES

- 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 Mr Huw and Sally Jones against the decision of Cornwall Council.
 - The application Ref PA/18/08144, dated 21 August 2018, was refused by notice dated 9 January 2019.
 - The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is as a self-contained independent dwelling house.
 - **Summary of decision: appeal dismissed.**
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Procedural Matters

1. The appellants challenge the validity of the notice on ground (b) stating that it is unclear what is meant by 'associated development'. It is also unclear whether the alleged material change of use for 'residential purposes' refers to the use of the building as a dwelling house or for other purposes, perhaps ancillary to the nearby properties also in the ownership of the appellants.
2. The Council states that associated development is works and other operations which facilitate the use of the main building and its extensions such as drainage. The requirements of the notice specify the removal of services. Notwithstanding the Council's explanation I consider that the allegation would have greater clarity if it refers to the provision of services rather than to associated development and I intend to correct the notice accordingly. I am satisfied that the notice can be corrected without injustice to the parties in view of the requirements referring to the disconnection and removal of services.
3. It is the Council's understanding based on the response to a Planning Contravention Notice (PCN) in July 2018 that the residential occupancy lessens during the winter months as the main occupancy reverts to another building. As the building could be used for another use without supplanting the residential use, its description reflects this.
4. As the appellants responded to the PCN in the following terms 'Residential – used during most of the year for holiday letting and during the winter as a dwelling', it is perfectly reasonable for the Council to refer to use for residential purposes.
5. Where legal matters are appealed, the onus of proof rests with the appellant and the standard of proof is on the balance of probability.
6. **The site and relevant planning history**
7. The site comprises a recently constructed shed in the north east corner of a larger field in open countryside. To the north and east of the shed are converted former agricultural buildings, including the Tractor Shed, currently used as holiday dwellings. To the north is a horticultural operation.
8. The single-storey timber shed has been converted into a dwelling comprising a single bed/sitting/kitchen room and a separate bathroom. The entrance door and windows are located on the south west elevation where a veranda has been constructed. Adjacent to the shed is a small timber building that the Council describe in the allegation as having the purpose of a laundry and butchery relating to the keeping of pigs. The appellants state that wider site is used as a smallholding with several pigs being kept on site.

9. Planning permission was granted in February 2011 for the erection of an outbuilding and siting of a polytunnel in an adjacent field to Rowan Barn (PA10/08681).

Appeals A and B: the appeals on ground (b)

10. An appeal on this ground is that the alleged breach has not occurred as a matter of fact.
11. The building permitted was for an open fronted store and toilets and in a different position to the actual siting of the appeal building. I am satisfied that the notice is not defective on its face and from my inspection of the site it is evident that the alleged breach, as corrected, has occurred as a matter of fact.
12. The appeal on this ground fails.

Appeals A and B: the appeals on ground (d) and Appeal C

13. In Appeals A and B, the appeals on ground (d) is that at the time the notice was issued, it was too late to take enforcement action against the matters stated in the notice. The relevant date is therefore is 29 January 2015 and if a material change of use occurred more than four years before the issue of the notice it is therefore immune from enforcement action by virtue of s.171B(2) and lawful by virtue of s191(2). In respect of Appeal C, that relevant date is 21 August 2014 which is four years before the date of the application.
14. The building was constructed in 2013 on the basis of the 2011 permission, although it was sited about 6.2m to the south east of its approved position. It was initially used in relation to butchery courses being held at the property to provide toilet and washing down facilities. I note the butchery business was dissolved in October 2015. The storage of building materials and residential use starting in May 2014.
15. The separate shed at the side of the appeal property was constructed in 2016 and the veranda in February 2018. In view of these dates, the veranda and the separate shed have not achieved immunity from enforcement action through the passage of time and it is clear that the ground (d) appeals and the LDC appeal relate only to the building erected in 2013.

The appellants' case

16. Statutory declarations of Huw Jones and Sally Jones indicate they originally lived in Rowan Barn which was sold to the appellants' son in 2014 but they retained The Tractor Barn (let out as a holiday unit), The Shed (converted to a self-contained residential unit) and The Field Barn (unconverted with an extant permission for use as a holiday unit). They declare that they occupy the shed from Easter to Autumn half term. In further statutory declarations they refer to works referred to in the affidavit of Laurence Sutherland undertaken in February 2015, to replace timber doors to make the accommodation more secure and better insulated. The works were undertaken as their boat was being sold which was also used as temporary accommodation during the summer. They declare that they split their time between the boat and The Shed during the summer of 2014 and the Shed was not put to any other use during periods of non-occupation. Sally Jones declares that she helped Deborah Fowler with her small business on several occasions during 2014 when she and her husband stayed at The Shed when assisting Ms Fowler.

17. In support of the appellants' claim that they lived in The Shed from May 2014, they state that booking entries for Rowan Barn, the Dairy Barn and the Tractor Barn corroborate their evidence. Additionally the glass was purchased on 30 April 2015 as evidenced by the copy receipt. Photographs taken on 20 March 2015 indicate the use of the outdoor space as a garden and for barbequing but these do not represent evidence of a residential use taking place.
18. Ms Fowler's statutory declaration indicates that she drove Mrs Jones home on several occasions during May and June 2014 and could see that the Jones's 'were living in The Shed'.
19. The appellants have submitted invoices which indicate that the septic tank was purchased in September 2013, polypipe in January 2014, and machinery and plant hire in February 2014. An advance payment document for electrical work is dated 29 January 2014 which relates to a connecting cable to a new Field Barn, lighting to a 'new garden room' and extra lighting in the Tractor Barn. Invoices for various electrical items are dated March 2014
20. The appellants support their case by reference to *Thurrock* regarding the relevant period for immunity, to *Panton and Farmer* in respect of circumstances not having changed since the conversion of the building and its subsequent occupation; and, to *Gravesham* regarding the definition of a dwelling house¹.

Third Party Representations

21. A number of third party representations have been made by neighbours, the key points of which relate to the date when the appellants started to live in The Shed. Mr and Mrs Parker state in their unsigned affidavits that Mr and Mrs Jones started to live in the building from June 2015. The Parkers moved to the area in March 2015 and at that time the Jones's were living in Rowan Barn. The conversion of The Shed started in March 2015 and was completed in June 2015 at which time the Jones's moved in. The building has not had 'uninterrupted use'.
22. Mrs Mary Combe states that the Shed has not been in residential use for 4 years and has only been occupied for the summer months and until 2018, this occupancy has been carefully concealed.
23. Mr Roger Peek, Mr L Sutherland and Mrs J Sutherland separately confirm in their sworn affidavits the same dates as the Parkers and refer to the appellants living on their boat in the Helford River in 2014 during the summer and since 2015 occupied the Tractor Barn during the winter. Since starting to use the outbuilding in June 2015, the Jones's have extended and added to the building.
24. Mrs Sutherland disputes the declarations by the Jones's that Rowan Barn was sold to their son in 2014 when the Land Registry entry indicates that this occurred on 17 December 2015.
25. In Mr L Sutherland's affidavit, he declares that the Jones's lived on their boat in the summer months but at no time in 2014 did the Jones's occupy the Shed although they occasionally attended to their properties to prepare them for new tenants. He declares that until early June 2014 The Shed was used for the

¹ *Thurrock BC v SSETR* [2001] EWHC Admin 128
Panton & Farmer v SSETR & Vale of White Horse DC [1999] JPL 461
Gravesham BC v SSE & O'Brian [1982] 47 P&CR 142; [1983] JPL 307

storage of building supplies, wood and gardening equipment. The exterior openings were fitted with loose timber barn doors and the interior consisted of a plain concrete slab with no ceiling, windows or other means of natural lighting. There are no facilities such as a kitchen bathroom or bedroom. There was one light socket and one light fitting. A water supply existed and a septic tank was installed in the field but there was no pipework connection. In February 2015 the Jones's asked Mr Sutherland to help to install weatherproof doors on the shed so they could use it as temporary accommodation. This work started in February 2015 with the clearing of the interior and the rehanging of the existing barn doors which assisted weather proofing. Copies of various invoices relating to the work have been submitted by Mr Sutherland who further explains that Mr and Mrs Jones engaged a builder to fit an insulated floor and piping from the septic tank for the toilet and bathroom. The Jones's also employed an electrician and a plumber who installed lighting, power, toilet, washing facilities, bath, LPG central heating and to install insulated walls and ceiling boards. Over the next four months Mr Jones installed double glazed doors. The barn doors remained in place on the exterior the building and acted as shutters. The Jones's then started their occupancy of the shed in early June 2015. At this time the shed still had no kitchen facility so washing up was done in the bath and preparation done on the table in the open plan area of the shed.

Assessment

26. It is clear that The Shed currently satisfies the *Gravesham* criteria as a dwelling as it has the ability to afford to those who use it the facilities required for day to day private domestic existence. What is uncertain is the date when the conversion of the building to a dwelling was sufficiently advanced for the four year period to begin to run from for the purposes of s.171B(2). It is necessary to look at the date of the physical works when the building was capable of providing viable facilities for living, rather than the date when all the works were complete; and, when the use actually commenced. Neither is decisive. It can be summarised from *Welwyn Hatfield*² that it is a matter of fact and degree as to when the change of use occurs; it is incorrect simply to regard the commencement of actual residential after conversion works as giving rise to a change of use. Relevant considerations in this case include the former use of the building; its physical state at the relevant date, the actual use of the building at that date; the intended use.
27. On the basis of the appellants' evidence, on the relevant date of 29 January 2015 (four years before the issue of the notice), the appellants would have been residing in The Tractor Barn and the appeal property would have been unoccupied from the autumn half term in 2014. Whilst they state that they lived in the appeal property in the summer of 2014, it is necessary to consider what conversion works had been carried out at that time to establish commencement of a material change of use. According to the submitted evidence, very little had been done. It was not weathertight, had no natural light and only had limited services. The appellants have submitted no evidence to indicate that bathroom or cooking facilities had been installed which suggests that any facilities that existed were very limited and fall short of the *Gravesham* criteria. The appellants may have occupied the property as their summer residence on an intermittent and informal basis and may not have

² *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15

been averse to living in a 'glamping shed' (or as the agent subsequently explained that the appellants were happy living in a basic level of accommodation). It seems therefore that until the works to re-hang the existing doors and to install the glazed doors commenced in February 2015, and for further works for the conversion of the building to be carried out, those facilities normally associated with being required for day to day private domestic existence were not present in the property.

28. The appellants state that the appeal property was not occupied in the winter months and it is necessary to consider whether the residential use has been sufficiently continuous over the four-year period such the Council could have taken enforcement action at any time. During periods of non-occupation in the winter and with the shutter doors closed, The Shed would not have been identifiable as a dwelling but as a simple agricultural building as it was only the later addition of the veranda that has subsequently domesticated its appearance. The Council would not, therefore, necessarily have been aware of a change of use or had the opportunity to consider the expediency of enforcement action. If the use ceased during the period, the time could not count towards immunity, as the *Panton and Farmer* principle only applies when lawful use rights have been accrued.
29. A surprising admission in a letter dated 22 May 2019 does not assist the appellants' case, in which the Jones's wrote to 'Chris and Loz' (Parker) and stated '...so we decided to live in the shed that was already built and not being used, in order to summer let the tractor barn. We do know that this was flouting the planning laws but we hadn't kept it a secret from any of our neighbours and we did not feel we were harming anyone'. Although the Jones's did not expressly state any dates in this letter, it clearly indicates the intentions of the appellants.
30. I note also that there has been a disagreement between the appellants and Mr Sutherland regarding the work carried out to the appeal property but that is not relevant to my findings.
31. I do not find the appellants' evidence clear and unambiguous. Indeed there is significant contrary evidence pulling in the opposite direction to reach a conclusion that on the balance of probability the effective date for a material change of use from the agricultural building to a dwelling occurred after the relevant date and accordingly the change of use is unauthorised and not immune from enforcement action.

32. The appeals on this ground fails

Appeal A: the appeal on ground (a)

33. An appeal on this ground is that planning permission should be granted for the unauthorised development.
34. The main issues are whether the development of a dwelling is appropriate in this location and the effect that the development has on the character and appearance of the area.
35. The adopted Cornwall Local Plan Strategic Policies 2010-2030 provides for the conversion of buildings where retention would lead to an enhancement of the immediate setting and does not involve substantial works. Policy 7 requires that the buildings should be 10 years old or greater and have a lawful use. This

building bears little external resemblance to that building approved in the 2011 permission and is constructed some 6.2m from the approved site. As such, any claimed degree of compliance with the planning permission cannot be valid. Nonetheless, the building was constructed in 2013 and, being a structure over four years old, is immune from enforcement action. It is, however, less than ten years old as required by Policy 7.

36. At the time the building was constructed, its use was as a store. Reference is made to the storage of wood and garden machinery and the building also being used for butchery in association with pig rearing which took place on the remainder of the field. The building and land are considered to have had an agricultural use.
37. The building is domestic in appearance with large areas of glazing and a veranda in contrast with the utilitarian appearance of the approved building and one which would not be uncharacteristic of a rural landscape. Domestic activities would be discernible from the public right of way some 25m away. This together with domestic paraphernalia around the building and the presence of parked cars would mean that the building would no longer be dismissed as a benign agricultural building in a distinctly rural landscape. This would not result in an enhancement to the building or to the character and appearance of the area.
38. The appellants refer to the building being on previously developed land and able to benefit from Policy 21 which supports the re-use of previously developed land and buildings. The definition of previously such land within the National Planning Policy Framework specifically excludes land and buildings used or last used for agricultural purposes and Policy 21 is not applicable.
39. The site is within a part of the Cornwall and West Devon Mining Landscape World Heritage Site and is typical of the site description. However, the site does not contain any of the features of inscription and the development is unlikely to adversely affect heritage value of the locality. However, the residential use neither conserves nor enhances the WHS and would not reflect the quality and distinctiveness of the locality quality.
40. In concluding on the issues, the proposal would be contrary to the policies of the Development Plan and would have an adverse effect upon the character and appearance of the area.
41. The appeal on this ground fails.

Appeals A and B: the appeals on ground (g)

42. An appeal on this ground is that the time for compliance with the requirements is too short. It is stated that the appellants would be rendered homeless in the short term and a variation of the compliance period to 12 months is requested to allow alternative short term accommodation to be found. However I see no reason why the appellants would be rendered homeless when they use the adjacent Tractor Barn in the winter months and presumably are able to manage the letting arrangements.
43. The Council advise that if the appellants find that the compliance period is not going to be met, it is within the Council's power to extend that period through Section 173A (1) (b) of the Town and Country Planning Act 1990

Conclusions

44. For the reasons given above, I conclude that in respect of Appeals A and B that the notice is incorrect in its reference to associated development and I shall correct the notice accordingly prior to upholding it.
45. In respect of Appeal C, 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 use of the building as a self-contained independent dwelling house was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended

Decisions

Appeal A: APP/D0840/C/19/3224293

Appeal B: APP/D0840/C/19/3224294

46. It is directed that the allegation in the enforcement notice be corrected by the deletion of the words 'associated development' and be replaced with the words 'provision of services'. Subject to this variation the enforcement notice is upheld and planning permission is refused.

Appeal C: APP/D0840/X/19/3224296

47. The appeal is dismissed.

P N Jarratt

Inspector