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# Appeal Decision

**by Gareth Symons BSc(Hons) DipTP MRTPI**

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

**Decision date: 10 February 2021**

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**Appeal Ref: APP/W3330/C/20/3260489**

**Higher House Farm, Huntham, North Curry, Taunton TA3 6EF**

- 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 Anne Kemp against an enforcement notice issued by Somerset West and Taunton Council.
  - The enforcement notice was issued on 21 August 2020.
  - The breach of planning control alleged in the notice is failure to comply with condition No 03 of a planning permission Ref: 36/19/0027 granted on 6 November 2019.
  - The development to which the permission relates is "Variation of condition 3 (holiday use) of permission 36/07/0016". The condition in question is No 03 which states that: *The property shall be used for holiday accommodation purposes only and shall not be occupied as a person's sole or main residence. The site owner or operator shall maintain an up to date register of the names and addresses of all occupiers of the property on the site for the duration of their stay and shall make this information available at all reasonable times to the Local Planning Authority.* The notice alleges that the condition has not been complied with because the barn is being used as a permanent dwelling.
  - The requirements of the notice are: Comply with Condition 3 of planning permission ref 36/19/0027.
  - The period for compliance with the requirements is: Three months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 as amended.
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## Decision

1. It is directed that the Enforcement Notice (EN) is varied by deleting "Three months" from under section 6 and replacing that with "Nine months". Subject to this variation, the appeal is dismissed and the EN is upheld.

## Procedural Matters

2. Prior to determining the appeal, I sought the views of the appellant and the Council about not needing to visit the appeal site. This is because there are no planning merits to consider and both sides had submitted sufficient evidence for me to consider the points in dispute under the two grounds of appeal pleaded. No objections were raised to this approach. I am satisfied that no prejudice has been caused by not visiting the site.
3. Under the two grounds of appeal pleaded, I cannot have regard to any matters of planning merit such as whether the building is well suited to holiday accommodation and if the holiday occupancy condition should be lifted. I also cannot consider exempting the appellant from the restrictions of the condition.

I shall though consider the time given to comply with the EN under the ground (g) appeal below.

### **The ground (b) appeal**

4. An appeal on this ground is based on the claim that the matter stated in the EN has not occurred. In this case, the appellant needs to show, on the balance of probability, that the holiday occupancy condition has not been breached. Despite the details about persons who have holidayed at the property, there is countering very strong evidence from persons with first hand local knowledge writing in support of the appeal, and the Parish Council, which refers to concerns that the appellant would be evicted from her home. The Council also state that all postal correspondence is sent to the address at Higher House Farm, the appellant's GP is local, and she is registered to vote locally.
5. I acknowledge that for health reasons and the coronavirus pandemic travel restrictions, the appellant's normal lifestyle of moving around the UK and abroad have not been possible. However, the balance of the evidence clearly shows that when the EN was issued, and for what appears to be a prolonged period, the appellant was living at the dwelling and was not there for holiday purposes. Planning condition on planning permission ref: 36/19/0027 restricts the property to be used for holiday accommodation purposes only.
6. Given the above, there is no alternative other than to find that the condition has been breached. Consequently, the ground (b) appeal cannot succeed.

### **The ground (g) appeal**

7. I acknowledge from the Council's point of view that there is an enforcement history related to the occupancy of the appeal property and it was considered expedient to take enforcement action. However, at the time of my decision the coronavirus pandemic is still having a serious adverse effect on people's normal lives and the ability to travel, and even contemplate holidays. Moreover, there is the appellant's age and health to take into account.
8. In ordinary times a three months compliance period would be reasonable. However, in these extraordinary times, there is a very strong case for extending the compliance period to nine months. That would strike the right balance between bringing the breach of planning control to an end, but also allow the appellant the time needed to plan for hopefully some normality from personal and business perspectives later this year. That nine months would run from the date of this decision.
9. To this extent the ground (g) appeal succeeds.

### **Conclusion**

10. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with a variation.

*Gareth Symons*

INSPECTOR