



Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 April 2021

Appeal Ref: APP/F2605/C/20/3258396

The Pigman's House, Reepham Road, Bawdeswell, Dereham, Norfolk NR20 4RX

- 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 Stephen Vince against an enforcement notice issued by Breckland District Council.
 - The enforcement notice was issued on 7 July 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the building on the land from agricultural use to use as a single residential dwelling house.
 - The requirements of the notice are:
 - Permanently cease the use of the land as a single residential dwelling.
 - Remove all fixtures and fittings associated with the residential use.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the appeal documents, a decision can be reached on the papers.
3. Paragraph B.9 onwards of the Procedural Guide - Enforcement Notice Appeals - England November 2020 states 'Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the appeal without a site visit'. As there are no other grounds of appeal other than a legal ground, the appeal has therefore been decided without a site visit.

Background

4. The appeal concerns a detached, single storey, building set back from the road, known as The Pigman's House, which is situated in a large rectangular plot in a rural area. Within the site there are two detached outbuildings which the appellant states are used for storage and storage/garage. Directly to the west of the site is Wood Farm House, now in separate ownership, which was the hub of a farm previously owned by the appellant's father. This is also situated in a large rectangular plot with an access track on the western side. The access

track leads to the rear of the house where there is another dwelling known as The Granary, converted from some of the former farm buildings. This is now occupied by the appellant's former wife. The former farm buildings and The Granary sit within a much larger rectangular plot of land that abuts The Pigman's House and Wood Farm House. The current arrangement and occupation of these dwellings is as a result of a court order made in 2016 following the appellant's divorce in 2012.

The ground (d) appeal

5. This ground of appeal is that at the date when the notice was issued, no enforcement action could be taken. The burden of proof in an appeal on this ground lies with the appellant. As such, he needs to show, on the balance of probabilities, that the use of the building as a single dwelling house began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter. The notice was issued on 7 July 2020 so the appellant needs to show that the material change of use began not later than 7 July 2016 and continued without material interruption.

The appellant's case

6. The appellant submits two statements from himself, a statement from his former wife, who lives at The Granary, and a statement from a former agricultural labourer, Mr A J Smith, who used to work for the appellant's father. All the statements are signed and dated and contain the signatory's address as well as a statement of truth but the documents are not sworn. The appellant also includes a Wood Farm ownership plan, a copy of a decision notice from the 2017 planning application and a copy of the Council's Planning Contravention Notice (PCN), as well as a Final Comments statement.

The Council's case

7. In addition to commenting on the appellant's case, the Council rely on their appendices A – M to support their position:
 - A: Planning application 3PL/2016/1376/O and decision, withdrawn
 - B: Planning application 3PL/2017/0339/O and decision, refused
 - C: 2017 site photographs by the Planning Officer
 - D: 2019 site photographs
 - E: Aerial and Street View photographs
 - F: Land Registry documents
 - G: Planning Contravention Notice and reply
 - H: Enforcement delegated report
 - I: Statement from visiting officer from Anglia Revenues and Partnerships
 - J: Statement from a member of Bawdeswell Parish Council
 - K: Correspondence between Council and appellant

- L: Welwyn Hatfield Borough Council v Secretary of State for Communities and Local Government [2011] UKSC 15
- M: Gravesham BC v Secretary of State for the Environment [1982] 11 WLUK 42.

Assessment

The erection of The Pigman's House

8. The appellant's father purchased Wood Farm and 48 acres of land in 1952. This included Wood Farm House, various agricultural buildings and land surrounding those buildings. He ran it as a mixed use farm (arable, pigs, poultry) and at the same time ran a separate business as an antiquarian.
9. Mr Smith worked at the farm between 1952 to 1963. He recalls assisting the appellant's father with the construction of The Pigman's House in 1956 which was an Arcon prefabricated house with windows and doors. Inside there was a bedroom, living area and a food preparation area, though he does not recall a cooker. The bathroom contained a wash hand basin but no fitted bath, only a tin bath and Mr Smith helped to build a separate earth closet (outside WC). The electricity supply was connected by overhead wire to Wood Farm House and waste water from the sink and basin discharged via a pipe into a ditch. Fresh water came from the same well that served the farm and Wood Farm House.
10. The appellant's father initially furnished it with basic furniture including a bed, a table and chairs and a wardrobe and the first tenant was Mr Leslie Gatfield. He looked after the pigs and was succeeded by other farm workers, there being a stockman there in 1963 when Mr Smith left.
11. These recollections are confirmed in part by the appellant who was a young boy at the time but he did remember when Mr Gatfield was there, even though he himself was away at boarding school in term time. He confirms there were successive stockmen that occupied The Pigman's House but he did not know their names. By 1968, the appellant's father retired and the agricultural land was sold in 1969 leaving the buildings I have described in the Background section above.
12. From this information I find that the building was built as a dwelling and the intention was to use it as a dwelling. The Council consider it was originally an agricultural building especially as there was no bath or WC, in effect that it was built as a restroom, and quote *Gravesham*.¹ However, the building under consideration in *Gravesham* did not contain either a bath or a WC. There was only a living room with a fireplace, a kitchen and a bedroom. The judge agreed with the second Inspector's approach in that case, which was to make a decision based on the facts of the case. The Inspector found that the building was a dwelling house and McCullough J agreed as it had all "the facilities required for day-to-day private domestic existence". As such, the absence of a bathroom and inside WC does not necessarily prevent a building that is used for residential purposes from being a dwelling house.
13. Furthermore, both the appellant, his former wife and Mr Smith refer to The Pigman's House as an Arcon building. Mr Smith even recalled where it came

¹ Gravesham BC v SSE & O'Brien [1982] 47 P&CR 142; [1983] JPL 307

from, which was a nearby village. From the photographs of the site I can see that these buildings have a distinctive but practical design. I am aware from my own knowledge that there were several types of prefabricated dwellings built all around the country after the Second World War. The appeal building appears to have most of the original Crittall windows and the Crittall front door even has an original letterbox.

Use 1956-1969

14. I turn now to consider the use of The Pigman's House. It would appear from the appellant's statement that that it was his father's intention to provide agriculture workers' accommodation for a stockman. The Pigman's House was furnished by him and it appears from the statements that it was used as a single dwelling house for many years.
15. After the appellant's father bought Wood Farm, I find it was one planning unit in a mixed use comprising residential use, agricultural use and commercial use (antiquarian). There was a physical and functional connection with all of the holding. This is because, for example, Wood Farm House is set back from the road and all the farm buildings are behind it, accessed from the same driveway that serves Wood Farm House and all the uses were operated by the appellant's father.
16. Following the construction of The Pigman's House, Mr. Smith states that the two outbuildings adjacent to The Pigman's House were erected after 1963 and were used "For the working purposes of the farm". The appellant recalls he built one of them in 1968 which may have been before the appellant's father ceased farming. It therefore appears at this stage that Wood Farm was still one planning unit in a mixed use, except the residential use now took place in two separate dwellings. I reach this conclusion as The Pigman's House was owned by the appellant's father and occupied by his employee who made use of the adjacent outbuildings and piggeries to the rear in the farmyard in the course of his work.
17. After the erection of The Pigman's House a new vehicular access may have been created from the main road to access the dwelling or there may have been an existing access, which explains why this site was chosen for the dwelling. However, I have no information on this matter. The Pigman's House is orientated towards the west, overlooking the front garden of Wood Farm House and it may have been that the stockmen accessed The Pigman's House from the farmyard to the rear in the same way that Wood Farm House is approached from the rear/side².
18. The Council submit, if the building was not used as a rest room, then it was used "for farm workers ancillary to the lawful use of the original site for agriculture" but it is not clear what is meant by this statement. The Pigman's House relied on Wood Farm House for an electricity supply and fresh water from a shared well. However, there is no information within the appellant's case to suggest that the stockmen used The Pigman's House as ancillary accommodation to Wood Farm House.
19. Mr Smith recalls that The Pigman's House was used to check or test turkey eggs for fertility. However, this recollection is prefaced by his statement The

² Aerial photographs show cars parked to the rear of Wood Farm House

Pigman's House "was at all times and has always been a house". To my mind checking eggs for fertility would not necessarily amount to a material change of use from residential as it was probably an activity carried out on the kitchen table. Mr Smith also describes moving items of furniture around The Pigman's House in 2011/2012 and that he recognised they were the original furnishings from 1956.

20. Following the cessation of the agricultural use in 1969 and the sale of the agricultural land, it is my view that Wood Farm House, The Pigman's House and the former agricultural buildings were still in one planning unit, although the mix of uses had changed. The planning unit was still all in one ownership but the mixed use now comprised residential and commercial (antiquarian). It appears to have remained as one planning unit after the death of the appellant's father in 2005, but the use changed to a single use of residential.
21. It appears that The Pigman's House was never rented to anyone or used as a 'grace and favour' property after farming ceased. In the appellant's response to the Council's PCN he states, in answer to question 11 about the use of the building, that it was "lived in by farm workers until after my father stopped farming. Then it was occasionally used by guest/visitors to Wood Farm House until after my mother died in 1966". This is inconsistent with his later Statement of Case for the appeal. However, the latter document is more detailed than the PCN response and the appellant has had more time to prepare it and to order his recollections. I therefore give more weight to the 1968/69 dates for ceasing the agricultural use and selling the agricultural land.
22. It was only after the appellant's bankruptcy in 2010, marital breakdown in 2011 and subsequent divorce that the planning unit changed. After the court order of 2016 the singular planning unit became three planning units as described in the Background section above. The later use of The Pigman's House is discussed in due course.
23. Therefore, having regard to all the submissions, I find that The Pigman's House was not only built as a dwelling in 1956 but up until at least 1969 it was used as a single dwelling. The residential use therefore became established in terms of planning law.

Use after 1969

24. The Council submit that the residential use of the building was abandoned after the agricultural use ceased. If a building or land remains unused for a considerable time, in such circumstances that a reasonable person might conclude that the previous use had been abandoned, then the concept of abandonment applies. It has been held in the Courts that there are four criteria to consider namely, the period of non-use, the physical condition of the building, whether there has been any other use and the owner's intentions as to whether to suspend the use or to cease it permanently. The Council refer to *Hartley*³ which is the most well-known case on the matter but other cases⁴ since have developed criteria and reconsidered the criteria to assess abandonment.

³ *Hartley v MHLG* [1970] 1QB 413

⁴ *Nicholls v SSE and Bristol CC* [1981] JPL 890, *Trustees of Castell-y-Mynach Estate v Taff-Ely BC* [1985] JPL 40, *Hughes v SSETR* [2000] 80 P&CR 397, *Bramall v SSCLG* [2011] JPL 1373

25. From 1969 the appellant states The Pigman's House was used to provide accommodation for buyers in connection with the antiquarian business and by relatives who came to stay from abroad. This is confirmed by his former wife, who had knowledge of the building from 1990. She states it was not only used by visitors but also by her son for a while. As such, it appears that there were periods of non-use in between infrequent residential use.
26. From the photographs I have seen and the descriptions of the building from Council staff, it would appear that the external appearance of the building was not regularly maintained. The windows and doors appear not to have been painted and brambles etc were not cut away. However, the avocado coloured bathroom suite removed from Wood Farm House was installed in The Pigman's House in 2009, which was the first time the building had a fitted bath, replacing the former tin bath. This would suggest some maintenance was carried out and at some point, the earth closet was replaced with an internal WC.
27. The appellant does not describe any other use taking place in the building but he does state his father installed furniture at The Pigman's House that he had inherited, such as an antique four poster bed. It could be that the building was used for storage purposes as there were also two antique wardrobes. His father also fitted extra locks due to thefts/attempted thefts when the building was not occupied.
28. As to the owner's intentions, notwithstanding the lack of external maintenance, it would appear that both the appellant and his father regarded The Pigman's House as a second home. This is the case even though until very recently the level of accommodation was basic, compared to today's standards. The residential use was neither actively suspended nor did it cease, given the infrequent guests and the limited internal updates. However, the appellant submits no evidence that the building was registered for Council Tax purposes when that tax was introduced in the early 1990's. There is also insufficient evidence to establish that the building was used for storage purposes.
29. Having regard to the four criteria, I apportion substantial weight to the physical condition of the building, which had been allowed to deteriorate over time, whether consciously or unconsciously, by the owners. As such, to any passers-by, it would have appeared that any residential use had been abandoned. This was certainly the view taken by the Council's Tax and Planning Officers who visited in 2016 and 2017. Internal refurbishment appears only to have occurred after 2008. The appellant's submissions in relation to the other criteria are more open to interpretation such as the appellant's mixed recollections (PCN and Statement of Case details) over the intermittent use by guests/visitors and I therefore give them limited weight. It is therefore my conclusion that for planning purposes residential use of The Pigman's House was abandoned.
30. It therefore follows that I now need to assess whether the appellant's residential use of the building as a single dwelling house began more than four years before the notice was issued and continued, without material interruption, for a period of four years thereafter.

2011 onwards

31. The appellant states that the 2008 financial crisis led to the loss of his business in 2010⁵ and the breakdown of his marriage⁶. Around about this time the family moved back to Wood Farm House as the loans were called in on their previous abode. The loans were also called in on Wood Farm and so the appellant's former wife, together with her mother and a friend of the appellant, bought Wood Farm House in July 2011⁷. Following the appellant's bankruptcy and marital breakdown he had nowhere to live other than a caravan, which he moved from place to place, until the appellant and his former wife agreed he could move into The Pigman's House. According to the Land Registry documents, this had been bought by the appellant's former wife in October 2011.
32. He remained at The Pigman's House until March 2015 when he bought The Granary from the mortgagee at an auction. The only documents that support his use from 2011 are an undated photograph taken by his former wife in 2011 and Mr Smith's statement. The photograph shows the caravan sited next to The Pigman's House with two older-style dining chairs on the grass outside and a wooden patio table. Mr Smith states he helped the appellant around 2011/2012 renovate and improve The Pigman's House and moved the furniture around. The photograph does not show residential use as a single dwelling but I find the appellant's claims are plausible having regard to Mr Smith's statement, the Land Registry documents and his former wife's statement.
33. The appellant occupied The Granary from its purchase until October 2016, when he then returned to The Pigman's House after the court order in October 2016, which finalised all the assets. Between spring 2015 and September 2016 the appellant's son, who was by now in his early 20's, occupied The Pigman's House. The appellant states that his son was pursued for non-payment of Council Tax during this period and was even issued with a court summons. He is unable to produce the paperwork as evidence as the Council refused his Subject Access Request. The Council has not provided this information as part of its evidence.
34. It would appear that the residential use of The Pigman's House first came to the attention of the Council in September 2019. At a site visit in October 2019 the Council's Enforcement Officer entered The Pigman's House and saw one room was laid out as a lounge. Thereafter he was asked to leave but photographs taken at the time show a vehicular access from Reepham Road, new landscaping and two new windows within the building. Through some of the windows personal possessions can be seen such as ornaments.
35. However, the Council were aware earlier than 2019 that the building may have been occupied as in November 2016 the appellant submitted a planning application for a replacement dwelling for The Pigman's House. The application form was dated 12 November 2016 and in answer to the question "Please describe the use of the site" and "Is the site currently vacant?" the appellant stated "Dwelling house/amenity space" and "No". The Planning Officer advised the appellant that The Pigman's House did not look like a dwelling and if it

⁵ Norwich County Court 1182 of 2010

⁶ Decree absolute dated 18 April 2012

⁷ Evidenced in Appendix F, Land Registry documents

- could not be demonstrated that it was in use as a dwelling, any new application would be refused.
36. The Planning Officer's site visit photographs were taken in winter 2017 and are contained in Appendix C. They show an avocado coloured bath and toilet and what appears to be a paint pot lying outside on the ground; what appears to be a new breeze block wall inside The Pigman's House and apparently new draw curtains covering the windows. There is also a metal farm gate open to one side of an access from Reepham Road and a hard surfaced track leading into the site. Whilst in themselves these items are not evidence of single residential use, I find they do support the appellant's overall submissions.
37. This though is not the first time that a Council Officer had visited the site as in June 2016 a Council Tax Officer states she visited the site. The purpose of her visit or what caused her to visit is not explained other she states she is a "Visiting Officer". She states she found a building that was overgrown and covered in debris with no windows. This statement is inconsistent with later photographs which show that the original windows are intact. Her witness statement records her conversation with the appellant: "Mr Vince was claiming this was occupied by himself since 11 December 2016". However, if the site visit took place in June 2016, it is not clear how he could be claiming occupation from December 2016 and so it is not clear where or when this conversation took place. What is clear is that the Council had evidence that the appellant was paying Council Tax on The Pigman's House from 11 December 2016, with the benefit of a single occupier discount.
38. There was another Planning Officer site visit in spring 2017 in connection with the appellant's second application for a replacement dwelling. The photographs in Appendix B show that the appellant was starting to improve the appearance of the garden. The appellant's 2017 planning application was dated 14 March and the same statements are made regarding the existing use as stated in the 2016 application.
39. The 2017 application was accompanied by some information from the Valuation Office Agency and a letter from Mr Smith. I have not been provided with copies of those documents but it would appear that the Council were not satisfied in 2017 that The Pigman's House was occupied. The first reason for refusal of the application states that the appellant has not demonstrated that the building has been occupied as a dwelling for the previous ten years.⁸ However, the officer did not inspect the interior of the building at either of her site visits.
40. The Council also rely on aerial and Google Street View images to support their case. Whilst Google Street View images can assist with understanding what may have happened with regard to the use of a building, they are not determinative and none are included in the Council's Appendix E. The aerial images dated 2010, 2013, 2014 and 2017, provide very limited information as to whether the residential use was continuing or not, especially when tree canopies cover a large part of the site.

⁸ Reference is made to Policy DC3 of the Council's Core Strategy 2009 and the need to demonstrate residential use for the previous 10 years to accord with this policy but I have not been provided with a copy as it is now superseded.

41. In addition, the Council rely on photographs taken by a parish council member in February 2017 and these show a car parked outside The Pigman's House and that a window was open in the house. The photographer though did not enter the building. Finally, it is stated that Council records show The Pigman's House was registered for Council Tax purposes as being empty between 1 April 2015 until 11 December 2016. This information is inconsistent with the appellant's recollections and he attempted to obtain the paperwork which he asserts would have supported his son's occupation, to no avail.

Conclusion

42. It is therefore considered in the absence of any significant information to the contrary that the appellant did indeed begin living in The Pigman's House towards the end of 2011. In arriving at my conclusion, I am conscious that the appellant's case for residential use from 2011 relies more on statements and recollections than documents. It is inevitable when seeking to document a material change of use that occurred in times past that sometimes some of the evidence is inconsistent. An example of this is the response to the PCN regarding use by visitors up to 1966 and the later Statement of Case which described use by visitors over a longer period. Notwithstanding this, having regard to the totality of the evidence and its overall consistency, I find the appellant's evidence is sufficiently precise and unambiguous to support the existence of a single residential use of The Pigman's House.
43. The test for the evidence is "on the balance of probabilities", namely, what is more likely than not. That balance of the evidence need only be slightly more than half in order to satisfy the test but that is not to say that what has been submitted by those who challenge the appellant's evidence is untrue.
44. The Council's final submission is that in the event it is found that a residential use has been "ongoing since 2010" then that use was actively concealed by the appellant. They refer to the *Welwyn Hatfield*⁹ case and submit that the appellant had the intention of obtaining immunity from enforcement action by carrying out various actions.
45. The examples given by the Council do not, in my view, satisfy the high bar to be cleared in order to reach the conclusion that there had been positive deception by the appellant. To my mind the building has not been hidden with, for example, fencing/hoardings or other buildings or structures. It seems anyone has been able to walk into the site over the years and take photographs, without the appellant's knowledge. Access was easily obtained through a metal field gate. The building retains most of its original windows and doors and these have not been covered up. In addition, failing to maintain the building through lack of repairs hardly amounts to concealment when access is so easily available. Furthermore, lack of external residential paraphernalia could also be interpreted as perhaps being that the appellant is a tidy person or is not materialistic. Also, there are several reasons why people sometimes do not pay Council Tax such as disputes with the Council or lack of means.
46. Finally, the appellant's refusal to allow access to The Pigman's House is also not sufficient to claim concealment as it appears that the Council neither exercised their powers of entry under section 196 of the Town and Country Planning Act

⁹ Appendix L

1990 nor made use of a warrant. As such, I find that the alleged appellant's actions or inactions do not amount to the concealment of the residential use and the appeal on ground (d) succeeds.

Overall conclusion

47. For the reasons given above I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.

D Fleming

INSPECTOR