



Appeal Decision

Inquiry Held on 25 January 2021 and 8-9 June 2021

Site visits made on 1 June 2021 and 17 June 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 22 November 2021

Appeal Ref: APP/W1145/C/19/3229627

Land at Coope, Ashwater, Beaworthy EX21 5HE

- 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 Jon Middleton against an enforcement notice issued by Torridge District Council ('the Notice').
- The enforcement notice, numbered SMD/ENF/002/0019, was issued on 17 April 2019.
- The breach of planning control as alleged in the notice is without planning permission, (i) the material change of use of a building (stable/bunkhouse) to residential use; (ii) unauthorised construction of a wooden structure; (iii) the siting of a caravan for human habitation.
- The requirements of the notice are (i) cease the residential use of the former stable/bunkhouse which can be identified in orange on Appendix 1 and identified in Appendix 2; (ii) Remove the unauthorised wooden structure which can be identified in the area hatched in green on Appendix 1 and identified in Appendix 3 from the land; (iii) All material arising from compliance with (ii) shall be removed from the land; (iv) The residential use of the caravan (the position of which is indicated) hatched in blue on the plan attached (Appendix 1) shall cease; and (v) the caravan shall be removed from the land.
- The period for compliance with each of the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision

The enforcement notice is corrected and varied. The appeal is allowed in part and dismissed in part.

Application for costs

1. At the Inquiry an application for a partial award of costs was made by Mr Middleton against Torridge District Council. This application is the subject of a separate Decision.

Procedural Matters

2. The Inquiry opened on 25 January but was adjourned soon after my Opening statement when it became apparent that the required notifications had not been undertaken by the Council. The Inquiry was resumed on 8 June and sat over two days.
3. I undertook two visits to the site. That made prior to the resumption of the Inquiry was to allow me gain an understanding of the site's land and features before the Inquiry. That held after was necessary to assess issues that had

arisen in the Inquiry. There was no discussion of the merits of the case at either site visit.

4. After the Inquiry, I wrote to the parties to inform them that, in respect of the Stables/Bunkhouse, (referred to hereafter as 'the Stables'), I had referred to its rooms using the numbering scheme set out in drawings submitted by the Appellant. I set out that, notwithstanding that I acknowledged their limitations, I proposed to attach a copy of one of the drawings in order to visually clarify my findings and conclusions. Both parties replied that they had no objection to this.
5. I have used Drawing No JM2 in this respect, as this shows the rooms in the Stables as they were prior to both its use for residential purposes and building works to allow this. Given its limitations, and notwithstanding that it is purported to be to scale, I have omitted any reference to scale. Its purpose is simply to allow the identification of the rooms I refer to in my reasoning and decision.

The Notice

6. I asked the parties for their views on a correction to the first of the alleged breaches in the Notice, (its section 3(i)). It appeared to me that what the Notice was directed against here was the use of the Stables building as a dwellinghouse and that the correction was necessary in terms of accuracy and certainty. Were this to occur, it was agreed, it would require a consequential variation to the first of the Requirements of the Notice, (its section 6(i)). Furthermore, it appeared to me that this would negate the need to hear the Ground (f) appeal in respect of the Stables.
7. Both parties agreed to the correction and variation, and this is reflected in my Formal Decision. In addition, the Appellant said at the Inquiry that he was not pursuing the Ground (f) case in respect of the stable.

Reasons

The site

8. Coope lies in a rural setting in the open countryside. The area has a highly dispersed settlement pattern, with isolated farms and small settlements linked by a network of quiet, narrow roads running through gently rolling, often well-wooded countryside.
9. It is a small landholding that is accessed via a track that runs about half-a-kilometre from one of the narrow roads. A dwelling of traditional design and materials, 'Coope Barn', lies at the far end of the track. A small range of utilitarian timber agricultural style buildings a short distance away, towards the public road. Neither Coope Barn nor these agricultural buildings are referred to in the Notice.
10. The two buildings that are referred to in the Notice lie quite close to Coope Barn: the Stables lies to its north; and the wooden structure, (known as 'Columbine'), lies to the northeast. The static caravan lies on the north side of the access track, roughly half-way between the public road and the dwelling.
11. The Stables is a single-storey building set under a pitched roof. The roof overhung the side of the building containing its access doors, which was

referred to as a 'covered walkway' at the Inquiry. When I visited the site, the majority of the building was being used for residential purposes. Although I did not enter it, there is a smaller area at its eastern end that was in use as an office. Along part of its northern side there was a small lean-to element that, when I visited, was used for purposes related to the residential use.

Ground (d)

The Stables

12. A ground (d) appeal is made on the basis that, at the date the EN was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by the matters set out in the Notice. The onus is on the Appellant to make his case on the 'balance of probabilities'.
13. Time limits after which no enforcement action may be taken against a breach of planning control are set out in s171B of the 1990 Act. Its terms that are relevant to this appeal are:

S171B(1) "Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed";

S171B(2) "Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach"; and

S171B(3) "In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach".

14. The Ground (d) case is made with respect to the Stables. In essence, the Appellant's case is that the dwelling has been formed through the change of use of the stables; thus the correct time limit is that set out in S171B(2). He states that as the Stables had been converted and used as a single dwellinghouse for more than four years, it is immune from enforcement action.
15. The Notice was issued on 17 April 2019. Therefore, for his case to be successful here, he would have to show two things. Firstly, that the Stables was a dwellinghouse, in the *Gravesham*¹ sense, for a period of four years prior to the Notice being issued – that is to say, 17 April 2015 at the latest. Secondly, that it had been used continuously in this manner throughout the four year period.
16. Early in the Inquiry Mr Leader said that the Council was not querying who occupied the building. Therefore, I have taken what has been put forward by the Appellant in this regard as being read. Notwithstanding this, I will refer to its occupants where this is necessary to illustrate a point.
17. The Council's case is three-fold: that the use of the Stables as a single dwellinghouse did not occur until about April 2017; that, if that was not the case, the Stables did not have the necessary facilities to be considered to be a

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306

dwellinghouse on or about 17 April 2015; and as the building comprises a mixed use as a dwellinghouse and office used by Mrs Middleton in association with her business, the relevant period would be 10 years by reason of S171B(3).

18. The Stables building was built by January 2009. It comprised 4 bays that were used to accommodate horses working on the holding. At that time, there was an open-sided covered area where that part of the building that now accommodates the office is. During the Inquiry, the bays were referred to as rooms 1 to 4, as shown on a series of drawings² submitted with the Appellant's Proof of Evidence. I refer to them in this manner in this decision letter. The evidence showed that in January 2014 the Appellant made a Prior Notification application to the Council for its conversion to a bunkhouse. That application was acknowledged by the Council, but no decision was made on it. The reasons for this are unclear and differ between the parties. However, given that there was only a ground (d) appeal for the stables, it was agreed by the Appellant that it was not for me to make a determination on whether there was a deemed permission for that development by virtue of the General Permitted Development Order in operation at that time.
19. The Court's decision in *Gravesham* set out that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
20. Works were undertaken to create two bunkhouse rooms from the two middle stables, referred to as rooms 2 and 3, in early 2014. The Appellant stated that, at that time, the toilet and bathroom facilities were in "another building". This was a building that lies adjacent to Columbine, which he described as 20m away. It appeared to me to be greater than this but was, in any event, some way distant away from the stables.
21. The bunkhouse was not a success, so, in September 2014, the accommodation was let to a Polish couple who rented both converted rooms. At that time, their cooking and bathroom facilities were outside and, in the light of the onset of colder weather, the Appellant gave them permission to knock a doorway between the two rooms. At this time, the Appellant says, a rudimentary kitchen was put into room 2, the grey water from which drained to a soakaway to the rear of the stables. Contemporaneously, room 3 was converted to a bedroom with a composting toilet in the corner. The bathroom facilities were, however, still away from the living accommodation.
22. It is by reason of this last characteristic of its use at that time that I find that the stables was not then in use as a *Gravesham* dwellinghouse. Using what was acknowledged to be a rudimentary sink to strip wash, and having to cross a yard in front of the dwelling at Coope to shower, meant that the accommodation did not have the facilities required for day-to-day living at that time.
23. Following the departure of the Polish couple, the evidence shows that the Appellant's daughter and her boyfriend moved into the stables. They made an internal link from the kitchen to room 1, in which they created an en-suite bedroom. Grey water from the sink and shower ran to the soakaway. Toilet facilities for the accommodation at that time were still provided by a

² Drawing Numbers JM1 to JM8

composting toilet that was in the corner of this room. Room 3 was used as living room.

24. Although, in the view of the Council, the toilet facilities would have been “to put it mildly, “inconvenient””, the test from *Gravesham* is whether the stables, at that time, provided the facilities required for day-to-day private domestic existence. A toilet is undoubtedly a required facility in this regard; though it is not necessary, to my mind, for this to be a flushing toilet. Whilst the use of a composting toilet would not be acceptable for many people, a useable toilet was nonetheless present in the property. Further, the occupants of the stables no longer had to strip wash in the sink or walk across the yard to access shower facilities.
25. Having inspected room 1, I agree that it would have been cramped before the toilet in the en-suite was connected to the septic tank and the subsequent removal of the composting toilet. However, this would not negate a finding that there was a dwellinghouse at that time.
26. Although the lean-to element was not on the drawings that were provided by the Appellant, I accept that this was because he did not see its potential importance to the appeal. Whilst he could not recall when it was built, Mr Middleton was “pretty confident” in his assertion that it was in place prior to 2014. Although it appears to have been remodelled to a degree since 25 February 2015, when the Council took photographs of the stables, it was there at that time.
27. The only window to room 1 looks out into the space enclosed by the lean-to. Whilst it has an effect on its outlook and, to a degree, its ventilation, again I do not find that this has the result of negating the stable’s use as a dwellinghouse.
28. Mr Middleton’s evidence that this work was undertaken by early March 2015 was given precisely and unambiguously. Although he did not attend to give oral evidence to the Inquiry, Adam Lintott, the Appellant’s daughter’s boyfriend, completed a statutory declaration. Whilst not carrying the weight of oral evidence tested in an Inquiry, it nonetheless carries substantial weight. His evidence corroborates that given by Mr Middleton. In the absence of substantive evidence to the contrary relating to this period, I take it to be the case on the balance of probability.
29. Heating, in the form of a solid fuel burner and storage heaters, was not introduced until after the relevant date. This, however, does not militate against the stables being a dwellinghouse prior to that date. There was electricity in the property that would have allowed its residents to use portable heaters.
30. At this time, room 4 had not been incorporated into the dwelling. The evidence shows that, on the balance of probability, it was in a storage use - being used for both occupants of the dwelling in rooms 1-3, and for the wider Coope holding. Although room 4 was attached to the residential unit in rooms 1-3, as there was no internal link between them they were physically separate. Given the shared nature of the storage use of room 4, I find it to have also been functionally separate. Applying the *Burdle*³ principles here, I find, on a fact and

³ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

degree basis, that when the use of rooms 1-3 as a *Gravesham* dwelling commenced it became a separate planning unit.

31. The dwelling that had been formed at that time is not that which is seen today. That is because it was later expanded into room 4, by way of the insertion of a door allowing access from room 3. This allowed for the creation of a second bedroom. This was completed in early 2017 and, as stated in the Council's Closing Submissions⁴, this was within 4 years of the service of the Notice.
32. As this expansion occurred in the order of two years after the creation of the dwelling, it was a quite separate act. As such, I do not find that this 'reset the clock' in terms of the 4-year period for the dwelling already formed in rooms 1-3, but see it as being analogous with a later extension to the dwelling. As this entailed a change of use, the time period in which enforcement action might be taken against the residential use of room 4 began in early 2017. The 10-year time limit in S171B(3) applies and, therefore, the use of room 4 is not immune from enforcement action.
33. Therefore, further changes to the 'Allegation' and 'Requirements' sections of the Notice, above those referred to in my section entitled 'The Notice' in my 'Procedural Matters', above, are required.
34. At some point, but apparently after the issuing of the Notice, which does not refer to it, further works were undertaken to the stables. A portion of the covered, though unwallled, area at its eastern end was enclosed and has been used as an office by Mrs Middleton's business. Mr Middleton agreed with Mr Leader's suggestion that this was not part of the dwellinghouse during cross-examination.
35. To assess whether they form part of the same planning unit, and thus whether or not the building as a whole has a mixed use, the principles in *Burdle* again need to be applied. Although I did not enter the office, I could see through its windows. From this vantage point, and from entering room 4, I saw that there is no link between the two. Although part of the same building, they are two distinct, physically separate areas that are used for different and unrelated purposes. Again, I consider them to be separate planning units. Therefore, the works to create this part of the building and its office use should not reset the time limit for the dwellinghouse that is the subject of the Notice.
36. For the above reasons, my conclusion on the ground (d) case in respect of the use of the stables, is that a dwellinghouse in rooms 1-3 was substantially completed prior to the relevant date and thereafter used continuously for 4 years prior to the issuing of the Notice. Therefore, no enforcement action may be taken in respect of this. However, the residential use of room 4 was not immune from enforcement action at the time that the Notice was issued. Therefore, there is partial success on ground (d) and I shall further correct the allegation and vary the requirements of the Notice in respect of the Stables, rather than quash it.

Ground (d) – The Caravan

37. The Notice alleges the residential use of the caravan. To be successful in his ground (d) appeal, the Appellant has to show that the caravan had been in-situ for a period of at least ten years prior to the issuing of the Notice, that this had

⁴ Paragraph 9

- been occupied for residential purposes continuously for that period, and that, if these were achieved, that this use was not thereafter lost. The 'relevant date' for this assessment would therefore be on or before the 17 April 2009.
38. The question of whether what is on the site is a caravan arose during the Inquiry. Before I can move on to assess the points highlighted in the preceding paragraph, this needs to be addressed.
39. Neither side brought forward substantive evidence that what was on the land was not a caravan. Indeed, the Council's case is predicated on this and the Appellant's case throughout uses this noun. I undertook a thorough assessment of what is on the site at my visit following the Inquiry, in the light of the statutory definitions in S29(1) of the 1960 Caravan Sites and Control of Development Act, as amended, and S13 of the Caravan Sites Act 1968, as amended.
40. What forms the bulk of what is on the land is clearly a static caravan. Although I did not measure it, I had been given no reason to suppose that it fell outside the statutory size limitations. Any doubt that it was a caravan arose from the presence of an area of decking that had been constructed along part of one side of the caravan. No definitive evidence of when this was erected was given to me.
41. The decking sat on fairly substantial timbers set into the ground. Notwithstanding that several lighter timbers ran vertically from the decking, and were screwed into the side of the caravan, they provided very little support, if any, to the decking. For its greater part, if not wholly, it supported its own weight. At the rear of the caravan, that is to say furthest from the decking's access steps, the decking was covered by a mono-pitched roof. This did not appear to be connected to the caravan, but was supported by the decking.
42. On a fact and degree basis, the decking and covered area were separate, stand-alone structures. Some simple work might be required to detach the vertical timbers but I have no reason to lead me to conclude that this has rendered the caravan immobile. It appeared, including underneath, to be of a condition that would allow it to be transported from the site with few problems. Given its structural independence, the decking would not impede such a move.
43. What is on the land accords with the statutory definitions of a caravan. The Council acknowledged⁵ that it had been sited on the land throughout the relevant period in excess of ten years. Further⁶, as it had no evidence of its own to the contrary, it accepted the evidence given under oath by Mr Middleton "that the caravan was used continuously during the relevant period". From the arguments that were put forward, this phrase equates use with occupation.
44. The Appellant has used the land at Coope within the WWOOF⁷ scheme; hosting people on the holding who would gain experience of rural life while paying for their stay by helping with work on the land. People engaged in WWOOFing lived in the caravan. The evidence shows that this occurred during the Spring to Autumn of 2011, 2012, 2013 and 2016. The question to be addressed is

⁵ Closing statement

⁶ Ibid

⁷ Worldwide Opportunities for Organic Farming

- whether this use was materially different from the non-WWOOFing residential use of the caravan.
45. Mr Jackson, for the Council, agreed during cross-examination that the reference to the occupation of the caravan by WWOOFers as being ancillary to the use of the land was incorrect. He, then, described it as being associated with the agricultural use of the land. There was some friction in the Council's position, here.
46. Notwithstanding this, the Council's position was that, when used by non-WWOOFers, the caravan was a separate planning unit and pointed to the use of assured shorthold tenancy agreements in this respect. However, when used by WWOOFers, it became an integral part of the whole of the holding at Coope, save for the stables and the dwelling. This, and the differing character of those different occupiers' uses, led to a material change of use of the land occurring. On its behalf, Mr Jackson succinctly summed it up, stating that the distinction did not lie in the label attributed to the user but in the manner they used the caravan.
47. In support of its position on this issue, the Council has supplied me with several court cases⁸. As the occupation of the caravan has been agreed, the issue hinges on whether the use was materially different when its occupants were WWOOFers⁹ assisting with the working of the land at Coope as opposed to those simply living in the caravan with no involvement in working the land.
48. The *Birmingham* decision set out how there might be a material change of use of land or buildings, notwithstanding that they might stay within an all-encompassing statutory definition. In that case whilst a property remained residential, a change of use occurred when a building moved from a single dwellinghouse to a house in multiple occupancy, given the change in character. The case in the *Forest of Dean* turned on the failure of an Inspector to interpret the terms of an earlier planning permission. Similarly, the *Barton Park* case also involved the interpretation of planning permissions on a caravan site. The character of the users was also an issue in *Barton Park*. The latter two cases are different from that before me, as the caravan at Coope has not been granted planning permission so, therefore, there is no planning control on its use by reason of either a condition or the description of development. A fundamental point to take forward from all these decisions, and many others, is that the matter has to be assessed on a fact and degree basis, taking the individual circumstances into account.
49. Mr Jackson asserted that the mix of leisure and work was quite different and distinct from that of an occupant with an assured shorthold tenancy. When asked if he could point to a court or appeal decision that might back up its assertion that WWOOFing was a distinct use, he could not.
50. The Appellant's case was simply the assertion that there is no material difference between the use of a caravan by WWOOFers and other occupants. They were both C3 residential uses.

⁸ *Birmingham Corporation v Minister of Housing and Local Government and Another* [1963]
Forest of Dean District Council v Secretary of State for the Environment and another [1994] JPL 937
Barton Park Estates Limited v SSHCLG and Another EWCA [2021]

⁹ *World Wide Opportunities on Organic Farms*

51. From the limited evidence before me on the matter, as a matter of fact and degree, I find that there was no material difference in the character of the two types of user of the caravan. Whilst WWOOFing might be a *sui generis* use of the land, though, again, I was not provided with substantive evidence of this, there was not a change of planning unit in respect of the caravan, when its occupants changed to or from WWOOFers. When used by WWOOFers, although they were active on the holding I do not find that this resulted in the caravan becoming incidental to the use of the holding. Using the principles of *Burdle*, the caravan remained a separate residential planning unit. I find that as a matter of fact and degree, the change of occupant did not mean that the caravan moved from its own discrete, stand-alone planning unit to become part of the planning unit of the Coope holding, or vice versa.
52. Following on from my finding that what is on the site is a caravan, my findings on the ground (d) in respect of it are as follows. Its use by WWOOFers did not result in a material change of use, nor was its status as an independent planning unit changed through their occupying it. The parties agreed that the period of occupation was achieved and I have no reason to find otherwise. There is no evidence that the resultant lawful use was thereafter lost. Therefore, in respect of the siting of a caravan for human habitation, the ground (d) appeal is successful.

Ground (a) - Columbine

53. 'Columbine' consists of a roughly rectangular building, the walls of which are finished in timber with a roof of red corrugated metal. It sits within a private garden area.
54. It was constructed by the Appellant in 2016-17, when the Appellants lived at Coope Barn. It was initially used as a rest room away from the house when Mr Middleton was in ill-health, in a manner that he describes as being ancillary to the use of Coope Barn. In this regard, he stated that he considered that it was in the curtilage of Coope Barn.
55. Whether this was indeed the case was not progressed in depth at the Inquiry. There is no statutory definition of curtilage, and case law¹⁰ has variously found that it is a matter of judgement for the decision-maker, with findings to be made on a fact and degree basis. The judgement is to be made taking into account test of: physical layout; ownership, past and present; and use, past and present.
56. Here, the building and Coope Barn have been in the same ownership at the time it was erected. It was initially used for purposes related to the use of Coope Barn but, following the Appellant's illness, this changed to an unrelated use. In physical terms, I saw at my site visit that Columbine and its associated land were well-separated from Coope Barn, by reason of the access track. It did not have the required intimacy with the dwelling. Weighing these factors, I find that Columbine was not and is not within the curtilage of Coope Barn, and it has not been shown that it benefited from any permitted development right to be erected.

¹⁰ *Dyer v Dorset CC* [1988] 3 WLR 213; *Burford v SSCLG & Test Valley BC* [2017] EWHC 1493 (Admin); *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310; *McAlpine v SSE* [1995] JPL B43

57. In reaching this decision, I have taken a certificate of lawfulness for the residential use of Coope Barn, issued under S191 of the Act, into account. I was given a copy of the issued certificate and two drawings which, though rough and drawn by hand, are claimed to be to scale. They show Coope Barn standing in a fairly extensive red line area that is annotated as being its curtilage. This appears to include Columbine. However, whilst these drawings have been stamped as having been 'Received' by the Council, this is not evidence that the Council agreed that this was the property's curtilage in its issued certificate. In any event, I do not find this to be the case.
58. Columbine is entered through a porch with a washing machine in it, which leads to an open plan kitchen-living room, which has a bathroom and two bedrooms off it. From what I saw at the time of my site visit, Columbine is a *Gravesham* dwelling, and it has been used as such.
59. The Appellant's position is that the residential use should be granted planning permission, albeit with this use restricted to occupants staying in association with a 'care farm' at Coope. I was told that this is an established concept that marries people who have disabilities or are marginalised with meaningful activities. It is aimed, for example, at people with dementia, or have learning difficulties or are on the autistic spectrum. The appeal for those people is that the accommodation and activities in this peaceful rural location are beneficial to their conditions, in a manner that other locations and forms of holiday are not.
60. Mrs Middleton, who was clearly a passionate about the care farm concept, is a practising occupational therapist in the NHS. She told me that there was a definite demand for such accommodation. When this form of structured activity was offered previously at Coope, demand grew over the years from a single care home referral to referrals from various care homes, as well as personal approaches from people, from across Devon and Cornwall.
61. I found it to be not only an interesting concept, but one that offers the opportunity for those people in society that are often forgotten and much less fortunate than most of us to take activity holidays tailored to their needs in a countryside location. For these reasons, I give the provision of this form of accommodation significant weight in my deliberations.
62. The principal policy from the North Devon and Torridge Local Plan (LP) that deals with tourism accommodation is Policy DM18. Its second part is relevant here, as it deals with rural locations. In these locations, the policy initially sets out support for new accommodation, subject to three criteria. If these are met, proposals are then to be assessed against further criteria. The initial three criteria are, in essence: (a) that schemes should be related to and compatible in scale with the settlement in which it is located, or an existing tourism attraction; (b) it involves the reuse or conversion of an existing building; or (c) it improves or diversifies existing tourism accommodation.
63. It was shown, under the terms of LP Policy ST07, which sets out the Council's spatial development strategy, that Coope does not qualify as a settlement in terms of Policy DM18. Therefore, it is necessary to show that the use of Columbine would arise, or has arisen, from the re-use or conversion of an existing building, or that there is an existing tourism, visitor or leisure attraction at Coope.

64. Notwithstanding its initial use for convalescent purposes by the Appellant, this is a building that would have required planning permission, for which none was sought. Neither did it become lawful through the passage of time prior to the issuing of the Notice. This cannot, therefore, be classed as an existing building for the purposes of Policy DM18(2)(b). This leaves the question as to whether there is an existing tourism attraction at Coope.
65. In Cross-Examination, Mrs Middleton acknowledged that for there to be a tourism attraction, there was a basic need for a farm to be operating at Coope. She stated that there was not one and that this would require 'starting again'. Although it was suggested that had it not been for the Covid pandemic the business would have still been operating when the Notice was issued, I find that the evidence does not support this contention. Mrs Middleton acknowledged that the business was not viable prior to the Appellants going to Spain. Business planning was on-going, including work by students, but I was not presented with evidence that there was a formal plan in place at that time that showed that a successful care farm venture was, or would be likely to be, possible. My finding is that there is not an existing tourism attraction at Coope. In reaching this point, I have taken into account the effects of Mr Middleton's illness and the earlier use of the land by WWOOFers.
66. The corollary of finding that there is no existing tourism attraction at Coope is that the use of Columbine for tourism accommodation is contrary to LP Policy DM18.
67. S38(6)¹¹ sets out that decisions should be made in accordance with the development plan, unless material considerations indicate otherwise. I have already set out that the provision of holidays for less fortunate people carries significant weight, and is a material consideration that favours the proposed development.
68. Mrs Middleton made the point that it would be relatively easy to 'resurrect' growing and foraging, activities in the surrounding woodland and Culm grassland, and bringing in ducks and geese. Whilst I agree that this would be the case, there was no firm structure to these suggestions. I heard that some thought had been put into the matter, based on earlier experiences, including how, for example, if carers accompanied those staying at Columbine this would reduce regulatory care requirements. However, I found the planning, such as it was, to be at an early, and somewhat aspirational, stage.
69. Mrs Middleton said that she 'did not have a business case to hand' and agreed that there was no detailed business plan in place. Whilst there is no requirement in Policy DM18 for a business plan or evidence of the viability of a proposal, that is irrelevant to this proposal. Where it is proposed to commence a tourism attraction, or, as here, to resurrect one and seek permission for accommodation associated with it, it is to my mind both acceptable and necessary to ask for evidence of viability through sound business planning. The understandable fear of the Council, articulated by Mr Jackson, is that without this the result would be new dwellings in the countryside, contrary to the terms of other policies in the development plan.
70. However, there is an absence of substantive evidence that the proposed tourism attraction at Coope would be viable. Therefore, the benefit of the

¹¹ Planning and Compulsory Purchase Act 2004

provision of the proposed form of holiday accommodation would not outweigh the harm that would arise from non-adherence with the Council's adopted policy approach to the provision of holiday accommodation in rural areas.

71. My conclusion on the Ground (a) appeal is that, for the above reasons, the proposed development would be contrary to the terms of LP Policy DM18 relating to the provision of tourism accommodation. Therefore, the Ground (a) appeal fails.

Grounds (f) and (g) – The Caravan

72. Given my finding with regards to the ground (d) appeal for the caravan, there is no need to determine the ground (f) and ground (g) appeals in respect of it. Similarly, given the partial success of the ground (d) appeal in respect of the stables, I again have no need to determine the ground (f) in this regard.

Ground (g) – The Stables

73. An appeal under Ground (g) is that the time allowed for compliance with the requirements of the Notice falls short of what should reasonably be allowed. The basis of the Appellant's Ground (g) case, here, is that the result of the Council's Notice would be that the occupants of the Stables would lose their home and 6 months would not be sufficient to find another dwelling. This is no longer the case, as my decision allows the dwellinghouse to remain, albeit with the loss of room 4. I find that 6 months is reasonable to comply with the revised requirements of the Notice.

Formal Decision

74. It is hereby directed that the enforcement notice be corrected and varied by:
- The deletion of the text of section 3 (i) of the Notice, "the material change of use of a building (stable/bunkhouse) to residential use", and the substitution of "The material change of use of rooms 1-3 of the building (stable/bunkhouse) to use as a single dwellinghouse (Appendix 2)".
 - The deletion of the text section 6 (i) of the Notice, "Cease the residential use of the former stable/bunkhouse which can be identified in orange on Appendix 1 and identified in Appendix 2" and the substitution of "Cease the use of room 4 of the building (stable/bunkhouse) which can be identified in orange on Appendix 1 and identified in Appendix 2 as part of a single dwellinghouse".
75. For the reasons set out, above, and subject to the correction and variation, the Ground (d) appeals in respect of the use of rooms 1-3 of the stable/bunkhouse as a single dwellinghouse, and the siting of a caravan for human habitation are allowed.
76. The Ground (a) appeal in respect of the wooden structure ('Columbine') is dismissed, and the Notice as corrected and varied is upheld in this regard.
77. The Ground (g) appeal in respect of the stable/bunkhouse as a single dwellinghouse is dismissed, and the Notice as corrected and varied is upheld in this regard.

Roy Curnow

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Duncan Tilney Solicitor, of Stephens Scown Solicitors

He Called:

(In Order of Appearance)

The Appellant

Mrs Emma Middleton Witness

Did Not Speak:

Tom Graham Stephens Scown Solicitors

FOR TORRIDGE DISTRICT COUNCIL (TDC):

Mr Timothy Leader
Counsel, of St John's Chambers
Instructed by Carol Norman, Solicitor of TDC

He Called:

Mr James Jackson Principal Planning Officer TDC

Did Not Speak:

Carol Norman TDC

Grant McGill TDC

Chloe Emery TDC



Plan

This is the plan referred to in my decision dated: 22 November 2021

by Roy Curnow MA BSc(Hons) MRTPI

Land at: Coope, Ashwater, Beaworthy EX21 5HE

Reference: APP/W1145/C/19/3229627

Scale: Not to scale

