
Appeal Decisions

Inquiry (Virtual) held on 18, 19 and 20 January 2022

Site visit made on 26 January 2022

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 8 March 2022

Appeal A: APP/W3330/C/20/3249482

Land at Oake Lodge, Stathe Road, Burrowbridge Somerset TA7 0JH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (herein cited as the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Richard Harborne against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice was issued on 11 February 2020.
- The breach of planning control as alleged in the notice is the unauthorised change of use of an agricultural building (as shown edged in black on the plan annexed to the enforcement notice) to use as a residential dwelling.
- The requirements of the notice are:
 1. Cease the use of the agricultural building as a permanent residential dwelling.
 2. Remove all domestic items and paraphernalia from the land.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the 1990 Act.

Summary Decision: The appeal is allowed following correction of the enforcement notice in the terms set out below in the Formal Decision.

Appeal B: APP/W3330/C/21/3281426

Land on the north side of Statheclose Rhyne (otherwise known as land adjacent to Lilac Cottage Stathe Road) Stoke St Gregory Taunton Somerset

- The appeal is made under section 174 of the 1990 Act.
- The appeal is made by Mr Richard Harborne against an enforcement notice issued by Somerset West and Taunton Council.
- The enforcement notice was issued on 12 July 2021.
- The breach of planning control as alleged in the notice is the unauthorised construction of buildings on the Land in the approximate positions shown edged green on the plan attached to the enforcement notice.
- The requirements of the notice are:
 1. Demolish the buildings referred to in paragraph 3 of the notice.
 2. Remove from the land all materials resulting from such demolition.
- The period for compliance with the requirements is nine months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) of the 1990 Act.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decision.

Procedural Matters and Background – both appeals

1. The addresses in the banner headings above are taken from the enforcement notices but there is no dispute that the 2 appeals before me relate to the same land. Both appeals were before me at the Inquiry as such, and to avoid

duplication, I have dealt with the decisions together. The Inquiry sat for 3 days, and it was agreed that the oral evidence of Mrs Susan Jones and Mrs Anna-Mari Galliot did not need to be affirmed at the Inquiry. All oral evidence given by the remaining witnesses was affirmed at the Inquiry.

2. Appeal A was submitted by Battens Solicitors Limited (Battens) on behalf of the appellant but when Appeal B was submitted it was confirmed in writing that Mrs Susan Jones would act on behalf of Mr Harborne for both appeals.
3. Prior to the Inquiry commencing the Council stated that it had realised that the Inquiry notification letters regarding both appeals had not been sent out 2 weeks prior to the Inquiry. The letters were sent out electronically on the 7 January 2022. Nevertheless, the appellant stated and provided a photograph to indicate that the site notice was erected prior to the 2 January 2022. Both parties were given the chance to comment on whether any interested parties would be prejudiced. I had no reason to disagree with the main parties that it appeared that no interested parties would be severely prejudiced by the Inquiry opening as planned on the 18 January 2022.

The site and relevant planning history

4. The land, shown on the plans attached to the enforcement notices, is roughly rectangular in shape and the building cited in Appeal A is located close to the access drive that is at the northeast corner. The access drive joins Stathe Road adjacent to a dwelling called Lilac Cottage. There are 2 structures that are used as compost toilets the one adjacent to the land's northern boundary and the second closer to the centre of the land near to a track. The ground (d) appeal in Appeal B relates to those structures and the more northern structure is shown as A and the other as B on plan RH1¹. It was confirmed at the Inquiry that the 3 sworn statements had transposed those references to the compost toilets.
5. The land has been in the ownership of the appellant or his father since 2003. A number of enforcement cases² were opened by the Council between 2004 and 2015. In 2010 an enforcement notice (the 2010 notice) was issued on the same land as identified in the enforcement notices before me. The breach of planning control cited in the enforcement notice was *"Without planning permission, changed the use of the land by stationing a mobile home for residential use and occupation and erected a structure for residential use and occupation as shown in the attached photograph"*. The 2010 notice therefore, targets the residential use constituted by the stationing of a caravan on the land and the operational development involved in the construction of the straw bale structure and its residential use.
6. The requirements of the 2010 notice are:
 - Cease using the land for residential occupation and use
 - Remove the structure shown in the attached photograph in its entirety
 - Reinststate the land to the condition that it was in immediately prior to the unauthorised residential occupation.

¹ CD1 in Core Documents List

² E/182/51/04; E/279/51/05; E124/51/10; E150/51/13; E/218/51/15

7. Both parties were given the chance to make written and oral submissions as to whether the first requirement has any implications, or not, in relation to the ground (d) appeal of Appeal A. Based on those submissions it is apparent that the requirements are targeted specifically at the residential use and operational development associated with the alleged breach in question and the notice does not allege that the barn was in residential use at that time. There is no dispute that the requirements of the notice were complied with. Consequently, it is clear to me that the 2010 notice relates to a substantially different breach of planning control than that before me in Appeal A. Accordingly, in my judgement, the change of use of the barn for residential use would not contravene the requirements of the 2010 notice that is currently in force. I have dealt with Appeal A on that basis.
8. In 2015 the latest enforcement case was opened for the alleged non-compliance with the 2010 notice in relation to the residential occupation of the site (the 2015 case). The Council's evidence indicates that no actions, other than acknowledging the complaint, were undertaken with regard to that complaint until Mrs Salter joined the Council in July 2017. A site visit was attempted at that time but no access onto the land was possible. The appellant submitted an application for a certificate of lawfulness (LDC) for the change of use of a building from agricultural use to C3 residential use as a single dwellinghouse in July 2018 (2018 LDC). That application was refused in October 2018.
9. In November 2018 Council Officers, including Mrs Salter, visited the site and gained access inside the agricultural building cited in the enforcement notice relating to appeal A. In January 2019 a Planning Contravention Notice (PCN) was served on the appellant. The enforcement notice (EN1) relating to the change of use of the agricultural building (the barn) was issued on 11 February 2020 and Appeal A was submitted in March 2020. A second LDC application was submitted in July 2020 (2020 LDC) for the existing use of an agricultural barn as a single residential dwelling. That application was refused in March 2021.
10. The enforcement notice (EN2) relating to the unauthorised construction of buildings on the land was issued on the 12 July 2021 and Appeal B was submitted in August 2021. Two further enforcement notices were issued on the same land in July 2021 relating to the unauthorised change of use of agricultural land to the siting for caravans as permanent residential accommodation and the unauthorised change of use of the land from agriculture to use for the open storage of caravans. Appeals have not been made in relation to those 2 further enforcement notices.

Appeal A – The Notice

11. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.

Section 55 of the 1990 Act states, amongst other things, that "development," means the making of any material change in the use of any building. To ensure that the description of the alleged breach reflects section 55 of the 1990 Act I consider that the wording '*unauthorised change of use*' within the description of the alleged breach should be corrected to '*unauthorised material*

change of use'. There was no dispute at the Inquiry that I can carry out this correction without injustice to the parties.

Appeal B

12. In its closing submissions the Council confirmed that it had come to the conclusion that on the balance of probabilities at the date on which EN2 was issued no enforcement action could be taken in respect of compost toilets A and B. It also confirmed that in its view EN2 should be corrected to remove those 2 buildings from the ambit of the notice. There was no dispute at the Inquiry that I could carry out that correction without injustice to both parties.

Applications for costs – both appeals

13. At the Inquiry applications for costs in relation to both appeals were made by Mr Richard Harborne against Somerset West and Taunton Council. These applications are the subject of separate decisions.

Appeal A – The appeal on ground (d)

14. An appeal on ground (d) is made on the basis that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice. The time limits within which enforcement action must be taken in respect of breaches of planning control are set out in the 1990 Act. In this case, the relevant time period is set out in section 171B(2) of that Act and the burden of proof lies with the appellant. EN1 was issued on 11 February 2020, so in order to succeed on this ground the appellant needs to show, on the balance of probability, that the material change of use alleged in the notice began before 11 February 2016 and continued for at least four years thereafter.
15. A UPVC door in the front elevation of the barn leads into a large room that appears to serve as an entrance way and a reception/living room, through an internal door to the left there is a kitchen, and an office/study with a bedroom at the far end. To the right through an internal door is a small living room with access to a workshop. The rooms are relatively generous in size and there are items of furniture and personal possessions in each room. The UPVC windows on the front elevation provide light to each room, other than the workshop and office.
16. There are no mains utility supplies to the barn. Water is obtained, on a regular basis, in containers that are filled from the White Spring in Glastonbury by the appellant. Electricity is supplied by solar panels and a wind turbine and stored via a number of vehicle batteries. Gas bottles are used to fuel a 2 burner and grill camping stove. There are wood burning stoves in the small living room and bedroom. Washing facilities are within the bedroom – a sink and shower. The water from the containers is supplied to the kitchen and bedroom sink through pump garden sprayers. The appellant explained at the Inquiry how he heated and filled the 'cistern' with water for the shower. Compost toilet A is relatively close to the barn and is used by the appellant.
17. There is no definition of what constitutes a "dwellinghouse" in the 1990 Act, but in the case of *Gravesham*³ the Court held that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities

³ *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

required for day-to-day private domestic existence. From the outside, the barn does not have the appearance of a conventional dwelling, despite its various doors and windows on the front elevation. The barn does not have the facilities that would be found in most modern houses, and I have no doubt that most people would not care to live there. However, it appeared to be relatively warm, wind and watertight and contained the rudimentary facilities for cooking, eating, washing and sleeping associated with use as a dwellinghouse. Moreover, the Council do not dispute that the barn affords the facilities required for day-to-day private domestic existence. Based on the evidence before me and my observations at the site visit I have no reason to disagree.

18. There is no dispute that the barn was in use as a dwellinghouse in November 2018 when Mrs Salter visited the site and at the time the enforcement notice was served. The dispute relates to when the material change of use and breach took place. The Council argues that insufficient precise and unambiguous evidence has been presented to demonstrate, on the balance of probability, that the breach commenced four years or more prior to EN1 being issued.
19. The appellant explained under affirmation that many of the works to convert the barn were undertaken by himself, but the concrete floor was laid by others not long after the site was bought in 2003. In 2004 the first enforcement case⁴ on this site related to various works to the barn. It is not known what those works entailed as no further details are available. Mr Harborne states that the works to complete the dwellinghouse were finished in March 2013. The documentation he has produced relates to a quotation for the supply of blocks from Travis Perkins in 2012. He states that the blocks for under the patio windows were obtained from that firm not long after. He stated at the Inquiry that any other paperwork relating to the building works that were undertaken by others had been discarded. That this was the case some 9 to 19 years after he said the works were carried out could not be seen to be unusual or harmful to his case.
20. In addition, from my observations it is apparent that a large proportion of the materials utilised in the barn have been recycled and salvaged from elsewhere. Furthermore, the rudimentary nature of the works carried out does not contradict Mr Harborne's account that he has done many of the tasks himself.
21. The dated photographs, submitted by the appellant, show that the patio doors were installed in March 2013 and that some of the UPVC windows were installed prior to 2009. They also indicate that solar panels had been installed on the site close to the barn and that the room now used as a bedroom had various items of furniture and personal possessions within it in 2009.
22. In December 2013 the Council's Senior Enforcement Officer, Mr Hardy, wrote to the appellant and the letter states, amongst other things, that '*... at least two caravans appear to be used for residential purposes. Also the existing barn has been altered with the provision of windows and patio doors. Inside there was a table and chairs etc. set up as a rest/living room.*' A dated photograph supplied by the Council, taken on the 2 December 2013, shows part of the patio windows with a voile type curtain across one pane, chairs and a small table with items on it in a room lit by the windows and a vision panel in a wooden wall. I observed that the room lit by the patio windows now has

⁴ E/182/51/04

'settee' type single chairs rather than dining room chairs and the internal wall to the rear has been painted. However, the vision panel to the workshop remains in situ.

23. No other photographs relating to the barn taken at that site visit are available. I acknowledge that the letter from Mr Hardy does not state that the barn was in residential use in 2013 whereas he had stated that at least 2 caravans did appear to be used for residential purposes. It would be reasonable to consider that if it was clearly apparent that the barn was in residential use at that time that the letter would have stated that. However, as stated previously the barn does not have the appearance of a conventional dwelling externally and the letter asks for comments on the items mentioned in the letter. As such, it appears that there was a suspicion that the barn may have or may be intended to be used for a purpose not related to agriculture. It also appears that Mr Hardy may have left the Council a short period after the letter was sent.
24. In July 2014 a Council Officer undertook a site visit and took a photograph of caravans on the site. There is no indication that anyone from the Council went inside the barn during 2013/2014 or what they saw if they looked through any of the other windows/doors. There is no record of any further action taken by the Council in relation to the letter that was sent in December 2013. Mr Harborne admitted at the Inquiry that he did not reply to that letter.
25. The report by Slade Parry, chartered surveyors, dated 21 May 2020 indicates that in their opinion the wall cladding and concrete blockwork walling of the external walls has been in place for more than 10 years. The report goes on to state that the use of salvaged materials and probably unskilled labour have produced a primitive, rustic and unconventional home and that it is entirely feasible that the works were carried out between 2004 and 2012 in the author's view. However, Mr Thompson, the author of the report, also stated that assessing the date/age of building works was not straightforward in this case due to the use of salvaged materials and probably unskilled labour.
26. There is little documentary evidence to indicate what facilities for cooking, eating and washing were within the barn in 2013. Nevertheless, it is apparent that by 2013 that there were a number of windows and doors in the front elevation of the barn, a living room/rest room was set up and domestic furniture and possessions were within it. In my judgement, the installation of the windows and doors within the front elevation of the barn would, more likely than not, have been carried out with the aim of facilitating a material change of use to a dwelling. Nonetheless, even if the barn was available for use as a dwelling from March 2013 a change of use would not commence merely through the availability for use.
27. Mr Harborne gave evidence under affirmation that he moved into the barn completely after the patio windows had been installed in March 2013 and that he has lived in it full time since 14 March 2013. He also stated that between 2009 and 2013 he lived partially in a caravan and partially in the barn. I accept that little evidence in the way of utility bills, council tax records, electoral registry records or other documentary evidence has been provided that would support the claims made by the appellant with regard to his occupation of the property. Nevertheless, no postal address was available for the barn or the site and this is corroborated by the Council's own evidence. An email from Mrs Salter on the 1 November 2019 states that a letter sent to Mr Harborne at

Oake Lodge was returned to her by the Royal Mail '*no such address*'.

Moreover, there are no mains utilities for there to be utility bills. Mr Harborne told the Inquiry that his post was sent to a c/o address, 14 Church Road, Street, but the friend whose house it was did not always forward the post to him.

28. The appellant's response to the PCN includes as an answer to question 24 that he first occupied the barn in 2006. He stated at the Inquiry that at that time he occupied the barn by packaging and making salads and storing various items. A letter from the Council's Planning Enforcement Officer dated 26 January 2006 states that '*I was able to view a number of vehicles, caravans and what appeared to be occupation of the agricultural building*'. What type of occupation of the barn is not stated other than the officer considered it may not be agricultural in nature.
29. Mr Harborne has also stated that he was living in a caravan that was stationed close to the bedroom end of the barn in 2009 when there was a very cold winter and he vowed to himself to move into the barn. His written response to the PCN states that he lived in the blue van 'J' until 2006 and the caravan marked 'X' from 2006 to 2012/2013. However, in a letter dated 14 December 2007, from the appellant to Mr Hardy, the activities described by the appellant do not include a residential use of the vehicles/caravans and the occupation of the barn is not mentioned.
30. At the Inquiry Mr Harborne said that caravan 'X' was in the position marked 'L'/'M' on the PCN response and it is the caravan shown in the photograph at Appendix A of his proof of evidence. That photograph is dated 9 January 2009 and shows a caravan stationed near to the one end of the barn. The caravan has the lettering LMC on one end. A caravan with the same lettering on appears to be within the Council's submitted photographs dating from 2005, 2007 and 2013. In all of these photographs that caravan is stationed near to the one end of the barn. The PCN response also states that caravan 'X' was moved to its current position, at the date of the response, in 2015. The Council's photographs from 2018 appear to indicate that this caravan was not positioned near the barn at that time.
31. The 2010 notice related, in part, to the change use of the land by stationing a mobile home for residential use. It is not known if that notice specifically related to caravan 'X', but the Council's records indicate that the 2010 notice was complied with by January 2012. Therefore, at that time the Council were satisfied that the change of use had ceased in that a mobile home stationed on the land was not in residential use. There is no evidence before me to indicate that Mr Harborne has lived at a different address since 2012. It is therefore highly likely that the appellant had completed the internal works on the conversion of the barn to enable him to continue living on the site and live in the barn full time by the time the patio windows were installed in March 2013.
32. Caravan 'X' remained on site and additional caravans and vehicles have been stationed on the site since 2013. However, I can see no logical reason why Mr Harborne would have moved back into a caravan even on a part-time basis, given the relative warmth and comfort of the facilities in the converted barn. Moreover, it appears that caravan 'X' had been moved some distance from the barn sometime in 2015 and that third parties occupied other caravans/vehicles.

33. As stated previously, the 2015 case related to the alleged non-compliance with the 2010 notice with regards to residential occupation of the site. No additional evidence of what the specific complaint entailed, that resulted in the case being opened, or any actions taken at that time are available. In July 2016 the owner of Lilac Cottage sent emails to the Planning Enforcement Officer at the Council relating to the appellant's activities on the land. The email dated 30 July states, amongst other things, that *'your predecessor Mr John Hardie closed the case relevant to the subject without taking any action...I strongly believe the site is being used for more than agricultural purposes. Over the years many caravans have entered and exited ...the dilapidated barn on the site has been improved and now has double glazed doors..'* Even though the spelling of the surname is different it is reasonable to consider that the Mr Hardie cited is Mr John Hardy the Principal Enforcement Officer. It is not clear which case Mr Hardy had closed without action but given that no action was taken after the December 2013 letter it is likely that is the case cited. I acknowledge that the email does not state that the barn is being used as a dwelling, it only states that it has been improved and has double glazed doors. However, as stated previously the external appearance of the barn is not that of a conventional dwelling.
34. Mrs Salter tried to undertake a site visit in July 2017 in relation to the 2015 case that had not been closed. She could not gain access to the site and proceeded to try and contact Mr Harborne and his father in relation a number of vehicles on the land and other items being stored on the land and also someone possibly living on site. In December 2017 Mr Harborne responded in an email to Mrs Salter and stated, amongst other things, that *'A variety of workers do spend short periods of time on the land mostly in the summer. They are engaged in field and land management and also direct agricultural activities like orchard management and vegetable production and fruit harvesting. This also provides a degree of security which is most needed due to the numbers of thefts of equipment that we have suffered over the years. Your predecessor did say that it was permissible for agricultural workers to live in non permanent accommodation for up to 6 months of the year, although I am not sure exactly how much time individuals do spend at the land.'*
35. Mr Harborne does not make any reference to the barn or him living in it in that email. Mrs Salter considers that if Mr Harborne was living permanently on the site at that time his very presence would be a form of security and security in the form of transient workers would not be necessary. She also deduces from the response that the agricultural workers are not living in the barn and that Mr Harborne would be aware of how much time individuals spend on the site if he was living in the barn at that time. Under cross-examination Mrs Salter agreed that the deductions were based on her assumptions. In my judgment, her assumptions are not unreasonable. Nevertheless, I also consider that the response could be read as Mr Harborne trying to make a case to retain the caravans and vehicles on the land, be evasive about how long individuals stay on the site and ultimately delay any potential enforcement action.
36. There was a protracted time period between Mrs Salter's attempt to undertake a site visit in July 2017 and the date of the actual site visit in November 2018. The Council has provided copies of the correspondence related to various attempts to set up meetings and site visits. Mr Harborne has admitted that he was trying to delay matters as he was fearful of losing his home. Mrs Salter cited obtaining a warrant for entry in an email to Mr Harborne's father in

- November 2017 but there is no evidence before me to indicate that this was ever progressed.
37. In March 2018 Mr Harborne emailed Mrs Salter that he had retained an agent to assist him in the planning process and to state that he had been living in the barn for four and a half years, at least, at that time. The 2018 LDC was subsequently submitted. In response to the 2018 LDC the owner of Lilac Cottage stated in an email, amongst other things, that *'if the Council had investigated any of my complaints and accessed the site none of this would have happened because the enforcement officer would have discovered him living on the site and made moves to remove him.'* Again that email only states that Mr Harborne would have been discovered living on the site and that could reasonably be taken to mean living in a caravan and/or the barn. Also in response to that LDC Burrowbridge Parish Council stated that it had historically and consistently asked the Council to enforce action since 2013 against the problems raised by them. The nature of those problems is not stated. A dwelling is cited in point 1 of that response but the description of the existing use the subject of the LDC relates to *'use as a dwelling'*. Therefore, when read in context no further inferences can reasonably be taken from that response.
 38. The 2018 and 2020 LDC applications contained sworn and unsworn statements from third parties who had stayed on the land. The Statement of Case submitted by the original agent on this appeal cited 3 sworn statements of truth. However, it was confirmed at the Inquiry that those statements were no longer relied upon and did not form part of the appellant's case. Whilst such evidence may have been of assistance to the Inquiry, following the *Gabbitas*⁵ principle, the withdrawal of them should not necessarily count against the appellant's case.
 39. Based on the written and oral evidence the only breaks in occupation of the barn relate to the appellant's holidays in America and Canada and short periods working away providing security at festivals. The Council stated at the Inquiry that it is not arguing that there have been any significant breaks in the occupation of the barn. I have no reason to dispute that the cited periods of vacancy can be treated as *de minimis* and the Council would not have been prevented from taking enforcement action against the use during those vacancies.
 40. Mr Harborne's documentary and written evidence in regard to his residential use of the barn is somewhat spartan and it provides little specific evidence of him residing in the barn itself. However, as stated above, the photographs do indicate that windows and doors had been installed in the front elevation, a living room/rest room was set up and domestic furniture and possessions were within it by March 2013. Furthermore, his oral evidence given under affirmation, set out precisely and unambiguously when he started to live full-time in the barn and how he has occupied the barn without mains utilities. Clearly, Mr Harborne's evidence is self-serving, in that it supports his case. There are discrepancies in the evidence in relation to the period around 2007 and he also admitted that he tried to delay the Council visiting the site in 2017/2018. These considerations reduce his credibility as a witness.

⁵ *Gabbitas v SSE & Newham LBC* [1985] JPL 630

41. However, the appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If there is no evidence to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to reject the appellant's evidence provided it is sufficiently precise and unambiguous. The Council stated in the Officer Report relating to the 2020 LDC that it *'arguably has no direct evidence of its own which categorically demonstrates that the building was not in residential use prior to Feb 2016'*. Mr Harborne's 2017 email response could be read more than one way and it is understandable that he feared losing his home.
42. The enforcement history provided by the Council and the ongoing complaints from the owner of Lilac Cottage and the Parish Council can reasonably be regarded as being consistent with Mr Harborne's evidence, but they could also relate to him living on the site in a caravan. Nonetheless, given that the Council's records indicate that the 2010 notice's requirements had been complied with in 2012 it is more likely than not that the material change of use occurred in 2013. Moreover, nothing has been presented that contradicts the evidence provided by the appellant regarding the sequence of events from 2009 onwards described above and there is little that makes his version of events less than probable. When viewed in totality, as a matter of fact and degree the evidence presented indicates that on the balance of probabilities that Mr Harborne has lived in the barn for a period of more than four years without significant breaks in occupation.
43. Therefore, the material change of use of the barn for residential purposes is immune from enforcement action by virtue of the terms of section 171B(2) of the 1990 Act.

Conclusion – Appeal A

44. On the balance of probabilities, the appeal on ground (d) should succeed in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control. The enforcement notice will be corrected and quashed.

Appeal B – The appeal on ground (d)

45. The appellant's case on ground (d) is limited to 2 of the buildings cited within EN2, compost toilets A and B. Accordingly, there is no basis on which EN2 could be quashed under ground (d), but there is scope for argument over whether the notice can require removal of those buildings. In this case the burden of proof lies with the appellant to show that the operations involved in the construction of compost toilet buildings A and B were substantially completed prior to 12 July 2017. The appellant has submitted invoices dated 17 May 2014 and 7 April 2015 for Tardis Interiors to design and build compost toilets. He has also submitted 3 sworn statements from third parties who had stayed on the land and used compost toilet B. Dated photographs from 30 October 2016 and 19 March 2018 of compost toilet B are also before me.
46. Mr Harborne's oral and written evidence indicates that since its erection he has used compost toilet A as the barn does not include any sanitary facilities and that the invoice dated the 17 May relates to that building. He also indicates that the building replaced an earlier compost toilet structure that was close to toilet A. I was shown the remnants of the earlier toilet structure at the site visit.

47. The Council was initially concerned with discrepancies that were apparent between Mr Harborne's response to the PCN, the references to compost toilets in the Slade Parry Report and aerial photographs that the Council had sourced. However, through cross examination at the Inquiry it became clear that the inconsistencies were derived from confusion relating to the earlier compost toilet and its replacement. Moreover, the Council acknowledged that its aerial photographs may not show the toilets due to the amount of vegetation and the quality of the photographs. I observed at the site visit that the compost toilets are located adjacent to shrubs and trees. When that landscaping is in full leaf it would more likely than not screen the 2 compost toilets in aerial photographs.

Conclusion – Appeal B

48. Consequently, based on the evidence before me, on the balance of probability the buildings identified as compost toilets A and B were substantially completed prior to 12 July 2017. Therefore, at the date on which EN2 was issued no enforcement action could be taken in respect of compost toilets A and B. The ground (d) appeal succeeds to that extent. I intend to correct the notice by substituting the plan attached to EN2 with the amended plan annexed to this decision and adding the word 'amended' between 'the' and 'plan' in paragraph 3 prior to upholding it.

Formal Decision – Appeal A

49. It is directed that the enforcement notice is corrected by:

- the wording '*unauthorised change of use*' within the description of the alleged breach being substituted with '*unauthorised material change of use*'.

50. Subject to the correction, the appeal is allowed and the enforcement notice is quashed.

Formal Decision – Appeal B

51. It is directed that the enforcement notice is corrected by:

- the substitution of the amended plan annexed to this decision for the plan attached to the enforcement notice
- the addition of the word '*amended*' between '*the*' and '*plan*' in paragraph 3 of the enforcement notice.

52. Subject to the corrections the enforcement notice is upheld.

D. Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Maurice O'Carroll	Counsel – 33 Bedford Row
He called	
Richard Harborne	Appellant
Mrs Susan Jones	The Susan Jones Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Roy Pinney	Consultant Solicitor - SHAPE Partnership Services
He called	
Mrs Anna-Mari Galliot	Planning Specialist
Mrs Stacey Salter	Planning Enforcement Officer

DOCUMENTS

CD37 Appellant's Opening Statement;

CD38 Appellant's Closing Statement;

CD39 Evidence of Anna - Mari Galliot;

CD40 Evidence of Stacey Salter;

CD41 *Gravesham BC v Secretary of State for the Environment* (1984) 47 P&CR 142;

CD42 *Moore v Secretary of State for the Environment* (1999) 77 P&CR 114;

CD43 Wyken Field, Warwick, PINS decision of 11 January 2017, APP/T3725/X/16/3147317;

CD 44 *Swale BC v First Secretary of State* [2005] EWCA Civ 1568

CD45 Council's Opening Statement;

CD46 Council's Closing Statement;

CD47 Appellant's Costs Application Submission.

(numbering follows on from documents in the Core Document List)



Amended Plan

This is the plan referred to in my decision dated:

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

Land on north side of Statheclose Rhyne (otherwise known as land adjacent to Lilac Cottage Stathe Road) Stoke St Gregory Taunton Somerset

Reference: APP/W3330/C/21/3281426

Scale: Not to Scale

