

Appeal Decision

Site visit made on 6 April 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 21 April 2022

Appeal A - Appeal ref: APP/F1040/C/21/3286785

Badger Brook Barn, Hills Lane, Stanton by Bridge, Derby DE73 7HY

- The appeal is made by Glen James Gray under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by South Derbyshire District Council.
- The notice was issued on 15 October 2021; reference No. E/2020/00054.
- The breach of planning control was: Without planning permission, the material change of use of an agricultural building to a mixed use as a dwellinghouse (Use class C3) and agriculture, with the formation of first floor residential accommodation.
- The requirements of the notice are:
 1. Cease the use of the dwellinghouse (use class C3) located within the agricultural building.
 2. Permanently remove the first floor development that is the dwellinghouse (use class C3) from the agricultural building, including all access staircases and services.
- The period for compliance with the requirements is six months.
- The appeal was made on ground (a) as set out in the amended Act.

Summary of decision: The enforcement notice is upheld. Planning permission is not granted to retain the residential use of the agricultural building.

APPEAL B - Appeal ref: APP/F1040/W/21/3276671

Badger Brook Barn, Hills Lane, Stanton by Bridge, Derby DE73 7HY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal was made by Glen James Gray against the decision of South Derbyshire District Council.
- The application ref: DMPA/2020/0866 was dated 25 September 2020.
- It was refused by a notice dated 13 May 2021.
- The development was described as: Continued use of part of agricultural building as overnight accommodation (change of use to mixed use as a dwellinghouse (use class C3) and agriculture) for a temporary period of two years.

Summary of decision: The appeal is dismissed. Planning permission is not granted to retain the temporary residential use of the agricultural building.

Appeal development

1. The appeal concerns the residential use of part of an agricultural barn approved in June 2018 – planning permission No. 9/2018/0426, for the erection of an agricultural barn at Badger Brook Barn, Hills Lane, Stanton by Bridge.
2. Badger Brook Barn is a recently developed smallholding of 12 ha in a mixed use of agricultural and holiday let cabins approved in April 2019 – planning permission 9/2018/0950, for the erection of 3 holiday let cabins and the construction of a parking area.
3. A one bedroom flat has been built within the agricultural barn at first floor level, accessed by a wide stairway. The flat consists of a bed-sitting room with a kitchen and a bathroom. No windows have been built into the barn's corrugated sheet outer walls. There is a large window looking into the barn. It is understood the flat is occupied by the Appellant Mr Gray's daughter and her two children.

The s.174 appeal on ground (a) and the s.78 appeal

4. An appeal on ground (a) asks that planning permission is granted to retain the development enforced against.
5. The deemed planning application that arises from the appeal against the enforcement notice on ground (a) is an application to grant permission for the material change of use of an agricultural building to a mixed use as a dwellinghouse (use class C3) and for agriculture, with the formation of first floor residential accommodation.
6. The s.78 appeal application asks for planning permission for the continued use of part of the agricultural building as overnight accommodation (change of use to mixed use as a dwellinghouse (use class C3) and agriculture) for a temporary period of two years.
7. The 2 appeals deal with overlapping considerations. They are considered together.
8. Mr Gray said the overall development of the site was to form a small farmstead with holiday let cabins to provide work and income. It was started in the late 1990's. The barn was erected for small scale agricultural use. The cabins were constructed to provide work and income. It appears therefore that Mr Gray's holding was to be operated as a mixed use agricultural unit and a holiday let enterprise.
9. It was explained that due to a family break-up, Mr Gray's daughter and her 2 children became homeless. They had initially been provided with accommodation by the Council in a nearby hotel, but it became unavailable without notice when the hotel closed during the first Covid lockdown period. Mr Gray decided to provide accommodation for his daughter and grandchildren within his barn until a more permanent solution could be found.
10. Although the Council's objection to the retention of the residential use of the barn at Badger Brook Farm set out in some detail why there was no persuasive agricultural need for someone to live on the site, the Appellant said his case did not rely on an essential functional need for an agricultural worker to maintain a permanent presence on the site. Instead, he said the project fell to be

considered against the Council's policy relating to barn conversions, (Agent's letter, 21 January 2022). Whilst it would be more convenient, sustainable and make better business sense for him to maintain a permanent presence on the site associated with both enterprises, that was not the driver behind the formation of the living accommodation in the barn.

11. In my view, the Council were right to conclude there is no agricultural justification for anyone to live on the Appellant's land. This is a mixed agricultural and holiday let business, where the agricultural business aspect appears to be the minor element. Such a residential use would be contrary to Local Plan policy H25 - rural workers dwellings. That requires an essential need for a temporary dwelling for a worker to support a rural based activity; that the essential need cannot be fulfilled by an existing dwelling within the locality and that the enterprise has been planned on a sound financial basis and is capable of being carried on as such. None of those requirements were met here.
12. The appeal site is outside any settlement boundary as defined by Policy SDT1, where the erection of an isolated dwelling in the open countryside is considered unsuitable. However, the Appellant said Policy BNE5 of the Local Plan allows for the residential conversion of existing buildings subject to compliance with Policy H28 of the Local Plan. Policy H28 has 3 criteria:
 - i) the building is to be of a permanent and substantial construction;*
 - ii) is suitable for conversion without extensive alteration, rebuilding and/or extension; or*
 - iii) constitutes the re-use of a suitable redundant or disused building or would secure the future use of a heritage asset.*
13. The Appellant claimed that the appeal agricultural building satisfied criteria i) and ii). It did not need to satisfy criterion iii) as well.
14. The explanation to the policy says that the buildings within the South Derbyshire countryside are part of the character of the Rural Areas. The conversion of buildings can allow change to be assimilated without being detrimental to the existing character. It goes on to say that National Policy supports the reuse of rural buildings for residential uses and states that they should lead to an enhancement to the immediate setting. In my view, it is quite clear that this policy is not intended to apply, as in the present case, to the conversion of a recently built concrete frame agricultural building clad in concrete and profile sheeting into to a new dwelling.
15. The continued use of the appeal agricultural building for living accommodation would also be contrary to policy H1 of the Local Plan Part 1, policies H25, BNE5 and SDT1 of the Local Plan Part 2. It would also fail to comply with para. 80 of the National Planning Policy Framework (NPPF) and associated Planning Practice Guidance (PPG) which says that Planning policies and decisions should avoid the development of isolated homes in the countryside.
16. I have considered the personal circumstances in this case. The Appellant asks in the s.78 appeal that a 2 year planning permission is granted to allow his daughter and her children time to find suitable permanent accommodation.
17. The enforcement notice was issued on 15 October 2021. When upheld, it allows a further period of 6 months to comply with the requirement to cease

the residential occupation of part of the agricultural building. The s.78 appeal planning application was dated 25 September 2020 but it appears that the flat in the agricultural building was occupied by 31 March 2020. If the full period for compliance with the enforcement notice is used, Mr Gray's daughter and her children will have been living in the flat for some 2¹/₂ years. It is reasonable to expect that her housing problems might have been overcome in that time. To permit another 2 years from the date of this decision would, in my view, be unjustifiably excessive.

18. The appeals fail. The enforcement notice is upheld and planning permission is not granted on the application deemed to have been made to retain the residential use of part of the appeal agricultural building. Planning permission is not granted on the s.78 appeal application for a further 2 years residential use of the flat in the barn.

FORMAL DECISIONS

Appeal A - Appeal ref: APP/F1040/C/21/32886785

19. The appeal is dismissed. The enforcement notice is upheld. Planning permission is not granted on the application deemed to have been made for the material change of use of an agricultural building to a mixed use as a dwellinghouse (use class C3) and agriculture, with the formation of first floor residential accommodation in the agricultural building at Badger Brook Barn, Hills Lane, Stanton by Bridge, Derby DE73 7HY.

Appeal B - Appeal ref: APP/F1040/W/21/3276671

20. The appeal is dismissed. Planning permission is not granted on the application made for the continued use of part of the agricultural building as overnight accommodation, (change of use to mixed use as a dwellinghouse (use class C3) and agriculture), for a period of two years at Badger Brook Barn, Hills Lane, Stanton by Bridge, Derby DE73 7HY.

John Whalley

INSPECTOR