



Appeal Decisions

Inquiry held on 6-8 September 2022

Site visit made on 6 September 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 16 September 2022

Appeal A Ref: APP/F1610/C/19/3223863

Plot 2, Quarry Farm, Cricklade Road, South Cerney, Cirencester, Gloucestershire, GL7 5QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Tom Varey against an enforcement notice issued by Cotswold District Council.
- The notice, reference:17/00197/ENF, was issued on 25 January 2019.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a dwellinghouse on the Land.
- The requirements of the notice are: Demolish the unauthorised building as erected on the land and reinstate the land to its former condition.
- The periods for compliance with the requirement is: 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f), (b), (c), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- A similar appeal (APP/F1610/C/19/3223864) has been made by Mrs S Varey

Appeal C Ref: APP/F1610/C/22/3296849

Plot 2, Quarry Farm Cricklade Road, South Cerney, CIRENCESTER, GL7 5QE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs S Varey against an enforcement notice issued by Cotswold District Council.
- The notice, reference:20/00300/OTHER, was issued on 17 March 2022.
- The breach of planning control as alleged in the notice is without planning permission, the change of use of agricultural land to residential curtilage and the erection of an outbuilding at the property known as Pear Tree House ("the Unauthorised Residential Use") within the area shown edged red on the plan here attached.
- The requirements of the notice are: 5.1 Cease the use of and demolish the unauthorised building as erected on the land and permanently remove it from the site. 5.2 restore the land to agricultural use.
- The periods for compliance with the requirements are: 5.1, 6 months; 5.2, 9 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
- A similar appeal (APP/F1610/C/22/3269850) has been made by Mr T Varey

Decisions

Appeals A & B - APP/F1610/C/19/3223863 & 3223864

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

Appeal C - APP/F1610/C/22/3296849

2. Appeal C is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change of use of agricultural land to residential land and the erection of an outbuilding at the property known as Pear Tree House ("the Unauthorised Residential Use") within the area shown edged red on the plan attached to the notice at Plot 2, Quarry Farm Cricklade Road, South Cerney, CIRENCESTER, GL7 5QE as shown on the plan attached to the notice and subject to the following condition:
 - 1) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling within Schedule 2 Part 1 Class E (buildings incidental to the enjoyment of the dwellinghouse) and Class F (hard surfaces), shall be carried out on the site.

Appeal D - APP/F1610/C/22/3269850

3. The Appeal is dismissed.

Applications for costs

4. Applications for full and partial awards of costs were made by the Council and these are subject to a separate decision letter.

Preliminary Matters

5. It was confirmed in opening that the ground (c) for both appeals was withdrawn.

Background to the Appeals

6. Mr Adams was the owner of Quarry Farm, which stands on the west side of Cricklade Rd. The road runs parallel to the A419 dual carriageway, which is hidden by trees and bushes, and has a scattering of houses and other buildings along its western side. He is a long standing acquaintance of Mr Varey, who is from a traveller family and until recent years lived in a caravan on a nearby traveller site.
7. In 2005 Mr Adams received planning permission for a large, detached building to contain a swimming pool, gym, games room and garage. This would stand next to Quarry Farm, backing onto the road. Essentially it would have been in the same place and roughly the same scale as the current dwelling. Work began on this building, but out of time and so unlawfully in 2011, and amounted to only trenches and footings for the foundations. In 2014 Mr Adams changed his mind and received planning permission for a slightly smaller building, but with a gable ended wing, that was to be a badminton court with changing rooms and a garage and he asked Mr Varey to build it. Works for the clearance of the ground, which had become overgrown, commenced and Mr Adams again changed his mind and in November 2015 received planning permission for the same badminton court, but with the gable-ended wing switched to the other end, closer to Quarry Farm, and ancillary guest accommodation in a first floor in this wing. The bulk of the building was open to the roof for the badminton court.

8. Around 2015/2016 it became clear the roof for the court was too wide and required further supports. Structural engineers were called in and eventually pillars were installed to support metal beams to support the roof. This compromised the single large badminton court which was effectively cut into 3 by the pillars and so three smaller courts were introduced. By now Mr Adams had run out of money and sold or gave the land and building to Mr Varey with an option to buy it back. Mr Varey built the court at his own expense and at some point it was decided to turn it into a dwelling. Mr & Mrs Varey are now the owners of the dwelling and live there. Mr Adams has sold up Quarry Farm and lives in Cyprus.
9. An enforcement notice was issued in January 2018 alleging the erection of a dwelling house, but with requirements that pertained to a material change of use, in that they only required the use to cease and the building to be returned to the configuration in the 2015 planning permission. This was appealed and the notice quashed as the Inspector could not reconcile the requirements with the allegation without injustice to the appellants. The new notice was issued as described in the heading to this decision.

The Appeal on Ground (b)

10. This appeal turns on the different interpretation of the events outlined above. The Council argue that even if the badminton court was begun, it was never completed and brought into use. A dwelling was in fact created and so the allegation of the construction of a dwelling is correct. The appellants argue the court was built and used, and only then was it decided to turn it into a dwelling. There has been a material change of use of a building into a dwelling so the allegation is incorrect.
11. There is a further disagreement between the parties as to the implications of this. The Council argue they can simply issue another notice, alleging a material change of use under the second bite provisions. The appellants argue they cannot, as the allegation of a material change of use is sufficiently different from the erection of a dwelling to go beyond what is allowed by the second bite provisions, and as more than 4 years have passed since the material change of use to a dwelling took place the building and use are now lawful. This is not a matter before me, so I shall not comment further on it.

Basic facts

12. There are a number of matters of fact which we know for certain. The original footings were in place by February 2011. The first planning permission for the court is dated 18 December 2014. The promissory note/agreement entered into between Mr Adams and Mr Varey is dated 17 February 2015. A planning permission to subdivide Quarry Farm to split it into 2 dwellings was granted on 19 August 2015 and then the second planning permission for the court was granted 30 November 2015. The structural engineers report is dated February 2016. There are photographs from the appellant dated August 2016 that show the interior of part of the building apparently decked out as a badminton court.
13. On 20 September 2016 Mr Rofer, the appellants' solicitor visited the site and saw it was 3 badminton courts. Also in September (the 8th) an amendment notice was submitted by Mr Griffin, who was acting as the building regulations expert, to the Council to inform them of an intention to change to a dwelling. 24 August 2017 the Council visited and took photographs showing the building

undergoing conversion to a dwelling. There is evidence from Facebook posts the Varey family had moved in on 12 September 2017.

14. On the face of it this would suggest the appellants' claim to have made a material change of use is correct. However, the Council have challenged the storey that is woven around these dates and events to suggest that it doesn't make sense or is contradictory. The Council do not need to come up with an alternative timeline, it is enough to show that on the balance of probabilities, the appellant is incorrect.
15. First, we need to consider the inconsistencies in the appellants' evidence. The nub of their story is that Mr Adams was a wealthy landowner who was falling on hard times. He gave evidence at the inquiry and was quite candid about this. He found it easy to make money but harder to hang onto it. In my view whether I believe Mr Adams is the essence of the case and I found him to be a credible witness.
16. The story is that when times were good he embarked on the somewhat grandiose project of the swimming pool building. But it became clear this would be too expensive to build. By 2014 he was having family issues and running short of ready cash. He decided to resurrect the pool building idea, but as a cheaper badminton court, as a way of adding value to Quarry Farm and engaged Tom Varey to project manage the build. Mr Adams had no interest in badminton, it was purely an investment decision based on the fact he already had planning permission for a leisure building. He was hoping to fund it from a land sale in Cyprus but that eventually fell through. In the meantime Mr Varey began work clearing the site and laying the slab.

What happened with the laying of the slab?

17. This is the first of the main inconsistencies. Mr Varey said in his proof that he laid the concrete slab, which also involved a lot of pipe work and a septic tank etc, in late 2014 or early 2015. A photograph is provided which it was said was about January 2015, showing the completed slab. This work had run up significant debts, £38,000 it is said, and Mr Adams couldn't pay. Consequently, he entered into the legal agreement with Mr Varey. This agreement sold the land to Mr Varey for a notional £38,000, with an option for Mr Adams to buy it back within 2 years for £38,000 plus any additional money Mr Varey had spent completing the building. However, the photographs of the slab show that is for the building that received planning permission in November 2015, that is the gable ended wing is in the 2015 position not that for 2014. Yet planning permission hadn't been applied for it in January 2015 when the slab was said to be laid.
18. When cross-examined Mr Varey explained he wasn't good with dates, as he struggled with reading and writing and the photographs were actually January 2016. This makes sense as planning permission was granted 2 months before. The £38k was for the ground works, septic tank and clearance, not for the slab. This was backed up by Mrs Varey and Mr Adams noted that not a lot of work had been completed by the time of the legal agreement.
19. On 20 January 2016 a council officer visited the neighbouring site for an unrelated application. This officer, Mr Moody, wrote the proof for this appeal, but could not attend and a consultant was employed instead. In the proof, Mr Moody said the agent referred to a planning permission that had been granted

next door for an outbuilding (ie the badminton court). Mr Moody did not “see evidence of any substantive works having been carried out”. Mr Miles, the consultant, expanded on this a little at the Inquiry, saying that Mr Moody saw very little, possibly the remains of a stables that had been there. Unfortunately I have no evidence from Mr Moody, no statutory declaration or site visit notes, so it is difficult to know exactly what he saw.

20. I suggested to Mr Miles that the site visit notes would possibly not mention this, unrelated, development, and it was only when preparing for this inquiry that Mr Moody remembered this exchange, an idea with which he agreed. If so, then Mr Moody’s memory as recorded in the proof, may be pretty accurate. If he looked across the appeal site, which then was open and visible, he may well not have seen much. The slab is set on the ground and no other works are visible in the photographs. It is entirely possible that he saw the slab or part of it and decided it did not amount to substantive works. Whatever the truth the slab had to have been laid around that time as we know the building was substantially complete by August, which is only 8 months later.
21. In the meantime, between the date of the agreement, when Mr Adams was hoping for money to come from his Cyprus land sale and laying of the slab in January 2016, it had become clear the land sale idea was going nowhere and Mr Adams decided to split the house at Quarry Farm into two dwellings. Planning permission was granted for this in August 2015. Eventually Mr Adams did sell the new house and continued to live in the other half of Quarry Farm. It was this that promised to be a new source of money for Mr Varey who then continued with the works, laying the slab. This seems a reasonable hypothesis to me.
22. All of this suggests to me the slab photographs are from January 2016. The legal agreement is for the monies already paid out on site clearance etc and Mr Moody either didn’t see the slab or did and decided it wasn’t substantive – whatever that means. The inconsistency with Mr Varey’s proof is not that surprising given the time and lack of any actually datable photographs.

The introduction of the pillars

23. Following the laying of the slab, work continued with the walls up to head height and then the problem with the roof span arose. The appellants’ version is that it became obvious the roof span was too large and wouldn’t support the weight of the roof without support. Structural engineers were consulted and Mr Mills produced a report dated February 2016. In March 2016 Architects – John Broom Associates, produced a drawing showing where the pillars should be located and that they support steels that run into the roof slope, forming an internal, supporting arch. Remedial work had to be carried out, the floor slab cut away to accommodate deeper foundations for the pillars, the steels inserted and then the roof put on. This also seems to make sense, except for various anomalies.
24. As well as calculations for the roof, the structural engineer’s report suggests steel beams would be laid across the building at ceiling height. This would of course render the badminton court inoperable and was nothing like the March 2016 architect’s drawing. This anomaly seems to have come to light during the previous appeal, and Mr Adams sought a meeting with Mr Mills to explain what had gone on. Mr Mills wrote a letter, dated 31 July 2019 to explain. This does explain that the calculations were based on plans provided by the previous

architect, a Mr Drysz, who has since died, and that he provided the wrong plans. The correct ones showed the open plan badminton court and he apologised for adding in the unnecessary floor beams, by which he means the ceiling beams. However, the letter also says the correct plans showed a mirror of the building shown in his calculations and that the calculations were prepared between December 2015 and February 2016, so work on the calculations would seem to have begun before the slab was laid, assuming January 2016 is the correct date for the slab.

25. It seems from the calculations document, however, that they are not a mirror of the correct plans (assuming by correct plans he means the 2015 consent) so that is odd and it is also odd that the calculations began before the correct plans were obtained. Perhaps that explains why the wrong plans were used? But none of the plans for either the 2014 or 2105 versions of the court are labelled 101A or 102B as mentioned in the letter. All in all Mr Mills' letter only adds to the confusion.
26. Although it was never explicitly suggested, the Council's concerns over the steel beams seem to be that at that point, that is long before the building was finished, a decision had been made to build a dwelling instead. The pillars and beams were to support the first floor that was inserted for the bedrooms. However, if that is the case, the beams were never put in, otherwise Mr Rofer would have seen them and no badminton would have been possible. So that isn't what happened. What is clear is that at some point it was determined the roof required more support and this involved installing pillars in the open space of the court and steel beams to support the roof. Otherwise there would have been no need for the John Broom plans. Consequently while a number of questions remain, there is nothing that seriously contradicts the appellants version of events.

Were the badminton courts ever used?

27. Thus by March 2016, when the architect's drawings are dated, Mr Varey was continuing with the build, adding in the pillars and eventually constructing a building with 3 smaller badminton courts. According to Mr Rofer, at the time of his visit on 20 September 2016, there was a wooden floor and two courts were marked out with tape, one of which was used by Tom Varey Jr and his friends. Photographs from slightly earlier in August 2016, show the unmarked court with a badminton net in it. The Council suggest the building was still under construction at this date, but that is not what the photographs show. Mr Varey accepted that in August 2016 the changing rooms weren't complete, just a shell inside, but they are ancillary to the courts and the lack of their completion doesn't suggest to me the building as a whole wasn't substantially complete and had been brought into use. There is no evidence the badminton courts were not completed and plenty of evidence they were. The photographs also show there is no ceiling in place and a proper wooden floor has been installed.
28. The only alternative explanation is that the whole badminton court idea was a subterfuge, to convince Mr Rofer that the building had been completed. But why? Had the Council visited then I could understand the need to convince them a badminton court had been built, but they didn't. The whole elaborate charade would appear to have been designed purely for the specific circumstances of this appeal, which of course could not have been predicted

back in 2016. Consequently, I consider the evidence shows the courts were completed and brought into use.

The conversion to the dwelling

29. It was around this time that Mr Adams gave up on the idea of the court being a useful adjunct to Quarry Farm and decided to convert it instead into a dwelling. On 8 September 2016, Mr Griffin, his building regulations man, informed the Council of this change in a Building Control Amendment Notice, which amends the Initial Notice (for the badminton courts) and announces it will now be a dwelling. He told Mr Adams, once 5 days were up, if the Council did not object then they could convert the courts into a dwelling. Work hadn't started by the time of Mr Rofer's visit on 20 September 2016, but the Council visited in August 2017 and it was virtually complete.
30. The Council make much of the fact the amendment notice describes the works as "*erection of a new dwelling*", but that cannot be correct as by September 2016 there is no dispute the building was at least nearly finished, so I do not think anything turns on Mr Griffin's poor phraseology. He provided a statutory declaration on which he agrees he told Mr Adams he had "deemed permission for the works" proposed in the amendment notice. This is not quite saying he had planning permission, but close enough for a non-expert.
31. Works obviously began sometime before August 2017 as they were well advanced by then. Mr Varey and Mr Adams both say that once the February 2017 deadline set in the legal agreement ran out (ie 2 years from the date it was signed), then Mr Adams was no longer able to buy back the land. He effectively gave it to Mr Varey as he had no chance of raising the money to pay for the works already carried out and so washed his hands of the whole affair. Mr Varey was left with the building which he then converted into a dwelling. Again the Council argue that given its state when they took their photographs on 24 August 2017 it couldn't have been complete by 12 September when the Facebook photograph is taken. But the Facebook message is not that the house was complete, but that it was their first night there. It could easily have been sufficiently finished to stay there, even if not everything was completed.

Other issues

32. The Council issued a PCN on 3 October 2017 to find out what had happened at the site. The appellants' then planning consultant, Mr Mennell filled this out. He says the building was begun in October 2015 and will be completed in December 2017 and the Vareys will live there. We know that work probably did begin around October 2015, but that was on the badminton court, and although the Vareys had moved in by the date of the PCN, the house may well not have been completed until December 2017. Although the PCN refers to the erection of a building on the land for residential use, the question is specifically when was the building begun and the answer is October 2015. I can't see I can read any more into that than a simple answer of fact. Mr Mennell isn't making an admission it was always intended to be built as a dwelling.
33. Much has been made of Mr Mennell's lack of knowledge of the enforcement system and this may inform the simplicity of the answer above. But it does seem that Mr Mennell was at fault for not pleading ground (b) at the original inquiry, for advising the Vareys that once the first notice was quashed they had

planning permission for the house and for his inaccurate description of events in the original statement of case.

34. In my view there are only superficial differences from Mr Mennell's case and that which was finally uncovered at this Inquiry. These are far from unusual circumstances in my experience and don't suggest that Mr Varey was simply making up different stories at different times, especially when recalling a very tangled web of events and decisions made some years ago. The 2018 e-mail where Mr Mennell describes the change of use occurring during building operations only betrays his own failure to understand the issues surrounding the concepts of completion, operations and change of use in an enforcement context. In any event they rely, apparently on Mr Varey's recollection of events and he would not be expected to understand these differences.
35. As to the failure to appeal ground (b) at the original inquiry and initially at this one, is down entirely to Mr Mennell. His description of events makes it clear he knew the badminton court use was begun and then a material change of use made to a dwelling so it cannot be argued the appellants case has changed, it was simply that Mr Mennell did not recognise it for what it was.

Conclusions

36. In my view there is nothing that fundamentally disturbs the appellants version of events. A badminton court was planned and executed, being substantially complete and brought into use by August 2016. Subsequently, a decision was made to make a material change of use to a dwelling and that was substantially complete and occupied by September 2017. With the benefit of hindsight, Mr Adam's various decisions to go ahead with the building and then to push on with it after the roof issue arose look to have been misguided, but at the time, I can see that each step forward seemed to be the least-worst option open to him.
37. The alternative course of events as suggested by the Council is that during the construction process it was decided to turn the building into a dwelling. This does fit with the idea Mr Adams wanted to wash his hands of the whole thing and by letting Mr Varey build a house he got out of paying the money he owed and Mr Varey got a good return on his investment of labour and materials. However, it fails to explain why the badminton court was ever finished (or nearly finished) and why the badminton playing charade was set up for Mr Rofer? No-one could have foreseen the Council would allege the construction of a dwelling and it is only for this ground (b) that the whole "alleged" badminton court scenario works. Indeed the very fact the appellants didn't appeal ground (b) originally suggests strongly they were not involved in a clever subterfuge but that, as odd as it may seem, they did build a badminton court and then turn it into a house. If everyone acted in a perfectly rational manner then enforcement would be much more straightforward. Therefore on the balance of probabilities I prefer the appellants' version of events.
38. I agree that we do not want to return to the pettifogging days of old, but there is a fundamental difference between a material change of use and building operations. The ground (b) appeal is that the construction of a dwelling did not happen as a matter of fact and with that I agree. The appeal on ground (b) succeeds. I shall quash the notice and the other grounds do not need to be considered.

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39. It was agreed at the Inquiry that the barn building does not stand out in its countryside setting and that if the appeal was allowed on ground (b) the Council would not object to the grant of planning permission for the barn nor for the creation of residential land (not curtilage), which would inevitably follow for the new dwelling. Consequently, I shall quash the notice and grant planning permission for the matters alleged.
40. The only condition that has been suggested is to remove permitted development rights for class E garden buildings or further hard surfaces to prevent over-development of what is a rural site. I agree this is necessary.
41. In this case I shall dismiss the similar appeal by Mr Varey to avoid two grants of planning permission.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Michael Rudd of counsel

He called

Thomas Varey

Gavin Rofer

Thomas Varey Jr

Susan Varey

Edward Adams

Dr Angus Murdoch

FOR THE LOCAL PLANNING AUTHORITY: Alexander Greaves of counsel

He called

Andrew Miles

DOCUMENTS

1. Appellants' opening
2. Council's opening
3. 2019 letter from Mr Mills about structural calculations
4. 2018 e-mails to PINs from Mr Mennell
5. Council's costs application
6. Suggested conditions
7. Council's closings
8. Appellants' closings