



Appeal Decisions

Site visit made on 9 March 2023

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 30 March 2023

Appeal A Ref: APP/R0335/C/21/3271703

Land adjacent to the 'Barn at Glenwood', Warfield, Berkshire, RG42 6BH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Manucher Daneshvar against an enforcement notice issued by Bracknell Forest Borough Council.
 - The notice, reference EN/12/00359/UOPD, was issued on 19 February 2021.
 - The breach of planning control as alleged in the notice is without planning permission the change of use from Paddock/agricultural land to private residential garden and the development of a polytunnel, greenhouse and shed and proliferation paraphernalia in association with the unauthorised use as private residential garden.
 - The requirements of the notice are: (i) cease the use of the land outlined in red as private residential garden; (ii) remove the polytunnel, shed and greenhouse from the land outlined in red on the location plan and shown on aerial photography in Appendices A and B; (iii) remove all materials associated with steps (i) and (ii) from the land; (iv) remove all materials associated with the use of the land outlined in red on the attached plan as a private residential garden, such as (but not limited to): garden benches, garden tables and chairs, domestic structures, gardening equipment and any miscellaneous equipment associated with the residential property including motor vehicles.
 - The period for compliance with the requirements is: 2 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (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.
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Appeal B Ref: APP/R0335/C/21/3271704

Land adjacent to the 'Barn at Glenwood', Warfield, Berkshire, RG42 6BH

- A similar appeal without the ground (a) is made by Ms Elenica Mishto
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Appeal C Ref: APP/R0335/C/21/3271708

Land adjacent to the 'Barn at Glenwood', Warfield, Berkshire, RG42 6BH

- A similar appeal including a ground (a) is made by Poly Developments International Ltd
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Decisions for all Three Appeals

1. The appeals are dismissed, the enforcement notice is upheld and planning permission is refused on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Application for Costs

2. An application for costs has been made by Mr Daneshvar and is the subject of a separate letter.

Preliminary Matters

3. This appeal was originally down for a Hearing, which was later upgraded to an Inquiry, as various witnesses would need to be cross-examined under oath as to the accuracy of their recollections. Unfortunately various delays meant the Inquiry was not eventually arranged until November 2022. Then due to the ill health of the appellant that date was cancelled. Eventually it was decided by the Inspectorate that due to the already lengthy delays an open-ended commitment could not be given and Mr Daneshvar's health evidence made it clear that he would not be fit to attend an inquiry at any time soon, if ever. As he was no longer professionally represented the decision was made to proceed with written representations procedure. Although less than ideal there did not seem to be any alternative. I have dealt with the evidence bearing in mind the preference of the parties for an inquiry to enable it to be tested.

Background to the Appeals

4. The appeal site has a long and complex history, some of which is relevant to this appeal. Mr Daneshvar, who is a property developer and is associated with Poly Developments International Ltd, bought the wider farm in 1979 and lived in a modest dwelling at Glenwood. In 2004 he received planning permission (04/00860) to demolish it and build a new larger house, which is now called Rose House, and he lived there for a while. The plans submitted with that application showed the new house set in a rectangle of garden, the larger area of land to the south, on which the barn would eventually be built, was shown as a paddock. As part of the works to construct Rose House, Mr Daneshvar says he constructed a barn, known to the Council as "barn at Glenwood" but to the appellant as Glenwood. It seems the workmen building Rose House lived on site in caravans and used the new barn as a sitting area and storage. In 2006 the barn was converted partly into a residence for company employees and partly used for storage. In January 2012 an LDC was granted (11/00799/LDC) to regularise the use of part of the barn for residential purposes.
5. According to Mr Daneshvar in 2012 various financial issues led to him moving out of Rose House to a rented property in Slough and Rose House was in turn rented out. Also in 2012 an application (12/00572) to reprofile the garden around Rose House was granted accompanied by a plan that sets out what was considered to be the garden of the house at that time. A new conifer hedge had been planted along the southern boundary of Rose House that only roughly followed the old rectangular boundary from 2004, and narrowed towards the entrance drive, marking a slightly smaller area of garden. The next year, in 2013, an LDC (13/01069) was applied for, to ascertain if the rest of the land around the barn 'Glenwood', was residential or not, as the 2012 LDC showed the red line tightly drawn around the building itself. The 2013 LDC was refused and an appeal¹ dismissed in 2015, coincidentally by me. In February 2016 planning permission was granted to convert all of the barn into a dwelling. During the processing of that application the Council negotiated with the appellant to restrict the residential curtilage to the land to the north of the barn only. Previously the plans had included the southern area of land, similar to this appeal site.

¹ APP/R0335/X/14/2222101 Issued 26 March 2015

6. In early 2016, now that Glenwood was larger, Mr Daneshvar moved back in, still renting out Rose Cottage and began to much more intensively use the appeal site for vegetable growing, erecting a shed and polytunnel that are subject to the notice.

The Notice is a Nullity

7. The appellant points out the date in the explanatory notes as to when an appeal can be made is incorrect. It seems the Council accidentally repeated the same date the notice came into effect. As the Council note, a finding of a nullity will be in rare cases where an error is so egregious as to make it impossible to correct without injustice. In this case there clearly has been no injustice, the appellant was not misled and three valid appeals duly made. I do not find that the notice is a nullity.

The Appeal on Ground (c)

8. This ground is that the matters alleged benefit from planning permission. There are three ways for the appellant to achieve his goal of regularising the use of the site for residential purposes. One is to apply for planning permission, which is dealt with in the ground (a) appeal below. The second is to demonstrate it has been used for those purposes for 10 years and that is the subject of the ground (d); and thirdly that it benefits from a historic planning permission, which is the subject of this ground. In this case the appellant argues that the whole area of land around Glenwood was residential curtilage and this was established in 2012 when the LDC was granted. Although the red line plan on the LDC application and decision is tightly drawn around the barn itself, the southern part of the land (the current appeal site) was already in residential use, the only door into the barn opened onto the southern part of the land, it was in separate ownership and clearly delineated. Once this curtilage is established, the later grant of planning permission for the extended barn in 2016, although clearly describing a material change of use from paddock to residential for the northern part of the land cannot legally remove the already established southern use. As the appeal site is therefore curtilage, its use residentially is lawful.
9. This ground confuses curtilage and use. The curtilage of a dwelling can change over time, as it is a matter of fact and degree at any one time what curtilage is. Usually it simply equates to the area of garden around a house, but where that area is not lawfully determined or clear on the ground then curtilage can wax or wane depending on use. However, a finding of a residential use that has been established over time for the southern part of the land (the appeal site) is linked to the ground (d) and I shall discuss it further there. This ground is whether the site benefits from a planning permission.
10. In this case I made a clear finding in my 2015 decision that the 2004 permission for Rose House did not mean the whole site (as it then was) including the site of Glenwood was in residential use. That use was confined to the area of Rose House delineated by the leylandii hedge. At the time it seemed to me the hedge and the rectangle shown on the 2004 application plans were more or less the same, but now it is clear the hedge delineates a slightly smaller area of land., but whatever the outcome of that deliberation, there was no residential use around Glenwood.

11. The 2016 grant of planning permission for Glenwood clearly establishes a residential use of the land within the red line, which is the whole of the northern side of Glenwood, a small strip to the south and the drive. Incidentally it would be reasonable to assume this also was the curtilage of the new dwelling. The Council Officer's report makes it clear this area of land was agreed after discussion with the appellant, who wanted the southern parcel to be included as well. The Council were at pains to ensure this remained undeveloped countryside and so insisted it was removed from the plans. Unequivocally therefore there is no lawful residential use of the current appeal site created or implied by the 2016 planning permission.
12. It may be that success on ground (d) would lead to a finding that the polytunnel and shed were genuine Class E buildings and so permitted by the General Permitted Development (England) Order 2015, but that is something I will consider later. As far as the use of the land is concerned the appeal on ground (c) fails.

The Appeal on Ground (d)

13. This ground is that the use has persisted for 10 years. That is from before 19 February 2011. First a brief explanation as to what is required for success on this ground. Firstly there has to be a material change of use from the lawful use that was agriculture to a residential use. In the absence of any permanent structures such as patios, pergolas, ponds, flower beds, raised beds, pathways etc this is quite difficult to demonstrate. Having a BBQ in a field does not amount to a material change of use. The appellant quotes from Ramsey² that a use can be permanent even though no activity takes place for the bulk of the year. The example is of a football field, once the use is established it may only be used on winter Saturdays, but as long as no other uses intervene then it is a permanent intermittent use. The appellant is at pains to demonstrate that the site was not used for any purposes, other than residential, since he bought it. However, this case is materially different in that the occasional BBQ or sitting out does not establish the material change of use in the way that the creation of a football pitch might. To succeed the appellant needs to show that the prolonged residential use cumulatively amounts to a material change of use that has gone on for 10 years or more with no significant breaks.
14. Several witness statements have been provided which set out a fairly consistent story of regular parties and BBQs all through the year, hosted by Mr Daneshvar for his family and friends, but also attended by people who rented out Rose House. Mr Daneshvar says that once he was divorced in 1996 he no longer had any interest in keeping horses on the paddock and began the use for parties then. Parties were held almost every weekend through the spring, summer and early autumn at least 50 times a year and on at least 30 weekends. This was between 1996 and 2004, however, he also says that usually after each party they would clear everything away to be stored in the barn, yet that wasn't built until 2005 and was built as a store for building materials for the Rose House works. This is a clear inconsistency but also suggests the use was intermittent.
15. During the building work period which is from 2005 to possibly 2011, the builders, living in caravans on the land, used the site for BBQs, sitting and general living purposes. However, in July 2006 Mr Nowak, one of Poly

² Ramsey v SSETR [2002] EWCA Civ 118

Developments employees, moved into the residential element of the barn and he too used the site as his garden. He never planted or did anything permanent to the land, but carried on using it as his outdoor amenity space. Because the residential element of Glenwood was so small Mr Nowak was regularly outdoors and this was witnessed by Mr Daneshvar almost every day.

16. In 2008 the market crashed and in order to make money Mr Daneshvar tried to sell Rose House, unsuccessfully. Finally in 2012 he rented it out and moved to Slough. Rose House was rented to Gary Walters and then to Alex Patterson. By then Mr Nowak was using the storage part of Glenwood for his own purposes. Then, Mr Daneshvar came back to Glenwood, at least 5 times a week to hang out and have more parties. It seems he used the facilities at Glenwood even though Mr Nowak was living there, and apparently this didn't bother either party, Mr Nowak was still regularly using the site for his own purposes.
17. In 2016 planning permission was granted to convert all of the barn into a dwelling and Mr Nowak moved out to be replaced by Mr Daneshvar. The parties continued unabated on a regular basis. It was now that the shed was built (2016) and his second wife began cultivating vegetables leading to the recent construction of the polytunnel.
18. Mr Nowak is now in Poland but his son, Marek, provided a statement having spoken to his father about his time at Glenwood, and having lived there himself from 2010. He recalls spending almost all his time (when it wasn't raining) in the garden (the appeal site), relaxing, drying clothes, exercising etc. He remembers Mr Daneshvar's parties, held most weekends and bank holidays when the weather was good, but says they were generally held closer to Rose House.
19. Mr Patterson who rented Rose House from 2017 to the present confirms frequent BBQ parties, but that also he and his family have free access over the whole site (both the garden at Rose House and at Glenwood). Various other friends and relatives provide evidence that they attended parties regularly at the appeal site and used the bathroom facilities in Glenwood. Everyone agrees that the land was treated as a large garden.
20. If the evidence from the appellant is coherent, convincing and uncontested then I should accept it at face value. However, the Council point to a number of contrary indications. There have been numerous planning applications over the years, and these do not support the witness statements. The plans supplied with the original application to build Rose House in 2004 show the appeal site to be paddock. 11/00799 was the LDC for the use of part of the barn as a dwelling. This makes no mention of the use of the land around it, nor any parties, although by now, according to Mr Daneshvar's latest evidence that use had been going on for over 10 years. As a result the LDC is granted only for the building. The reprofiling application from 2012 describes the use as "grassland". 15/01146 was for the extension of Glenwood to fill the whole barn and a change of use of "paddock" to residential curtilage. The officers report, written in January 2016 notes the use of southern parcel of land as paddock and that it is important to retain this, whereas the northern part of the land is already being used for residential purposes and so there would be no intensification if the permission was granted limited to this parcel of land. This very much echoes my own observations when visiting the site in 2015, that the

land was a paddock, that was regularly mown, but had a lumpy feel underfoot, with a small number of residential implements clustered near to the barn. The planning history of the site and the impression gained by officers and myself when visiting the site was that it was a paddock.

21. Aerial photographs have been provided for 2004, 2006, 2008 and 2010. They show the evolution of the overall site as described above, and the land around Glenwood just looks like a grassy paddock. There is no visual evidence of any occupation of the barn at all. In 2013 a drive has been constructed and vehicles are parked by the barn, but the ground still looks scruffy, unlike that around Rose House which looks like a lawn with domestic features in it. In 2017, there is much more evidence of occupation of Glenwood, with items dotted all over the site and in 2018 the polytunnel appears. This later use is consistent with Mr Daneshvar's reoccupation of Glenwood.
22. Of the photographs, the oldest is 2005 and shows a sit-on mower in the middle of a scruffy field. Later photographs from 2006 appear to show activity in the grounds of Rose House, which is under construction in the background. In 2007 the barn is visible in the background but the activity is closer to Rose House and not on the appeal site. In 2010 the whole site is covered in snow, which doesn't help, but in 2011 the barn is shown with a car parked to its rear, in the sunshine. No activity is on the appeal site. In 2012 various items are piled up next to the barn on the southern side, but not on the paddock area we are concerned with. In 2014 there is a party going on in the middle of the site, the grass has been cleared and mown for the purpose, but the rest of the paddock is somewhat overgrown. In 2015 there is a party in front of the barn. Now, the whole area seems to have been mown, but is still patchy and scruffy. There is another party in 2016 and then more photographs from 2017 onwards of more consistent residential activity, with the grass now properly mown and cared for. There are inflatable pools, loungers, swing seats etc.
23. The photographs and the aerial photographs show a consistent picture of little activity until 2014, after which there is the occasional party until Mr Daneshvar permanently occupies the enlarged house at Glenwood from 2016 onwards. This tallies with my own view of what is most likely. The idea of 50 parties a year over 30 plus weekends is really only believable if you live in the Mediterranean, not Bracknell and for that level of use to have carried on for 20 years or more is beyond belief. No doubt over time memories of frequency have hardened and regular parties, say of once a month, become every week. The whole business of returning from Slough to hold parties weekly and using the facilities where Mr Nowak is living also does not ring true, unless it was only occasionally.
24. As part of his late evidence Mr Daneshvar provided copies of letters from the Council which he says show they accepted a residential use had commenced. However, the opposite is the case. A letter of February 2010 says that a barn has been built outside of the curtilage of Rose House, that is in a field. This is repeated in a letter in April 2013. A letter of November 2012 explains there is no residential use for the land around Glenwood and this is repeated in December 2012. In July 2014 a further letter complains of an apparent extension of the curtilage of Rose House into a field, which must be the appeal site. All these letters are simply evidence of the Council's continued attempts to prevent a residential use from being established on the appeal site.

25. In my view, and on the balance of probabilities, the evidence shows an occasional use of a field for BBQs from perhaps the early 2000s up to 2016 when the use became more intense, and along with the introduction of buildings and planting the material change of use took place. It is possible that for a while Mr Nowak used some of the land near to the barn residentially, but even if he did, this did not establish a new use across the appeal site and was only temporary. The appeal on ground (d) fails.

The Appeal on Ground (a)

26. This ground is that planning permission should be granted for the matters alleged. The Council's policies are designed to encourage development to build on the local character and respect local patterns of development (CS7) and will protect land outside of settlements for its own sake and particularly from development that would harm its character, appearance and function (CS9). The site lies in a small enclave of fields and houses to the south of the B3022 on the northern edge of Bracknell, which is heavily built up and where clusters of buildings are separated by small fields. North of the 'B' road the landscape become much more rural, but the land around the site is fragmented and what rural sense there is easily lost. In my view that makes conserving these small pockets of agricultural land even more important.
27. The appellant argues the fallback of an agricultural use would be even more harmful, as it could comprise intensive horticulture or use by large tractors or agricultural buildings could be erected. This is of course speculation and somewhat at odds with the argument that there is actually no real agricultural use possible because the field is too small, waterlogged and has no entrance except along the drive to Glenwood. Of course this ignores the most suitable, and therefore most likely use as grazing. This may not be the appellant's intention, but the paddock will be there long after the houses around it have changed hands and as I saw on my site visit it still fulfils an important function of bringing the countryside right into this cluster of houses, something Mr Daneshvar himself was enthusiastic about, which is why he didn't ever develop the site as a more traditional garden.
28. Allowing the change of use is likely to mean the land will be more intensively used than if it remains agricultural, if not immediately then in the future. Even if garden buildings are controlled by condition an awful lot can still be done without the need for any further planning permissions, that would detract from the open, rural feel of the land as it should be. I noted on my site visit the establishment of raised beds and planting of shrubs was already changing the nature of the landscape. The proposal is thus contrary to CS7 and CS9.
29. The appellant raises the Public Sector Equality Duty and his personal circumstances. It is argued that the use of the sunny southern section of the garden is vital for his mental health and well-being. No evidence has been provided of any specific needs but I agree access to somewhere to sit outside in the sunshine is likely to benefit anyone, not only the elderly and infirm. However in this case the curtilage shown on the 2016 plans for Glenwood allows for a narrow strip in front (to the south) of Glenwood that could lawfully be used for sitting out, but also a significant stretch of land to the east that could also be utilised. There is no need for the drive and turning head to take up all that space, it would be better to use the northern side of Glenwood for parking and turning if that is as shady as alleged. Refusing planning

permission therefore has no implications for the PSED and the appellant's personal needs can be met without granting planning permission. The appeal on ground (a) fails.

Ground (f) the Polytunnel and Shed

30. There is no lawful use of the appeal site other than for agriculture, and there are no permitted development rights for a holding as small as this to construct buildings or polytunnels. Neither building is lawful.
31. The shed may have been erected more than 4 years ago and so is immune by way of the passage of time, but there is no evidence one way or the other for this. However, even assuming it is lawful, it can still be removed as it is part and parcel of the unlawful residential use and is a harmful domestic intrusion.
32. I do not think the agricultural fallback position would be likely to lead to a need for a shed or a polytunnel, and any personal use by Mrs Daneshvar that involved a building or structure would in any case require planning permission. Therefore I shall retain the requirement to remove these structures. The other requirements are perfectly acceptable. The need to remove the residential paraphernalia is self explanatory and does not repeat the first requirement. No lesser steps have been suggested that would overcome the harm identified.

Other Matters

33. It is impossible to be certain what was the exact area of residential use established by the 2004 planning permission for Rose House, but it was similar to that bounded by the leylandii hedge except for a triangle in the corner by the access drive that was beyond the hedge. The plan for 2013 LDC for residential use of the land that went to appeal included all the land outside of the leylandii hedge and that was refused and no argument was made then that this small portion of the land may have been included in the 2004 permission. The enforcement notice plan also follows the line of the leylandii hedge and given the way the land beyond the hedge (the appeal site) has been sporadically used ever since I would suggest the hedge now forms the boundary of the residential use of Rose House and also its curtilage. The appellant says the reduction in the size of the plot was for tax reasons when trying to sell Rose House back in 2008, and the new garden was defined by the leylandii hedge. I also note that it conveniently allowed an access to be made to the barn, which by then was being lived in by Mr Nowak, which did not cross the garden of Rose House. It seems from Mr Daneshvar's statement that he considered the land was now attached to the garden of Glenwood. Although I have concluded that was not a residential use, the triangle of land was detached from Rose House and became subsumed in whatever use was being made of the larger parcel of land around Glenwood.
34. On the site visit the appellant showed me a newly planted line of shrubs that, he said, marked the actual line of the garden of Rose House. This line seemed to follow the blue line on the plan submitted with the 2016 application for the residential use of all of the barn and is some considerable way beyond the hedge line, bears no relation to the original 2004 permission and more or less cuts the paddock in half. The purpose of the blue line was to show other land within the appellant's ownership. It is not clear whether this was accurate or not, but for the sake of this appeal that does not matter. What is important is that it does not suggest that the land beyond has any particular use at all.

Indeed, it seems to me that it has been accepted by the appellant that all the land beyond the hedge line was the garden of Glenwood, that has been his argument in this appeal and how the land has been laid out since about 2008, excepting that the garden is actually a paddock. If the use of the triangle of land beyond the hedge had ever been residential then it would seem to me it has now been lost. That triangle is included within the red line of the enforcement notice plan which more or less follows the hedge line. Consequently all the land between the hedge and the red line on the 2016 plan is covered by the requirements to cease the use as residential and return it too agricultural. Given the tangled history of the site and the evidence for the way it has been used over the years that seems reasonable to me.

35. The appellant argues the enforcement notice plan is also inaccurate as it erroneously cuts across the turning head. However, I agree with the Council that it is actually more generous as it leaves a slightly larger area of land outside the ambit of the notice than shown on the 2016 planning permission. This is because the drive and turning head are not in the place they were shown on that plan. There is no need to alter the plan.

Conclusions

36. I shall dismiss all three appeals and uphold the notice as drafted. The time allowed to comply with the notice is 2 months which seems plenty of time to arrange for the removal of three insubstantial structures.

Simon Hand

INSPECTOR