



Appeal Decisions

Inquiry held on 16, 17, 18 and 22 April 2024

Site visit made on 16 April 2024

by Elizabeth C Ord LLB(Hons) LLM MA DipTUS

an Inspector appointed by the Secretary of State

Decision date: 23 May 2024

Appeal A Ref: APP/Y2620/X/22/3306008

The Office, Courtyard Barn, Hindolveston Road, Thurning, Dereham, NR20 5QS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Richard Kerrison against the decision of North Norfolk District Council.
 - The application ref CL/20/2055, dated 5 November 2020, was refused by notice dated 22 December 2021.
 - The application was made under section [191(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is residential dwelling (C3).
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Appeals B & C Refs: APP/Y2620/C/22/3305910 & 3305911

The Office, Roundabout Farm, Hindolveston Road, Thurning, Norfolk, NR20 5QS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr Richard Kerrison and Mrs Victoria Kerrison against an enforcement notice issued by North Norfolk District Council.
 - The notice was issued on 29 July 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the land from use as an office to residential use.
 - The requirement of the notice is to: Permanently cease the residential use of the cabin building and remove from the building the kitchen and bathroom.
 - The period for compliance with the requirement is: 6 months from the date when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), and (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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Appeals D & E Refs: APP/Y2620/C/22/3305902 & 3305903

Courtyard Barn, Roundabout Farm, Hindolveston Road, Thurning, Norfolk, NR20 5QS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeals are made by Mr and Mrs Richard Kerrison against an enforcement notice issued by North Norfolk District Council.
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- The notice was issued on 29 July 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission the material change of use of the building known as Courtyard Barn, shown hatched on the attached plan, to an unlawful use as a separate unit of independent holiday let occupation.
 - The requirement of the notice is to: Permanently cease the holiday let use.
 - The period for compliance with the requirement is: 6 months from the date when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (f), and (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal F Ref: APP/Y2620/W/22/3299210

The Orangery, Roundabout Farm, Hindolveston Road, Thurning, Norfolk, NR20 5QS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr and Mrs Richard Kerrison against the decision of North Norfolk District Council.
 - The application Ref is RV/21/2645.
 - The application sought planning permission for conversion of outbuildings to two units of bed and breakfast accommodation without complying with a condition attached to planning permission Ref PF/13/1048, dated 12 November 2013.
 - The condition in dispute is No 3 which states that: The Bed and Breakfast accommodation hereby permitted shall be used for Bed and Breakfast accommodation purposes only in connection with Pear Tree Cottage and shall not be used as a separate self-contained unit of holiday or residential accommodation.
 - The reason given for the condition is: For the avoidance of doubt and because the Bed and Breakfast accommodation is of insufficient size to provide adequate space internally and externally for residential use in accordance with Policy EN4 for the adopted North Norfolk Core Strategy.
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Decision Appeal A

1. I allow the appeal and attach to this decision a certificate of lawful existing use or development (LDC) describing the existing use which I find to be lawful.

Decision Appeals B and C

2. I direct that the enforcement notice is corrected as follows:

In section 3:

Amend the allegation by deleting the words "from use as an office" to provide "without planning permission the material change of use of the land to a residential dwelling."

In section 4 of the notice:

Delete the reference to 4 years in paragraphs 1 and 4 and replace with 10 years.

3. I allow the appeals and I direct that the enforcement notice be quashed.
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Decision Appeals D and E

4. I direct that the enforcement notice is corrected as follows:

In section 4:

Delete the reference to 4 years in paragraph 1 and replace with 10 years.

Delete the reference to Policy EC3 in paragraph 4 and in the list of policies and replace with Policy EC2.

5. I dismiss the appeals and uphold the enforcement notice as corrected.

Decision Appeal F

6. The appeal is allowed, and planning permission is granted for conversion of outbuildings to two units of bed and breakfast accommodation at Pear Tree Cottage, Courtyard Barn, Hindolveston Road, Thurning, Dereham, NR20 5QS in accordance with the application ref RV/21/2645 without compliance with the following conditions previously imposed on planning permission PF/13/1048 dated 12 November 2013:

condition 3: The Bed and Breakfast accommodation hereby permitted shall be used for Bed and Breakfast accommodation purposes only in connection with Pear Tree Cottage and shall not be used as a separate self-contained unit of holiday or residential accommodation,

condition 4: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995, (or any Order revoking, amending or re-enacting that Order with or without modification) no enlargement of or other alteration to the Bed and Breakfast Units hereby permitted (including the insertion of any further windows or rooflights) shall take place unless planning permission has been first granted by the Local Planning Authority,

but subject to the following conditions:

Plans

1. This permission is granted in accordance with the plans (drawing numbers 01A, 02A, 03B and 04A) received by the Local Planning Authority on 6 November 2013.

Reason:

To ensure the satisfactory layout and appearance of the development in accordance with Policy EN4 of the adopted North Norfolk Core Strategy.

Use of The Orangery

2. The Bed and Breakfast accommodation hereby permitted shall be used for Bed and Breakfast accommodation purposes only and shall not be used as a separate self-contained unit of residential accommodation.

Reason for the condition:

For the avoidance of doubt and because the accommodation is of insufficient size to provide adequate space internally and externally for residential use in accordance with Policy EN4 of the adopted North Norfolk Core Strategy.

Removal of Permitted Development Rights

3. No enlargement, improvement or other alterations of the units hereby permitted [Class A]; (including the insertion of any further windows or rooflights), no enlargement of a dwellinghouse by construction of additional storeys [Class AA], no additions or alterations to the roof/s [Class B & C]; no provision of porches [Class D]; nor the provision within the curtilage of the units of any building or enclosure, swimming or other pool [Class E]; or chimneys, flues or soil and vent pipes [Class G] or any other works as defined by Classes A, B, C, D, E and G of Part 1 of Schedule 2 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), shall be erected or brought onto the land.

Reason for the condition:

The development of the site in the manner approved will necessarily result in a close-knit group of dwellings where the siting, design and extent of any extensions/alterations must be controlled for the benefit of the residential and visual amenities of the locality, and in accordance with Policy EN4 of the adopted North Norfolk Core Strategy.

Applications for costs

7. The Appellants have made two applications for costs. These are the subject of separate decisions.

Preliminary Matters

8. All witnesses gave sworn evidence by affirmation.
9. Closing submissions were given remotely by video conference call, after which the inquiry was closed.

Introduction

10. Roundabout Farm consists of several properties owned by the Appellants, namely The Office, Courtyard Barn, Pear Tree Cottage, and The Orangery, together with wooden cabins and stables. It is in residential and holiday letting use. I will refer to this small complex overall as the Roundabout Farm site.
11. The Appellants currently live in The Office, from which they run their holiday letting business providing holiday accommodation at Courtyard Barn, Pear Tree Cottage and The Orangery. There is no planning permission for The Office. Courtyard Barn has planning permission for use as a dwelling, and Pear Tree Cottage and The Orangery have planning permission for bed and breakfast lettings. The issues concern the uses of The Office, Courtyard Barn and The Orangery.

12. The facts concerning the appeals are connected and necessitate an overall consideration of the situation at Roundabout Farm. Following the structure of the presented evidence, I have considered the appeals in three parts, dealing separately with 1) The Office, 2) Courtyard Barn, and 3) The Orangery.

Appeal A, and Appeals B & C on ground (d) – The Office

Main Issue

13. The Local Planning Authority (LPA) considered the LDC application and imposition of the enforcement notice on the basis that a material change of use of the land had occurred from office to residential. The Appellants' case was that the main use of the building had always been residential and had never been as an office. Therefore, the parties agreed that the appropriate time period was 10 years not 4.

14. There needs to be clarity in what is meant by residential. It could mean the material change of use of land to the stationing of a caravan for residential purposes, or the material change of use of land to a residential dwelling. In my judgment, it is the material change of use of land to a residential dwelling that is in issue. Therefore, I have defined the main issue as:

Whether The Office has been used mainly as a residential dwelling without material interruption throughout a 10 year period (beginning with the date of change of use of the land to residential dwelling and counting forward), so that the time for taking enforcement action has expired.

15. The LDC appeal must be determined at the date of the application (5 November 2020), and the enforcement ground d) appeal at the date of the enforcement notice (29 July 2022).

The Enforcement Notice

16. The LPA suggested at the inquiry that the allegation in the enforcement notice should be amended to reflect a material change of use to mixed residential and office. The Appellants objected, maintaining that The Office had always been, and still was, in residential use.
17. Such a change could cause injustice to the Appellants, as their case is that the only primary use is as a dwelling. Therefore, I am not prepared to use my discretion to vary the terms of the notice in this way.
18. Both parties requested that I make the following amendments to the enforcement notices, which they agreed would not cause injustice to either party.

1. In section 3: Amend the allegation by deleting the words "from use as an office" to provide "without planning permission the material change in use of the Land to residential use."

Bearing in mind that it is the material change of use to residential dwelling that is in issue, I have used my discretion to amend the allegation as follows:

By deleting the words "from use as an office" to provide "without planning permission the material change of use of the land to a residential dwelling."

2. In section 4: Delete the reference to 4 years in paragraphs 1 and 4 and replace with 10 years.

Using my discretion, I have made this amendment.

Reasons

Legal and policy tests

19. The burden is on the Appellants to prove their case on a balance of probabilities.
20. When use is intermittent the test is whether the LPA could have taken enforcement action against the use at any time within the relevant period. To become lawful, the use must have continued actively throughout the 10 year period to the extent that enforcement action could have been taken against it for unlawful use as a dwelling at any time during that period.
21. National Planning Policy Guidance advises that "In the case of applications for existing use, if a local planning authority has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate on the balance of probability."
22. The immunity period cannot be relied upon where there is positive deception in matters integral to the planning process, designed to avoid enforcement action within the relevant period. Whether there has been deception is fact sensitive. Deception is positive conduct designed to deceive the LPA. There is a difference between keeping a low profile on the one hand and deliberately misleading conduct to prevent discovery on the other.

Discussion

23. The Appellants purchased Courtyard Barn together with the surrounding 2.75 hectares of land, and in November 1997 obtained planning permission for its conversion to a dwelling (LPA SOC CB App 2). During its conversion, they say they lived in a caravan on site for 18 months. This is disputed by the LPA, although no evidence has been provided to the contrary. It is not unusual for people to temporarily live in a caravan when renovating a home and, most likely, this is what the Appellants did. Therefore, I accept their evidence in this regard.
24. In 2000 they moved into the newly converted Courtyard Barn and lived in it as their home until 2006. Courtyard Barn was registered with the Council as the Appellants' main residence from 1 April 2005.
25. The Appellants decided to rent out Courtyard Barn as holiday accommodation in 2006 and their first guests arrived on 28 July 2006.
26. They say that, to free up Courtyard Barn to let, they moved into a single width static caravan in 2006 on the site where The Office is now located. This is disputed by the LPA, who say insufficient evidence has been provided.

27. A manual log from July 2006 until January 2007 shows full guest bookings from 28 July to 10 September 2006 and regular bookings thereafter through to January 2007 (RK's proof App 11a).
28. There is an aerial photograph taken in 2010 of what appears to be a single width static caravan on the site of The Office (LPA SOC The Office App 13). This demonstrates that the caravan was stationed on the site of The Office in 2010.
29. There is no evidence before me to contradict the Appellants and so I find that they lived in their caravan at the site of The Office from summer 2006 until the last bookings in January 2007.
30. The holiday lettings were successful, and so the Appellants decided to continue with them.
31. In September 2010 the Appellants bought a mobile home (RK's proof - invoice dated 29.09.2010 at App 1). They moved their static caravan to their previous neighbour's property at Roundabout Farm, where it was used as a summer house. They brought the mobile home onto site in two halves, placing it where their static caravan had been located.
32. The mobile home came with full living facilities including central heating and a kitchen and bathroom that had previously been factory fitted. It was put back together by caravan engineers and services were connected by local tradespeople, including a waste-water treatment plant. It had all the facilities of a dwelling. The mobile home became known as The Office, and the Appellants say they moved into it in October 2010.
33. Between October 2010 and late summer 2012, Mr Kerrison carried out improvements to the mobile home whilst they were living in it. These included installing a wood burning stove, erecting timber decking, and building an extension to create a small office and boot room. The Office now consisted of a kitchen/diner, lounge, three bedrooms, a bathroom, an entrance/cloak room, and an office (plan at RK's proof App 5). From my site visit, I observed that this is the same arrangement as currently exists.
34. The LPA in closings submitted that the improvements undertaken between October 2010 and summer 2012 amounted to operational works, which resulted in a permanent structure that was a "building" as opposed to a use of land for the stationing of a residential caravan. They argued that, as the building was only completed in late summer 2012, the Appellants cannot demonstrate 10 years' continuous use of it prior to 5 November 2020 (for LDC) or 29 July 2022 (for Enforcement Notice).
35. This is a new argument that was not previously advanced. Nonetheless, I have considered whether and, if so, when, The Office became a building.
36. When The Office was transported onto site, it had to be separated into two sections, as it was too large to move in one piece. It was re-constructed on site and services were attached. It was of such a substantial size that it rested on its own weight and when assembled was physically incapable of being moved by road from one place to another. It was too large to put on any lorry. The Appellants intended the resulting structure to be permanent.

37. From this evidence, on a fact and degree basis, I find that The Office was a building from October 2010, when it was initially constructed. It was already a building before the subsequent improvements were undertaken, and they did not cause a material change of use from that pertaining in October 2010.
38. The Appellants say they have lived and carried on their holiday business from The Office continuously since October 2010, freeing up Courtyard Barn for holiday lets. The LPA contend that their residential use of The Office has not been continuous and, when Courtyard Barn was not let out, the Appellants lived there. Furthermore, the LPA submit that the Appellants lived in Peartree Cottage on occasions, which was granted planning permission for conversion to a holiday cottage in 2003.
39. In support of their contentions, the LPA refer to the Appellants using addresses other than The Office for making various applications, citing Courtyard Barn (KPs App 41, 42), Roundabout Farm (KP App 43), and Pear Tree Cottage (KP App 46) as their claimed addresses. They suggest this is evidence that the Appellants were moving around the different properties and living in them at various times when they were not being let.
40. The Appellants say they always lived in The Office and denied living in Courtyard Barn or Peartree Cottage at any time, after October 2010. However, they admit that their daughter, Carrie-Rose, sometimes slept in Pear Tree Cottage when her boyfriend stayed over. The Appellants submitted that their belongings were in The Office, they found it more cosy to live there than in the large Courtyard Barn, and they were settled in The Office.
41. The wider Roundabout Farm site was sometimes referred to in evidence as "Courtyard Barn" and the Appellants confirmed that they used the names interchangeably. Courtyard Barn was the first property to be converted and the largest on site and hence the wider site was sometimes referred to as Courtyard Barn.
42. There has only been one post box at Roundabout Farm into which mail has been delivered, and this is at the entrance to the wider site. Therefore, regardless of the name on the documents, the Appellants have collected their post from the same place. The refusal notice for the LDC (LPA SOC App 2) records the address as "The Office, Courtyard Barn".
43. In my judgment, the building names on these documents carry little weight as evidence of the Appellants actually living in the different properties on site. They appear to be used interchangeably in the knowledge that they are all part of the wider Roundabout Farm site and with postal deliveries being collected at one single place.
44. Several witnesses gave evidence that the Appellants have lived in The Office for some significant time.
45. Lady Anwen Hurt said she visited The Office for the first time over the Easter of 2011 and made several visits thereafter in 2011 when buying a puppy from the Appellants. During this time, she went into the living room where it appeared the Appellants were living. As she and her husband (the late Sir John Hurt) were often away filming, they would leave the dog with the Appellants and

- collect it thereafter. They went into The Office on numerous occasions, sometimes in the evening, and often stayed to eat there.
46. In December 2016 the Hurts moved next door into Hawthorn House, and after Sir John's death in 2017, Lady Hurt spent a lot of time with the Appellants in The Office. She also looked after their animals whilst they were away, sometimes sleeping in their bedroom. In her view, there was no question that the Appellants lived in The Office.
47. Lady Delia Goodenough has known the Appellants since about 2008 and visited Roundabout Farm several times a week to ride and train the horses. She often used the lavatory in The Office, and sometimes changed her clothes in their bedroom. She occasionally fed the Appellants' pet dog and cats, whose feed bowls and baskets were in The Office. She often had tea or coffee there. In her opinion, the Appellants lived in The Office.
48. Mrs Debra Coe has known the Appellants for many years and has visited Roundabout Farm at least twice a week in connection with riding activities. She has frequently visited The Office since 2010 and has had tea and cake there after her riding activities. She and her husband have frequently had meals in The Office. She believes that it has been the Appellants' home since 2010.
49. Mr Steve Hipperson started work for the Appellants in May 2018 as a grounds and maintenance worker and was generally at Roundabout Farm three days a week. He used the facilities in The Office where he made a pot of tea each day. In his view The Office was the Appellants' home.
50. Carrie-Rose Kerrison, the Appellants' daughter, said she lived in The Office since 2010 when her parents let out their house at Courtyard Barn, apart from the brief time, some years later, when she lived at Peartree Cottage, and when she went to university in 2020. She returned during the pandemic and lived in The Office.
51. These witnesses appeared credible and reliable and I accept their evidence.
52. There was also an affidavit from Jill Faith Dawber, who was too ill to attend to give oral evidence. The essence of her written testimony was that she has known the Appellants for many years and, since about 2017, has visited Roundabout Farm two or three times a week to work with the horses. She has often had refreshments, meals and get-togethers in The Office. She has used the Appellants' bedroom to change her clothing and has stayed in The Office looking after the cats and dog when the Appellants were away. She opined that the Appellants live in The Office.
53. Mrs Dawber's evidence is consistent with that of the Appellants' other witnesses, and I accept what she says.
54. There is a site plan of November 2013 of the wider Roundabout Farm, which bears the title "Wooden Cabins, Courtyard Barn". Whilst it shows the buildings of Courtyard Barn and Pear Tree Cottage, it does not show The Office. The LPA indicate that this suggests The Office building was not present in 2013.
55. There is an aerial photograph of 2014 showing The Office on the same site as where the static caravan was previously stationed (LPA SOC App 13). This demonstrates that it was there at this time, a year later.

56. Omitting The Office from the site plan does not mean it did not exist. The evidence, both oral and documentary, weighs in favour it being on site in 2013. I find that the building was on site continuously from September/October 2010.
57. The other properties on site were being let for holiday accommodation and the evidence suggests that, when they were booked out, the Appellants lived in The Office. I find this to be the case. I will now go on to consider whether the Appellants used The Office as their residence on a continuous basis since 2010.
58. The Office has not been registered for Council Tax and so there are no Council Tax records. The Appellants were registered as living at Courtyard Barn for Council Tax purposes. However, this does not mean they were living at Courtyard Barn. I have already found that, at least some of the time, they were not.
59. I have considered whether the failure to inform the Council that the Appellants were living in The Office was conduct amounting to deliberate concealment. However, the Appellants were merely keeping a low profile, and this is not sufficient to prevent them benefiting from the immunity period.
60. The Valuation Office Agency undertook a review of the banding of Courtyard Barn in October 2014 (LPA SOC App 15) to consider whether it was a holiday let, but did not amend the banding at that time, as they understood only 2 bedrooms were being let. It was amended in 2016 when they classed it as a composite property. Even if only 2 bedrooms were being let out before 2016 (and I make no findings on that), it does not detract from the fact that Courtyard Barn was being let out and not available for the Appellants to live in.
61. An Environmental Health Officer visited Courtyard Barn in January 2019 to test the water supply, and in a subsequent email he referred to being told that the water treatment plant was located in the Appellants' daughter's room, which suggested to him they were living there. However, he also noted it was advertised for holiday accommodation and that there was a static caravan on site.
62. The Appellants do not recollect saying this. Nonetheless, I accept that it was probably said, as there is no reason otherwise for it to be written in the email. However, it is not in dispute that Carrie-Rose sometimes slept away from The Office when her boyfriend visited, and it is likely she slept in Courtyard Barn as well as Pear Tree Cottage on occasions. That does not mean she was living there and certainly does not mean that the Appellants were. Therefore, I give the email negligible weight.
63. Evidence of Courtyard Barn bookings, in the form of a printout from 1 January 2012 to 31 December 2023 show annual booking levels ranging from 55.62% to 78.90%, apart from 2020 (year of first Covid lockdown), which was 44.93% (RK's proof Apps 9a & b). This evidence was not challenged, and I give it significant weight as proof of letting for a substantial proportion of the time between these dates.
64. On 25 November 2019 the LPA received a report about multiple planning breaches at Roundabout Farm. Mr Peacock met the Appellants on site on 17 January 2020 and his evidence was that the Appellants told him they were residing between Pear Tree Cottage, Courtyard Barn and The Office. A

computer note, derived from his manuscript site visit note (KP proof App 3) reads:

"...An inspection of the office was undertaken where it was confirmed Mr and Mrs Kerrison were residing in the property when the other properties were let out. Mrs Kerrison confirmed it was easier [for] her to sleep in [the] property as she would get late calls due to work. Confirmed Courtyard Barn being let out..."

65. The Appellants denied saying they were living anywhere other than The Office. Mrs Kerrison gave evidence that she said she would sometimes sleep in the living room of The Office, when she was taking late night calls.
66. Mr Peacock's note does not support his recollection, albeit it is neutral in this regard. It is possible that he misunderstood but, in any event, it is more likely that Mrs Kerrison was staying in The Office with her husband and simply moved to the living room when taking night-time calls, rather than sleeping in the large Courtyard Barn on her own. Accordingly, I accept her evidence.
67. A Planning Contravention Notice dated 11 March 2020 was served on the Appellants (SOCG App 5). In answer to specific questions, the Appellants said Courtyard Barn was currently used as self-catering holiday lets and the current use began in July 2006. There had been no breaks, and lettings had been achieved of 50-60% per a year. With respect to The Office, they said it was their home and office and the current use began in 2006.
68. On 19 May 2020, Mr Peacock took the case to the Enforcement Panel, who thought there was a mixed use of holiday let and residential occurring at Courtyard Barn.
69. On 28 May 2020 Mr Peacock wrote to the Appellants about various alleged breaches (KP proof App 8) and, relevant to Courtyard Barn said:
70. "It is evident that Courtyard Barn is being used for the purposes of holiday let and for your own residential purposes... After reviewing the evidence provided it appears that use has been occurring for more than 10 years, and therefore could potentially be lawful and as a result immune from enforcement action. This will need to be formally regularised through a Certificate of Lawful Use or Development application..."
71. The Appellants' agent, Michael Haslam, wrote back on 9 July 2020 (KP proof App 9) saying that Courtyard Barn had planning permission for a residential dwelling and its use for holiday lets was residential in accordance with the permission. He declined to submit an application for an LDC.
72. On 8 September 2020 Kevin Peacock met the Appellants at Roundabout Farm. The computer record compiled from his site note states "...Courtyard Barn still operating as holiday let for larger groups only. When I arrived, a group was occupying the premises, around 8 people, just a family gathering..." (KP proof App 3).
73. On 5 November 2020 the Appellants made an application for an LDC for residential use of The Office (KP proof Apps 39 & 40), which was registered by the LPA on 9 November. This was refused on 22 December 2021 (LP SOC APP 2) for the following reason:

74. "The Council is not satisfied, on the balance of probabilities test, that the application has failed to demonstrate through sufficient evidence, beyond reasonable doubt, that the site has been used continuously, in excess of 4 years from the date on which the application was made, for activities falling within Class C3 of the Town and Country Planning (Use Classes Order) 1997."
75. The wording of this decision suggests that the LPA were confused and applied the wrong test when determining the application.
76. On 24 February 2021 Kevin Peacock, along with other Council representatives, attended Roundabout Farm and inspected the entire wider site. The computer record regarding The Office (KP proof App 3) reads "It was stated that currently Mr and Mrs Kerrison and their daughter are using the Courtyard Barn to reside in due to not having any bookings because of Covid 19."
77. A Planning Contravention Notice dated 8 July 2021 (SOCG App 5) was served on the Appellants. They confirmed the use of Courtyard Barn was as self-catering holiday lets with the only breaks in letting occurring during COVID restrictions. They stated occupancy rates from 2011 to 2020 ranged from 39% to 67%.
78. Helen Crawley, a neighbour from the adjacent Brays Cottage since 2005, gave evidence that she was aware of Courtyard Barn being used as a holiday let but believed it was an ad-hoc measure. Whilst she was unable to say where the Appellants had been living, she noticed lights on in Courtyard Barn during lockdown, and she assumed the Appellants were living there at that time. Whilst I accept that this was her belief, it was only an assumption and I give it little weight.
79. Richard Kerrison gave evidence that during lockdown, when Courtyard Barn was unoccupied, he and his wife, Victoria, took the opportunity to give it a deep clean and to decorate. When social distancing restrictions eased off and people were able to go on holiday again in small bubbles, Courtyard Barn was let out again.
80. It is likely that during Covid, the Appellants spent some time at Courtyard Barn and slept there periodically. Government advice was to social distance, and the more spacious Courtyard Barn would have presented less of a health risk to them. However, that is no different from somebody spending a period away from home on an extended holiday. On balance, it is unlikely that the Appellants moved all of their belongings out of The Office during this time and it is more likely that they used both buildings to live in. On a fact and degree basis, this did not break the continuity of living in The Office.
81. Kevin Peacock visited the site again on 26 August 2021. The computer record (KP proof App 3) shows that Richard Kerrison said Courtyard Barn was booked beyond Christmas with July and August booked Friday to Friday. During the visit, two cars arrived with guests for Courtyard Barn and Kevin Peacock gained the impression from their conversation that Courtyard Barn was a year-round holiday let.
82. The LPA, having heard the evidence, now argues that The Office is in mixed residential and office use, as the office use is an integral part of the building and facilitates the management of the holiday lets on a day to day basis.

Visitors to the wider site are referred to The Office to check in, it contains monitors and a CCTV system, and the Appellants can open and close the entrance gate from there. They say its use is reflected in the fact it is called The Office.

83. I do not accept this argument. The Office is a three bedroomed dwelling which contains a small office room. The set up is not dissimilar to many homes that have an office/study and is what might be expected to accommodate people working from home. The fact that visitors check in there and the site is controlled from there is not sufficient on a fact and degree basis to class the building as being in mixed use. The name is of little consequence. In my judgment, the primary use of The Office is and has been residential. There is no mixed use.
84. Considering all the evidence, it is unlikely that either the mobile home as originally brought onto site in 2010 or, as improved/extended, was used solely or mainly as an office. Such a large accommodation would be unnecessary to service the small holiday business that the Appellants run. It is far more likely that its primary use was as a residential home for the Appellants and their daughter, whilst they let out the other properties on site to earn a living.
85. With respect to continuity, it is unlikely that the Appellants would have slept and lived in the various holiday properties when they were not let out. To do so would entail having to move their personal belongings around from property to property, which would cause them inconvenience and additional cleaning work in maintaining cleanliness standards for guests. Furthermore, they would most likely want the holiday accommodation to be ready to let out at short notice in the event of last minute bookings, so as to maximise profit.
86. The Appellants were specific and unambiguous in their evidence that they had always lived in The Office since it was brought on site in October 2020. Indeed, the timing of the LDC application, being November 2020, suggests that they believed they could demonstrate 10 years continuous residential use from this time. Their evidence has been consistent in this regard. The Appellants' case is further strengthened by their witnesses who gave cogent evidence in support.

Conclusion

87. I have considered the LPAs arguments both individually and cumulatively. However, I am satisfied from the evidence before me that, on a balance of probabilities, The Office became a building in October 2020. The use of the land materially changed to use as a residential dwelling and the Appellants lived in the dwelling continuously for a period of over 10 years from then onwards. Therefore, their appeals are well-founded and succeed.
88. Accordingly, I exercise the powers transferred to me under section 195(2) of the 1990 Act and grant a LDC under section 191(4) and allow the enforcement appeal on ground d).
89. Consequently, there is no need for me to consider the ground a) and g) appeals.

Appeals D and E - Courtyard Barn

Main issue

90. Whether the use of Courtyard Barn has so substantially changed its character from that of a dwelling to that of holiday lettings to amount to a material change of use.
91. The Appellants have purposefully not made a ground d) appeal and accordingly this has not been considered.

The Enforcement Notice

92. The parties agreed that the following amendments should be made. I also take that view and make the amendments, being satisfied that no injustice will result.

In section 4:

Delete the reference to 4 years in paragraph 1 and replace with 10 years.

Delete the reference to Policy EC3 in paragraph 4 and in the list of policies and replace with Policy EC2.

Ground c) appeal

Reasons

The Law

93. The assessment must be undertaken by reference to the circumstances pertaining at the date of the enforcement notice, being 29 July 2022. The legal principles are set out in *Moore v Secretary of State* [2010] EWCA Civ 1202:

"[...] whether the use of a dwellinghouse for commercial letting as holiday accommodation amounts to a material change of use will be a question of fact and degree in each case, and the answer will depend upon the particular characteristics of the use as holiday accommodation. Neither of the two extreme propositions – that using a dwellinghouse for commercial holiday lettings will always amount to a material change of use, or that use of a dwellinghouse for commercial holiday lettings can never amount to a change of use – is correct."

Facts

94. It was agreed that the following factors are relevant in this case:
- a. The size of the dwelling, and the number of people it accommodates;
 - b. The nature of the facilities;
 - c. The nature of the occupation;
 - d. The effect on residential amenity by reference to noise and disturbance.

Size and numbers accommodated; Nature of facilities and occupation

95. Courtyard Barn is substantial in size and contains five bedrooms with ensuite bathrooms, a large kitchen and very large dining room/lounge/entertaining

room with a snooker table, a garden with an outdoor hot tub, and a games outhouse with a pool table.

96. Mr Kerrison gave evidence that it is suited to hosting groups of friends and/or families who live in separate households and come together on holiday for reunions and to celebrate special occasions such as birthdays. He said this was one of the main reasons people chose Courtyard Barn.
97. His documentary evidence of bookings (RK proof App 9a & b) shows the average number of people staying at Courtyard Barn at any one time as being over 8. Website reviews indicate its size and facilities as being a reason for booking the accommodation (KP proof App 35).

Residential amenity

98. The surrounding area is open countryside and the baseline position is a tranquil and peaceful environment.
99. Helen Crawley, the neighbour from the adjacent property Brays Cottage, gave evidence that, in 2018/2019 the water quality from the borehole she shared with the Appellants deteriorated. From around the same time, she experienced considerable disturbance from guests staying at the properties at Roundabout Farm, particularly from frequent loud noise.
100. On 25 November 2019 the LPA received a report about multiple planning breaches at Roundabout Farm.
101. On 4 March 2020, the LPA received a telephone call from a neighbour living at the adjacent Roundabout Cottage [KP proof App 4]. He said Roundabout Farm was being used as a hotel and raised concerns about the amount of traffic coming in and out, giving rise to highway safety issues. He said he had a problem with guests knocking at his door at unreasonable hours believing they were at Roundabout Farm.
102. In the summer of 2020 Helen Crawley complained to the LPA about noise and disturbance coming from Roundabout Farm. This was followed up by a solicitor's letter to the LPA dated 3 September 2020 (KP proof App 11), which referred to a high volume of traffic and intensification of commercial holiday accommodation use at Roundabout Farm, which was causing "...a severe and unacceptable impact on our client's, and other adjacent neighbour's residential amenity."
103. Specifically, the letter referred to Courtyard Barn being a five bedroomed property with capacity to sleep 10 people and advertised on Booking.com as having a "games room", "hot tub", and "meeting/banqueting facilities". Other websites were cited as providing similar advertisements. Amongst other things, it complained about guests using the hot tub late into the night and creating excessive noise.
104. On 8 September 2020 Kevin Peacock met the Appellants at Roundabout Farm, and his site note stated that it was being let for larger groups only (KP proof App 3).

105. A noise log taken by Helen Crawley over several days in September 2020 records loud music in the evenings, using the outdoor hot tub late into the night and children's screams (KP proof App 10).
106. The computer record From Kevin Peacock's visit to Roundabout Farm on 24 February 2021 (KP proof App 3) notes that Courtyard Barn was being let to large groups and that, amongst other things, it had a large games room with a snooker table, an outdoor hot tub and swing, and a shed with a small children's snooker table.
107. On 22 February 2021 the LPA received a further solicitor's letter regarding the alleged nuisance experienced by Helen Crawley (KP proof App 14). It referenced an initial letter in July 2019 complaining of nuisance and breaches of planning control and complained that the noise and disturbance from high volumes of guests was ongoing, causing harm to amenity.
108. The computer record of Kevin Peacock's site visit on 26 August 2021 (KP proof App 3) notes that he got the impression Courtyard Barn was often occupied for celebrations and events with people returning.
109. Highways was consulted on 7 October 2021, but raised no significant concerns (KP proof App 21). Environmental Protection was consulted the same day and, having reviewed audio and video clips, were of the view that there was no statutory nuisance but that a loss of amenity was occurring (KP proof App 22). Environmental Protection also had a log of several noise and disturbance complaints made from September 2020 to October 2021 (KP proof App 37a).
110. On 12 October 2021 Helen Crawley made a further complaint (KP proof App 23) of guests walking along her boundary, looking into her small-holding and watching her go about tasks. She said there were also instances of lost holiday makers disturbing her as late as 11.00pm at night. Courtyard Barn was being advertised for family gatherings, weddings, hen and stag parties.
111. The Highways team monitored Roundabout Farm and their report (KP proof App 24) was reviewed by Norfolk County Council Highways team in December 2021, who found it interesting but nonetheless took the view the figures were too low to take action (KP proof App 25).
112. On 14 January 2022 Helen Crawley's solicitors again wrote to the LPA about the continuing loss of amenity to their client and pressed for action (KP proof App 28). The Appellants offered a section 106 Agreement in an attempt to control the impacts on neighbours (KP proof App 29), but this was rejected by the LPA as being unenforceable.
113. In an attempt to reduce unwanted guest behaviour, the Appellants moved the Courtyard Barn hot tub away from the boundary with Brays Cottage, and repositioned the entrance gates to Roundabout Farm to assist traffic flow. They also introduced "house rules".
114. In June 2022 further complaints were received from Helen Crawley and the occupiers of Roundabout Cottage relating to noise and disturbance, guests trespassing on their land and high volumes of traffic (KP proof App 31a & b).

115. On 29 July 2022 an Enforcement Notice was issued alleging the material change of use of Courtyard Barn to an unlawful use as a separate unit of independent holiday let occupation (KP proof App 32).

Discussion

116. Holiday guests, some of whom are likely to be celebrating special events, are likely to sometimes behave differently from residents at home. As there is no ongoing relationship with the neighbours, there is a potential for some of them to be less considerate than they might be in their own house. Evidence of complaints suggests that this was the case on several occasions with holidaymakers at Courtyard Barn. The veracity of the complaints was not questioned, and I accept them at face value.
117. The Appellants argue that most of the complaints have come from Helen Crawley and were made because of a dispute between them. However, this does not detract from the existence of disturbance, and the impact on her amenity and that of the occupiers of Roundabout Cottage.
118. Whilst the Environmental Protection Officer believed that the high bar for a statutory nuisance had not been met, she was of the opinion that neighbours' amenity had been adversely impacted. I give this substantial weight. Although the Appellants took measures in an attempt to control guests' unwanted behaviour, they were insufficient to resolve the problems.
119. Although I accept that an element of disturbance may have come from guests staying in other properties (Peartree Farm; The Orangery) on the wider Roundabout Farm site, most it will have come from Courtyard Barn, given its size and location.
120. Accordingly, I find that noise and disturbance occurred on multiple occasions at Courtyard Barn resulting in an adverse effect on the residential amenity of neighbours.

Conclusion

121. Drawing the above factors together cumulatively, I find that the character of the use of Courtyard Barn has changed so substantially as to amount to a material change of use from a dwelling to holiday accommodation. Consequently, there has been a breach of planning control and the ground c) appeal is dismissed.

Ground f) appeal

122. The purpose of the enforcement notice was to remedy the breach, and the LPA submit that the only way to do that is to require the holiday lettings to cease.
123. The Appellants did not suggest any lesser steps until invited to do so by me at the Inquiry. The suggestion they then made to remedy the breach was:
- "Permanently cease the use of Courtyard Barn for holiday lets in ways which are not consistent with its continued used as a dwelling."

124. No details were given of what those “ways” would be, or how an assessment of whether the requirement had been met would be made. In my view the suggestion is wholly unenforceable and I reject it.
125. Consequently, I find there are no lesser steps that can be taken and accordingly, I dismiss the ground f) appeal.

Ground g) appeal

126. At the Inquiry, the Appellants submitted a bookings schedule showing confirmed bookings from October 2024 to May 2025 (ID 14) and indicated that they wished to honour those bookings.
127. The LPA submitted that six months was sufficient and would give holidaymakers with confirmed bookings thereafter sufficient time to make new arrangements.
128. I take the view that six months is sufficient for the reasons advanced by the LPA, and accordingly the ground g) appeal is dismissed.

Appeal F - The Orangery

Main Issue

129. Whether a condition is needed restricting the use of The Orangery to bed and breakfast accommodation and preventing its use as a separate self-contained unit of residential accommodation.

Reasons

130. On 12 November 2013, permission was granted for the conversion of an outbuilding attached to Pear Tree Cottage to two units of bed and breakfast accommodation (LPA SOC App 3). This became known as The Orangery. It was subject to conditions, including condition 3 which stated:
- “The Bed and Breakfast accommodation hereby permitted shall be used for Bed and Breakfast accommodation purposes only in connection with Pear Tree Cottage and shall not be used as a separate self-contained unit of holiday or residential accommodation.”
131. The reason given for the condition was:
- “For the avoidance of doubt and because the Bed and Breakfast accommodation is of insufficient size to provide adequate space internally and externally for residential use in accordance with Policy EN4 of the adopted North Norfolk Core Strategy.”
132. The Appellants applied for the removal of this condition, and the LPA refused the application on the basis that the use of the Orangery as a separate unit of residential accommodation would be unacceptable (LPA SOC App 2).
133. Nonetheless, the LPA’s position is that their concerns would be overcome by an alternative condition, which kept the restriction but did not link the use to Pear Tree cottage. The condition suggested is:

"The Bed and Breakfast accommodation hereby permitted shall be used for Bed and Breakfast accommodation purposes only and shall not be used as a separate self-contained unit of residential accommodation."

134. The reason they give for the imposition of this condition is that The Orangery is of insufficient size to achieve an acceptable standard and quality of living accommodation, due to cramped internal layout and inadequate amenity space. Having inspected The Orangery internally on my site visit, I accept the LPA's concerns and find that it is too small to provide a separate unit of living accommodation.
135. The Appellants submitted that they were "...quite happy with condition 3 as the LPA wishes it to be amended. However, they said the development does not need to be controlled by such a condition.
136. The LPA referred to the cases of *I'm Your Man Ltd v Secretary of State* (1999) 77 P.&C.R. 251, and *Wall & ors v Winchester City Council and Secretary of State for Communities and Local Government* [2015] EWCA Civ 563. I have considered these cases.
137. "*I'm Your Man*" is authority for the proposition that the manner in which a permitted use is exercised (in that case a purported temporary time period) cannot be limited by the description of development, but rather it must be imposed by condition.
138. The Orangery is not one of those cases. With The Orangery, it is the description of the extent of the use (bed and breakfast accommodation) that is in consideration, as opposed to the manner in which it is implemented.
139. The "*Winchester*" case provides that the extent of the use for which a planning permission is granted must be ascertained by interpreting the words in the planning permission itself. If the permitted use has been implemented, and a change to the permitted use takes place, then it will be a question of fact and degree whether that change is a material change of use.
140. Paraphrasing from this case: if a planning permission were granted for a particular use A, it would not permit the carrying on of a different use B. However, so long as the land were being used for A, then no planning permission would be needed for use B, if use B were not a material change of use from A. The determination would be a matter of fact and degree.
141. The LPA is concerned that the use of The Orangery as a separate dwelling may not necessarily be a material change of use, and any decision on this would be a matter of judgment, having regard to the nature of the use and its planning impacts. I accept that argument.
142. If over a certain period an element of separate use took place at times, but the permitted bed and breakfast use continued overall, there would need to be an assessment of whether a material change of use had taken place. There is no certainty that such a change could be demonstrated as this would be a matter of fact and degree. Therefore, to ensure that no separate use occurs, I find that the proposed condition is necessary.
143. The original planning permission also contained condition 4, which removed certain permitted development rights. The Appellants submitted in closing that

it should be removed if the above new suggested condition were imposed, although no reasons were given for this.

144. The LPA has suggested an updated condition, restricting permitted development rights, to take account of recent legislation.

145. I have considered the LPA's reasons for this condition which, in essence, are to preserve residential and visual amenity due to the close-knit location of the various building. I accept that this condition is necessary and should be imposed.

Conclusion

146. The appeal is allowed, and planning permission is granted without conditions 3 and 4, subject to the two new conditions set out above.

Elizabeth C Ord

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Harriet Townsend (Counsel).

She called:

Richard and Victoria Kerrison (the Appellants)

Michael Haslem OBE (Appellants' agent)

Carrie-Rose Kerrison (Appellants' daughter)

Steve Hipperson (Appellants' groundsman)

Lady Anwen Hurt (Appellants' friend and neighbour)

Lady Goodenough (Appellants' friend)

Debra Coe (Appellants' friend)

FOR THE LOCAL PLANNING AUTHORITY:

Jack Parker (Counsel).

He called:

Kevin Peacock (Planning Enforcement Officer)

Geoff Lyon (Development Manager)

INTERESTED PARTIES:

Helen Crawley (neighbour from Brays Cottage)

INQUIRY DOCUMENTS

ID 1	Nutrient Neutrality submissions from Appellants
ID 2	Calendars showing bookings of Courtyard Barn
ID 3	Plans relating to The Orangery Planning Permission
ID4	Photographs and plans of The Office
ID5	Planning Statement regarding The Orangery from Appellants
ID6	Opening submissions from the Appellants
ID7	Council's opening statement
ID8	Statement from Helen Crawley and Nell Montgomery
ID9	Complaints and text message
ID10	Email regarding site visit
ID11	Development control policies
ID12	Agreed proposed conditions for The Office
ID13	Winchester City Council judgment
ID14	Courtyard Barn booking schedule
ID15	Appellants' closing submissions
ID16	Council's closing submissions

ABBREVIATIONS USED IN THE DECISION

App	Appendix
CB	Courtyard Barn
LDC	Lawful Development Certificate
LPA	Local Planning Authority
KP	Kevin Peacock
RK	Richard Kerrison
SOC	Statement of Case
SOCG	Statement of Common Ground

Appeal Decision APP/Y2620/X/22/3306008

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 05 November 2020 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason(s):

The use of the land as a dwelling has continued actively throughout the 10 year period commencing October 2010.

Signed *Elizabeth C Ord*
(Inspector)

Date: 23 May 2024

Reference: **APP/Y2620/X/22/3306008**

First Schedule

The residential use of the land and building known as The Office.

Second Schedule

The Office land and building edged in red on the plan attached to this certificate being The Office, Roundabout Farm, Hindolverston Road, Thurning Norfolk NR20 5QS

IMPORTANT NOTES – SEE OVER

Appeal Decision APP/Y2620/X/22/3306008

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date, and was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Appeal Decision APP/Y2620/X/22/3306008

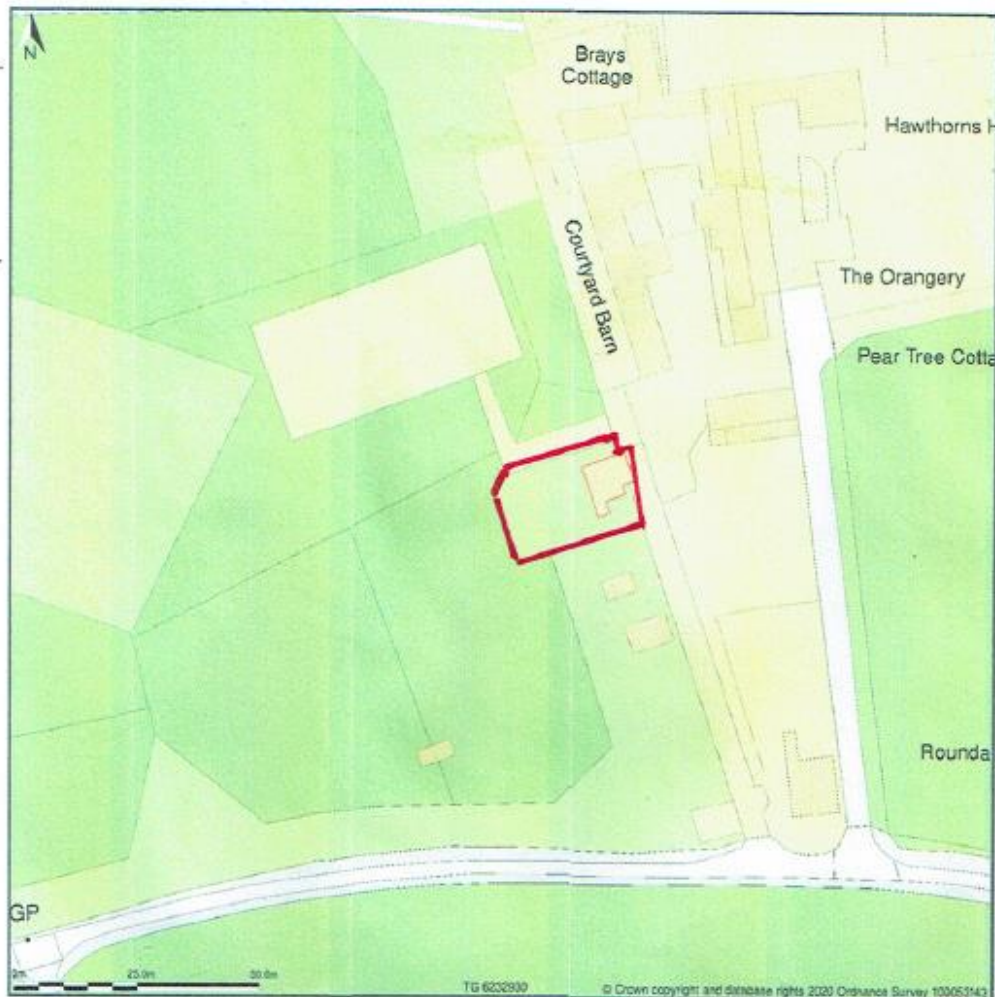
Plan

This is the plan referred to in the Lawful Development Certificate dated: 23 May 2024

Land at: The Office land and building edged in red on the plan attached to this certificate being The Office, Roundabout Farm, Hindolverston Road, Thurning Norfolk NR20 5QS

Reference: APP/Y2620/X/22/3306008

Scale: Not to Scale



Site Plan shows area bounded by: 606131.86, 329207.8 606331.86, 329407.8 (at a scale of 1:1250), OSGridRef: TG 622930. The representation of a road, track or path is no evidence of a right of way. The representation of features as lines is no evidence of a property boundary.

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