
Appeal Decision

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2025

Appeal Ref: APP/C3105/X/25/3367838

Point to Point Farm, Street from Claydon to Southam Road, Mollington, Oxfordshire OX17 1QE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (“the Act”) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr David Jeffries against Cherwell District Council.
 - The application ref 24/03162/CLUE is dated 22 November 2024.
 - The application was made under section 191(1)(a) of the Act.
 - The use for which an LDC is sought is existing use of a dwelling house.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application made by Cherwell District Council against Mr David Jeffries is the subject of a separate Decision.

Preliminary Matters

3. The site address and description of the use given above are taken from the application form, while the Council has described the site as The Barn, Point to Point Farm, Mollington, Oxfordshire OX17 1QE in correspondence. It is clear from the submitted material that the appeal relates to a barn within the farm complex.
4. The submitted location plan indicates that an LDC is sought for the entire barn, and the red edge on the plans annexed to statutory declarations (SDs) in support also identify the entire barn. However, the application contains a second location plan (HP-HE-01) with a red edge restricted to part of the barn and including the access route from the highway. The submitted block plan (HP-HE-04) distinguishes the dwelling from the access.
5. The definition of a building in section 336(1) of the Act includes “any structure or erection, and any part of a building, as so defined.” Accordingly, and unless specified otherwise, in this Decision, ‘the building’ means the part of the barn that is shaded dark grey on drawing HP-HE-04 and no other land.
6. A new property name, Chestnuts Farm, has appeared in recent correspondence and it appears to now be used for some or all the land at Point to Point Farm, potentially including the appeal site. However, it is understood that an application to change the postal address has not been made to or approved by the street naming and numbering authority.

7. The appeal procedure was changed from an inquiry to written representations following the appellant's failure to identify any witnesses or submit proofs of evidence. To avoid any disadvantage, he was afforded an opportunity to make final written comments on the content of the Council's proof of evidence.
8. A site visit was not carried out because access to the land was denied. My consideration of the main issue set out below is therefore based upon the parties' written submissions.

Main Issue

9. Section 191(2) of the Act provides that a use is lawful at any time if (a) no enforcement action may then be taken in respect of it; and (b) it does not constitute a contravention of any of the requirements of any enforcement notice then in force. In this context, 'then' means on the date that the application was validly made. While an enforcement notice has been issued in respect of the existing use of the building applied for, it was not in force on the date the application was made.
10. The main issue is therefore whether enforcement action could have been taken against the material change of use of the building to use as a single dwellinghouse on the date the application was validly made.
11. Section 171B(2) of the Act provides that a change of use of a building to use as a single dwellinghouse that took place before 25 April 2024 may gain immunity from enforcement action after 4 years have elapsed. In this case, it must therefore be demonstrated, on the balance of probabilities, that the change of use occurred on or before 22 November 2020 and continued without significant interruption.
12. It will also be necessary to consider the Council's contention that immunity from enforcement action cannot be achieved because there was positive deception involving the deliberate concealment of a breach of planning control.

Reasons

Whether the use was instituted on or before 22 November 2020

13. The appellant's principal evidence is set out in 5 SDs made by himself, Heidi Jeffries, Jenefer Clarke, Ashley Broughton and Henry Dyer on 6 or 8 November 2024. The appellant, Jenefer Clarke, Ashley Broughton and Henry Dyer all state that the barn was constructed in 2014, including a significant part of the current fabric of the building. Additional fabric was then added in 2019 or early 2020, resulting in the current structure of the building.
14. The appellant's SD states that the building was initially used to store furniture, as ancillary accommodation to the main dwelling at the farm and occasionally by his accountant, Jenefer Clarke. Ms Clarke's SD states that she worked in the building in that role monthly from 2014 to 2020. Nothing within the foregoing amounts to use of the building as a dwellinghouse.
15. The SDs of the appellant and Ms Jeffries state that residential use of the building, by Ms Jeffries and her children, began in March 2020 "prior to the Covid lockdown." Ms Clarke's SD records that she thought Ms Jeffries "moved in just prior to lockdown in March 2020." An unspecified day, either on or before 26 March 2020¹,

¹ The date on which The Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 came into force at 13:00.

is therefore the claimed date for the institution of the use of the building as a single dwellinghouse.

16. No other indication of when the use was instituted, such as a tenancy agreement or date-stamped photographs showing the building in residential use, have been produced. The Council points out that the appellant has produced relatively little evidence, in contrast to comparable cases, but neither has it produced contrary evidence of its own. It must be borne in mind that the SDs were made under the provisions of the Statutory Declarations Act 1835 and as such they should be given appropriate weight as sworn first-hand evidence.
17. However, the appellant's evidence only relates to the building, being the part of the barn shaded dark grey on drawing HP-HE-04. Section 193(4)(a) of the Act provides that an LDC may be issued for the whole or part of the land specified in the application. There is no evidence that any other part of the barn, or any other land at Point to Point Farm was also used as a single dwellinghouse without planning permission.
18. Accordingly, and on the balance of probabilities, it has been demonstrated that the use of the part of the barn edged dark grey on drawing HP-HE-04 as a single dwellinghouse was instituted on or before 22 November 2020.

Whether the use continued without significant interruption

19. Ms Jeffries states in her SD, "I continue to reside there." The SDs of the appellant and Ms Clarke state that she "continues to reside there" and "continues to reside in the dwelling" respectively. Mr Broughton states in his SD, "As far as I am aware she still lives there with her children."
20. Supporting evidence of this is limited. No bills for utilities or services have been produced, nor have any photographs or other documents confirming occupation by Ms Jeffries and her family over any 4-year period. Neither are there any official communications such as bank statements or Council Tax demands for the building addressed to Ms Jeffries or any other occupier.
21. While the appellant states that the building has its own electricity supply, no electricity bills addressed to Ms Jeffries or any other occupier have been presented. This aspect of the appellant's version of events is made less believable by a statement made by an environmental health officer. In it the officer recalls that he heard Ms Jeffries say the building does not have a separate electricity supply when under cross-examination in an appeal hearing in August 2025. In any event, Ms Jeffries' SD states, "I pay for utilities I use to the farm account" but no evidence of any such payments has been produced.
22. As before, SDs made under the provisions of the Statutory Declarations Act 1835 must be treated as sworn first-hand evidence. However, "continue (or continues) to reside" falls short of an explicit statement that Ms Jeffries lived in the building, and nowhere else, continuously between March 2020 and November 2024.
23. Consequently, while the appellant has, on the balance of probabilities, demonstrated that the building was used as a single dwellinghouse in March 2020 and in November 2024, he has not demonstrated continuous use over the intervening period without significant interruption.

Whether there was deliberate concealment

24. The Council raises this argument with reference to the judgment of the Supreme Court in the *Welwyn Hatfield*² case, where it was found that the actions of the developer had amounted to positive deception. This had arisen through deliberate concealment in matters integral to the planning process, with the intention and result of undermining the regular operation of the planning process. The wrong-doer's aim had been to profit directly by resisting enforcement action once the statutory immunity period under section 171B(2) of the Act had passed.
25. The statutory immunity periods including that in section 171B(2) should normally be sufficient for a local planning authority to discover an unlawful operation or use. Consequently, for positive deception to occur, there must be some connection between actions taken to evade discovery and the immunity provisions, something more than just keeping a low profile.
26. The Council contends there is a parallel with the appellant's deliberate concealment before making a successful application for an LDC for the use of a building at Manor Farm Buildings, Claydon as a single dwellinghouse in 2010.³ This also related to a building he had erected within a barn, but the application was determined prior to, and so without the benefit of the Supreme Court's judgment in *Welwyn Hatfield*. While each case must be decided on its facts, the Council considers this shows that the appellant knew how to conceal the change of use of a building within a barn to use as a single dwellinghouse and how that might aid a subsequent application for an LDC.
27. The appellant had reasonable knowledge and experience of the planning system, having made as many as 12 applications to the Council between 2014 and 2020. Significantly, these include an unsuccessful 2018 application for prior approval for the change of use of an agricultural building to a dwellinghouse at Point to Point Farm. This not only reveals that the appellant wanted an additional dwellinghouse there but also suggests, by reason of the refusal, that he knew that it might not be achieved by conventional means.
28. The construction of the building and its use as a dwellinghouse have not involved any external alterations to the barn. All the dwellinghouse's windows are therefore internal to the barn, limiting the light and ventilation they afford to its occupiers. The appellant has not explained why he chose to do this, but it is reasonable to assume that it was to avoid the deviation from the approved plans being noticed and the unauthorised change of use being detected before he was ready to reveal it. The profit to him of doing so is clear.
29. The Council also considers there was positive deception through deliberate concealment in the appellant's decision to not seek building regulations approval for the construction of the building. While the appellant has not given a reason, it avoided one way in which the local planning authority might have learnt about the breach of planning control before he was ready to make his LDC application.
30. The building was not registered for Council Tax until after the Council had become aware of the breach. Again, the appellant has not given a reason, but this is another way in which the risk of information reaching the local planning authority

² *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15.

³ 10/01095/CLUE

could have been managed. Similarly, the Council, as street naming and numbering authority, did not receive any application for a separate postal address for the building. The appellant's reasons are again unstated but another way in which the facts might have become known was avoided.

31. The appellant states he constructed the building at the same time as the barn, so it could have been in his mind when he applied for planning permission. It does not matter whether the deception began with an application that did not reveal an intended residential use, or with a decision to build something different but with the outward appearance of what had been approved. The inescapable conclusion is that there was a carefully enacted deception, designed to achieve a new dwellinghouse in the countryside without a justified exception to the normal policies of restraint. On the facts, it appears unlikely that planning permission would have been forthcoming.
32. Nor does it matter that the use of the building as a dwellinghouse only began some 5 years after its initial construction. The building was designed for and capable of that use from the start and that appears to have always been the appellant's intention, albeit concealed for several years.
33. A further example of positive deception is the fact that Ms Jeffries did not apply to go on the electoral register at a new address specific to the building but at an existing address used in connection with a different dwellinghouse. The annual canvasses provided regular opportunities to consider whether that was a true representation of where she was living but the facts were not revealed. The appellant lived at the address that was used, so he must have been party to this deception.
34. As with the other matters considered above, registering at a new address would have revealed the existence of the dwellinghouse to another Council service, with the attendant risk that the local planning authority would become aware of the breach of planning control.
35. The appellant has not commented on any of the foregoing evidence set out by the Council. While caution should be exercised when considering the reasons for nothing being stated, it is fact that the appellant has failed to deny that he deliberately concealed the dwellinghouse and its occupation as such.
36. Viewed collectively, the Council's evidence leads to an inescapable conclusion that the use of the building as a dwellinghouse was deliberately concealed with the intention that the appellant would profit from it. The profit to Ms Jeffries as an occupier of the building is clear, given that she and her family moved there in difficult circumstances. However, that cannot take away from the fact that a carefully planned positive deception occurred.
37. The Supreme Court held, in *Welwyn Hatfield*, that while the Act contains a complete statutory code, the public policy principle that no one should benefit from their own wrong may nonetheless be applied. Accordingly, it found that the developer was not entitled to rely on the provisions of section 171B(2) of the Act, meaning that the use of the dwellinghouse he had built could not achieve immunity from enforcement action.
38. The Court considered the dishonesty it saw in the *Welwyn Hatfield* case to be highly unusual, almost constituting a category of its own, but there are close

parallels with the facts of this appeal. In each case, the dwellinghouse was constructed inside a new agricultural barn, with no external alterations being made. In both cases, there was no building regulations submission, no Council Tax registration on occupation, and no electoral registration at the building. Another similarity with *Welwyn Hatfield* is that the application form for the construction of the agricultural barn did not reveal that there would be a foul sewage connection, something essential to the use of the concealed dwellinghouse.

39. The only matter that could make me question whether this instance of positive deception was less than highly unusual is the similarity with what the appellant had previously done at Manor Farm Buildings. However, that only serves to reinforce my view that he knew exactly what he was doing, and that he did so with the intention of profiting from circumventing and undermining the proper operation of the planning system.
40. The actions that were taken to conceal the existence of the building and its use as a dwellinghouse were deliberate and well beyond merely keeping a low profile. On the facts, it is therefore appropriate to apply the public policy principle that no one should benefit from their own wrong in the determination of this appeal. Accordingly, and because of his positive deception, the appellant cannot rely on the provisions of section 171B(2) of the Act. The unauthorised existing use of the building as a dwellinghouse was therefore not immune from enforcement action on the date the application was made.

Conclusion

41. For the reasons given above I conclude that, had the Council refused to grant an LDC in respect of existing use of a dwelling house, that refusal would have been well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

Mark Harbottle

INSPECTOR