



Appeal Decision

Inquiry held on 15 October 2025

Site visits made on 7 May 2025 and 15 October 2025

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2025

Appeal Ref: APP/E2205/C/22/3308959

Part of the barn/shed building at The Paddock, Magpie Hall Road, Stubbs Cross, Ashford, Kent TN26 1HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Edward James Yorke against an enforcement notice issued by Ashford Borough Council.
- The notice was issued on 27 September 2022.
- The breach of planning control as alleged in the notice is:
On 22 March 2011, the Council granted retrospective planning permission (ref: 11/00134/AS) ('the 2011 Planning Permission') for 'rebuilding single storey barn/shed on the same footprint.'
Condition (1) contained in the 2011 Planning Permission stated that:
'The building hereby permitted shall not be occupied at any time for residential purposes, it shall only be used for agricultural storage and workshop in associated with the property known as The Paddocks [sic], Magpie Hall Road'
Reason: To prevent the formation of a separate dwelling in this rural location outside the confines of any settlement.
The 'single storey barn/shed' building (the subject of the 2011 Planning Permission) has been sub-divided and approximately two-thirds of the barn/shed building is now occupied for residential purposes. It is this part of the barn/shed building that constitutes what is referred to herein as 'the Building.'
It appears to the Council that condition (1) contained in the 2011 Planning Permission has not been complied with because the Building is being used for residential purposes as a single dwellinghouse. Furthermore, the material change of use of the Building to use as a single dwellinghouse without the benefit of planning permission itself constitutes a breach of planning control.
- The requirements of the notice are to:
 - (i) Cease permanently the residential use of the Building.
 - (ii) Remove permanently from the Building all domestic fixtures and fittings, bathroom sanitary ware and all other domestic units, appliances and paraphernalia associated with the unlawful residential use of the Building.
- The periods for compliance with the requirements are:
 - (i) 9 months.
 - (ii) 11 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (e) and (f) 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.

Summary Decision: The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

1. I raised with the parties the contents of section 171A of the Town and Country Planning Act 1990 (as amended) (the Act) that sets out what constitutes a breach of planning control. This is either the carrying out of development without the required planning permission or failing to comply with a condition or limitation to which planning permission has been granted.

2. In this case, the Council allege both that the occupation of the building as a single dwellinghouse is a breach of condition and that it requires planning permission. The parties agreed, taking account of *Valentina of London v SSE & Islington LBC* [1992] JPL 1151, that it is possible for enforcement notices to allege both breach of condition and carrying out development without planning permission. I see no reason to disagree so will not correct the notice as previously indicated.
3. However, it may be relevant to consider this in light of section 171B of the Town and Country Planning Act 1990 (as amended) (the Act). At the time the notice was issued and the appeal made, section 171B of the Act stated that, where the breach of planning control consisted in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach. The equivalent period in the case of a breach of condition was ten years with the exception of where the condition prevents use as a single dwellinghouse. There was discussion at the Inquiry as to whether the barn/shed building (the barn) was occupied as a separate dwellinghouse from the main house (the bungalow) at The Paddock (a single dwellinghouse with relevant period of 4 years) or as a residential annex (other than in compliance with the condition with relevant period of 10 years). At the Case Management Conference I indicated it was not clear what comprised the grounds of appeal under section 174(2)(b) and (c) of the Act. I will consider this matter under the appeal on ground (b) that the matters described in the notice have not occurred.
4. It was agreed at the Case Management Conference that the Inquiry would focus solely on hearing evidence relating to the appeal on ground (d). However, some evidence related to how the barn has been used and whether the breach of planning control in relation to the use as a single dwellinghouse had taken place as set out above. I have taken that into account in my decision on ground (b).

The Appeal on Ground (e)

5. Section 172 of the Act requires that a copy of an enforcement notice shall be served on the owner and occupier of the land to which it relates. In addition, it should be served on any other person having an interest in the land, being an interest which, in the opinion of the local planning authority, is materially affected by the notice. In this case, the Council state that they served the enforcement notice on the freehold owner of the property, who they claim is the appellant. They believed the appellant was also the occupier of the building. They served notice on the appellant at The Paddock and the barn. They also served the notice on "The Occupier(s)" at the barn.
6. The Council appear to have obtained details of the owner from the Title documents. They state that these do not indicate any other person has an interest in the land.
7. It is indicated that the notice has not been served on all the owners or other persons with an interest in the land. However, from the written evidence it is unclear who these persons are or what their interest is in the land. In the absence of such information, it is unclear whether their interest would be materially affected by the notice. In these circumstances it is not possible for all those with an interest to be individually named.

8. From the appeal documents, it appears that the Council may not have been aware who were the occupiers of the barn, other than the appellant. Nevertheless, in serving the notice on "The Occupier(s)" at the barn, this would have ensured any other occupiers should have been aware of the enforcement notice.
9. I note that under section 176(5) of the Act it is possible for me to disregard that a person has not been served the notice if neither the appellant nor that person has been substantially prejudiced by the failure to serve them. For the reasons set out above, nobody with an interest in the land has been identified who has not been served with the notice. It is also unclear what prejudice any person has suffered as a result. On that basis, I consider no-one has been substantially prejudiced by any failure to serve them.
10. For these reasons, I conclude that the appeal under ground (e) should fail.

The Appeal on Ground (b)

11. An appeal on this ground is that the matters described in the notice have not occurred. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. The main issue is whether the barn was occupied as a single dwellinghouse, separate from the bungalow, at or before the time the notice was issued.
12. Based on the evidence presented at the Inquiry, it is clear that the barn was fitted out with the kitchen, bathroom and other rooms at the time planning permission was granted for the building in 2011. The layout of the barn, and facilities contained within it, meant that it had provided the facilities required for private day-to-day private domestic existence. However, it was initially used by staff of the agricultural business operating at the site.
13. The bungalow and the barn are now occupied by the appellant's large extended family. There is a degree of flexibility in the living arrangements, particularly of the children, in staying in either the main house or the barn and moving between them from time to time. This appears to happen on an occasional basis for weeks or months at a time rather than night to night. Essentially, the accommodation for the family as a whole is divided between the two buildings. As a matter of fact and degree, both buildings provide primary living accommodation for the family; neither is incidental or ancillary to the other.
14. Evidence provided by the Council in the form of notes of conversations with occupants of the site in October and November 2019 indicated that the appellant moved into the barn following an argument with his mother, who lives in the bungalow, in October 2018. The appellant suggests that he doesn't remember what he told the Council at that stage. However, and on the balance of probability, I consider the argument would have taken place and that may have affected the relationship between him and his mother at least at that time such that they occupied the buildings as two separate dwellings. That would be sufficient to conclude that the barn was occupied as a single dwellinghouse prior to the notice being issued such that the appeal on ground (b) must fail.
15. My attention has been drawn to the provision of utilities on the site that are shared between the bungalow and the barn, paid for by the appellant. Council Tax for the bungalow and the barn is separate and has been paid for the period since October 2018, backdated from the investigations by the Council's Council Tax team in late

2019. Whilst these factors could be indicative of the buildings having been occupied separately, in this case they do not affect my conclusion.

16. On the balance of probability and as a matter of fact and degree, I consider the barn had been occupied as a single dwellinghouse by the time the enforcement notice was issued.
17. For these reasons, I conclude that the appeal under ground (b) should fail.

The Appeal on Ground (c)

18. An appeal on this ground is that “those matters” (the matters stated in the alleged breach of planning control) do not constitute a breach of planning control. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability.
19. There is no dispute that the material change of use of the barn to a separate single dwellinghouse constitutes development within the meaning of Section 55 of the Act for which planning permission is required. No planning permission has been sought from or granted by the Council for that use.
20. The condition attached to the planning permission reference 11/00134/AS states that the building permitted shall not be occupied for residential purposes, limiting the use to agricultural storage and workshop. It is clear that limits the use such that the use of the building described in the notice conflicts with the condition.
21. Taking account of the above factors, and having regard to all other evidence before me, I conclude that, on the balance of probability, the use of the barn as a single dwellinghouse constitutes a breach of planning control.
22. For these reasons, I conclude that the appeal under ground (c) should fail.

The Appeal on Ground (d)

23. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be sufficiently precise and unambiguous, even if there is no evidence to contradict it.
24. The notice was issued on 27 September 2022. The building would have become lawful were the use as a single dwellinghouse to have continued for a period of 4 years prior to that date, beginning with the date on which the use had started.
25. Evidence obtained by the Council in October and November 2019 indicated that the use as a single dwellinghouse commenced in October 2018. Their notes suggest that the appellant may have slept occasionally within the barn for nearly four years previously. That evidence came from discussions on site and over the telephone with the appellant, his mother and another person. At the Inquiry, the appellant stated that he could not remember the contents of these discussions and would not have been in a position to give accurate responses to questions at that time. Given the relationship with his mother at that time and his evidence regarding her health, it is unclear how reliable her responses may have been. The Council

refer to another person who they had met on site and gave consistent evidence relating to occupation beginning in October 2018. However, I have limited information as to who they were and the appellant was unable to identify them during his evidence. I will give their evidence limited weight.

26. The appellant's evidence given at the Inquiry was that he began living in the barn with his wife in 2014 and has lived there ever since. Statutory declarations dated 24 and 25 June 2021 from the appellant and his mother state that it was first occupied by him on 30 March 2014 and remained his primary residence since that date. The evidence given on affirmation by the appellant, his wife and a cousin was consistent with that. It was also supported by a small number of photos taken within the barn during that period. As set out above, the barn was capable of being occupied as an independent dwelling since it was granted planning permission in 2011.
27. I accept that there are inconsistencies in the account of the appellant over time, particularly relating to when the barn was first occupied and its use either as an independent dwelling or as an annexe. It seems that some evidence relied on words and phrases that he did not fully understand and I was referred to personal difficulties around the time of the initial investigation such that he doesn't recall the evidence given at that time.
28. Nevertheless, the evidence given on affirmation was precise and unambiguous that the appellant and his family occupied the barn beginning in 2014 and continuing ever since.
29. I have set out in the ground (b) appeal that the barn was occupied separately from the bungalow at least for a period around late 2018. There are clear links between occupation of the bungalow and barn by the appellant's large extended family to indicate that both buildings provide primary living accommodation for the family with neither incidental or ancillary to the other. However, taking account of the facilities provided within the barn and the precise and unambiguous evidence provided at the Inquiry, on the balance of probability I consider that the appellant and his wife always occupied the barn separately from the bungalow.
30. I have accepted that the appellant and his wife occupied the barn as a separate unit of residential occupation beginning in 2014. There has been no indication of a break in occupation since that time. On that basis, the barn was occupied as a separate residential dwelling for a period of 4 years prior to the issue of the enforcement notice, beginning with the date on which the use had started.
31. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be quashed.
32. In these circumstances, the appeal on grounds (a) and (f) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Formal Decision

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

AJ Steen

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ian Reesphillips, Counsel instructed by Ed Bowman of Kingsford Solicitors, who called:

Edward Yorke Appellant

Emily Smith

Matthew Wood

FOR THE LOCAL PLANNING AUTHORITY:

Ben Du Feu, Counsel instructed by the Solicitor to the Council, who called:

Scott Davies BA(Hons) Deputy Team Leader Planning Enforcement, Ashford
Borough Council

Abigail Close Private Sector Housing Officer (formerly Planning
Enforcement Officer), Ashford Borough Council