



Appeal Decision

Inquiry held on 22-25 February and 28 February – 3 March and 7 March 2022

Site visit made on 3 March 2022

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/B9506/C/20/3246929

Land at Passford Farm, Southampton Road, Boldre, LYMINGTON, SO41 8ND

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs Penelope Hill against an enforcement notice issued by New Forest National Park Authority.
- The notice, reference EN/18/0118, was issued on 17 January 2020.
- The breach of planning control as alleged in the notice is without planning permission, 3.1 without planning permission material change of use of an outbuilding shown in the approximate position shaded green on the plan attached to this Notice to an independent unit of residential accommodation (C3 dwelling); 3.2 without planning permission the material change of use of an outbuilding shown in the approximate position shaded orange on the plan attached to this Notice to an independent unit of residential accommodation (C3 dwelling); 3.3 without planning permission the erection of fencing and other means of enclosure (planters) shown in the approximate positions marked blue on the plan attached to this Notice. 3.4 without planning permission the erection of an outbuilding in the approximate position shaded purple on the plan attached to this Notice.
- The requirements of the notice are 5.1 Cease the use of the building shown in the approximate position shaded green on the plan attached to this Notice as an independent unit of residential accommodation; and 5.2 Permanently remove all cooking facilities including appliances, kitchen fixtures and cabinets from the building shown in the approximate position shaded green on the plan attached to this Notice; and 5.3 Cease the use of the building shown in the approximate position shaded orange on the plan attached to this Notice as an independent unit of residential accommodation; and 5.4 Dismantle and permanently remove the fencing and any other means of enclosure (planters) shown in the approximate positions marked blue on the plan attached to this Notice to ground level; and 5.5 Dismantle/demolish and permanently remove the outbuilding shown in the approximate position shaded purple on the plan attached to this Notice to ground level; and 5.6 Remove any resultant debris arising from compliance with the steps above from the land affected.
- The period for compliance with the requirements is: 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (e), (f), (g) of the Town and Country Planning Act 1990 as amended.
- A similar appeal, reference 3246928 has been made by Mr and Mrs Hill without the ground (a)

Appeal Ref: APP/B9506/X/19/3231361

The Lodge, Passford Farm, Southampton Road, Boldre, LYMINGTON, SO41 8ND

- 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 & Mrs Andrew Hill against the decision of New Forest National Park Authority.

- The application ref 19/00225, dated 14 March 2019, was refused by notice dated 24 May 2019.
- 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 the use of the Lodge as a single dwellinghouse.

Appeal Ref: APP/B9506/X/19/3236838

The Lodge, Passford Farm, Southampton Road, Boldre, LYMINGTON, SO41 8ND

- 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 & Mrs Andrew Hill against the decision of New Forest National Park Authority.
 - The application ref 19/00501, dated 18 June 2019, was refused by notice dated 15 August 2019.
 - 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 the use of the Lodge as a single dwellinghouse.
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Decisions

Appeal Ref: APP/B9506/C/20/3246929

1. It is directed that the enforcement notice is corrected and varied by deleting allegations 3.1 and 3.2 and requirements 5.1, 5.2 and 5.3. Subject to the corrections and variations, the appeal is allowed insofar as it relates to the means of enclosure marked in blue adjacent to the Barn (the building marked in green) on the plan attached to the enforcement notice and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the said means of enclosure at: The Barn, Passford Farm, Southampton Road, Boldre, LYMINGTON, SO41 8ND. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to the means of enclosure marked in blue between the Lodge (the building marked in orange) and Passford Farm Cottage and the outbuilding (the building marked in purple) on the plan attached to the enforcement notice and planning permission is refused in respect of the said means of enclosure and the outbuilding at Land at Passford Farm, Southampton Road, Boldre, LYMINGTON, SO41 8ND on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.
2. Attached to this decision is a certificate of lawful use, issued in accordance with the powers under section 177(1)(c) of the 1990 Act as amended, in respect of the use of the Lodge and the Barn as independent dwellings that are immune from enforcement action.

Appeal Ref: APP/B9506/C/20/3246928

3. The appeal is dismissed

Appeal Refs: APP/B9506/X/19/3231361 & 3236838

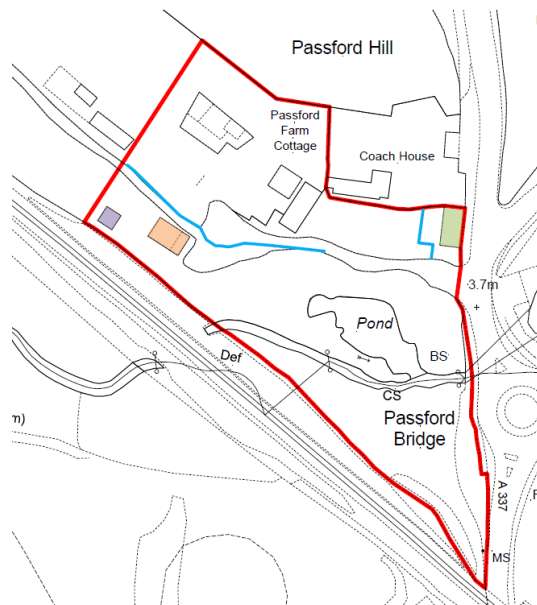
4. The appeals are dismissed.

Applications for costs

- Applications have been made by both parties and are subject to a separate decision letter.

Background to the Appeals

- The land originally comprised a number of buildings grouped around the main farmhouse, which is now known as Passford Farm Cottage. The plan below is reproduced from the enforcement notice.



- In 2006 Andrew Hill bought Passford Farm Cottage and all the land within the red line area, and also the land to the west which contained a mobile home, stables and various outbuildings. The mobile home is shown just beyond the redline and was converted into a permanent dwelling and received an LDC to that effect. It was then henceforth known as the Chalet and has now been sold off to a third party. It features in the appeal because from time to time various members of the Hill family lived in the Chalet and people who worked for Mr Hill also lived in the stables beyond the Chalet. The green building subject to the enforcement notice is known as the barn and sits at the front of the site by the road. In the western corner of the site is the orange building known as the Lodge with the purple outbuilding to its rear. The Coach House, was once part of the farm complex, but was converted into a dwelling many years ago and sold off separately from Passford Farm Cottage before Andrew Hill came on the scene. Andrew Hill is a businessman, who owns and runs various businesses, including car sales and general building. He has two sons, one of whom, Brandon, is involved in this appeal and now runs the car sales business. Andrew Hill and his wife Penny also, at times, ran a B&B from Passford Farm Cottage and self-catering from the Barn and from Passford Farm Cottage. Brandon and his partner Annabelle Rowe now run the Lodge and Barn as a self-catering business.
- Passford Farm Cottage dates back to the 17th century and was listed grade II in May 1987. It is clear that at one time, all the buildings mentioned above were part of, or located within the area of, the farm. However, over the years Passford Farm Cottage has played different roles and must have ceased to be a

working farm some time ago, hence there is a dispute about the extent of its curtilage at the date of listing which effects the fencing that has been erected shown by the blue lines on the plan above and the outbuilding.

9. The Barn and the Lodge have both been converted into dwellings, that is they have all the necessities for day to day living, kitchens, bathrooms, bedrooms, living areas and small gardens. There is no dispute that when the notice was issued, they were both independent dwellings. The issue is for how long have they been in that use. The Authority argue they were both used as ancillary to Passford Farm Cottage, at least from time to time, so that there has not been an unbroken period of 4 years of use as independent dwellings prior to the issue of the enforcement notice in January 2020. Or if there has, the use was lost by a subsequent change of use.
10. Since the notice was issued there has been a further fragmentation of the site as Andrew Hill has sold Passford Farm Cottage to Mr Parsons but retains the ownership of the Lodge and the Barn (in Mrs Hill's name). Consequently, the appellant is no longer pursuing an appeal for the fencing to the rear of Passford Farm Cottage. Mr Parsons also is not pursuing an appeal in respect of that fencing so I am only concerned with the fencing around the Barn.
11. Ground (e) was withdrawn at the Inquiry, and although the appellant insisted there was a ground (b) this is not the case and I shall discuss that below. As a result of this the fencing around the barn is subject to ground (c), that it is permitted development as it is not within the curtilage of a listed building and failing that ground (a). The Lodge and Barn are subject to grounds (d), (a), (f) and (g). The two LDCs for the Lodge are essentially the same as the ground (d) appeal. The outbuilding is proceeding on ground (c) that it is permitted development and failing that on ground (a). There is also an issue of deliberate concealment, which I shall deal with after the ground (d)s.

Is there a ground (b)?

12. The Barn was clearly once a barn and has subsequently been converted to a dwelling so the allegation of a material change of use is correct. It is possible that the lodge may have been originally built as accommodation, but no-one knows and there is no evidence for its use prior to 2006. Andrew Hill says that when he bought the site, he was told it had been lived in by previous occupants, but that does not tell us when it was constructed or what its original use was. It seems most likely therefore there has, as alleged, been a material change of use at some time, the question remains as to when. As both buildings have been subject to a material change of use to an independent dwelling then the allegation is correct and there can be no ground (b).
13. A subsidiary issue became clear during the inquiry that the appellant was acting under the misapprehension that because the Authority accepted the two buildings had been converted so that they contained all the facilities necessary for day to day living they therefore accepted they were being used as dwellings. For the appellant the use as a dwelling and use as an independent dwelling were self-evidently the same. However, the Authority were reluctant to use the word dwelling as it would lead to just this sort of confusion. The use the Authority claimed was being made was ancillary to the main dwelling, Passford Farm Cottage. The fact the buildings in ancillary use had all the facilities for day to day living did not mean they were being occupied as if they

were independent dwellings. That is the appellants' case to demonstrate at this Inquiry. If they succeed that will be on ground (d). Ground (b) can only succeed if there has never been a change of use and as noted above, there has. It also follows that there has been no underenforcement and s173(11) does not apply.

The Lodge – The Appeal on Ground (d)

14. There is no dispute that once Andrew Hill purchased Passford Farm Cottage and moved in, his parents Anne and Gordon Hill moved into the Lodge. Initially they stayed in their motorhome while Andrew Hill arranged for the Lodge to be upgraded. He says, and this was confirmed by several people who worked on the Lodge, that a rear lean-to was converted into a second bedroom, central heating was installed and the kitchen upgraded. Once complete Anne and Gordon moved in. In my view there is no doubt they were in occupation by 2007.

The 2007 visit

15. The Authority visited the site on 16 January 2007. The site visit notes record Andrew Hill as telling the officer his parents actually lived in the mobile-home (known now as the Chalet), but this had sprung a leak and so they were temporarily in the Lodge. He also said the Lodge was already converted when he move to the site but it had never been used as part of the B&B (currently being run from Passford Farm Cottage) only for friends and visitors as overspill accommodation.
16. This is the first of a number of contradictory statements, where the Authority's records differ from the testimony I heard. What we do know is that the parents were in the Lodge, the B&B was running in Passford Farm Cottage and the mobile-home had a leak. Everyone on the appellant's side, including Anne Hill are certain they never lived in the mobile-home, but in the motorhome and then the Lodge. The only real issue is whether that occupation was intended to be temporary or not, and clearly it was not. Therefore why did Andrew Hill tell the enforcement officer it was? Either the officer is wrong, or Andrew Hill was not keen to advertise the use of the Lodge for permanent accommodation, as at that point, he would find it difficult to demonstrate the use had been ongoing for 4 years. He either made up the story or allowed the officer to draw the wrong conclusions from what he said. I'll deal with the ramifications of that later, but for now, the parents are installed in the Lodge, permanently.

Occupation by Mr and Mrs Hill Sr

17. Gordon Hill died in 2010 and Anne Hill continued living in the Lodge until at least 2014 sometime after which she says she let it out to tenants and in 2018 sold her portion to Andrew Hill. Its worth noting here that Andrew Hill and his parents bought Passford Farm Cottage between them and they had a legal agreement that if either wanted to move on the other had to buy them out. There was a rather bitter dispute between Anne and Andrew Hill about money, exacerbated as she had entered into a relationship with another man which caused problems with her son, Andrew. The upshot of this is she did not feel comfortable living in the Lodge anymore, moving out to stay with friends and her other son, who was ill, and her new partner, leaving the Lodge free for tenants to move in.

18. There is no doubt that tenants lived in the Lodge; there was a single man and then an elderly couple. It seems from Anne Hill's evidence the first tenants moved in, in 2017 and she sold the lodge in 2018. For a couple of years before 2017 Anne Hill retained the Lodge but did not stay there often, although it remained available for her.

2018 – occupation by Andrew and Penny Hill

19. In early 2018, when Mr Hill bought the Lodge back off his Mother, he redecorated and moved in with Penny so that Passford Farm Cottage could be let out as a large self-catering unit. This is the second area of disagreement between the parties. Mr Hill maintains that he and his wife lived in the Lodge as if it were their main house. Passford Farm Cottage was rented out and he used a holiday lettings company to run that side of the business. He initially said he had no role in the use of Passford Farm Cottage as a self-catering business, but it became clear he meant he had no active role.
20. As the inquiry unfolded it became clear that as Mr Hill remained the owner of Passford Farm Cottage then he was ultimately responsible for its success. The rental company was run by Leigh Goldsmith who explained she was responsible for maintaining the website and any advertising, dealing with bookings, letting people in, arranging for cleaning and linen changes, maintenance and so on. However, Mr Parsons provided evidence of messages via the Airbnb app that suggested Leigh was contacting Andrew Hill on a regular basis and he was going round and sorting out all sorts of issues, mostly to do with maintenance, especially the hot tub.
21. It was explained that Leigh used 'Andrew' as a general term so that guests would see they had a single point of contact. Andrew Hill would get the message or phone call and deal with the problem by delegating maintenance to one of his workers, several of whom were regularly on site anyway, or sometimes Brandon and only occasionally he or Penny would get involved. He says he was usually busy with his other businesses or indeed had moved to the Isle of Wight by Christmas 2018 and so was not even around. When various people turned up at Passford Farm Cottage to deal with a problem they would simply say 'Andrew has sent me', thus reassuring the guests. It was stressed this was only an occasional event, normally Leigh dealt with the guests. Andrew Hill also pointed out that for several of the dates concerned he was on holiday abroad, on his boat off the Isle of Wight, in London and so on. He knew this from his photographs on his phone. The photographic evidence wasn't tendered, and anyway the Authority questioned the certainty of dates on photographs from iPhones, but I have no reason to doubt the truth of these assertions.
22. I have less difficulty than the Authority in accepting the explanation of the use of 'Andrew' as a general term. It seems quite sensible to me, especially as, regardless of where he may have been physically located, Andrew Hill is clearly a busy man with several businesses to run. It's unlikely he intended to be around the Lodge all day in case he was needed over at Passford Farm Cottage. However, even if he were, and even if every instance of the use of 'Andrew' meant that he did turn up and deal with an issue at Passford Farm Cottage, this does not necessarily mean the Lodge was being used ancillary to the Cottage. I shall discuss that later.

Occupation by Ms Rowe

23. Shortly after the Hills moved to the IoW, it was decided that Annabelle would take over running the self-catering at Passford Farm Cottage. She was living in the Chalet at the time with Brandon, but that was being sold off so they moved into the now empty Lodge. Leigh handed over the account to Annabelle who operated it in the same way. Contacting Andrew when needed, but less often, as Annabelle had less need of outside help than Leigh. She was also running the Barn, which we shall come onto later, and the same system operated there, with Andrew getting his workers to help out with any maintenance issues.
24. From July 2019 Annabelle and Brandon had their own flat in town and so rented out the Lodge as self-catering accommodation as well as the Barn. By now Passford Farm Cottage had been sold to Mr Parsons who has continued the self-catering business there, running on the same lines as Leigh and Annabelle. He has his own team of preferred handymen, launderers, cleaners etc who deal with it for him as he lives away in London.
25. What does all this mean? The Lodge was lived in by Anne and Gordon Hill, and then Anne Hill alone from 2007 until 2014 or 2015. It seems it may have been largely unoccupied for a couple of years, occasionally used by Anne Hill, until she decided to rent it out to tenants in 2017-18, after which Andrew and Penny Hill lived there until they moved to the Isle of Wight by Christmas 2018, when Annabelle Rowe moved in with Brandon. She still leases it from Penny Hill but rents it out as self-catering accommodation on Airbnb. There may have been short gaps while the building was redecorated but these do not affect the 4 year period.

Conclusions – Anne and Gordon Hill, ancillary use?

26. The only evidence that Anne and Gordon Hill used the Lodge as ancillary to Passford Farm Cottage is a Council Tax bill appended to a statutory declaration from Anne Hill in 2015. The bill refers to the period 2007-2009, is addressed to Andrew and Penny Hill at Passford Farm Cottage but refers to "The Lodge Annexe" and notes the owner is exempt from payment as it is occupied by a "dep rel". This apparently refers to a 'dependent relative'. The implication is that Anne and Gordon Hill are dependent on Andrew and Penny Hill. If so, then it could be argued (and is by the Authority) the Lodge was more akin to a 'granny annex' where the occupiers are dependent on family in the main house, and so the use is ancillary rather than independent. However, there is no other evidence from Council Tax bills, and no actual explanation what a 'dep rel' means in terms of Council Tax. In fact the weight of evidence is the other way. All the witnesses said that Anne and Gordon Hill lived independent lives and had merely replicated the living arrangements from where they lived previously. In fact, they were so independent Anne Hill fell out with Andrew in court and felt she couldn't live there any longer, hence the gap in 2015-17. Whether she was a dependant relative for tax purposes or not, there is no evidence to suggest other than that, as a couple and then on her own, she lived in the Lodge as an independent dwelling and that it was not used ancillary to Passford Farm Cottage.
27. Consequently, the lodge was occupied as an independent dwelling for more than 4 years between 2007 and 2015. There was a gap in occupation from 2015-17 but no material change of use to a different use, it was just that the

Lodge was not used on a day to day basis. Anne Hill's effects were still there and she could live in it whenever she wanted.

Conclusions – Andrew and Penny Hill, ancillary use?

28. When ownership was transferred to Andrew Hill and he and Penny Hill moved in the issue is whether they 'serviced' Passford Farm Cottage from the Lodge to such an extent that the use became ancillary. In my view, for there to be a material change of use from independent dwelling to ancillary use, there would have to be something specific that was different in the way the use operated. If the Hills moved back and forwards between the two buildings depending on bookings, then it could seem as if they were being occupied as single unit and it could be argued that was ancillary. Mr Hill is recorded by the Authority as saying he did this, but Mr Hill disputes this. In any event there needs to be something more than the occasional visit to mend the hot tub or let in a guest to create an ancillary link.
29. In August 2018 Lucie Cooper visited the site for the Authority. She took with her a PCN that had been filled in by Andrew Hill in 2015 in response to an earlier investigation by the Authority in which he said the Lodge was used as an independent dwelling and had been since before 2011. She annotated the PCN with her current observations. The handwritten note on the section dealing with the Lodge says "current accommodation". On returning to the office Mrs Cooper wrote up notes of this meeting for the file. In this note she explains in some more detail that the Lodge does not have an LDC but the PCN response (from 2015) suggests it might be a lawful independent dwelling. The new outbuilding to the rear of the Lodge might be permitted development if it is considered to be in the curtilage of the Lodge rather than the listed farmhouse.
30. On the 11 September 2018 Mrs Cooper wrote to Mr Hill, with a full explanation of where she thought the case stood. With regards to the Lodge she noted Mr Hill informed her there had been no change of use. It was occupied by him and Mrs Hill during the summer months, while Passford Farm Cottage was rented out as self-catering, and the farmhouse was serviced from the Lodge. In the winter the Hills moved back into Passford Farm Cottage. Mrs Cooper presumed the Lodge remained empty when the Hills were back at Passford Farm Cottage. She then concludes "*whilst there is no Lawful Development Certificate for the use of this building, as there does not appear to have been any change since the time of our last investigation, the use of this building as described above is not considered to warrant further enforcement action at this time*".
31. Mr Hill denies saying they 'serviced' Passford Farm Cottage from the Lodge or that they moved back and forth depending on the season. Regardless of this, the sentence I quoted above from Mrs Cooper's letter does not suggest to me she thought the use of the Lodge was ancillary to Passford Farm Cottage. If it was, why mention the lack of an LDC? At the time of the last investigation (in 2015) the Authority were told the Lodge was an independent dwelling and the letter notes nothing has changed since then. Had there been a material change of use to ancillary then surely Mrs Cooper would have made that clear? But she merely says the use doesn't warrant enforcement action. The most reasonable explanation for that, which is consistent with the annotated PCN

and the August typed up notes, is that the Lodge remained in use as an independent dwelling.

Conclusions - Annabelle Rowe, ancillary use?

32. By Christmas 2018 the Hills had moved to the Isle of Wight and following a short period of redecoration Annabelle Rowe and Brandon move in as the Chalet, where they had been living, was being sold. Eventually they left for a flat nearby and following further improvements, began renting out the Lodge as self-catering accommodation along with the Barn. None of this seems particularly contestable. The Authority argue that the tangled financial arrangements that Ms Rowe has with the Hills (specifically Penny Hill as the legal owner of the Lodge) suggest a web of deceit designed to make it appear as if she has a connection to the Lodge that is false. But in fact in all seems pretty straightforward to me. Ms Rowe rented the Lodge as a place to live on an AST from Penny Hill. Although she lived there with Brandon, Penny's son, the AST gave her some assurances in the event the relationship soured. Then, she and Brandon decided to move to their own rented place, away from the site and make some money by renting out the Lodge for self-catering. Penny Hill receives the rent from the Lodge and Anabelle and Brandon get the money from the self-catering, both parties making a profit. This arrangement continues today.

Overall conclusion

33. In conclusion therefore the evidence suggests to me the lodge has been continuously used as an independent dwelling from 2007 to 2015, there was a break in occupation, but not in use until 2018 and then continuous use to the present day. The Authority suggests that the movement from one building to another by Andrew Hill, Ms Rowe and Brandon Hill, and the different ways the buildings have been used, such as for B&B in Passford Farm Cottage then self-catering, and residential and then tourist accommodation for the Lodge suggests a fluidity across the site that shows it was all being used as one large planning unit, with different buildings having different uses depending on the whims of the family. This may be partially true but the Authority's case does seem to rely heavily on the idea that because the various people in these dwellings were all related that somehow makes the use of those buildings ancillary to each other. That is not a general principle in planning, it is how the building is actually used that is important and the evidence here is that there has been a consistent use of the Lodge as an independent dwelling for more than 4 years, regardless of who was in it. The Lodge therefore succeeds on ground (d).

34. A single planning unit can have several dwellings in it, and I do not need to go into the details of whether a separate planning unit for the Lodge was created, and if so at what date, as that is not directly relevant to the ground (d) arguments. Suffice to say, the Lodge is clearly now in its own planning unit.

The Barn – The Appeal on Ground (d)

35. The arguments at the Inquiry proceeded on the basis that it was accepted that the use of the Barn as self-catering accommodation was the same use, in planning terms, as an independent dwelling. So, if a mix of self-catering and occupation by tenants on a long term basis could be demonstrated then the

ground (d) would succeed. However, it was noted in closing that this approach had been rejected by the Courts¹. It is of course possible for a dwelling and a holiday use to be considered to be materially different uses, but this is usually a matter of scale rather than simply the nature of the occupation. For example a large party house might have materially different impacts than the same building used by a family. This argument was not raised here and I have no reason to suspect the holiday use was materially different to an independent dwelling use. I assume the reference to Moore was simply to note that it did not necessarily follow as a matter of principle that the two uses were always the same.

36. There is no dispute that when Mr Hill took over the site the Barn had not been converted to a dwelling. This was something that Mr Hill undertook. The issues here are when did the conversion works take place and after they had given the Barn the facilities for day to day living (as in Gravesham), was it actually used as a dwelling?
37. As soon as he took over, Mr Hill made an application to use the Barn as a holiday let. This included the internal works to create living accommodation, which is similar to how the Barn is today. The ground floor was largely open plan, with a kitchen at one end, dining area in the middle and lounge at the other, looking out over the parking. There were two staircases on either side of the main doorway in, leading to two ensuite bedrooms. There was no interconnection between the bedrooms. So each could be an independent room. Today the right hand bedroom has been subdivided to form two rooms, but its lack of connectivity to the left hand side remains.
38. This application was refused. Mr Hill says that in 2008 he converted the Barn anyway and it was used from 2009 for self-catering holiday lets, until 2017 When it was let as a whole to Lee Mills, a friend, who was a tenant there until August 2019, when, following a refurbishment (turning the 2nd bedroom into a games room), Ms Rowe took over letting the Barn as self-catering again. What actually happened isn't quite as straightforward as this.

2008-2009 the Astridge's involvement

39. When the Hills took over Passford Farm Cottage, the owners of the Coach House were the Astridges. The Barn is closer to the Coach House than Passford Farm Cottage and when Mr Astridge saw Mr Hill carrying out the initial conversion works he asked if he could buy it. This was agreed; Mr Hill would continue the works and Mr Astridge would pay for them. The plan was to incorporate the Barn into the planning unit of the Coach House and in September 2008 Mr Astridge made an application to retain the windows that had been put into the roof and walls of the Barn. This was withdrawn and followed up in October 2008 with a similar application. That application was granted. It made clear the Barn would be used ancillary to the Coach House and the plans showed the downstairs as open plan storage with one large room upstairs used as a home office. What is very odd about this is that Mr Astridge was also paying Mr Hill to carry out the conversion of a barn into a dwelling, very much as in the refused 2007 application. We know this as there are e-mails from April 2009 between the two. By now Mr Astridge had failed to get a mortgage and so could not buy the barn. He was disputing he should pay for

¹ Moore v SSCLG and anor [2012] EWCA Civ 1202

the conversion works. We know they exceeded what was shown in his plans from October 2008 as he talks about attaching a bracket to a ceiling for a projector and the completion of the third bedroom. So there must already have been two bedrooms in place.

40. The oral evidence was that Mr Astridge's parents stayed in it occasionally, presumably once it had been made habitable, and that Anne Hill used a room as an office there. Mr Astridge also refers to the office being in the Barn. Anne Hill did some general office work for Andrew Hill's garage business, until he bought the new garage and she worked from there. Her evidence was this was around the time her husband died in 2010, but it was confirmed the garage was purchased in 2009 and Anne Hill also was sure the office use ceased once the work for the Astridges was complete, which was also 2009. It seems the Authority did not carry out a site visit when granting the application so had no idea all this was going on, but it seems clear that by late 2009 the conversion works were complete and the Barn contained all the facilities necessary for day to day living. It never changed hands and remained within the planning unit at Passford Farm Cottage.

The self-catering use 2009-2017

41. Mr Hill is clear that from then on, the Barn was rented out as self-catering holiday accommodation. Evidence has been provided from TripAdvisor reviews and booking enquiries using Holiday Lettings, who worked through the TripAdvisor site. I agree that many of these are not confirmed bookings, but they do demonstrate the property was being marketed and often the enquiries were turned away as it was fully booked. What they show is the use of the Barn from 2011 to 2017. Not so much in 2011 but busy from 2012 to 2013 in the summer and then much of the year in 2014-2015 then less in 2016 and very little in 2017, but that was when Lee Mills rented the whole place. These are not the whole story as Penny Hill was unable to access her old mobile phone number which had a record of bookings on, nor a now defunct Late Rooms account, which also had bookings on it.
42. At this point it is worth stating that in my view this evidence shows the Barn was converted to a separate dwelling and used for holiday accommodation thereafter until Lee Mills moved in. There may have been gaps when it wasn't booked, but that did not suggest the use had ceased. The test is whether at any time the Authority could have issued an enforcement notice. It seems to me had they visited anytime between 2009 and now, they would have found a Barn that had been unlawfully converted into a dwelling and a simple internet search would have shown it was being rented out. I think that would have been enough to convince me to issue an enforcement notice. However, there are two issues, firstly the question of B&B use and secondly the Authority's visit in 2015.

Was it a B&B use?

43. The Authority argue that much of the use of the Barn was as an extension of the B&B being run from Passford Farm Cottage. If that is the case then the use of the Barn could be said to be ancillary to the farmhouse, as it was just used as overflow bedrooms. The evidence of the actual self-catering stays suggests the use alternated between the two, and so 4 years continued use cannot be demonstrated. Passford Farm Cottage was in use as a B&B when the Hills

moved in and they continued that use up to 2015 when a new kitchen was fitted and they decided to stop the B&B. This ties in with the TripAdvisor reviews which occasionally mention B&B, but not from early 2015 onwards.

44. It is the TripAdvisor reviews that reveal the B&B use, and also Mr Hill's response to the 2015 PCN where he describes the use of the Barn as "bed and breakfast / self-catering". I note that in May 2019 he referred to it in a ROI response as 'holiday accommodation self-catering' and in October 2019 Mrs Hill described it as self-catering. The reviews are mostly from TripAdvisor and the listing covers the whole site. The picture on Tripadvisor is of Passford Farm Cottage and nearly all the reviews are for B&B at the cottage, but a few mention being booked into the Barn instead. There is a suggestion the barn was used as overflow accommodation. Four reviews mention breakfast being brought over by the owner and a couple that say it was provided in the fridge in the Barn. It was suggested that other reviews refer to the Barn because of the complaints about road noise, but there are several that are definitely in the listed farmhouse that complain about road noise so that is not an indicator.
45. Mr Hill explained that, yes, they did provide B&B in the Barn from time to time if people requested it, usually this was croissants etc in the fridge. However, he was clear, as was Penny Hill, that breakfasts were not brought over from the farmhouse. Its hard to imagine how this could be done successfully as they are quite a distance apart, but continental breakfasts could easily be supplied, either in the morning or left in the fridge overnight. Although the Barn was set up as a single unit for up to 8 people, because the bedrooms upstairs could be isolated from the downstairs it would be possible to accommodate people in the two rooms upstairs separately, so they could have been used as overflow for the B&B. Nevertheless, the evidence for guests actually being accommodated in the Barn as if they were in a B&B is sparse, even if I take the reviews as completely accurate. I also note there are invoices to an IT firm for maintaining separate websites for the farmhouse B&B, and the barn self-catering. Although those websites are no longer extant, I cannot see that Mr Hill would have paid for them as far back as 2012 if they were not being used. Overwhelmingly it seems it was used as a holiday rental, and perhaps more importantly it was always available as a holiday rental.

The 2015 enforcement action

46. The visit by Mr Aldred in 2015 is the second area of contention. He visited in January and noted that a proper accompanied site visit was required. This was followed up by a PCN returned by Mr Hill in February. This is the PCN Mrs Cooper took with her in 2018, mentioned above. Mr Hill notes the Barn is used for B&B and self-catering and the use began before 2011. Mr Aldred was not satisfied by this and wrote to tell Mr Hill there were numerous breaches on the land and he needed an on-site meting which then occurred in April. Unfortunately the evidence for what happened then is unclear. The site visit notes say only that he met Mr Hill and it was agreed the latter would "*produce stat decs to confirm the ancillary use of the building at the site in connection with the B&B business*". It is assumed this refers to the Barn as that is the only building identified on the PCN as possibly related to the B&B business. This seems quite a low key response given the tenor of the February letter, but in any event Mr Hill then wrote to the Council on 5th of May dealing briefly with all the breaches, most of which do not concern us, but he says the Lodge

(coloured orange) has always been used as an independent dwelling and will provide statutory declarations to show this and as to the Barn (coloured green), he has removed the cooker and confirmed "*this unit is only being used as ancillary to the main dwelling*". In June Mr Aldred replied to say that "*no evidence of a breach of planning control has been found in this case*", no further action will be taken and he "*will treat the case as closed*".

47. The appellant's team placed considerable emphasis on this outcome and with some justification. It suggests the Authority accepted the lodge was lawful, but more importantly for the Barn it suggested they were happy it could be used ancillary to Passford Farm Cottage once the cooker had been removed. It is important to remember that at this point the Authority should have thought the Barn had been converted to a home office with storage below for use in connection with the Coach House. They did not know any of the history of the site between the grant of that planning permission and the 2015 visit. It must have been a considerable surprise to find the Barn converted into a dwelling and being used by Mr Hill. How it could be ancillary to Passford Farm Cottage is not clear, nor why removing the cooker would make a difference. Evidence was provided that the kitchen was fully fitted, with a microwave etc so removing the cooker would not affect the provision of the facilities required for day to day living. And in any event, there was nothing to stop Mr Hill from putting the cooker back, which is what he did. It is difficult for me to understand how Mr Aldred could have thought the case was closed and of course it wasn't.
48. The evidence is clear that Mr Hill continued to rent out the Barn as self-catering accommodation, almost immediately after he wrote the letter. He and others said the cooker was replaced a few days later and business resumed as usual. We have a TripAdvisor review from a Fatima Hajnal. Ms Hajnal provided a statutory declaration to support the 2019 LDC application for the Barn that was refused, confirming the TripAdvisor review was accurate and the kitchen had a functioning gas cooker. This was by the 10th of May. By the time of the next visit in 2018 Lee Mills was occupying the Barn as his main residence.
49. Mr Hill says he felt pressured into removing the cooker, presumably to get Mr Aldred off his back, and it seemed a painless way of enabling him to get on with letting out the Barn. Whatever the reasons, there does not seem to have been a break in the continuity of the use. The Council rely on Mr Hill's assertion that the use was now ancillary as effectively stopping the clock and, even if 4 years had been achieved prior to 5 May 2015, there was now a material change of use to an ancillary use. I don't think there ever was an ancillary use, and I am far from certain there ever could have been. But even if there was, by 10 May 2015 the self-catering accommodation had resumed and either that continued or Lee Mills was living there up to the date of the issue of the notice in 2020. So either way, the Barn has become immune to enforcement due to the passage of time.

Other issues concerning the Barn

50. Mr Jenkins who lives at the Coach House, opposed the granting of the 2019 LDC. His evidence as paraphrased by the Council in their report was that the Barn had been mainly empty from 2015-2017, with only occasional use until

Lee Mills moved in. He refers to a police report of a break-in in 2017 noting it had been vacant for some time. The police report is not produced in evidence and Mr Jenkins recollections of how busy the Barn is does not tally with the bookings or financial evidence provided, so I do not think this outweighs the more convincing evidence I have of use.

51. There is also a dispute about Mrs Cooper's evidence from her 2018 visit when Mr Hill told her Lee Mills had been living there for 4 years. Not only was this patently untrue, but also provably so from Mr Hill's own evidence back in 2015. I'll deal with this in more detail under concealment, but for the purposes of the ground (d) I don't see it as relevant. The evidence is clear about the use of the Barn, regardless of any alleged 4 year tenure involving Mr Mills.

Concealment

52. The case law on concealment is that the protection afforded by the time limits under section 171B of the 1990 Act can be displaced where it can be established that there has been a deliberate concealment of the breach of planning control. Four matters were identified in Welwyn² that would lead to a finding of deliberate concealment, positive deception, intention to and actual success in undermining the planning system and that the landowner would profit from the concealment, but it has since been made clear these are not necessary tests, nor is there a test of exceptionality. Each case needs to be considered on its merits. Nevertheless, concealment does not easily arise in cases of omission, there must generally be something specific that is designed to conceal and it is likely to be positive and deliberate.
53. Much has been made of the lack of consistency in the dates advanced by the appellant's witnesses and in the different statutory declarations made by Mr Hill in pursuing various LDC applications. However, it is not unusual in my experience for witnesses to provide different dates, especially under cross-examination, that is the nature of different individual's recollections. The issue is whether they undermine the general argument being put forward. In this case they do not, as everyone was generally consistent in what happened and where, and the differences in dates did not throw up any serious contradictions. When presenting evidence for an LDC it is not unusual to claim the required 4 or 10 years as relevant, especially if that is easy to show. It is only when it becomes clear the Council, or in this case the Authority, do not find it convincing, does it become necessary to find more evidence that takes the dates further back in time, I do not find this suspicious or undermining of the case.
54. Taking the Lodge first, the dates that Anne Hill occupied the Lodge for are accounted for by the fact that she did 'occupy' it until 2017 but did not stay there regularly after 2015. I don't find this taints her evidence. I have dealt with the issue of the 2018 meeting with Mrs Cooper above. Even if Mr Hill did say what he was alleged to have said, it was the Authority's misunderstanding of what that meant in planning terms that was more of a problem, not any concealment on Mr Hill's part. It is not clear from Mrs Cooper's notes what she thought the import of Mr Hill's suggestions is and as I note above, it is surprising, that if Mr Hill's admission that he serviced Passford Farm Cottage from the lodge was of key importance there is no record of it being said prior to

² Welwyn Hatfield Council v Secretary of State for Communities and Local Government [2010] EWCA Civ 26

the letter written some time later. I have dealt with Annabelle Rowe's AST above and there seems to be nothing sinister there either and certainly nothing odd in her occupying the Lodge with her partner, Brandon. None of that suggests ancillary use at all and if the Authority thought it did then that is their mistake. Mr Parsons' rebuttal evidence of Mr Hill's lack of involvement in the running of Passford Farm Cottage as self-catering accommodation, turned out to be entirely explicable.

55. There is finally the issue of what was said in 2007. This turns on whether Mr Hill said the parents were temporarily in the lodge or not. As noted above it is possible that Mr Hill simply allowed the enforcement officer to draw the wrong conclusions from what was said. Either way, this is right back at the beginning of the process, even had it been true, it wouldn't stop the Hills from changing their minds later. I do not think there has been any deliberate concealment that led to any genuine advantage for Mr Hill to exploit the planning system when it comes to the lodge.
56. Regarding the Barn the 2015 letter is the key issue. The fact that Mr Hill didn't tell the Authority he had converted the Barn for residential use is irrelevant and the alleged mention of a 4 year occupancy by Mr Mills would seem to be the opposite of concealment. No advantage could be gained from that statement, if it was made, as it was so easily shown not to be the case. The removal of the cooker is a more significant event. It is clear that Mr Hill told the Authority that it had been removed (which was true) and the use was now ancillary to the main dwelling (which was not true). He then put it back and carried on letting out the Barn.
57. I have already explained my disquiet as to how the Authority handled the investigation in 2015. It was not up to Mr Hill to determine the use was ancillary, that was a matter for the Authority. I note he did not say he had ceased the unlawful self-catering use nor that he had taken up a B&B use, we have no idea what Mr Hill meant in his letter and it should not have led to the case being closed. We know from the PCN that Mr Hill considered the Barn use had been going on for more than 4 years, as he described it as having begun before 2011, so the 2015 letter seems more to me to be an attempt to distract Mr Aldred. If he was doing his job properly there is no way Mr Aldred should have genuinely been misled by the letter, the fact that he was is not Mr Hill's fault. In other words if it was an attempt to deliberately conceal what was happening it was such a poor one it is not sufficiently serious to displace the protection of the 4 year time period. There was nothing to stop Mr Hill from putting the cooker back in and resuming the use of the Barn, particularly because he never said he wouldn't. He may not be able to assume the moral high ground in any argument with the Authority but that is not the same as saying he set out to deliberately conceal what was happening in order to gain an advantage in planning terms.
58. It seems to me there has been considerable confusion about what was happening at the Lodge and the Barn, and that Mr Hill has not gone out of his way to dispel it. He has certainly sailed close to the wind on several occasions in telling the Council what they wanted to hear, but I do not think he has actually gained any significant advantage from doing so. Had the Council been a little more diligent in their record keeping or in the way they handled the various investigations, everything was open to see. I should also note the Barn

has been consistently advertised as a self-catering unit on the internet which is available for anyone to see. I do not therefore find there was deliberate concealment in the case of the Barn or the Lodge from which any significant advantage was gained and the ground (d) appeal succeeds for both the Barn and the Lodge.

Fencing – the Appeal on Ground (c)

59. The means of enclosure around the Barn consists of a mix of fences and planters, containing hedging material. It was suggested the planters were actually a hedge and so did not fall within the ambit of the planning system at all. From what I saw, however, they appeared to be large and sturdy boxes or frames with hedges growing in them. Whether they can be moved or not I do not know, but if they can it would not be easy to do as they would be very heavy. Indeed they are clearly designed to be permanent and so in my view they do form part of the means of enclosure for which planning permission is required.
60. It is not disputed that if they fall within the curtilage of the Barn and, the Barn is not also curtilage listed as a result of its relationship to Passford Farm Cottage, then they would be permitted development. The first question is therefore where are they situated and secondly is the Barn curtilage listed.
61. I haven't discussed the planning unit so far as I do not think it is particularly germane to the ground (d) appeals. Having, however, determined the Barn is lawfully an independent dwelling it follows it may also be a separate planning unit. Now that Passford Farm Cottage has been sold off, the original planning unit has clearly been severed. The Barn and the Lodge have no connection to each other, other than ownership and it seems the current situation is that two planning units have been created, one for the Lodge and one for the Barn. That, however, was not the situation when the notice was issued, as at that time the sale of Passford Farm Cottage had not gone through. However, even then there were three separate and distinct uses, Passford Farm Cottage as self-catering accommodation, the Lodge as a self-catering unit and the Barn as another self-catering unit. Each was separated from the others by fences and means of enclosure, the only link was ownership by the Hill family. By then it seems the Barn was in its own planning unit.
62. The Barn is rectangular and is tucked into the corner of the site, the long side adjacent to the road. The boundary of the garden of the Coach House runs very close to northern gable end of the Barn and a gate in the fence between the two gave access to a path that ran along the western side of the barn (that is now the front), and so to the bell mouth turning area that provides access off the road to the Barn and the access track that runs through the site to Passford Farm Cottage and the Chalet beyond. The Coach House occupiers still have a right of way along this path to the road. A thick screen of evergreen trees bordered the path separating the Barn from the lawn in front of Passford Farm Cottage. Now a modest area of lawn has been claimed from Passford Farm Cottage beyond the tree screen which has been partially removed, to provide a larger garden in front of the Barn with a hot tub. This is screened from the front garden of Passford Farm Cottage by fencing, and planters with hedges. It seems to me this modest garden area forms the curtilage of the Barn. It fulfils all the criteria of a curtilage and is certainly proportionate to the Barn.

Although there is parking for the Barn, within the land now in the separate ownership of Passford Farm Cottage, the area defined by the boundaries discussed above are all within the ownership of the Barn and so would seem to me to form its curtilage.

63. This however is a recent development. Passford Farm Cottage was listed in 1987 and at that time there is unfortunately no evidence as to what the area around it looked like so there is no direct evidence as to whether the Lodge or the Barn were part of its curtilage and so are curtilage listed buildings. It is true that in the past the Authority have not treated either building as if they were curtilage listed. Various applications have been made for the Barn and no application for listed building consent has ever been made or suggested. However, equally the Authority do not seem to have ever made a specific finding on it all. Consequently, I do not think they are now disbarred in some way from reconsidering the matter. Similarly the Conservation Area Character Appraisal notes Passford Farm Cottage is listed and has an extensive curtilage. The barn is noted as an "unlisted building" which is of local interest. However, the CACA is not definitive on the question of listing or curtilage. That is a matter for the decision maker.
64. As can be seen from the plan above, the farmhouse sits towards the back of the site, although this would once have been closer to the middle as the stables beyond, in what is now the Chalet area, would all have been part of the wider farm complex. Much of the site is taken up by the pond, stream and wild garden that surrounds it to the south of the track that runs through the site. Nowadays the farmhouse has a large back garden that lies to the north of the track and a smaller, but still extensive front lawn that is border by a massive hedge of mature conifers screening the Coach House to the north, the track to the south and the Barn to the east.
65. The history of this front lawn is somewhat complex and it is many years since this part of the land at least was a working farm. There is an undated photograph showing the farm in the snow, with a cow on the track and walls and gates dividing the land up between the farmhouse and the Barn. I think this must be one of the earliest records we have and possibly dates from around the same time as the 1907 Ordnance Survey extract showing what seems to be a wide access track running through the site, woods to the south (where the pond now is) and a scatter of buildings on the track (possibly farmyard as suggested in the snow photograph), all now gone. The domestic front garden of the farmhouse would seem to be confined to the area behind the wall that bisects the photograph and can also be seen on the map. It is visible in the inter-war photographs showing the tea-rooms. The tea-rooms seem to have occupied all the lawned area in front of the Coach House and are clearly separated from the farmhouse. Whether tea was served from the farmhouse or the Coach House doesn't really matter, there is clearly a division of the land. A low brick wall divides the tea-room from the access track (which looks more like a road) and scatter of thatched buildings to the south. The tea-rooms seemed to have ceased to function during the second world war. There is a water colour reproduction showing the lawn unencumbered but still separated from the farmhouse by a, by now, vestigial wall. A possibly later postcard labelled 'Hampshire' does appear to show the front garden of the farmhouse merging into the lawn area.

66. What is not clear is what the situation was like in 1987, but a clue is in the sales details from 1998 as described in the Mirror newspaper, where it notes that the farmhouse now stands in 3 acres of gardens with a stream running through. The oldest aerial photograph is from 1999 and this also appears to show the whole area to be open. The track opens out into a parking and turning area, at the back of which the Lodge now stands (it may be in the photograph obscured by a tree but its impossible to tell), the back garden merges seamlessly with the land to the rear, and the pond has been created with a lawn between it and the track. The beginnings of the massive hedge separating the Coach House off from the site is also visible. Given the whole site (except for the Coach House) is in one ownership and it seems the farmhouse sat amidst its large 3 acre garden then its not unreasonable to consider the whole area, was at that time, within its curtilage.
67. Doubt has been expressed about the dates of the aerial photographs, but nothing much hangs on the exact year. There is no doubt they show a progression of development from 1999 to 2018 and no-one argued that features on the photographs suggested the dates were incorrect. At worst the 1999 photograph is clearly the oldest picture and so the closest one to the date of listing.
68. There is no reason to suggest that the curtilage of a farmhouse can't include the access track that passes through it to the rest of the farm, so there is no reason why that should form a natural boundary. It may be that when the tea-rooms operated there was a clear functional separation between them and the rest of the site, but that had long ceased by the time of the listing.
69. I would suggest therefore the evidence shows the site was once a farm, with presumably a large curtilage including a farmyard to the front and side. This changed when the tea rooms began and the site seems to have been divided up, possibly into farmhouse, tea-room, and residual farming activity. Finally the land around the farmhouse was turned back into a large garden, including all the land to the front on both sides of the track up to a level with the current back garden of the farmhouse. This was the case by 1998, and we know the tea-rooms had ceased by the 1940s, so on the balance of probabilities it seems to me most likely that was the case by 1987 when the farmhouse was listed.
70. I have not mentioned the barn in the above discussion as it needs separate consideration. It may have been that back at the turn of the 20th century the farmhouse and barn had a functional link but there is no evidence for that. It does not appear in any of the photographs of the tea-rooms or the farmhouse as they all taken from in front of it. There would not seem to be any link between the barn and the farmhouse when it was a tea-room, or later when it was a B&B from before Mr Hill bought it.
71. The Barn is positioned lengthways to the road and had a large entrance on its southern gable end (now turned into French-windows. There is evidence of an entrance on its longer western side facing towards the farmhouse that has been turned into a front door and window. However, its orientation now is towards the access track. As was pointed out on site, there is a bell-mouth opening off the busy main road, from which the track leads off to the farmhouse and separately to the original southern entrance to the Barn. Older photographs show this entrance to the Barn as it used to be and it does seem

to be separate to the entrance to the main site. The aerial photographs also show the Barn to be consistently screened off from the front lawn by trees, as was agreed at the Inquiry. It is only very recently those trees have been removed and the garden of the Barn extended onto the lawn.

72. Given my conclusions above on the curtilage of the farmhouse being the same as the garden, parking and access area, it is difficult to also conclude the Barn would have been included in that area. There is evidence it was used for storage, an attempt was made in 1977 for it to be used for the sale of antiques, and more recently it seems it was used for bike repairs. None of this suggests any link to the farmhouse. The only possible link is that the site was once a farm and the Barn stood at the bottom of what was probably once a farmyard, but that link was broken over a century ago and certainly before 1987.
73. In my view therefore the Barn was not in the curtilage of the farmhouse when it was listed. However, as noted above the front lawn was, and that extended down to the tree screened path that was, as Mr Hill accepted, the original edge of the plot on which the Barn stood. Most of the means of enclosure outlined in blue therefore lies within the curtilage of the listed building, but not the short stretch near to the access track. That means that the section within the curtilage of the listed building is not permitted development and will require planning permission.

Fencing the Appeal on Ground (a)

74. I agree with the Council and the Inspector in the 2021 appeal³ that an accumulation of modern buildings and structures have eroded the openness of the wider setting of the listed farmhouse. The current layout of the grounds is markedly different to that revealed in the 1999 aerial photograph and the setting of the listed building has been compromised. However, the splitting up of the site and the creation of several new planning units, including the Coach House many years ago, have all contributed to a situation over which the Authority now has little control.
75. Because of my view that the Barn lies outside of the listed curtilage and has formed its own planning unit with its own curtilage, there would be nothing to stop the owners from erecting a 2m fence within the new garden, but outside the listed curtilage, or indeed from planting a hedge along the current boundary within the listed curtilage. Given the current use of the Barn and the need for privacy for the occupiers of both the Barn and the farmhouse, I consider it is highly likely some form of barrier would be erected. Therefore although the current means of enclosure does cause less than substantial harm to the setting of the listed farmhouse the fallback would be little different. Therefore there would seem to be nothing to be gained in planning or heritage terms from refusing permission for the means of enclosure as it stands today. On that basis and having regard to my statutory duty under s66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 and the relevant policies in the New Forest National Park Local Plan I shall grant planning permission for the means of enclosure shown in blue on the enforcement notice.

³ APP/B9506/D/21/3274515

76. Technically speaking I could correct the notice to remove the short section of fencing that lies outside the curtilage, but it seems more sensible to simply grant planning permission for the whole section to avoid any future disputes.

The Outbuilding – the Appeal on Ground (c)

77. The appellant relies on the idea that the outbuilding lies within the curtilage of the Lodge and is used for purposes incidental to the enjoyment of the Lodge so that it is permitted development by virtue of Class E of the General Permitted Development (England) Order 2015. I agree that the Lodge is a dwelling and so has a residential curtilage within which permitted development rights obtain, but I am far from certain that curtilage extends as far as the outbuilding. The extent of any possible residential curtilage was not discussed at the Inquiry, but I do not need to go there as there are other reasons why the outbuilding is not permitted development. Firstly, it does not seem to be being used for purposes incidental to the enjoyment of the Lodge, which is a self-catering holiday home. There is some storage of linens and other items pertaining to the self-catering use, but it also seems to be used for general overflow storage for the Hills. Andrew and Brandon Hill both said they used it for storage, and there was some suggestion Penny Hill also used it. Annabelle Rowe certainly uses it and but that would be genuinely incidental, the rest of the use would seem to be useful for the wider family but not incidental to the use of the Lodge.
78. Secondly, E.2 states that on land within a National Park, if the outbuilding is larger than 10sqm and more than 20m from the Lodge it is not permitted development. The Authorities evidence is that it fails this test and no counter evidence was provided. As it could easily have been shown to be within 20m if it was, I can only assume the Authority are correct.
79. Thirdly, I have concluded above the Lodge lies within the curtilage of the listed farmhouse and so Class E rights are removed by E.1(g). While the Lodge might, now, have its own curtilage, that does not stop it from also being within the curtilage of a listed building as well. The appeal on ground (c) fails.

The Outbuilding – the Appeal on Ground (a)

80. No strong claim has been made by the appellants for planning permission for the outbuilding. The Council argue it is contrary to various policies of the local plan. The outbuilding is standard 'Tyrolean chalet' style pine building sat on a concrete plinth. It is not therefore simply a neutral shed but stands out as alien and intrusive. Its design is not sympathetic in appearance within the National Park (DP2), nor does it enhance the built environment of the New Forest (DP18). It certainly contributes to a gradual urbanising effect (SP17) and as noted by the previous Inspector it contributes to an erosion of the sense of openness around the listed building (SP16). For all these reasons planning permission should not be granted for the outbuilding and the appeal on ground (a) fails.

Conclusions

81. The appeals for the Lodge and Barn succeed on ground (d). The appeal for the fences around the Barn only succeeds on ground (a) and the appeals for the outbuilding fail. Because I am upholding the notice for the outbuilding and the

fences that are not around the Barn, I cannot quash it to give effect to the ground (d) successes. I shall therefore correct the notice by deleting allegations 3.1 and 3.2 and requirements 5.1, 5.2 and 5.3, and I shall exercise the power available to me under section 177(1)(c) of the 1990 Act as amended to issue a certificate of lawful use or development under section 191 of the 1990 Act as substituted by section 10 and paragraph 24(1)(b) of Schedule 7 of the Planning and Compensation Act 1991 in relation to the existing uses of the Lodge and Barn. I shall issue a split decision to grant planning permission for the fences around the Barn and uphold the notice as amended to require the removal of the outbuilding and the fences by the farmhouse. To prevent confusion I shall dismiss the LDC appeals as these are no longer relevant and the redundant duplicate appeal 3246928.

Simon Hand MA

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alan Masters – of counsel

he called

Andrew Hill – appellant

Andy Maltby – gas engineer

Christer Kitching – builder

Rebecca Dining – friend

Kevin Hodges – Penny Hill’s brother-in-law

Samuel Farmer – local caravan park owner

Anne Feast (nee Hill) – Andrew Hill’s mother

Mantas Gritenas – handyman

Beau Batchelor – friend of Brandon Hill

Annabelle Rowe – partner of Brandon Hill

Brandon Hill – son of Andrew Hill

Steve Bennet – employee of Andrew Hill

Penny Hill – appellant and wife of Andrew Hill

Lee Mills – tenant in the Barn

David Goldsmith – manager of local tourism company

Leigh Goldsmith – manager of own lettings company

Carole Stellman – planning advisor

FOR THE LOCAL PLANNING AUTHORITY:

Poonam Pattni – of counsel

She called

David Illsley – NPNP – planning policy

Emily Dee – NFNP – conservation officer

Lucie Cooper – NFNP – enforcement officer

Guy Parsons – formally rule 6 party, current owner of Passford Farm Cottage

Carly Cochrane – NFNP planning officer

DOCUMENTS

1. NFNP Openings
2. 2015 letter from NFNP to Mr Hill
3. Bookings and invoices for the Barn in 2016
4. Guy Parsons witness statement
5. Evidence from Andrew Hill as to where he was when allegedly at the Barn
6. Planning permissions relating to the Coach House
7. Documents pertaining to separation of Coach House from Passford Farm

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 17 January 2020 the use described in the First Schedule hereto in respect of the buildings specified in the Second Schedule hereto and coloured green and orange respectively 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: the buildings had been occupied as separate dwellings for more than 4 years.

Signed

Simon Hand

Inspector

Date 28 March 2022

Reference: APP/B9506/C/20/3246929

First Schedule

Use of The Lodge (coloured orange) as an independent dwelling; and use of the Barn (coloured green) as an independent dwelling.

Second Schedule

Land Passford Farm, Southampton Road, Boldre, LYMINGTON, SO41 8ND

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 in the buildings specified in the Second Schedule was lawful, on the certified date and, thus, 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 buildings 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 or building, may result in a breach of planning control which is liable to enforcement action by the local planning authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 28 March 2022

by **Simon Hand MA**

Land at: Passford Farm, Southampton Road, Boldre, LYMINGTON, SO41 8ND

Reference: APP/ B9506/C/20/3246929

Scale: not to scale

