The Planning Inspectorate
Yr Arolygiaeth Gynllunio

Penderfyniad ar yr Apêl

Ymchwiliad a gynhaliwyd ar 09/05/17 & 04/07/17
Ymweliad â safle a wnaed ar 04/07/17

gan Melissa Hall BA(Hons), BTP, MSc, MRTPI

Arolygydd a benodir gan Weinidogion Cymru

Dyddiad: 13.09.2017

Appeal Decision

Inquiry held on 09/05/17 & 04/07/17
Site visit made on 04/07/17

by Melissa Hall BA(Hons), BTP, MSc, MRTPI

an Inspector appointed by the Welsh Ministers

Date: 13.09.2017

Appeal Ref: APP/E6840/C/16/3163967

Site address: Tyr Goytre, Pandy, Abergavenny NP7 8EB

The Welsh Ministers have transferred the authority to decide this appeal to me as the appointed Inspector.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Mike Meredith against an enforcement notice issued by Monmouthshire County Council.
- The enforcement notice, Ref E11/097, was issued on 20 October 2016.
- The breach of planning control as alleged in the notice is the '*Unauthorised change of use of part of an agricultural barn marked green to the attached plan to use as a single residential dwelling*'.
- The requirements of the notice are:
  '*a) Cease the residential use of part of the building marked green on the attached plan.*
  b) Remove any interior walls, floors, ceilings that were built to convert part of the barn to a residential dwelling and all bathrooms, kitchen and all domestic fittings and appliances'.
- The period for compliance with the requirements is 4 calendar months from the date the Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(d),(f)and (g) of the Town and Country Planning Act 1990 as amended.

Formal Decision

1. The Enforcement Notice ("the EN") is varied by

   - The deletion of the words '….*4 calendar months from the date that this Notice takes effect*' from the Time for Compliance and their replacement with the words '….*12 calendar months from the date that this Notice takes effect*'.

   - The substitution of the plan referred to in Schedule 2 of the EN with the plan attached to this Decision, dated 27/6/2017.

   Subject to these variations, the appeal is dismissed in respect of grounds (a), (d) and (f) and the EN is upheld. The appeal on ground (g) succeeds.

Application for costs

2. At the Inquiry, an application for costs was made by Mr Meredith against Monmouthshire County Council. This application is the subject of a separate Decision.

Procedural and Preliminary Matters

3. The appeal was initially made on grounds (a), (b), (d), (f) and (g). However, in an email dated 18 January 2017, the appellant confirmed that the ground (b) appeal would not be pursued. It is on this basis that I have determined the appeal.

4. Although I opened the Inquiry on 9 May 2017, it was adjourned until 4 July 2017 to allow the Council to correctly notify interested parties of the particulars of the appeal. However, on opening the appellant contended that the Enforcement Notice ("The EN") was a nullity. I therefore heard legal submissions on this point from both parties before adjourning. In the reasons that follow I will explain why I do not find this EN to be a nullity.

5. Written submissions have also been made to the effect that the EN is invalid insofar as the fee payable has been incorrectly calculated and the second EN served by the Council had not been withdrawn before issuing the third EN (the subject of this appeal). I am thus bound to consider the issue of validity.

6. Three days prior to the resumed Inquiry, the Council submitted additional evidence consisting of photographs of the appeal site together with application forms, plans, submissions and correspondence relating to previous applications. As the additional material relates to previous planning applications already referred to in evidence, I do not consider that it results in the introduction of new material. Hence, I do not find that the appellant would be prejudiced by my consideration of the additional evidence.

7. At the opening of the Inquiry it was evident that there was a discrepancy between Mr Meredith's Statutory Declaration of 11 May 2016 and his subsequent Statutory Declaration made on 10 April 2017. The EN was issued on the basis of a change of use of part of the building with the residential use commencing after the completion of the agricultural building consistent with the statements made in the Statutory Declaration of 11 May 2016. The Statutory Declaration of April 2017 states that work on fitting out the dwelling for residential use commenced after the main structural work was completed in July 2007. A further Statutory Declaration signed and dated 3 July 2017 was submitted at the resumed Inquiry, which confirmed that following completion of the building it was used to store a tractor, muck-spreader, chain harrow and rollers. Work on the partition wall and mess room did not commence until March 2008 with the addition of the upper floor and fit out as a dwelling following in November 2008. Mr Meredith submitted diary entries as Exhibits to the Further Statutory Declaration to substantiate these claims. On this basis, and the oral evidence given at the Inquiry, I am satisfied that the building was completed and used as an agricultural barn prior to the commencement of work for the conversion, in part, to a dwelling.

Nullity and Validity

8. At the Inquiry the parties agreed that s173 of the Act and the Town and Country Planning (Enforcement Notices and Appeals (Wales) Regulations ("the ENAR") set out what an EN should include.

9. Section 173(10) of the 1990 Act states that '*An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an EN service under s172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under s174*'. The additional matters are prescribed in the ENAR.

10. Regulation 3(c) of the ENAR states that an EN shall specify '*the precise boundaries of the land to which the Notice relates, whether by reference to a plan or otherwise*'.

11. The EN describes the land to which it relates as '*Land at Tyr Goytre, Pandy, Abergavenny in the County of Monmouthshire shown edged red on the attached plan*'. The plan attached to the EN as served is of poor quality and outlines a large parcel of land in the appellant's ownership within which the appeal building is situated. It is not possible to identify from the plan the exact area of land outlined and its relationship to the field boundaries or the adjacent highway. I therefore accept that, to some extent, the recipient would need to rely on the written description to identify the boundaries of the land to which the EN relates. However, it is reasonable to take into account the EN as a whole; it is apparent that it is directed at part of an agricultural barn edged in a green line on the plan which, when read alongside the allegation, could not be said to be misleading the recipient as to which building is being referred to, particularly as he is living in it. Consequently, I am of the view that the appellant is able to understand the extent of the land to which the Notice relates, which is the intention of Regulation 3(c). The fact that the appellant has produced evidence relating to the matters at issue further convinces me that he has not been mislead by the poor quality of the plan accompanying the EN.

12. That is not to say that there is not room for improvement. Under s176 of the Act, Inspectors on appeal may correct "any defect" in an EN or vary its terms, provided no injustice is caused. An amended plan has been agreed by the parties which will substitute the original plan. No party would be prejudiced by this correction. For clarity and ease of reference, I have attached this plan to my Decision.

13. The appellant's second contention is that the '*Time for Compliance*' specified in the EN refers to 4 calendar months from the date the EN takes effect, whereas the '*What Happens if You Do Not Appeal*' section of the Explanatory Note requires that reasonable steps for complying with the EN are taken within the period of 1 month. That is, two compliance dates have been given, which leaves the recipient uncertain of the time period in which he has to comply with the EN, contrary to the requirements of 173(10) of the Act.

14. Regulation 4 of the ENAR requires an Explanatory Note to accompany a copy of an EN and lists what such a note must include. There is no statutory requirement for the Explanatory Note to explain what happens if you do not appeal or to specify the compliance period for a second time.

15. I do not dispute that there is quite clearly an error in the Explanatory Note insofar as the wrong compliance period is specified. However, the defect is not in the EN itself and a reasonable reader would understand the compliance period to be that specified in the EN.

16. For these reasons, I conclude that the EN is not a nullity.

17. Turning to the matter of validity. At the resumed Inquiry the Council confirmed that the EN issued in July 2016, which precedes the EN the subject of this appeal, has been withdrawn. In any event, the existence or otherwise of the July 2016 EN has no bearing on the validity of the October 2016 EN the subject of this appeal.

18. Regulation 4(a)(iv) of the ENAR also requires the Explanatory Note to include details of the fee payable under regulation 10 of the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 for the deemed application for planning permission for the development alleged to be in breach of planning

control in the EN. I accept that, in this case, the incorrect fee was stated. However, it is an error rather than an omission and I am not persuaded that it was fatal for the validity of the EN. Rather, this error was resolved in the administrative processing of the appeal and the making of a ground (a) appeal.

19. I therefore conclude that the EN is not invalid.

Background

20. There is a detailed planning history associated with this site. Shortly after purchasing the holding in January 2007, and with there being no on-site accommodation, Mr Meredith began residing on the land in a static caravan located within a barn close to the site entrance (the lower barn).

21. Mr Meredith then applied for planning permission for an agricultural building which was granted in April 2007 (Ref DC/2007/00262). Whilst it is this permission which is said to have been implemented, there are discrepancies between what was shown on the plans and that constructed on site; the plans indicated a slatted appearance to the barn akin to the cladding that has been applied but reference is made to galvenised steel rather than timber slats. There were also no window openings on the approved plans. Nevertheless, the Council confirmed that it would not pursue enforcement action in respect of the changes that were made.

22. At a site visit in November 2010, the Council observed a motor home parked inside the new barn and, as a consequence, Mr Meredith made a planning application for the siting of a camper van as accommodation for a seasonal worker on the existing holding in March 2011(Ref DC/2011/00209). That application referred to the siting of the camper van in front of the lower barn. The application was refused in July 2011.

23. A 2012 application for the retention of the static caravan / mobile home within the barn for temporary seasonal accommodation for an agricultural worker (Ref DC/2012/00700) was invalid and subsequently withdrawn in November 2012.

24. In 2014, Mr Meredith made an application for a detached dwelling to replace the barn and mobile home (Ref DC/2014/00593). This application was refused on the grounds that it had not been demonstrated that there was an essential functional need for the proposed rural enterprise dwelling, or that the enterprise it would support would be financially sustainable, contrary to both national and local planning policy.

25. By August 2015, the Council had served its first EN alleging the change of use of an agricultural barn to a mixed agriculture and residential use. However, the EN was defective and withdrawn.

26. In January 2016, Mr Meredith made the application for a certificate of lawful existing use for the dwellinghouse and associated curtilage (Ref DC/2016/00113) claiming that the dwelling had been substantially complete for a period in excess of four years. The application was refused in May 2016 on the grounds that there had been positive action by the appellant to conceal the dwelling at the site, over-riding the application of s171B(2) of the 1990 Act.

27. The Council served a second EN in August 2015, but this too was defective and has now been withdrawn. The third EN issued in October 2016 is that the subject of this appeal.

The ground (d) appeal

28. An appeal on ground (d) is that, at the time the EN was issued, it was too late to take enforcement action.

29. Section 171B of the 1990 Act sets out the time limits for taking enforcement action against a breach of planning control. In the case of a breach of planning control consisting of 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[1]. The 4 year period applies to a material change of use of a *building* to use as a single dwellinghouse (my emphasis); "Building" is defined in s336 of the Act as including any part of a building for the purposes of the Act.

30. It is common ground that the change of use of part of the barn and physical works to facilitate the residential use were carried out more than 4 years prior to the serving of the EN. However, this case turns on whether the breach has been deliberately concealed such that the provisions of s171B(2) are not engaged, in the context of the principles established by *Welwyn Hadfield Borough Council v Secretary of State for Communities and Local Government [2011] UKSC 15* and subsequent legal judgements.

31. In the *Welwyn* judgement, Lord Mance identified four features that took the case outside the scope of s171B(2) of the Act: there was positive deception in matters integral to the planning process; the deception was directly intended to undermine the planning process; the deception did undermine the planning process; and the wrong doer profited directly from the deception.

32. *Jackson v Secretary of State for Communities and Local Government [2015] EWCA Civ 1246* reiterated those four criteria but noted that not all cases would need to meet all four points for the *Welwyn* principle to apply.

33. In the case before me, there is no question of deception in the making of a false planning application or of planning permission for the barn being falsely obtained, as was the situation in *Welwyn.* Based on the submitted evidence, I accept that the building was completed and used as a barn, primarily storing agricultural equipment and machinery, prior to its conversion in part to a dwelling.

34. The matter at issue is whether there was positive deception by other means rather than this simply being a case of the appellant refraining from drawing attention to himself by, for example, not applying for building regulations approval or registering on the electoral roll. Lord Brown in *Welwyn* stated that:

    '*Inevitably the breaches of planning control statutorily said to become immune from enforcement under section 171B involve a spectrum of wrongdoing. These range from cases at one end where the developer is simply unaware of the need for development permission to, at the other extreme, those intent on unpermitted development who plot a whole course of deception designed to circumvent planning control and escape enforcement*'[2].

35. The *Welwyn* principle is based on positive and deliberately misleading statements from the outset. Lord Mance expressly stated that sins of omission and concealment,

[1] Section 171B(2) of the Act.
[2] Paragraph 73.

rather than positive deception, would not on their own disentitle reliance upon section 171B(2).

36. The Council's case in relation to positive deception relates, in part, to the statements made by the appellant in documents which accompanied previous planning applications for development at the site, including:

- A file note kept by Mr Delamere of a site visit dated 12 November 2010 in which he was told by Mr Meredith that the motorhome on the site was his full time residence, even though it appeared to be in a dilapidated condition[3]. Mr Meredith admitted at the Inquiry that this statement was untrue, that he was 'put on the spot' by Mr Delamere and that the motorhome was not his full time residence at that time.

- A covering letter from the appellant's agent dated March 2011 in relation to a planning application for the use of the land for the stationing of a campervan to provide accommodation for a seasonal agricultural worker on the existing holding, in which it was stated that '…*the holding itself does not enjoy residential accommodation*'. The accompanying Design and Access Statement (DAS) also declares that '*There is no dwelling on the holding*'. Similar statements to the effect that there is no dwelling house on the holding were made in the covering letter and DAS which accompanied the 2014 outline application for a rural enterprise worker's dwelling[4]. The Agricultural Appraisal of June 2014 submitted in support of the latter planning application states that the appellant '…*is of no fixed abode and lives with relatives in Abergavenny*'. These statements were simply not true at the time they were made if the appellant was already living in the dwelling, as he now claims.

- A Planning Contravention Notice was served on Mr Meredith at Tyr Goytre in May 2013 alleging the unauthorised change of use of a barn to residential use. In the e-mail response from Mr Meredith's solicitor, dated August 2013, it is stated that he spends most nights when local with Glyn Thomas at Doleau yr Wysgoed Forest Coalpit and with a lady friend at Llanvihangel Crucorney. The solicitor adds that he has been advised that Mr Meredith stayed on the site for the purposes of lambing, farrowing and calfing for approximately 120 nights per annum. That is, Tyr Goytre was not given as Mr Meredith's permanent place of residence and Mr Meredith confirmed at the Inquiry that he did not tell the solicitor that he was residing in the dwelling on site. Whilst there is some dispute between the parties as to whether the PCN related only to the lower barn rather than the appeal site as a whole, and the basis on which the information was thus provided, it does not change the fact that Mr Meredith did not reveal that he was residing on the site at any point in the response to the PCN nor did he share these details with his solicitor.

37. In my opinion, the repeated and false statements made between 2010 and 2014 regarding the presence, or not, of a dwelling on site were intended to deceive. It is clear that Mr Meredith pursued planning applications for alternative residential proposals despite already living in the dwelling. At no time was the agent, agricultural consultant or solicitor acting on his behalf doing so in full knowledge of Mr Meredith's

[3] Appendix 8 of Mr Delamere's Proof of Evidence. Although the file note is dated 12.11.201, Mr Delamere confirmed at the Inquiry that this is a typographical error that should read 12.11.2010.
[4] Planning application Ref DC/2014/00593 refers.

living arrangements. For example, the 2011 planning application would have given the impression of unmet need for a seasonal agricultural worker, albeit no such need existed if the appellant was already living in the dwelling.

38. At the Inquiry, Mr Meredith stated that he saw no reason to share the details with his professional representatives as the matter would have been resolved if planning permission had been granted for one of the alternative forms of development. He told me that, in that case, the dwelling would have become obsolete. In other words, the documents and information provided in support of the applications, together with the PCN were written in complete ignorance of Mr Meredith living on the site.

39. In fact, in his Statutory Declaration of May 2016, Mr Meredith states that '*Once the works to convert part of the agricultural building to a residential dwelling were substantially completed in 2010, I moved into the dwelling….. I became aware that I was potentially in a precarious position as I did not have formal planning permission for a house on the Holding and this was clearly a worry at the time and remains a worry…'* Clearly, in 2010, Mr Meredith recognised that planning permission would be required for the dwelling. I have been provided with little conceivable reasons as to why he would otherwise have withheld evidence of his actual living arrangements at that time from both the Council and his own professional representatives.

40. At the Inquiry Mr Meredith initially stated that when the Council visited in 2011, he was not aware that planning permission was required to live on the site. However, I find this claim difficult to understand given that he was perfectly aware that he needed permission for the camper van as seasonal accommodation and for the retention of the static caravan, and had made planning applications to this effect. He subsequently conceded that he became aware of the need for planning permission for the dwelling at the time the applications were made.

41. Mr Meredith also agreed that he had sight of the forms, documents and statements submitted in support of the previous applications and that he knew the information contained therein to be false. Neither did he draw attention to the dwelling at the Planning Committee site visit in 2014, or inform the Local Ward Member of its presence.

42. The appellant argues that the Council should have noticed the conversion of part of the building to a dwelling and that the appellant was residing in the barn when its officers conducted site visits in October 2010, November 2010 and January 2012. In particular, the appellant told me that an officer entered the barn in November 2010 and would have had clear sight of the inner gable wall and its apparent domestic appearance. At the 2012 visit, the officer would have observed the ground floor utility / laundry room and the domestic style fenestration in the gable end of the building.

43. At the Inquiry, Mr Delamere confirmed that he had visited the site on several occasions but that the residential use of the barn was not evident until the 2015 site visit, which Mr Meredith said in evidence he had not been expecting. To my mind, the internal block work wall, high level window facing into the barn and soil pipe were not necessarily an indicator that part of the barn was being used as a dwelling. It would not be an unreasonable assumption that welfare facilities had been installed (such as a w.c.) and that the window merely provided viewing of the animals in the barn from a storage area.

44. In terms of the external face of the building, the external cladding of the gable end extended over the windows at first floor such that they were not visible other than at

close range and are located on the side of the building facing away from the approach / access to the barn. In my view, this represents an attempt to physically conceal the more domestic elements of the conversion externally. The appellant told me that the cladding was required by the 2007 planning permission for the agricultural building but, given the discrepancies between what was approved and that constructed on site, I find it difficult to believe that the appellant was fastidious in complying with the cladding element of the planning permission but not with other aspects of it.

45. I was also told that the gable end was clad to prevent draught and that it covered the windows due to exposure to high winds. That claim would be perfectly plausible were there not a block wall behind the cladding which extends to the apex of the roof and that this means of achieving shelter from the wind prevented the windows from opening fully. Put another way, the timber cladding was not necessary for functional purposes and rather compromised the proper functioning of the windows together with the amount of daylight entering the rooms beyond.

46. The appellant's actions went beyond keeping a low profile and did not therefore consist predominantly of omission. This is not a case of someone merely refraining from drawing attention to himself, but of positive conduct and actions, the intention of which was to deceive the local authority so that it would not be aware of the residential use or that the four year period in which enforcement action could be taken had passed.

47. The Supreme Court determined in *Welwyn* that Mr Beesley's conduct disentitled him from relying on s171B, because of the long-standing principle of public policy that no one should be allowed to profit from his own wrong-doing. My conclusions in this case are that the appellant is not entitled to rely on the time limits set out in s171B because of his conduct in concealing the dwelling house.

48. My attention has been drawn to a previous appeal decision in relation to an enforcement notice alleging a change of use of part of the building from an agricultural barn to a residential building[5]. Although in that case the appeal was allowed and the EN quashed, whether or not there has been such deception as to disentitle an appellant to rely upon section 171B(2) and the four year rule is a fact sensitive question. Each case must be considered on its own facts.

49. In reaching my decision I have had regard to the other case law referred to by both parties, but to which I have not specifically referred. However, they do not lead me to any other conclusions.

Deemed planning application / ground (a)

50. The appeal on ground (a) is that planning permission should be granted for what is alleged in the EN.

Main Issue

51. The main issue is whether the development complies with national and local planning policy which places strict control over new housing development in the open countryside.

[5] Appeal ref APP/X1545/C/16/3145308.

Reasons

52. The appeal site is a holding approximately 1km north-east of the village of Pandy. The holding comprises some 13.3 hectares of permanent grazing pasture. It is accessed via an unmade track off the A465 which links Abergavenny with Hereford.

53. For the purposes of the adopted Monmouthshire Local Development Plan (LDP), the site lies in the open countryside where new residential development is subject to strict control. LDP Policy S1 deals with the spatial distribution of new housing provision and directs new residential development to within or adjoining the main settlements. It adds that new housing development in the open countryside will only be allowed where it meets certain criteria. The criterion of relevance in this case is that the development would need to be necessary for agriculture or rural enterprise purposes or an acceptable conversion of a rural building (in line with the circumstances set out in LDP Policy H4). These policies reflect the aims of national planning policy in Planning Policy Wales and Technical Advice Note 6 '*Planning for Sustainable Rural Communities*' (TAN 6).

54. It is common ground between the parties that there is insufficient stock to justify an essential functional need and that it does not meet the TAN 6 tests for a rural enterprise dwelling. Furthermore the conversion of the agricultural building, which is a utilitarian building constructed of modern materials, would conflict with the requirements of Policy H4 which states that such buildings will not be considered favourably for residential conversion. It would therefore conflict with LDP Policy S1 which prohibits unjustified dwellings in the open countryside.

55. The introduction of sporadic, unjustified dwellings in the open countryside would have a harmful effect on the character and appearance of the area, in conflict with Policies EP1 and DES1, which seek to protect the countryside for its own sake.

56. The appellant asks that consideration be given to his personal circumstances as material considerations to justify a departure from local and national planning policy. No details are provided of Mr Meredith's means or of the farm accounts to show that the holding functions at a commercial level. As I understand it, Mr Meredith continues his employment as a lorry driver and pursues his hobby of restoring lorries in his spare time. In the absence of Mr Meredith, the farm helper, who lives off site, tends to the needs of the farm. In this context, I am not persuaded that hardship would result from the appellant living away from the holding. Neither do I find that such circumstances amount to the exceptional circumstances required to justify a new dwelling in the open countryside.

57. Whilst the appellant has provided some details of alternative accommodation in the area, it is only an internet search of a snapshot in time. No evidence has been submitted of approaches to property agents or the Council to get a better idea of what may become available over time or what assistance may be available to Mr Meredith.

58. I have also been asked to consider a three year temporary permission to test the enterprise. However, the viability of the holding has already been assessed in 2011 and 2014. Consequently, it would not be appropriate to allow a further period of time to assess an enterprise which has already been found to lack financial and functional need for a dwelling.

59. I acknowledge the petition of support and that Mr Meredith has become a valued member of the local community. Be that as it may, this matter does not outweigh the unacceptability of the development for the reasons I have already given.

The ground (f) appeal

60. An appeal on ground (f) is that the steps required to comply with the requirements of the EN are excessive and lesser steps would overcome the objections.

61. The purpose of the EN is to remedy the breach of planning control by requiring the cessation of the residential use and removal of any interior walls, floors, ceilings and kitchen / bathrooms which were built or installed to facilitate the residential use.

62. The appellant states that consideration should be given to allowing the unit to remain with the occupation controlled by condition to provide accommodation on site during the lambing season (December to April)[6]. In the alternative, the appellant argues that it is not uncommon for mess rooms to be provided on holdings, which the unit could adequately provide for. It was also suggested that the unit would provide agricultural storage, so supporting the agricultural use without impinging on the farm operations.

63. As for the suggested need for accommodation on site for agricultural purposes, the Council states that this need was assessed in 2011 and 2014 by its Agricultural Consultant who concluded that no need consistent with policy had been demonstrated. I have not been provided with any compelling evidence to the contrary that may justify the retention of the unauthorised dwelling, or any part of it.

64. Furthermore, the scale of the dwelling is such that there is a kitchen / dining room, separate living room and music room together with 2no bedrooms at upper floors. The ground floor provides a utility area, small shower room and w/c. Its scale is far beyond that which could be required as a mess room or to providing welfare facilities for the holding. Neither is there any compelling evidence before me that there is inadequate storage in the barn for agricultural equipment machinery, feed or other paraphernalia such that a unit of this size would be required.

65. In my view, the requirements are entirely appropriate to achieve the objective of preserving the character and appearance of the area and are necessary to remedy the breach. Given the nature of the breach and the difficulty of detecting further breaches, it would be inappropriate to allow a separate unit to remain in the building which has potential for residential use in the future.

66. Thus, the requirements of the EN are not excessive and there are no lesser steps put forward by the appellant that would remedy the breach of planning control or the injury to amenity that has been caused by the breach. The appeal on ground (f) must therefore fail.

The ground (g) appeal

67. The ground (g) appeal is that the time given to comply with the requirements of the EN is too short.

68. The appellant asks for the period to be extended to 12 months to find alternative accommodation and to instruct third parties to undertake the removal works required under paragraph 4(b) of the EN.

69. As I understand it, the building is the appellant's only place of residence and to my knowledge he owns no other property or land. The effect of upholding the EN is that

[6] The appellant contends that the Council's own agricultural consultant accepted that there is a need for accommodation during lambing season.

the appellant will be homeless and will have no alternative but to seek alternative accommodation from the Council. I also acknowledge that he would need to make arrangements for animal welfare and security of the farm.

70. At the Inquiry, the Council accepted that the period of 12 months sought by the appellant would be reasonable. I am mindful that, until the breach of planning control is rectified, the detrimental effects of the unlawful development will persist. However, I consider a period of 12 months would strike an appropriate balance between the competing public and private interests so as not to place a disproportionate burden on the appellant of finding alternative accommodation. To this limited extent, the appeal on ground (g) succeeds.

Other Matters

71. No evidence was put forward in relation to human rights and the European Convention on Human Rights. Nevertheless, I recognise that dismissal of the appeal would interfere with the appellant's home and family life. However, this must be weighed against the wider public interest. For the reasons given above I have found that the appellant's home cannot benefit from the provisions of s171B(2) of the Act and I am satisfied that the legitimate aims of protecting the character and appearance of the area can only be safeguarded by the refusal of permission under the ground (a) appeal. On balance I consider that the dismissal of the appeal would not have a disproportionate effect on the appellant.

Conclusion

72. In conclusion, the appeal is unsuccessful on grounds (a), (d) and (f). The appeal on grounds (g) succeeds as I find the compliance period to be too short. I am therefore varying the EN accordingly prior to upholding it.

Melissa Hall

Inspector

APPEARANCES

FOR THE APPELLANT:

Ms Nina Pindham	Instructed by Hannah Mannion, Solicitor, Thrings LLP
She called	Mr David Glasson
	Mr Michael Meredith

FOR THE LOCAL PLANNING AUTHORITY:

Mr Robin Green	Instructed by the Solicitor to the Council
He called	Mr Guy Delamere

INTERESTED PERSONS:

Ms Faye Clarke	Farm assistant
Ms Sharon Meredith	Appellant's family member

DOCUMENTS

1 Council's notification letter of the appeal, dated 19 June 2017.

2 Extract of s171 – s177 of the Town and Country Planning Act 1990.

3. Extract of Regulations 1-4 of the Town and Country Planning (Enforcement Notices and Appeals)(Wales) Regulations 2003.

4. *Ampliflaire Ltd v Secretary of State for Scotland [S.L.T 937, 1999].*

5. *Kestrel Hydro v Secretary of State for Communities and Local Government [2016] EWCA Civ 784.*

6. Signed copy of the Further Statutory Declaration of Michael Roy Meredith dated 3 July 2017.

7. Closing submissions on behalf of the appellant.

8. Closing submissions on behalf of Monmouthshire County Council.

Plan

This is the correct plan that should be attached to the EN.

Address: Tyr Goytre, Pandy, Abergavenny NP7 8EB

References: APP/E6840/C/16/3163967

Scale: NTS