

Case No. ENF/16/00154/BRE

Grid Ref: 288979 115990

Address:

Sky End, Templeton, Tiverton, Devon(formerly: land and buildings at NGR 288977 115989 (Mayfield House) Templeton, Devon)

Alleged Breach:

Alleged breach of condition 5, Planning Permission 00/01665/FULL; The building hereby approved shall only be used for agricultural purposes reasonably necessary on the holding to which it relates. On its becoming redundant for such purposes, it shall be demolished and all resultant materials removed from the site within 3 months of redundancy.

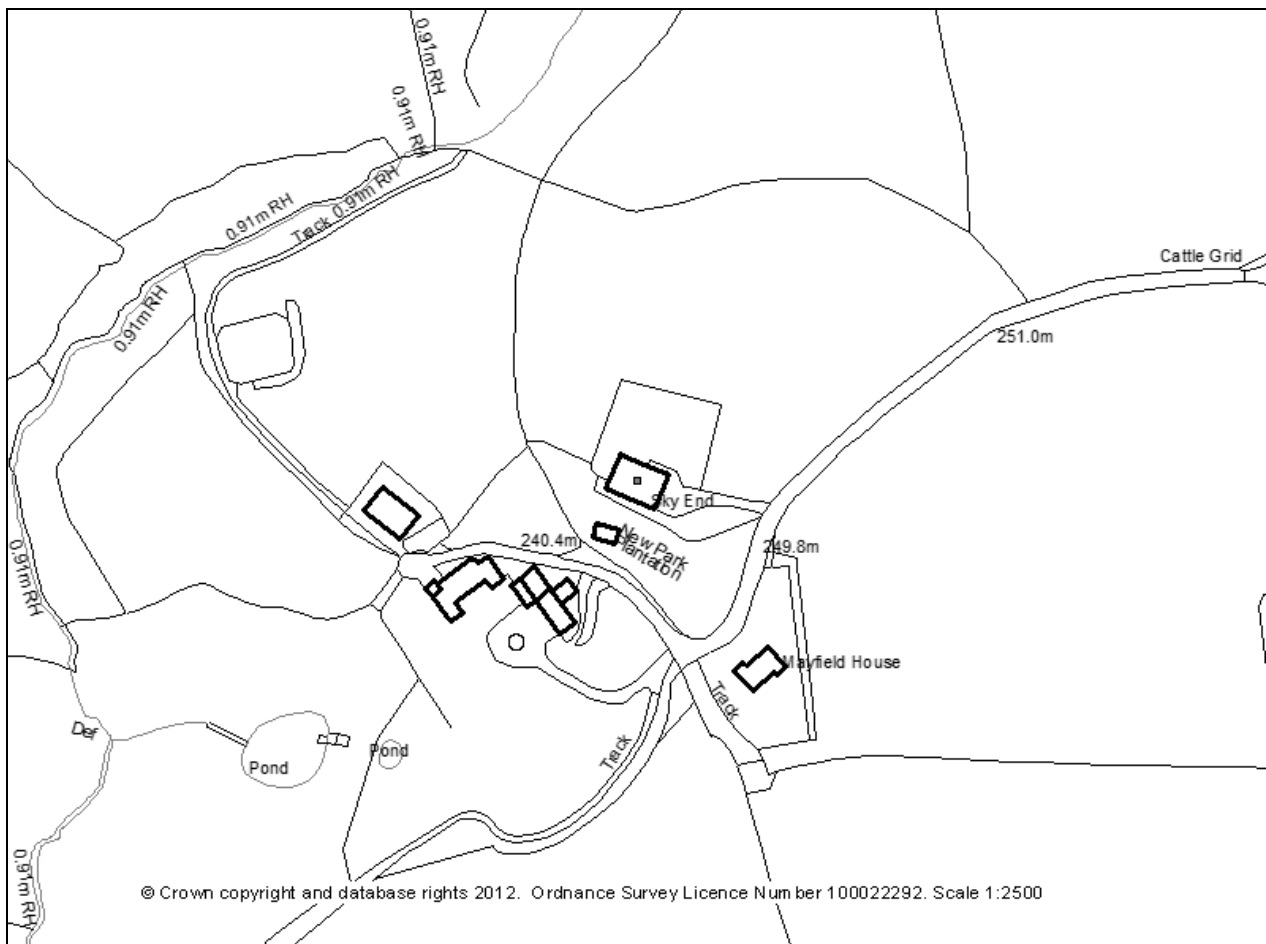
Recommendations:

That no further action be taken in respect of this matter.

Site Description:

Sky End is a development in progress. Formerly the building was a large agricultural barn in a secluded location within an agricultural holding some 1.2 miles north of the settlement of Templeton. To the south the building is screened by mature trees and to the north enjoys uninterrupted views over the surrounding countryside. There are two other dwellings situated some 57 and 73 metres from the barn respectively.

Site Plan:



Site History:

00/01349/PNAG	Erection of general purpose farm building for stock and hay storage *transferred to planning application 4/52/00/01665*	PP
00/01665/FULL	Erection of general purpose agricultural storage/stock building	PERMIT
14/00635/ PNCOU	Prior notification for the change of use of agricultural building to dwelling under classes MB(a) & (b)	ACCEPT

Development Plan Policies:

National Planning Policy Framework

NPPF, Chapter 7: Requiring Good Design. Of which paragraph 56 states: "The Government attaches great importance to the design of the built environment. Good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people."

NPPF, Decision-taking - "Effective enforcement is important as a means of maintaining confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control."

Mid Devon Core Strategy (Local Plan 1)

COR2 - Local distinctiveness

COR18 - Countryside

Mid Devon Local Plan Part 3 (Development Management Policies)

DM2 - High quality design

DM11 - Conversion of rural buildings

DM31 - Planning enforcement

Reasons/Material Considerations:

On 16th November 2000 planning permission was granted, subject to conditions, for the erection of a general purpose storage/stock building at Mayfield House, Templeton. Condition 5 of this permission (00/01665/FULL) reads:

The building hereby approved shall only be used for agricultural purposes reasonably necessary on the holding to which it relates. On its becoming redundant for such purposes, it shall be demolished and all resultant materials removed from the site within 3 months of redundancy.

In May 2014 a prior notification for the change of use of the above agricultural building to a dwelling under Classes MB (a) & (b) was received.

Under The Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014 new legislation came into force on 6th April 2014. This introduced new permitted development rights allowing for the change of use of an agricultural building to a dwelling.

The prior notification referred to above, and relating to land and buildings at NGR 288977 115989 (Mayfield House) Templeton, Devon, was one of the first received and considered under the new legislation.

One of the key considerations for the notification to be classed as permitted development under class MB (a) is as follows: Site was in agricultural use as part of an established agricultural unit on 20th March 2013, or if the site was not in use on that date, when it was last in use, or if the site was brought into after that date, 10 years before the date development begins.

The Planning Officer's inspection of the site in early June 2014 concluded that, at that time, the land and building in question was being used for equestrian purposes. The history of the use of the land and building was then checked with the applicant who confirmed it was used solely for agriculture up until November 2013 when a field was let for grazing horses.

This satisfied the criteria that the building needed to be solely used for agriculture on the critical date, 20th March 2013, to be permitted development.

All other criteria required for this to be permitted development was met and on 2nd July 2014 a Change of Use Acceptance was issued confirming the proposed change of use of the building into 1 dwelling shown on the site location plan and drawing 372-1, accords with the requirements of Class MB (a) and (MB) (b) of the Town and Country Planning (General Permitted Development) (Amendment and Consequential Provisions) (England) Order 2014. Prior approval is not required.

In March 2016 the Enforcement Officer's attention was drawn to fact the condition (5) of the original permission (00/01665/FULL), relating to the cessation of the use of the barn for agriculture, had not been upheld or enforced when that use ceased in 2013. i.e. the requirement that it be demolished within 3 months of it becoming redundant for the purposes of agriculture.

A full investigation into the matter has been carried out and it has been concluded that we had overlooked this condition when considering the change of use notification. In hindsight the matter of the condition should have been addressed when the prior notification was received in 2014. It is the Officer's opinion that this would have been addressed by inviting the applicant to submit an application for the removal of the condition from the original planning permission. It is likely that such an application would have received Officer support. The barn is a relatively new structure and Officer opinion is there is no justification for insisting on its removal. Assuming this to be the case, the conversion of the building would have still met the criteria for this to be permitted development and prior approval would not have been required.

It is clear however, there has been an error on our part in so much as the condition was overlooked and not addressed in the appropriate manner when the change of use application was assessed. Subsequently the Change of Use Acceptance was issued in good faith based on the information provided by the applicant. There are of course lessons to be learnt from this and given that this was one of the first prior notifications for a change of use to be considered under the new legislation it is fair to say our understanding of the legislation has improved with time and practice. Furthermore it is worth noting that class MB is a poorly drafted piece of legislation and lends itself to misinterpretation; hence the legislation was replaced by the much more robust class Q legislation in 2015.

It has been some two years since we confirmed to the applicant that the proposed conversion was permitted development and this issue has only just come to light. The development to convert the building to a dwelling is well underway and is understood to be in new ownership. Officer opinion is that it would be unreasonable to withdraw our acceptance of this being permitted development and to retrospectively address the matter of the removal of the condition at this late stage. Furthermore, given the likelihood of an application to remove the condition getting Officer support, it is not considered expedient to insist the condition requiring the building to be demolished is implemented.

Human Rights and Equality Issues:

The expediency of Enforcement action has been assessed with reference to guidance contained in the National Planning Policy Framework (NPPF). Expediency has also been assessed with regard to the statutory Development Plan, comprising the Core Strategy 2026 (July 2007), the Allocations and Infrastructure Development Plan Policies (January 2011) the Local Plan Part 3 Development Management Policies (October 2013).

When making their decision, Members must have regard to all relevant planning legislation, regulations, guidance, circulars and Council policies. This will enable them to make an informed decision in respect of an application.

In addition, Members should note that the Human Rights Act 1998 (HRA 1998) makes it unlawful for the Council to act incompatibly with Convention rights. Decisions by the Committee must take account of the HRA 1998. Therefore, Members need to be aware of the fact that the HRA 1998 makes the European Convention on Human Rights (the Convention) directly applicable to the actions of public bodies in England and Wales. The specific parts of the Convention relevant to planning matters are Article 6 (right to a fair hearing); Article 8 (right to respect for private and family life); Article 1 of the First Protocol (protection of property) and Article 14 (prohibition of discrimination).

Article 6 deals with procedural fairness. If normal committee procedures are followed, it is unlikely that this article will be breached.

Article 1 of the First Protocol and Article 8 are not absolute rights and infringements of these rights protected under these are allowed in certain defined circumstances, for example where required by law. However any infringement must be proportionate, which means it must achieve a fair balance between the public interest and the private interest infringed and must not go beyond what is needed to achieve its objective.

Article 14 states that the rights under the Convention shall be secured without discrimination on grounds of 'sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.

The power to issue an Enforcement Notice is discretionary and should only be used where the Local Planning Authority are satisfied that there has been a breach or breaches of planning control. It must also be satisfied that it is expedient to issue the Notice having regard to the provisions of the Development Plan and to any other material considerations. Consequently the Council must decide based on the particular circumstances of each individual case the question of expediency. The decision to take enforcement action must be reasonable and not based on irrational factors or taken without proper consideration of the relevant facts and planning issues or based on non-planning grounds.

Options for action or remedy:

The list of options available is as follows:

Take no action: - Officer opinion is that this would be an appropriate course of action. The applicant has acted in good faith on a decision made by Mid Devon District Council in 2014.

Invite an application to regularise the situation - This would not be an appropriate course of action. The applicant has acted in good faith on a decision made by Mid Devon District Council in 2014 and it would not be reasonable to insist on an application to remove the condition originally imposed.

Issue a Breach of Condition or Enforcement (Breach of Condition) Notice

This would not be an appropriate course of action. It is not considered expedient to insist the condition requiring the building to be demolished is implemented.

Reasons for Decision:

It has been some two years since we confirmed to the applicant that the proposed conversion was permitted development and the issue of the condition has only just come to light. The development to convert the building to a dwelling is well underway and is understood to be in new ownership. Officer opinion is that it would be unreasonable to withdraw our acceptance of this being permitted development and to retrospectively address the matter of the removal of the condition at this late stage. Furthermore, given the likelihood of an application to remove the condition getting Officer support, it is not considered expedient to insist the condition requiring the building to be demolished is implemented.

It is imperative that this matter is given closure and all parties kept informed of the outcome.

Steps Required:

n/a

Period for Compliance:

n/a