

NPA/DM/21/001

DARTMOOR NATIONAL PARK AUTHORITY  
DEVELOPMENT MANAGEMENT COMMITTEE

08 January 2021

**MONITORING AND ENFORCEMENT**

Report of the Head of Development Management

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**Item No.** **Description**

1. ENF/0165/20 - Construction and use of two unauthorised dwellinghouses, Building known as The Sheepshed & The Old Parlour, Robertsacre, Bridford, EX6 7HH

# ENF/0165/20 - Robertsacre, Bridford



Scale 1:1,250



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Ground Floor



First Floor



Enforcement Ref: **ENF/0165/20** District Council : **Teignbridge**  
Grid Ref: **SX822879** Parish: **Bridford**  
Officer: **Jo Rumble**

Description: **Construction and use of two unauthorised dwellinghouses**  
Location: **Building known as The Sheepshed & The Old Parlour, Robertsacre, Bridford, EX6 7HH**  
Landowner: **Mrs Roberts**  
Recommendation: **That subject to the consideration of any comments from the Parish Council, the appropriate legal action be authorised to:**  
**(i) Secure the cessation of the residential use of the building/s, and**  
**(ii) Secure the removal of the unauthorised building works to restore the building to its previous form and design, including the removal of the first floor, additional openings, glazing, rooflights and flue pipes.**

### **1. Planning History (Enforcement)**

ENF/0068/03 Subdivision and permanent residential use of holiday lets  
Action: Enforce Resolved: 09 December 2008  
ENF/0090/19 Unauthorised full time residential use of holiday lets

### **2. Relevant Development Plan Policies**

COR1 & DMD1a - Sustainable Development  
COR2 - Settlement Pattern & Development in the countryside  
COR4 - Design and sustainable development principles  
COR15 & DMD23 - Providing for limited new housing to meet local needs in the countryside  
DMD1b - Delivering National Park purposes and protecting Dartmoor's Special Qualities  
DMD3 – Quality of Place  
DMD4 - Protecting local amenity  
DMD7– Built Environment  
DMD9 - The re-use and adoption of historic buildings in the countryside  
DMD25 - Ancillary residential accommodation  
DMD35 – Farm Diversification  
DMD44 – Tourist Accommodation

### **3. Parish Council Comments**

3.1 Any comments from the Parish Council will be reported at the meeting.

## 4. Observations

### 4.1 INTRODUCTION

4.1.1 Robertsacre is located between Dunsford and Bridford within the open countryside, approximately 7m east of Moretonhampstead. It is accessed from an unclassified road off the B3193. The holding includes the main residence, Robertsacre Farm, and a range of outbuildings/barns which are some 60m to the north east of the farmhouse, with an independent vehicular access.

4.1.2 The two residential units, the subject of this report, namely 'The Old Parlour' and 'The Sheepshed' are formed predominantly in an 'L' shaped range of buildings located on a sloping site to the north east of, and attached to, Home Cottage and Oakstone Cottage, two existing residential units with consent for holiday use only. The Sheepshed has been extended to incorporate part of the ground floor of the holiday unit known as Oakstone Cottage.

### 4.2 PLANNING HISTORY

#### 4.2.1 **Two Holiday lets** (ref. 5/36/251/94/04 & 5/36/168/95/03) – Granted

In 1994 -95 Oakstone Cottage and the adjoining property, Home Cottage, were granted permission for use as holiday lets. Permission was granted subject to condition limiting occupation to holiday use only.

#### 4.2.2 **Certificate of Lawful Use** (ref: 0242/04) - Refused

An application for a Certificate of Lawful Use seeking to regularise the use of these buildings (Oakstone Cottage & Home Cottage) as residential letting accommodation was refused on 20 July 2004 due to insufficient evidence being submitted to establish that the buildings had been so used for a period in excess of 10 years. A Breach of Condition notice was served on 4 August 2004 requiring the 2 units to be occupied in accordance with the condition, this remains extant.

#### 4.2.3 **Farm building alterations** (ref: 0266/07) - Granted

In May 2007 permission was granted for alterations to the farm buildings attached to the holiday cottages. Works included alterations to the roof including the raising of the roofline and inclusion of dormer to a newly created hayloft. The permission was subject to a number of conditions including limiting the use to agricultural only. There is nothing to indicate this permission was implemented and it lapsed in May 2010.

#### 4.2.4 **Live – Work Unit** (ref: 0113/10) - Granted

On 15 March 2010 an application to change use of existing holiday cottage (Oakstone Cottage) and the adjoining redundant agricultural building to a live/work unit was granted permission on 26 August 2011 and was subject to a S106 agreement limiting occupation to those involved in agriculture, forestry or another 'essential rural business'. This permission was never implemented and consent has now lapsed.

#### 4.2.5 **Certificate of Lawful Use** (ref; 0156/20) - Refused

An application for Certificate of Lawful Use seeking to regularise the use of the buildings the subject of this report, as two dwellings, was refused on 28 August 2020. The application sought to show that the building works to convert the buildings were undertaken over four years ago and that both the units have been in residential use for a period in excess of four years.

4.2.6 Fundamental to the consideration of this application was the claim that the units had been created by the conversion of existing buildings. While the units were believed to

be on the same footprint as the previous, it was considered that the extent of the works undertaken to facilitate the residential occupation, including the complete rebuilding of the front wall and raising of the roofline to create second floors, amounted to the creation of a new building and not a conversion of the existing.

4.2.7 In situations where the creation of a dwelling has not come about from the 'change of use' or conversion of a building, the relevant time period for taking enforcement action is 10 years.

4.2.8 Accordingly, the application was refused due to insufficient evidence being submitted to establish that the buildings had been so used for a period in excess of 10 years.

#### 4.3 ALLEGED BREACH

4.3.1 Having received a report of the possible residential use of buildings at Robertsacre, our investigations, including a visit in July 2020, revealed that four units (Oakstone Cottage, Home Cottage, The Old Parlour and the Sheepshed) were being occupied as permanent dwellings.

4.3.2 Oakstone Cottage and Home Cottage have been the subject of previous enforcement action in 2004 when a Breach of Condition Notice was served requiring compliance with the holiday occupation condition. This notice remains extant. It is understood that notice has been given to the current tenants and these two buildings will be returned to holiday occupation for the 2021 season. It should be noted that the landlords are currently required to give 6 months' notice to tenants, rather than the standard 2 months, due to Covid restrictions.

4.3.3 Failure to comply with the extant Breach of Condition Notice makes the landowners liable to prosecution. The assurances that have recently been received will resolve this particular issue but the site will be monitored in the summer to ensure compliance.

4.3.4 Two further residential units have also been created adjacent to the holiday cottages, namely The Old Parlour and The Sheepshed. The Old Parlour is occupied by the landowner's son and family and the Sheepshed is tenanted, although it is understood that notice has also now been served on the occupant of that unit.

4.3.5 The Old Parlour forms a corner unit extended over two floors, and includes a family kitchen/diner, sitting room, bedroom and bathroom along with utility space. The Sheepshed is split levelled, the main living space and en-suite bedroom accommodated on the ground floor and first floor of the main structure respectively, with the kitchen, dining room and shower room projecting into the rear building (Oakstone) at an intermediary level.

4.3.6 The creation of these two unauthorised dwellings required the substantial rebuilding and extension of the former agricultural building in this location. Photographs of the site dating from 2010 indicate a single storey building of mixed render and block with sheeted roof. They show simple dual and mono pitch profiles and a substantially lower roofline to that now seen. The creation of a second storey to form the Old Parlour has involved the substantial raising of the walls and the lifting and provision of a new roof. In addition, a large dormer has been inserted into the raised mono-pitch section to provide French doors and a Juliette balcony to the Sheepshed.

4.3.7 Information received from the Devon Building Control Partnership indicates that the front wall to both the Sheepshed and the Old Parlour has been rebuilt from ground level, with a slated new roof and the external walls to the second storey clad in timber

boarding. While the building is believed to be on the same footprint as the previous, it is considered that the extent of the works amount to the creation of a new building and not a conversion.

4.3.8 The yard area to the front of the building has been divided into two to provide an outside area to each unit.

4.3.9 The evidence indicates that it is probable that the works were undertaken in excess of 4 years ago. However, as the works were carried out to facilitate the unauthorised change of use of the land, the works are not immune to enforcement action under the 'four year rule'.

#### 4.4 POLICY

4.4.1 The National Planning Policy Framework (NPPF) seeks to avoid the creation of new dwellings in the open countryside of the National Park and this aim is reflected in the policies of the Local Plan.

4.4.2 The Old Parlour is occupied by the landowner's son, and his family. The accommodation provided goes beyond the scope of ancillary accommodation to the main dwelling and amounts to the creation of a separate new dwelling in the countryside, contrary to local and national planning policy.

4.4.3 In exceptional circumstances, policy supports the creation of new dwellings in the countryside, such as for agricultural workers when there is sufficient agricultural justification for such a dwelling. However, to date no such application has been forthcoming and no agricultural justification provided to support the creation of a new dwelling.

#### 4.5 DISCUSSION

4.5.1 Recent information provided by the Devon Building Control Partnership indicates that building works were undertaken at Robertsacre during 2011. He referred to two file notes dating from the 7 October and 1 November 2011 relating to two site visits, the first when the owner indicated the intended use was as two separate dwellings and the second as one dwelling with an interconnecting door. The floor plans submitted to Building Control are at variance with that as built and it would seem likely that some further reorganisation of the internal space took place subsequently. These works include the extension of the Sheepshed into the adjoining building, 'Oakstone Cottage', and the area covered by the extant Breach of Condition notice relating to the holiday occupancy.

4.5.2 While a variety of evidence was submitted to support the Certificate of Lawful Use application (ref: 0156/20) for a period in excess of four years, the evidence, and information provided by the Devon Building Control Partnership, indicates that the dwellings have not been occupied for more of ten years and as such, the use as two dwelling houses is not immune from enforcement action.

4.5.3 Officers therefore consider that it is lawful and expedient to take enforcement action against the unauthorised works and residential use of these buildings.

#### 4.6 THE HUMAN RIGHTS ACT 1998

4.6.1 The Sheepshed is understood to have been occupied by a couple since August 2018 on a tenancy. The owner has served notice on the occupiers and the property is

expected to be vacated by May 2021.

4.6.2 The Old Parlour is home to the owner's son, his wife and their daughter.

4.6.3 The courts will view any decision to take enforcement action as engaging their rights under Article 8 of the European Convention on Human Rights (right to respect for private and family life and home) and Protocol 1 Article 1 (peaceful enjoyment of possessions). The service of an Enforcement Notice requiring the unauthorised residential use to cease would represent a serious interference with these rights. However, it is permissible to do so "insofar as is in accordance with the law and necessary in a democratic society for the protection of rights and freedoms of others".

4.6.4 The courts have held that provided a balanced and proportionate approach is taken, having regard to all relevant considerations and not giving irrational weight to any particular matter, the UK planning system (including the enforcement process) is not incompatible with the Human Rights Act 1998.

4.6.5 Tackling breaches of planning control and upholding Local Plan policies is clearly in accordance with the law, protects the National Park from inappropriate development and enshrines the rights and freedoms of everyone to enjoy the natural beauty and special qualities of the National Park.

4.6.6 There are not believed to be any overriding welfare considerations at this time. Members are therefore advised that enforcement action would appear to be:

(i) in accordance with law – s.178(3) Town & Country Planning Act 1990

(ii) in pursuance of a legitimate aim – the upholding of planning law and in particular the Development Plan policies restricting development in the open countryside of the National Park

(iii) proportionate to the harm

and therefore not incompatible with the Human Rights Act 1998.

#### 4.7 CONCLUSION

4.7.1 The unauthorised development has created two open market dwellings in an unsustainable location, harmful to the special qualities of the National Park. The development is considered contrary to the advice contained in the National Planning Policy Framework and the National Park Local Plan policies and following the refusal of the Certificate of Lawfulness application, it is now considered appropriate to secure the cessation of the use of the buildings as dwelling houses.

4.7.2 Members are therefore asked to authorise appropriate legal action to secure a cessation of the unauthorised use and removal of the unauthorised building works.

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CHRIS HART