

The regulation of cottage building in seventeenth-century Sussex

by Danae Tankard

Abstract

In 1589 a statute was passed entitled ‘An act against erecting and maintaining cottages’ which sought to regulate cottage building and the multiple occupation of cottages. This article examines the context of the act’s passage and its relationship to other legislation of the late sixteenth and early seventeenth century. It then offers a detailed exploration of the way the act’s cottage clauses were enforced in seventeenth-century Sussex. It also considers the legal status of cottages that were ‘continued’ and looks at evidence for methods of cottage construction and the range of cottage types.

In 1589 a statute was passed entitled ‘An act against erecting and maintaining cottages’ which sought to regulate cottage building and the multiple occupation of cottages. The preamble to the act set out its purpose:

For the avoiding of the great inconveniencies which are found by experience to grow by the erecting and building of great numbers and multitude of cottages, which are daily more and more increased in many parts of the realm.

The act made it illegal to build a cottage without four acres of land, to convert a building into a cottage without four acres of land, or to ‘willingly uphold, maintain and continue’ a cottage without four acres of land. The penalty for the first two offences was a fine of £10; the penalty for the third was a fine of 40s. for every month that the cottage was continued. There were a number of exemptions: cottages in towns or cities; within one mile of industrial areas or the sea or navigable rivers; in forests, chases, warrens or parks inhabited by under-keepers, warreners, herdsmen or shepherds; or inhabited by any ‘poor, lame, sick, aged or impotent person’. Prosecution of these clauses was vested in any of three authorities: the manorial lord at his court leet, the justices of assize and the justices of the peace. The justices of assize and the justices of the peace were permitted to make decrees allowing the continued habitation of cottages built without four acres of land for a set period of time ‘upon complaint’ made to them.¹ The act also made it illegal for cottages to be occupied by more than one family or lodgers (called ‘inmates’). Owners or occupiers who allowed multiple occupation were liable

¹ 31 Eliz. c. 7 (1589), cl. 1–5 (*Statutes of the Realm* (10 vols, 1810–28) [hereafter SR] IV (i), pp. 804–5).

to a fine of 10s. for each month that the offence continued. Prosecution of this clause was the responsibility of the manorial lord at his court leet.²

Writing more than 40 years ago about the circumstances that prompted the 1589 act, Joan Thirsk observed that it was 'designed to preserve the principle that all countrymen should have some land for their essential support'.³ More recently John Broad has commented that the act 'enshrined the concept of the independent labouring man, able to raise a subsistence from his four acres, but likely to sell his skills to farmers and tradesmen for part of the year to supplement his income'.⁴ In other words, both authors see the motivation for the act arising out of a desire to protect the smallholder and to preserve his independence. However, the wording of the preamble, describing the 'great inconveniencies' caused by the unregulated growth of cottages, suggests that from its inception it was intended to be punitive, whilst offering protection to the most vulnerable. In this article I will examine the context of the act's passage and its inter-relation with other legislation of the late sixteenth and early seventeenth century, before moving on to an examination of the way in which the cottages clauses of the act were being enforced in seventeenth-century Sussex.

I

The enclosure of manorial waste – on commons or wayside verges – for the erection of cottages was not a new phenomenon in the sixteenth century. Like other types of enclosure by encroachment, it was regulated through the manorial court. In a period when population was stagnant and land plentiful, such small-scale encroachment was not contentious. From the second decade of the sixteenth century, however, population began to grow, making land a more valuable, and highly regulated, commodity. At the same time, the economy entered a period of long-term inflation that saw prices rising, benefiting farmers able to produce a large surplus for the market but impoverishing smallholders. Large-scale enclosure of wasteland and common fields, the engrossing of farms and the conversion of arable land to pasture became increasingly divisive issues, forcing the government to promulgate a number of anti-enclosure and anti-engrossment statutes. These included 'An act concerning the improvement of commons and waste grounds', which was passed in 1550, in the wake of the anti-enclosure disturbances of summer 1549. The primary purpose of that act was to reaffirm the principles set out in the statutes of Merton and Westminster of 1235 and 1285 that lords might improve their commons so long as they left enough for their tenants. However, it also offered protection to the occupants of existing wasteland cottages, observing that

in diverse countries of this realm there have been built upon commons or waste grounds certain necessary houses under the quantity of three acres and not above three acres, enclosed to and with the same, and in some place there is enclosed a garden, orchard or pond out

² 31 Eliz. c. 7 (1589), cl. 6 (SR IV (i) p. 805). For a discussion of the inmates clauses, see P. Styles, 'The evolution of the law of settlement', in P. Styles (ed.), *Studies in seventeenth-century West Midlands history* (1978), pp. 175–204.

³ J. Thirsk, 'Enclosing and Engrossing', in J. Thirsk (ed.), *The agrarian history of England and Wales*, IV, 1500–1640 (1967), pp. 227–8.

⁴ J. Broad, 'Housing the rural poor in southern England, 1650–1850', *AgHR* 48 (2000), p. 157.

of or in such wastes or grounds which exceed not the quantity of two acres or thereabouts, which does no hurt and yet is much commodity to the owner thereof and to others.

The act then went on to stipulate that such enclosures were protected by law and the cottager entitled to occupation without penalty. Where the enclosure amounted to more than three acres, however, the manorial lord was entitled to lay open the excess. In 1550, therefore, the Edwardian government sought to protect cottagers.⁵

As the sixteenth century progressed, population growth accelerated, reaching a peak in the 1570s and 1580s. The surge in population was widely commented upon: in 1577 William Harrison noted, 'some also do grudge at the great increase in people in these days, thinking a necessary brood of cattle far better than a superfluous augmentation of mankind'.⁶ It was not only that there were more people than ever before but that too many of them were poor. The ranks of what Harrison describes as the 'true poor', that is, those who were poor by 'impotency' or 'casualty', were swelled by an increasing number of vagrants perceived as both a public nuisance and a threat to social order.⁷ Both these groups were recognised in the developing poor law legislation of the sixteenth century, culminating in the 1572 act, which introduced a mandatory system of poor rates for the relief of the 'poor and impotent' whilst imposing a range of punitive measures on the vagrant.⁸ However, the last quarter of the sixteenth century also saw a rapid growth in the numbers of the 'labouring poor' – those who were partly or wholly wage-dependent – who scraped by most of the time provided they did not fall ill or have too many children. In the countryside, an increasing proportion of the population was landless or land-impoorished, eking out a living through a mixture of paid labour, small-scale craft or trade activities and the exploitation of common land.⁹ The needs of this group were not specifically recognised in the 1572 act, and their entitlement to relief would remain ambivalent and contested as the poor law developed.

The proliferation of cottages and the subdivision of buildings had become a matter of public concern by the 1570s, leading to calls for statutory controls. During the reading of the bill against vagabonds and for the relief of the poor in May 1572, Nicholas St John, then member for Marlborough, argued that the rapid increase in new cottages on commons encouraged vagabondage and demanded that 'henceforth no cottage be built unless it have three or four acres of ground belonging to it'.¹⁰ This proposal was not, however, incorporated in the statute as enacted.

As Philip Styles showed long ago, in the absence of any statutory mechanism, rural and urban communities were taking matters into their own hands by issuing fines or demanding sureties from those providing accommodation to poor migrants.¹¹ In this respect, the 1589 act was long overdue, and merely gave a statutory basis to existing local practice. Our knowledge of the parliamentary background to the passage of the legislation is incomplete. Styles

⁵ 3 & 4 Edward VI c. 3 (1550), cl. 3–4 (SR IV (i) pp. 102–3); Thirsk, 'Enclosing and Engrossing', pp. 200–38; K. Wrightson, *Earthly necessities: economic lives in early modern Britain, 1470–1750* (2000), pp. 115–31.

⁶ W. Harrison, *The description of England*, ed. G. Edelen (1994), p. 182.

⁷ *Ibid.*, pp. 180–1.

⁸ P. Slack, *The English poor law, 1531–1782* (1995), p. 52.

⁹ Wrightson, *Earthly necessities*, pp. 194–8.

¹⁰ P. W. Hasler (ed.), *History of Parliament: the Commons, 1558–1603* (3 vols, 1982), III, pp. 322–3. I would like to thank Robin Eagles for this reference.

¹¹ Styles, 'Evolution', pp. 178–80.

suggested that the bill was introduced by the Lord Treasurer, William Cecil, Lord Burghley, but there is no evidence for this in the Journal of the House of Lords. The bill was first read in the Lords on 8 March 1589; it was sent to the Commons on 15 March; returned to the Lords with some amendments on 24 March and agreed the same day.¹² The housing needs of the impotent poor were given greater recognition with the passage of the 1598 'Act for the relief of the poor' which stipulated that parish officers, with the consent of local landlords and at the charge of the ratepayers, might build 'convenient houses of dwelling' on manorial wastes and commons, and place inmates and more than one family in cottages without being subject to prosecution under the 1589 act.¹³ This clause was repeated in the 1601 'Act for the relief of the poor', with the caveat that exemption applied only so long as parish cottages and 'places for inmates' continued to be occupied by the parish poor.¹⁴

On 13 February 1606 a bill introduced by committee was read in the House of Commons 'For the better execution of one act of Parliament, 31 Eliz. against erecting and maintaining cottages and for the repeal of one branch of the first proviso in the said statute'. This was defeated on 20 March, reintroduced on 17 April and defeated again on 30 April.¹⁵ The purpose of this bill is unclear but one of the committee members, Sir Robert Johnson, member for Monmouth, had a long-standing interest in the plight of the poor, rural depopulation, and the misuse of common land.¹⁶ It is also evident that the interpretation of what constituted a cottage under the 1589 act proved more complicated than the drafters of the statute had envisaged, particularly where existing buildings were converted or sub-divided. In 1632 judicial clarification was provided by the court of King's Bench, and subsequently summarised by the barrister and legal writer, William Sheppard, in part two of *The faithful councillor, or, The marrow of the law in English* (1654). At its most straightforward a cottage was 'a little house newly built, that hath not four acres of land to it' but, in the case of conversions or sub-divisions, Sheppard offered the following guidance:

1. If a man convert that building which before this statute was one dwelling house, into two dwelling houses; these are two cottages punishable by this statute.
2. If one build a new house upon an old foundation in the same quantity that the old was; this is no cottage within this statute.
3. If one build two distinct cottages together, the one upon the old foundation, the other upon the new; that which is built upon the old foundation is no cottage, but that which is built upon the new foundation is a cottage.

¹² Ibid., pp. 178; *Journal of the House of Lords*, II, 1578–1614 (1802), pp. 156–60; 164–5. The journal of the House of Commons for this Parliament does not survive. There is no mention of the 1589 act in T. E. Hartley (ed.), *Proceedings in the parliaments of Elizabeth I* (3 vols, 1981–95), II, 1584–1589, nor in D. M. Dean, *Law-making and society in late Elizabethan England: the Parliament of England, 1584–1601* (2002). I would like to thank Robin Eagles for his help with the parliamentary history of the act.

¹³ 39 Eliz. c. 3 cl. 5 (SR IV (i), p. 897); S. Hindle, *On*

the parish: the micro-politics of poor relief in rural England, c.1550–1750 (2004), p. 302.

¹⁴ 43 Eliz. c. 2 cl. 4–5 (SR IV (i), p. 963); Broad, 'Housing', p. 157.

¹⁵ *Journal of the House of Commons*, I, 1547–1629 (1802), pp. 267–70, 283, 287–8; 299–300; 303.

¹⁶ Andrew Thrush and John P. Ferris (eds), *The history of Parliament: the House of Commons, 1604–29* (6 vols, 2010), IV, pp. 904–09 (I am grateful to the History of Parliament Trust for allowing me to see this article in advance of publication).

4. If one build a house upon an old and new foundation together, so that the entire house doth stand upon both together; this is a cottage within this statute.
5. If a man have a house, and one hundred acres belonging to it, and he sell the house from the land, or the land from the house, or sell all the land, and keep the house; this is now become a cottage within this statute. And if a man erect a house, and lay four acres to it, and after take it away again, now this is become a cottage within this statute.

Sheppard then went on to list various exemptions.¹⁷ His guidance shows that it was then held that the 1589 act encompassed private landlords who either built cottages or converted buildings into cottages on their land. There were no further qualifications to the act in the seventeenth century, although the 1662 'Act of settlement' cited the problems caused by migrants building cottages in parishes with 'the largest commons or wastes' as one of the reasons for tightening the legislation on settlement.¹⁸ The 1589 act was repealed in 1775.¹⁹

II

Sussex, bordered by 76 miles of coast to the south and dense woodland and forest to the north, was divided for administrative purposes into eastern and western parts, each with its own regional capital, Lewes and Chichester (the diocesan seat). The primary units of civil administration were the six rapes that ran from the north to the south of the county, with the rapes of Lewes, Pevensey and Hastings lying within the eastern division and those of Chichester, Arundel and Bramber lying within the western division. Rapes were sub-divided into hundreds and the hundreds into smaller units called tithings in the west or boroughs in the east.²⁰

There were three distinctive economic regions within the county, the Weald, to the northeast, the downland and coastal plain to the south – both straddling eastern and western parts – and the marshland of eastern Sussex. Agriculture, driven largely by proximity to London, was the predominant form of economic activity. The downland and coastal plain area was primarily a corn-growing region, with sheepwalks on the Downs. Water transport links for export were good, with navigable rivers such as the Ouse and the Adur and significant coastal ports like Chichester. Rural industries were small-scale and local in their markets. Downland parishes were small in both acreage and population; manorial organisation was strong and farm sizes were large. In some areas common land had been enclosed by the seventeenth century, usually with the consent of the tenants; in others, it remained unenclosed until the nineteenth century. Settlements were typically nuclear, with stable populations and little inward migration. The Weald, with its dense woodland and heavy clay soil, was more suited to cattle ranching than arable farming. Parishes in the Weald were typically large (up to 23 square miles) and densely

¹⁷ W. Sheppard, *The faithful councillor, or, The marrow of the law in English*, part 2 (1654), pp. 328–30; quoted in D. L. Roberts, 'The legal significance of fragmentary survival', *Vernacular Architecture* 3 (1972), pp. 24–5.

¹⁸ 14 Car. II c. 12, cl. 1 (SR V, p. 401).

¹⁹ 15 Geo. III c. 32 (*Statutes at Large*, XII (1776), p. 307).

²⁰ C. Herrup, *The common peace: participation and the criminal law in seventeenth-century England* (1987), pp. 11–12; A. Fletcher, *Sussex 1600–1660: a county community in peace and war* (1975), p. 146.

populated, and settlements tended to be scattered. Manorial organisation was weak, with little control over immigration; farm sizes were small, and the landscape was made up of small, enclosed fields, with little common land. The Weald was the location of two great forests, St Leonard's and Ashdown, both of which had a reputation for lawlessness. Communications were hampered by the appalling state of the roads, often impassable in winter. The most significant Wealden industry was iron manufacture, providing seasonal employment for iron-workers and charcoal makers. Glass manufacture took place in Kirdford and Wisborough Green and other opportunities for employment were provided by the timber industry, leather tanning and cloth production. The marshland area of eastern Sussex, notoriously unhealthy and sparsely settled, was mainly used to pasture sheep and cattle. The high price of land and limited employment opportunities restricted immigration.²¹

The Sussex assizes, part of the Home circuit, were held biannually in winter and summer at either East Grinstead or Horsham on the northern edge of the county, as close to London as possible. Sussex was unique in having separate quarter sessions for the eastern and western divisions, which effectively acted as two independent benches. This meant that it had seven rather than four annual meetings. During the sessional weeks for Epiphany, Easter and Michaelmas, one court convened on Mondays and Tuesdays for the western part in Arundel, Chichester or Petworth, and another met on Thursdays and Fridays for the eastern part in Lewes. Midsummer sessions for both divisions were held jointly at Lewes until 1686; thereafter they were held separately. Although a single Commission of the Peace empowered local justices to preside at all meetings, most magistrates attended only the sessions closest to home. There was a considerable overlap of business between the courts of assize and quarter sessions and their procedures were essentially the same. Cases likely to lead to a sentence of death were reserved to the assizes but both courts dealt with a wide range of lesser crimes as well as offences against the communal peace, such as decayed roads and bridges, unlicensed alehouses, vagrancy, illegal cottage building, and taking in inmates.²²

Records for the Sussex assizes are contained in indictment files, which include all documents collected together by the clerk at the end of each court sitting. Complete files contain the gaol delivery commissions, precepts, calendars of county officers, grand jury panels and gaol calendars, trial jury panels, indictments, coroners' inquests, recognisances, juries of matrons, grand jury presentments, and a variety of writs. But records from more than forty courts held between 1600 and 1700 are missing and the files that survive are incomplete, with many retaining only material relating to felonious crimes.²³ The earliest surviving records for Sussex quarter sessions are the sessions rolls kept separately for the two divisions. The first surviving roll is dated Epiphany 1594 and, up to 1636, only 64 rolls out of a probable 301 exist for the two divisions, but subsequently the series is almost complete. Session rolls contain indictments, presentments, petitions, recognisances, depositions, jury lists, writs, rates of servants and the outer membrane. Until 1646 the outer membrane was used to record orders and judgements

²¹ Thirsk, 'The farming regions of England' in Thirsk (ed.), *Agrarian history*, IV, pp. 55–64; Herrup, *Common peace*, pp. 11–22; Fletcher, *Sussex*, pp. 3–21.

²² Herrup, *Common peace*, p. 24; Fletcher, *Sussex*, pp. 134–7; B. C. Redwood (ed.), *Quarter sessions order*

book, 1642–1649 (Sussex Rec. Soc., 54, 1954), p. xiii.

²³ J. S. Cockburn, *Calendar of assize records: Home circuit indictments, Elizabeth I and James I: Introduction* (1985), pp. 11–12.

of the bench on one side and attendance of bailiffs and constables on the other but thereafter the judicial record alone continued to be entered. Order books, covering both divisions, begin in 1642 and record all the orders and decisions of the court. Indictment books, also covering both divisions, summarised all indictments and, from 1652, record the court's judgements. The earliest indictment book begins in 1623. There is a gap for the years 1632 to 1652 but the books then continue without a break.²⁴

Two constables served each hundred and were responsible for appointing tithingmen (for western Sussex) and headboroughs (for eastern Sussex) at the hundred leet courts. Presentments made by tithingmen and headboroughs to the hundred courts, about minor offences such as failure to repair roads or scour ditches, formed the basis for many of the presentments made by hundred constables to the assizes or quarter sessions.²⁵

J. S. Cockburn has drawn attention to the unreliability of the biographical information contained in assize indictments, observing that 'in many cases the occupation attributed to the accused, or his place of abode, or both, are entirely fictitious'. Such information was merely intended to satisfy legal requirements but was 'factually worthless'. Cockburn's conclusions were based on comparison of information provided in indictments and recognisances, and in several indictments drawn by different clerks.²⁶ However, comparison of the more extensive range of documentary evidence extant for Sussex quarter sessions suggests that the biographical information is relatively robust.

III

The 1589 act expected the court leet, the court of assizes and the court of quarter sessions to serve as overlapping, rather than hierarchical, jurisdictions. The choice of courts leet is puzzling since by the fifteenth century they had become obsolete on some manors and in any case not all manorial lords had the right to hold one. For those that did, it was often held on the same day as the baron or manorial court. By the seventeenth century many manorial courts met infrequently and the range of business they dealt with had declined, with some merely acting as a court of record for land transactions.²⁷ In Sussex, where presentments were made, the squatter was typically fined and ordered to pull the cottage down. For example, on the manor of Chancton five tenants were presented in May 1605 for building cottages without licence on the lord's waste, fined 6s. 8d. and ordered to remove them before 1 November or pay a further fine of 10s.²⁸ Occasionally, the manorial lord 'by his special grace' granted a licence to the illegal cottage builder. In 1630 the lord of the manor of Cowdray gave George Haley permission to enclose a piece of waste, measuring 100 feet by 20 feet, on which he had erected a cottage, after he presented a petition endorsed by the manorial tenants. Haley then held the cottage and enclosure by copy of court roll, paying an entry fine of 6d. and an annual rent of 2d.²⁹

²⁴ Redwood (ed.), *Quarter sessions*, pp. viii-xii. Sessions rolls for the eastern and western divisions are held separately by East Sussex RO and West Sussex RO [hereafter ESRO and WSRO]. Order books and indictments books are held by ESRO.

²⁵ Herrup, *Common peace*, pp. 11-13; Fletcher, *Sussex*,

p. 146.

²⁶ Cockburn, *Calendar*, pp. 78-9.

²⁷ M. Bailey, *The English manor, c.1200-c.1500* (2002), pp. 178-89.

²⁸ Arundel Castle, MS M127, fo. 5.

²⁹ WSRO, Cowdray MS 239, fo. 59r.

Presentments made to manorial courts do not specifically refer to the 1589 act or even to the requirement for cottages to have four acres of land. In other words, they were dealt with as manorial rather than statutory transgressions. The infrequency with which many manorial courts were held and their erratic enforcement of manorial custom meant that they were never going to be an effective jurisdiction for enforcing the 1589 act.³⁰

To see how the 1589 act was being enforced in Sussex we need to turn to the records of assizes and quarter sessions.³¹ Prosecutions for illegal cottages recorded in the assize indictment files and the quarter sessions rolls are of two types: building and erecting a cottage or maintaining or continuing a cottage, reflecting the two main clauses of the act. The process of prosecuting the builders or occupants of illegal cottages began with the presentment, usually made by one of the hundred constables. The defendant was then bound over to attend the next assizes or sessions and required to provide a financial guarantee of his or her attendance, which was recorded in the recognisance. The formal record of the charge, the indictment, was endorsed *billa vera* (a true bill) or *ignoramus* ('we do not know', i.e. no case to answer) depending on whether the grand jury found the accusation to be true or false. If the bill was marked *ignoramus* the charge was dismissed. In the case of a true bill, the accused would then go on to stand trial before a petty jury. Indictments record the defendant's name, status or occupation, and parish of residence or former residence but provide no other information about the circumstances of the case. Unlike criminal cases, depositions were not taken. Judgement followed and if found guilty the defendant paid a small monetary fine, usually 6*d.* or 12*d.* (but never the statutory fine of £10 or 40*s.* per month), and was ordered to pull the cottage down. Failure to obey an order could lead to further prosecution. In a minority of cases, the court responded by granting a licence to continue a cottage, usually for a fixed term. There is no evidence of cases brought before the quarter sessions being transferred to assizes by a writ of *certiorari* or obvious reason why a case was brought before one court rather than the other. It is probable that the choice of court was dictated by its proximity, both geographically and chronologically, to the place and date of the offence.³²

For cases heard in the court of assizes, the presentment and indictment are the only surviving documentary record of the offence. For those heard at the court of quarter sessions, additional information on the background to the case is sometimes available in the form of a petition or an order. Petitions could be made by the cottage builder or occupier or on his or her behalf. Some petitions were made in response to an indictment; others were made independently of one.³³ Licences were granted infrequently, usually in response to a petition. There are 95 true

³⁰ Bailey, *English manor*, pp. 184–8. The haphazard survival of Sussex manorial records precludes a systematic assessment of the use of manorial courts to regulate cottage building. It is apparent that some manors were more assiduous in regulating cottage building than others, but whether this reflects manorial policy or other factors (such as the incidence of cottage building) is unclear. The court records of 11 Sussex manors covering some or all of the seventeenth century were examined, and they collectively support the interpretation offered above.

³¹ This and subsequent paragraphs are based on an analysis of material from 1600 to 1699 contained in a sample of 42 out of 154 assize indictment files, all 226 quarter session rolls for western Sussex and all quarter session indictment and order books for the eastern and western sessions.

³² Redwood (ed.), *Quarter sessions*, pp. xiii–xix; J. A. Sharpe, *Crime in early modern England, 1550–1750* (1999), pp. 50–7.

³³ There are 14 petitions surviving amongst the session rolls for the western division.

bills relating to illegal cottages amongst the session rolls for the western division for the period 1600 to 1699. Of these, only four led to a licence being granted by the court.³⁴

Presentments for cottage building or for continuing a cottage constituted a negligible proportion of business for both the courts of assize and quarter sessions. Cynthia Herrup calculated that for eastern Sussex only eight per cent of presentments made to quarter sessions or assize related to cottages or the keeping of inmates. In contrast, those relating to the neglect or abuse of roads or bridges amounted to 36 per cent and those relating to unlicensed alehouses to 24 per cent.³⁵ For the western division, there are 108 bills relating to cottages amongst the 226 session rolls that survive between 1600 and 1699, which means on average two a year.³⁶

IV

The most visible use of the cottages clauses of the 1589 act is in the provision of housing for the poor and it is this aspect that has received the most attention from historians.³⁷ The 1598 and 1601 poor law acts had strengthened the exemption contained in the act relating to the cottages of the impotent poor by allowing churchwardens and overseers to build 'fit and convenient places of habitation' on waste or commons without risk of prosecution. Many of the licences granted by the court of quarter sessions were for pauper cottages, either for named individuals or to allow parishes to increase their housing stock. The court could also order parishes to provide housing for its poor in the form of habitation orders. All of the petitions that survive amongst the session rolls for western Sussex are from, or on behalf, of the poor – people like Jonathan Pierce and John Birchall. In October 1648, Pierce, a husbandman living in West Grinstead, was indicted for building a cottage.³⁸ In January 1652 the sessions heard a petition from some of the inhabitants of West Grinstead which certified that:

Jonathan Pierce born in the said parish and has lived there all his time did about seven years since erect a cottage and enclose about half a rood of ground thereto in the highway leading from Stock Common to Ashington which said Jonathan was at the quarter sessions about two years since by some of the parish (as is supposed merely out of malice) indicted for the said cottage and enclosed ground thereto belonging, it being the chief livelihood and maintenance of the said Jonathan, his poor wife and four small children, we whose names are hereunder written, inhabitants of within the parish, do therefore most humbly entreat your worships in the behalf of the said Jonathan seriously to consider the premises and to grant your worships' order to the said Jonathan whereby he may quietly for the future possess and enjoy the said cottage and half rood of ground.³⁹

The petition was signed by the pastor, John Tredcroft, and twelve other parishioners. In response to this petition, the bench issued a licence to Pierce to continue his cottage with the

³⁴ Cases resulting in a licence are: WSRO, QR/W51, fo. 52/10; QR/W53, fo. 54/27; QR/W63, fo. 11; QR/W72, fo. 9; QR/W85, fo. 6; QR/W136, fo. 66A; ESRO QO/EW2, fo. 26v; QO/EW3, fo. 24v; QO/EW6, fo. 101v; Redwood (ed.), *Quarter sessions*, p. 87.

³⁵ Herrup, *Common peace*, p. 111.

³⁶ WSRO, QR/W2-W228.

³⁷ Broad, 'Housing'; Hindle, *On the Parish*, esp. pp. 301–3.

³⁸ WSRO, QR/W63, fo. 11.

³⁹ WSRO, QR/W72, fo. 9.

consent of the manorial lord for the remainder of his lifetime.⁴⁰ Pierce was presented again in October 1666 for erecting a cottage but the bill was marked *ignoramus* and dismissed.⁴¹

John Birchall, a labourer living in the parish of Billingham, was indicted in October 1672. In January 1673 the court received a petition from the minister, Thomas Oram, and 21 parishioners asking for the indictment to be discharged. They informed the court that,

... John Birchall, a poor inhabitant of our parish, has lately erected a cottage in the same on the waste of the manor of Hardham wherein his poor old mother, a widow, now inhabits with himself, and has for long time since his father's death preserved his said mother and we in some measure eased of her charge.

The petition was supported by the lady of the manor, Lady Mary Goring, who asked only for 'some small acknowledgement' at the court's discretion.⁴² At the same sessions the court ordered that, with the consent of the lady of the manor and of several inhabitants, Birchall could continue his cottage for the remainder of his life 'for his dwelling and habitation without incurring the penalty of the statute for erecting and continuing of cottages'.⁴³

What is less clear is the extent to which the clauses of the 1589 act relating to cottages were being used to regulate settlement prior to the passage of the 1662 'Act of Settlement'. Steve Hindle has argued that until the 1662 act gave legal definition to the issue of residence by introducing the 40-day residency rule, 'the two statutes of 1589 and 1598 effectively constituted the keystone of early modern policies on migration, settlement and belonging', whilst noting that 'the fit between them was not always as close as its parliamentary architects would have hoped'.⁴⁴ The notion of 'settlement' – that each individual had a parish to which he or she belonged and from which he or she was entitled to relief – was implicit in much of the early poor law legislation but the length of residence required to secure it was undefined. As Hindle has described, until 1662, the only statutes that specified a minimum period of residence to secure settlement were those relating to vagrancy, but these were not applicable to the circumstances of the majority of the rural poor. In the absence of any statutory definition there was considerable local variation in the interpretation of length of residence and many parishes openly flouted judicial advice that only the vagrant should be removed in order to rid themselves of those likely to become chargeable.⁴⁵ In 1633 the judges of assizes resolved that residence for a period of one month constituted a legal settlement.⁴⁶ This resolution was adopted by the Sussex bench, who nevertheless took the trouble to issue an order exempting inmates from gaining settlement in this way.⁴⁷

Prompt action to pull down cottages that were under construction was one method employed by rural communities to control settlement. Where the cottage was already inhabited, the 1589 act provided a statutory mechanism for ensuring its destruction and the eviction of its occupants. However, in Sussex at least, the act does not appear to have been systematically used

⁴⁰ ESRO, QO/EW2, fo. 26v.

⁴¹ WSRO, QR/W117, fo. 21.

⁴² WSRO, QR/W136, fo. 66A.

⁴³ ESRO, QO/EW6, fo. 101v.

⁴⁴ Hindle, *On the parish*, p. 302.

⁴⁵ *Ibid.*, pp. 306–10.

⁴⁶ T. G. Barnes (ed.), *Somerset Assize Orders, 1629–40* (Somerset Rec. Soc., 65, 1959), p. 68.

⁴⁷ Fletcher, *Sussex*, p. 169; ESRO, QO/EW2, fo. 18r.

in this way. Although the background to most of those indicted remains unknown, many were clearly resident in the parish prior to their indictment. Nicholas Goring of Horsham, indicted in 1644 and 1645, had signed the Oath of Protestation in his parish in 1641; so too had Nicholas Powell of Shipley, indicted in 1646, 1647 and 1650.⁴⁸ Moreover, indictments for continuing a cottage always give the period of time over which the offence had been committed. Since most of these begin on the first day of the month they are fictional to some extent, but the periods of continuation are typically between one and 24 months, with the longest being 47 months.⁴⁹ The periods of continuation cited in indictments do not get noticeably shorter after the passage of the 1662 act. It may be that rendering a poor family homeless was enough to force it to move on, thereby ridding the parish of its maintenance, but subsequent indictments of some individuals suggest that either the court's order to pull the cottage down had not been successfully enforced or the defendant had moved to another cottage. For example, Thomas Chifnall, a wheelwright, resident in Lyminster, was indicted at the western sessions for continuing a cottage for a period of three months in 1656, and again for continuing a cottage for a period of six months in 1660.⁵⁰

Obvious instances of the 1589 act being used in settlement disputes are found where cottages were erected on parish boundaries, which could lead to inter-parochial squabbles about chargeability. In 1638 a dispute arose between the parishes of Billingshurst and Pulborough over the location of a new cottage and in response the parishioners of Pulborough petitioned the court of assize to certify that 'the cottage new erected by Robert West, a poor inhabitant of our said parish, is by him set up within the bounds of the parish of Pulborough and by and with the consent of the said parishioners'. A copy of the petition, and of the court's order that the cottage was in Pulborough and should be allowed to continue, was signed by the vicar of Billingshurst, Thomas Oram, as a 'true copy' and carefully kept amongst the parish papers in case any further dispute arose.⁵¹ In April 1670, the two constables of the hundred of Dumpford presented John Chaundler and Robert Moody to the western sessions for building two cottages in Elstead Marsh, saying that, 'Elstead avers they stand in Elstead and Trotton avers they stand in Trotton'. The constables themselves were of the view that the cottages were in Elstead and John Chaundler and Robert Moody were indicted separately as resident within the parish of Elstead.⁵²

An analysis of the status and occupation of the 95 individuals who were presented to the western sessions for building or continuing cottages between 1600 and 1699 show that the labouring poor were disproportionately represented: 30 husbandmen, 33 labourers, 17 craft or tradesmen and six widows. Only four yeomen were presented, one viscount and three men and one woman for whom no occupations or status were given. One of the target groups of the 1589 act was that of landlords who built or bought up cottages or converted existing buildings into cottages, filling them with poor people who might become a financial burden on the parish.

⁴⁸ WSRO, QR/W51, fo. 52/10; QR/W53, fo. 54/27; QR/W56, fo. 31/57; QR/W59, fo. 60/20; QR/W68, fo. 13, 14; R. Garraway Rice (ed.), *West Sussex Protestation Returns 1641-2* (Sussex Record Soc. 5, 1905). Goring was granted a licence to continue his cottage in 1646 (Redwood, *Quarter sessions*, p. 87).

⁴⁹ TNA, ASSI 35/75/6 (3).

⁵⁰ WSRO, QR/W84, fo. 15; QR/W96, fo. 9.

⁵¹ WSRO, Par 21/11/2. There is no record of this in the indictment file for the 1638 summer assizes.

⁵² WSRO, QR/W128 (3, 13, 14).

This group is, however, almost completely absent from the presentments and appears to have largely escaped judicial notice. There are a few examples. In 1622 Gregory Sawyer of Mayfield was presented to the eastern sessions for continuing five cottages, including two occupied by Thomas Olive and William Edborow and two 'where the windmill stood in Mayfield'.⁵³ In 1651 William Fletcher of Friston, yeoman, was severally indicted at the eastern sessions for converting a barn into two cottages and for continuing a cottage.⁵⁴ Richard, Viscount Lumley, usually resident on his Durham estates, was indicted severally at the western sessions in 1653 for continuing three cottages inhabited by widows for a period of 12 months.⁵⁵ It may be that potential landlords were discouraged by parochial by-laws insisting on indemnity bonds from those accepting tenants, such as that made by the parish of Cowfold in 1604 that 'whosoever did bring into any of his houses or tenements any tenant without the consent of 12 of the best of the parishioners that any so doing shall of his own cost discharge the parish of any such tenant'.⁵⁶ Overwhelmingly, however, the 1589 act was being used against those who collectively comprised the poorer or meaner sort. In this context, the terms 'husbandman' and 'labourer' were seemingly synonymous: both were landless or land-poor and partly or wholly wage-dependent.

The motivations that lay behind local decisions to present cottage builders and occupiers are only obliquely discernable. Anyone who built or continued a cottage without four acres of land was vulnerable to prosecution but some cottages were evidently tolerated and others only presented several years after their erection. The most obvious motivation for presenting a cottager was that either the cottage or the cottager was causing a nuisance. Many cottages were built on roadside verges and were deemed to be encroaching on the highway, thus causing a nuisance to travellers. In other instances, their proximity to other housing caused a nuisance in ways that are not usually described. In 1671 the constable of Shiplake Hundred presented Richard Thunder of East Hoathly to the assizes for continuing a cottage for five months 'to the prejudice and to the continual wrong to three freehold tenements next adjoining to it, not having any land occupied with it but what is by encroachment taken in and enclosed from the waste'.⁵⁷

Encroachments onto common land always had the potential to be contentious since they placed an additional burden on communal resources like grazing and fuel collection. The 1589 act offered the potential to evict a neighbour who was deemed to be troublesome or socially undesirable. Thomas Johnson, a husbandman living in Shermanbury, was severally indicted at the western sessions in 1650 for continuing a cottage for twelve months and for stealing three bushels of wheat from the barn of his neighbour, Thomas Rawkins.⁵⁸ At the time of his first indictment for continuing a cottage, Thomas Chifnall, the wheelwright of Lyminster, was also indicted for stealing 'fir boards, shutters for windows, one form, four rails and two oak posts, one three-legged stool and two oak planks' from his neighbour, Samuel Downer, and for keeping a common tipling house.⁵⁹

⁵³ ESRO, QI/EW1, fo. 4r.

⁵⁴ ESRO, QO/EW2, fo. 25v.

⁵⁵ WSRO, QR/W76, fos. 28–30.

⁵⁶ WSRO, Par 59/12/1, fo. 44; for a fuller discussion of the use of indemnity bonds see Styles, 'Evolution',

pp. 178–86.

⁵⁷ TNA, ASSI 35/112/6, fo. 13.

⁵⁸ WSRO, QR/W67, fos. 29, 78.

⁵⁹ WSRO, QR/W84, fos. 16, 37.

Parish petitions on behalf of individuals like Jonathan Pierce were based on a remarkably consistent set of criteria. Was the cottager a long-term resident of the parish? What was his or her relative need? Was he or she honest and industrious? Did the cottage have the support of the manorial lord? And what impact would the cottage's removal have on the parish purse? In the cases of Pierce and Birchall the continuance of the cottage saved the ratepayers money; with Pierce it was because the cottage was his 'chief livelihood and maintenance' and with Birchall it was because he was supporting his mother. By implication, those who were not deemed to fulfil these criteria were more likely to find themselves presented. The fact that some petitions were made in response to an indictment suggests that cottage building both provoked and reflected local conflicts about parochial responsibility for the poor; the construction or continuance of the cottage – to use Hindle's expression – 'tested the thresholds of tolerance' between and within communities.⁶⁰

At the summer assizes in 1613 the grand jury complained that 'too many cottages have been built contrary to statute, four in Angmering and many in other parishes'.⁶¹ Quantifying what constituted 'too many' or, indeed, identifying areas that were particularly susceptible to illegal cottage building on the basis of the surviving evidence is impossible. It is notable that where clusters of indictments were made at assize or quarter sessions they are for Wealden parishes. For example, in 1633 six men were severally indicted at the summer assizes for either erecting or continuing cottages in the parish of East Grinstead and in 1656 four men and two women were severally indicted at the western sessions for continuing cottages in the parish of Wisborough Green.⁶² However, parishes in the Weald were larger and more densely populated than those in downland Sussex and so a greater number of indictments cannot necessarily be attributed to a sudden influx of migrants. A survey of Ashdown Forest made in 1610 identified 14 illegal cottages built over the previous 25 years, but this is not an enormous number bearing in mind that the Forest comprised some 13,000 acres and covered five parishes and several manors.⁶³ It could be argued that presentments for illegal cottages were more likely to arise in the smaller and more tightly regulated parishes of the downland area.

V

In his report to Parliament in 1864 on the state of rural housing Dr Hunter observed that: 'It was a common opinion among the peasants of pre-enclosure times that he who could in one night build what was called a "mushroom hall" or "now-or-never" without hindrance from the lord's agents had thenceforth a copyhold right in the ground he occupied'.⁶⁴ This 'opinion' is frequently cited by historians in the context of illegal cottage building and yet its origins are obscure.⁶⁵ An article by R. U. Sayce on 'The one-night house, and its distribution' published

⁶⁰ Hindle, *On the parish*, p. 321.

⁶¹ J. S. Cockburn (ed.), *Calendar of assize records: Sussex indictments, James I* (1975), no. 279.

⁶² TNA, ASSI 35/75/9, fos. 15–20; WSR0, QR/W85, fos. 10–15.

⁶³ J. E. Small, 'A review of Ashdown Forest and the common rights thereon', *Sussex Arch. Coll.* 126 (1988),

p. 163; B. Short, *The Ashdown Forest Dispute, 1876–82* (Sussex Record Soc., 80, 1997), pp. 15, 23.

⁶⁴ BPP, 1865, XXVI, 1, Seventh report of the medical officer of the Privy Council, App. 6, p. 136.

⁶⁵ Broad, 'Housing', p. 154; J. H. Bettey, 'Seventeenth-century squatters' dwellings: some documentary evidence', *Vernacular Architecture* 13 (1982), pp. 28–30.

in *Folklore* in 1942 provides a number of examples but these are mainly from the Celtic fringe – Wales, Ireland, Scotland, the Isle of Man and Cornwall – although he does cite some nineteenth-century evidence from the New Forest in Hampshire.⁶⁶ A letter by C. F. Tebbutt published in *Folklore* in response to Sayce's article provides two nineteenth-century examples from Ashdown Forest.⁶⁷ J. H. Bettey provides a seventeenth-century example in an article on squatters' dwellings which he sees as supporting this 'commonly-held belief'. The tenants of the Dorset manor of Cranborne complained to the manorial steward in 1625 that 'Richard Cooke intends either this night or the next to set up a house (which he has already framed) upon the common of Alderholt, and has placed straw upon the common in the place he has made choice of to erect his house in'.⁶⁸

If Cooke thought that erecting his frame overnight would protect him from the law he was mistaken. The 1589 act offered no exemption to those building 'one-night cottages' and those who escaped notice remained vulnerable to legal challenge until the repeal of the act. Scrutiny of title was most likely to occur when manors changed hands. When John Caryll of Harting bought the manor of Knepp in 1657 five presentments for illegal cottages were made in the next manorial court and in each case the occupant was ordered to pull their cottage down.⁶⁹ The Parliamentary surveys of Crown lands in Sussex made between 1649 and 1658 record a number of cottages with questionable legal status. William Pollard and Widow Hover both occupied cottages in the manor of Duddeswell which lay within Ashdown Forest for which neither could prove title to the surveyors' satisfaction. However, because they were poor and had both 'been at charges in building the said cottages and fencing the said plots of ground' the surveyors urged leniency. In contrast, a further seven cottages were deemed to be 'very prejudicial to the said park' and the surveyors recommended they be pulled down.⁷⁰ Moreover, if there was a widespread belief that building a cottage overnight gave it legal status then we would expect to find it used as a defence in petitions made to quarter sessions. None of the seventeenth-century Sussex cottagers who found themselves the wrong side of officials showed any awareness that their squatters' rights were being infringed.

VI

The tenacity of the idea of the 'one-night cottage' relates to another view found amongst historians, that the cottages of the labouring poor, and those of squatters in particular, were 'of the most rudimentary kind, very small and built of flimsy materials' and 'in reality little more than huts or hovels'.⁷¹ What is interesting about the case of Richard Cooke is not whether or not he was trying to build a 'one-night cottage', but what it says about the degree of planning necessary for the would-be squatter to build his cottage and the difficulty of undertaking such a task in secret. Just how much organisation could go into building an illegal cottage

⁶⁶ R. U. Sayce, 'The one-night house and its distribution', *Folklore* 53 (1942), pp. 161–3.

⁶⁷ *Folklore* 54 (1943), p. 391. See also W. W. Gill, 'The one-night house', *Folklore* 55 (1944), pp. 128–32; C. F. Tebbutt, 'The one-night house and its distribution', *Folklore* 95 (1984), p. 122.

⁶⁸ Bettey, 'Squatters' dwellings', p. 30.

⁶⁹ Knepp Castle, Burrell MS, 5927, fos. 24–5.

⁷⁰ J. R. Daniel-Tyssen, 'The parliamentary surveys of the county of Sussex, 1649–1653', *SAC* 23 (1871), pp. 301–2.

⁷¹ Bettey, 'Squatters' dwellings', p. 28.

is shown by another example provided by Bettey from the Wiltshire manor of Downton. In 1698 the manorial steward presented a number of men who 'in riotous manner broke the Lady's waste within the Franchises of Downton by digging holes in the ground to put posts in for erecting of a cottage on the said waste'. Those presented included Nicholas Lane senior, the 'owner' of the cottage, a carpenter called Samuel (or Abe) Wheeler and his apprentice, a thatcher called Joseph Chalker junior, George Noble who 'breaded' (that is, daubed) the cottage walls and an unnamed man 'who helped dig the holes for erecting the said cottage'. For Bettey, the use of earth-fast poles confirmed his view that squatters' cottages were flimsy and impermanent.⁷² However, in the opinion of M. W. Barley, the use of craftsmen was what distinguished a 'permanent dwelling' from a 'primitive structure' built by the occupants.⁷³ The lifespan of a cottage built with earth-fast poles would depend upon the type of timber, the construction methods and the soil conditions. Hewn six-by-six timber inserted into stone-lined holes might last up to fifty years, producing a cottage which could at least be described as 'semi-permanent'.⁷⁴

No comparable descriptions of the process of erecting an illegal cottage have so far been found for Sussex. However, as in the case of Richard Cooke, many of the would-be cottage builders started by assembling and erecting their timber frame. A poor husbandman, Robert Pearlie, of Madehurst petitioned the western sessions in 1627 because the parishioners were preventing him from erecting a frame given to him by the manorial lord. An undated letter of c.1600 to Thomas Pelham, lord of the Rape of Hastings, informs him that William Garrom has 'bought a house ready framed to set up' and seeks Pelham's licence so that he can 'go about it'. And a letter of c.1610 to Thomas Pelham from his cousin informs him that a shingler, Thomas Blatcher, had 'a frame set up for a little house', for which permission was disputed.⁷⁵ Fuller descriptions of two cottages for which title was disputed are included in the Parliamentary survey of the manor of Pevensey made in 1649. The first cottage, occupied by Widow Knight, with an adjoining stable and garden plot, was located at the west end of Pevensey Castle. The surveyors recorded that 'the said cottage and stable is built shed-wise against the castle wall of timber and mud walls and covered with thatch'. It had two rooms downstairs and two rooms upstairs. The second cottage, built on waste near the castle wall, was occupied by 'one Purchin' and was held by lease from Thomas Meeres who had built it but was unable to prove 'copy or other grant' for the land to the surveyors' satisfaction. This cottage was described as 'new built with stone walls and well covered with tiles'. It had two rooms downstairs and two rooms upstairs.⁷⁶

The Pevensey cottages were relatively large; many cottages are likely to have consisted of a single room with a gable-end chimney.⁷⁷ Even so, the construction methods that were used

⁷² Ibid., p. 30.

⁷³ M. W. Barley, 'Rural housing in England, 1500–1640', in Thirsk (ed.), *Agrarian history*, IV, p. 762.

⁷⁴ I would like to thank Jon Roberts for this information.

⁷⁵ WSRO, QR/W21. fo. 23/59; BL, Add. MS, 33058, fo. 33; BL, Add. MS, 33084, fo. 34. The lords of the Rape of Hastings claimed ownership of the wasteland and regulated its use. I would like to thank Christopher

Whittick for providing me with his calendar of the Pelham material.

⁷⁶ Daniel-Tyssen, 'Parliamentary surveys', pp. 280–1.

⁷⁷ Barley, 'Rural housing', p. 765; A. Longcroft, 'The Hearth Tax and historic housing stock: a case study from Norfolk', in P. S. Barnwell and Malcolm Airs (eds), *Houses and the Hearth Tax* (CBA Research Report 150, 2006), pp. 66–7.

– whether they were timber-framed or stone built, thatched or tiled – would require the use of specialist craftsmen, at some cost to the cottager in labour and materials. How much it cost to build a cottage and how long it took would have varied enormously. In 1638, after the house of a labourer called Simon Duke burnt down, the parish of Stoughton petitioned the western sessions for relief for him. According to the petition Duke had ‘out of his great pains and endeavours saved and disbursed some £10 or thereabouts to build and provide for himself, his wife and children a house and dwelling ...’.⁷⁸ In 1645 the overseers of the parish of Cowfold built a cottage for one of their paupers, James Luxford, at a cost of £7 1s. 0d. This included £1 3s. 4d. for a load and three quarters of timber, 3s. for 200 bricks (including carriage) and 12s. for two loads of straw. The wages of the craftsmen and labourers who built the cottage, including sawyers, a carpenter, a thatcher and a mason, came to £3 16s. The highest labour bill was that of the carpenter, who was paid £1 4s. for eighteen days work at 16d. a day. He also received 2s. 6d. for two and a half days work by his ‘man’ and 6s. for 13 days work at 6d. a day by his ‘boy’. One man was employed to make the laths, which took two days, and two men were employed to saw the timber, which took seven days. The time spent on other work including thatching, internal carpentry and masonry, is not quantified but the total build would have taken at least a month.⁷⁹ Based on the amount of timber used, it is likely that this cottage was single storey, of one or two bays, and with a footprint of between 150 and 250 square feet.⁸⁰

Many cottagers paid for their cottages out of their own pockets, like Duke scrimping and scraping the money together, and probably doing any unskilled labour themselves. Some, like Pearlie, were lucky enough to be given a frame by a benefactor or to receive a contribution towards the cost of construction from the parish funds. Frames could also be bought second-hand, as the case of William Garrom suggests. Thomas Chifnall, the wheelwright of Lymminster, evidently stole not only materials for his cottage, but also household goods, from his neighbour. The theft of timber, wood and other materials from woods, coppices and commons to build or repair cottages was a continuing problem for manorial lords and their stewards and undoubtedly influenced their attitude to cottagers. The dispute over the location of Blatcher’s cottage was because of its proximity to the lord’s coppice and, despite Blatcher’s promise that he would not ‘meddle’ with it, Pelham’s steward threatened to cut the frame down ‘fearing that he will be an enemy to the prospering of [Pelham’s] woods’.⁸¹ In 1622 the homage of the manor of Cowdray presented Thomas Aylwin alias Valentine, an inmate of Elizabeth Fludd, herself the occupant of a wasteland cottage, for cutting and removing coppice wood and timber without licence, for which Fludd forfeited her cottage. In March 1623 Aylwin was presented for building a cottage on the waste without licence and ordered to pull it down.⁸²

It is surprising that many of those who built cottages without permission were willing to invest so much time and money in them. But there were also those who, out of necessity, built themselves more makeshift accommodation, no doubt hoping it would only be temporary. In his account of the Shropshire parish of Myddle written between 1700 and 1702 Richard Gough includes two descriptions of ‘huts’. Gough records that Childlow’s ‘tenement or cottage’ had

⁷⁸ WSRO, QR/W35, fo. 36/8.

⁷⁹ WSRO, Par 59/31/1.

⁸⁰ I would like to thank Joe Thompson and Jon

Roberts for their help with this.

⁸¹ BL, Add. MS, 33058, fos. 27, 54; 33084, fo. 34.

⁸² WSRO, Cowdray MS 239, fos. 42r, 44v.

originally been a 'poor pitiful hut, built up to an old oak', inhabited by his great-grandfather, but was now a 'better house'. Its location 'near the side of the lane called Divlin lane formerly, and now Taylor's lane' suggests that it may have been a wayside encroachment. A Welsh man called Evan Jones had built himself a 'little hut' in Myddle Wood on a piece of land enclosed out of the common. The hut had, however, burnt down and Jones had built himself a 'pretty good house' with the proceeds of the subsequent parish collection.⁸³ Barley provides an example from a deposition taken in 1604 of a 'sorry cote pitched into a nook of rock of stone' in Charnwood Forest in Leicestershire, which had been 'a dwelling house, upon the want and necessity of another house, of a poor man, a wisket [basket] maker, that for his own succour made the same of sticks and turves, but paid no rent or fine'.⁸⁴ And in 1605 the Rector and 13 of the inhabitants of Ripe in Sussex wrote to Thomas Pelham informing him that John Pegden's 'small cote' was 'pitched in the ground and placed in the king's highway', following a successful application to Pelham for a licence.⁸⁵ The terminology used in these cases indicates that, to contemporary observers, there were human habitations that did not qualify as cottages because of their small size, rudimentary construction and relative impermanence. Whereas cottages were 'built', 'erected' or 'set up', cotes were 'pitched'. The cottages being presented in the courts of assizes and quarter sessions are unlikely to have been mere 'huts' or 'cotes'. Indeed, in some cases it may have been their perceived permanence that provoked legal action. Something 'rudimentary' or 'flimsy' could be easily kicked or pulled down and it is questionable whether it would be worth a constable's time to proceed with a presentment.

VII

The 1589 act is frequently referred to by historians writing about early modern rural communities and yet the background to its passage and the way in which it was used has received very little attention. Where it has been discussed in any detail it has generally been in the context of poverty and poor relief. This article has examined the circumstances that gave rise to the act and its inter-relation with the poor law legislation of 1598 and 1601. It has suggested that the act represented a change in policy from that of the middle of the sixteenth century, reflecting increasing levels of concern about rising population, poverty and vagrancy. The housing needs of the impotent poor were nevertheless recognised by the act and reinforced by subsequent poor law legislation.

An exploration of the way that the cottages clauses were used in Sussex has shown that manorial courts were not operating as effective jurisdictions for enforcement of the legislation as the act had envisaged. Their role was immediately superseded by the courts of assize and quarter sessions, for whom illegal cottages represented a small, but regular, stream of business. In Sussex the act was being used to provide housing for the poor but it was not routinely used to regulate settlement unless the cottage was built on or near a parish boundary. Although private landlords were one of the targets of the act, an analysis of the pattern of prosecutions

⁸³ R. Gough, *The history of Myddle*, ed. D. Hey (1981), pp. 242–8; J. T. Smith, 'Short-lived and mobile houses in late seventeenth-century England', *Vernacular*

Architecture 16 (1985), 33–4.

⁸⁴ Barley, 'Rural housing', p. 762.

⁸⁵ BL, Add. MS, 33058, fo. 51.

shows that in Sussex they largely escaped judicial notice and that the weight of the law fell on the labouring poor. Several factors have been suggested for why communities chose to present some individuals and protect or ignore others, including whether the cottage or cottager was causing a nuisance and the financial consequences to the parish of removing a cottage. Finally, this article has challenged the popular and somewhat romantic idea of the 'one-night cottage', suggesting that, until the repeal of the 1589 act, squatters always remained vulnerable to prosecution, no matter how long their cottage had been 'continued'. Leaving legal considerations aside, the evidence provided here of the time and labour involved in building illegal cottages shows that it was unfeasible for anything other than 'huts' or 'cotes' to be put up overnight.

How far the 1589 act was employed in the eighteenth century has yet to be explored, as have the circumstances surrounding its repeal. The short act of repeal of 1775 simply stated that the act 'has laid the industrious poor under great difficulties to procure habitations, tends very much to lessen population, and in diverse other respects has been found inconvenient to the labouring part of the nation in general'.⁸⁶ However, as Sir Frederick Morton Eden noted some twenty years later, the repeal of the act did not lead to an increase in the number of cottages, and finding accommodation remained the rural poor's 'greatest difficulty'.⁸⁷

⁸⁶ 15 Geo. III c. 32.

⁸⁷ F. M. Eden, *The state of the poor: or, an history of the labouring classes in England* (3 vols, 1797), I, p. 361.