
Appeal Decisions

Inquiry held on 13 December 2016

Site visit made on 14 December 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 December 2016

Appeal A Ref: APP/P1045/C/16/3147809

Aragorn Cabin, Mercaston Lane, Mercaston, Ashbourne, DE6 3BL

- 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 1990 Act").
- The appeal is made by Preserva (Midlands) Limited ("the Appellant") against an Enforcement Notice issued by Derbyshire Dales District Council ("the Council").
- The Enforcement Notice, numbered ENF/15/00097, was issued on 10 March 2016.
- The breach of planning control as alleged in the Enforcement Notice is the unauthorised construction of timber cabin and subsequent occupation as a dwellinghouse, with associated use of land as domestic curtilage.
- The requirements of the Enforcement Notice are: (1) Permanently cease the use of this cabin as a dwelling house. (2) Permanently remove the cabin from this land. (3) Restore the land to its previous condition.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(d) & (g) of the 1990 Act.

Summary of Decision: The appeal is allowed and the Enforcement Notice is quashed.

Appeal B Ref: APP/P1045/X/16/3148813

Aragorn Cabin, Mercaston Lane, Mercaston, Ashbourne, DE6 3BL

- The appeal is made under Section 195 of the 1990 Act against a refusal to grant a Certificate of Lawful Use or Development (LDC).
- The appeal is made by the Appellant against the decision of the Council.
- The application Ref 15/00326/CLEUD, dated 5 May 2015, was refused by notice dated 22 October 2015.
- The application was made under Section 191(1)(a) and 191(1)(b) of the 1990 Act.
- The use and development for which a LDC is sought is the erection of a log cabin and the use of the log cabin as a dwelling house (falling within Use Class C3) and associated change of use of land.

Summary of Decision: The appeal is allowed and a LDC is issued in the terms set out below in the Formal Decision.

Procedural Matters – Appeals A & B

1. The Council agreed that the burden of proof in a case where they allege that there has been positive deception of the Local Planning Authority rests with them. The Council have to prove the positive deception on the balance of probabilities i.e. that it was more likely than not that they were positively deceived.
2. All oral evidence at the Inquiry was given on oath.

3. At the Inquiry the Council agreed that the compliance period should be extended to 12 months (the period suggested by the Appellant). Accordingly, the Ground (g) appeal was resolved by agreement.
4. It was also agreed at the Inquiry that the land identified on the plan attached to the Enforcement Notice included land which fell outside the planning unit formed by the Cabin and its garden. The Council and the Appellant provided separate plans¹ which set out their respective positions regarding the extent of the garden land attached to the Cabin. I will return to the extent of the garden land later in my Appeal Decisions.

Judicial Authorities

5. I was referred to various parts of the following judicial authorities:
 - a) Jackson –v- Secretary of State for Communities and Local Government (High Court)².
 - b) Jackson –v- Secretary of State for Communities and Local Government (Court of Appeal – (Civil Division))³.
 - c) Welwyn Hatfield Borough Council –v- Secretary of State for Communities and Local Government and Another (Supreme Court)⁴.
 - d) R (Fidler) –v- Secretary of State for Communities and Local Government and Another (Court of Appeal (Civil Division))⁵.

Other Appeal Decisions

6. I was also referred by the Appellant to several Appeal Decisions (listed below) relating to possible concealment of unauthorised developments:
 - a) 6 Cranbourne Close⁶.
 - b) 1 Morgan Street⁷.
 - c) 408 Hackney Road⁸.
 - d) 37 The Circle⁹.
 - e) 35 The Circle¹⁰
 - f) 8 Beverley Garden¹¹

Relevant Background Matters

7. There are several lakes and/or other areas of water on land near the Cabin. In addition:
 - a) The Mercaston Brook runs close by.

¹ Documents 12 & 13 (respectively)

² Document 1

³ Document 2

⁴ Document 3

⁵ Document 4

⁶ Document 5

⁷ Document 6

⁸ Document 7

⁹ Document 8

¹⁰ Document 9

¹¹ Document 10

- b) There is, in the area, a system of sluices that feed water to the Old Water Mill (now converted to a dwelling-house).
- 8. In November 1999 planning permission was granted for a building to house fish storage tanks ("the Fish Tanks Building"). The Fish Tanks Building was erected prior to the construction of the Cabin and is within about 75m of the Cabin.
- 9. The timber cabin (referred to in the Appeal Decisions as "the Cabin") was erected in about February 2004.
- 10. The Cabin was erected by Howard Thacker ("Mr Thacker") to be a dwelling-house for Mark Bradbury.
- 11. At that time the land on which the Cabin was erected and other adjoining land belonged to Mr Thacker. Mr Thacker:
 - a) Owned a considerable amount of land and buildings in the area.
 - b) Employed Mark Bradbury, amongst other things, to:
 - i) Look after livestock that Mr Thacker kept on land near the Cabin.
 - ii) Operate the fishery which was known at that time as the Trent Trout Farm.
 - iii) Maintain Mr Thacker's landholding.
 - c) Was familiar with the planning system as evidenced by various applications made before and after the erection of the Cabin. Those applications included new buildings, extensions to existing buildings, and changes of use.
 - d) Discussed the best position for the Cabin with Mark Bradbury.
 - e) Paid all the electricity bills arising from Mark Bradbury's use of the Cabin.
- 12. Mark Bradbury has been in occupation of the Cabin since its completion.
- 13. Photographs, which include the Cabin, were taken in the spring of 2004 i.e. within a couple of months of the Cabin's erection. One of the photographs shows that a covered structure had been, or was in the course of being, erected on land close to the Cabin. This structure was to be used as an outdoor sitting area by Mark Bradbury. In addition, a TV aerial had been affixed to the Cabin.
- 14. Mark Bradbury confirmed at the Inquiry that trees were planted on land near the Cabin before, during and after its construction but the trees were not planted so as to screen the Cabin from public view.
- 15. In the autumn of 2004 a Charity event was held by Mr Thacker on land near the Cabin. It was clear from my site visit that the Cabin would have been clearly visible from the area where hundreds of visitors gathered to enjoy and participate at the Charity event.
- 16. In 2009 Mark Bradbury married his wife, Tracey. The wedding was blessed by the local Vicar. The Blessing ceremony was held at the Cabin. Dozens of people attended the Blessing ceremony.
- 17. Tracey Bradbury moved in to the Cabin in about 2006.

18. From about 2008 a post-box for the Cabin and the Cabin's name were placed on a post near the junction of the driveway (which leads to the Fish Tanks Building and the Cabin) with Mercaston Lane. In addition, a sign giving the name of the Cabin was placed on the entrance gate to the Cabin.
19. In the late summer early autumn of 2009 David Donnelly (Mr Donnelly) on behalf of the Appellant was in negotiation with Mr Thacker regarding the purchase of land at buildings (including the Cabin). The fishery use of the Fish Tanks Building had ceased. Mr Donnelly was aware that there was no planning permission for the Cabin. However, he took independent legal advice and was advised that four years had passed since the Cabin had been substantially completed and as such the Cabin was immune from any enforcement action that the Council could take. The Appellant's purchase of the land was completed in early 2010.
20. Mr Donnelly was keen to purchase the land because Mr Thacker has spent a considerable amount of money fencing the various fields and this suited Mr Donnelly who had, and who continues to keep, a pedigree herd of Simmentals. Mr Donnelly continues to show these pedigree cattle at various agricultural shows around the country.
21. I was advised that at the time of the sale of the land to the Appellant Mr Thacker was in financial difficulty.
22. Mark and Tracey Bradbury's occupation of the Cabin continued following the acquisition of the Cabin by the Appellant. There was, and is, no formal Tenancy Agreement which regulates the residential use of the Cabin by Mark and Tracey Bradbury. No rent was, or is, paid.
23. Mark Bradbury works for the Appellant but due to illness his hours have been reduced to three days per week. Mr Donnelly describes Mark Bradbury as "his eyes and ears" as Mark Bradbury keeps a watchful eye over the Simmentals and other livestock on the Appellant's landholding. In addition, Mark Bradbury:
 - a) Maintains the watercourses and ditches on the Appellant's land including removing branches and trees which inevitably fall in to those watercourses from time to time.
 - b) Maintains the footpaths that pass over the Appellant's landholding, including maintenance of stiles and the cutting back of vegetation.
 - c) Maintains other land which is owned by the Appellant.
24. In 2015 Mr Donnelly became aware that no Council Tax was being paid for the Cabin. Mark Bradbury had assumed that Council Tax had been paid by Mr Thacker and the Appellant thereafter. Mark Bradbury has visited the Council on two occasions to progress the issue of payment of Council Tax in respect of the Cabin but so far the Cabin has not been banded for Council Tax purposes.

Reasons – Appeals A & B

Ground (d) that at the time the Enforcement Notice was issued, it was too late to take enforcement action against the matters stated

25. The Council's position is that the time limits set out in Section 171B of the 1990 Act do not apply in this case because there has been positive deception of the breach of planning control. If there had not been positive deception of the

breach of planning control then the Council accept that the breach of planning control alleged in the Enforcement Notice would be immune from enforcement action due to passage of time.

26. In this case there is no direct evidence from Mr Thacker (the person responsible for the erection of the Cabin). The Council suggest that the location of the Cabin indicates that it was built in that position so that it would not be seen from the surrounding roads and with a view to deceive the Council as to its existence.
27. I do not accept that. The Cabin was built in its position because it was close to:
- a) The Fish Tanks Building where Mark Bradbury had to carry out some of his employment duties.
 - b) The Fish Tanks Building and the lakes which contained valuable fish and thus Mark Bradbury was able to:
 - i) Overlook one of the lakes from the Cabin.
 - ii) See other lakes etc. within a short walking distance of the Cabin.
 - iii) Keep a lookout over the Fish Tanks Buildingand thus deter poachers or other thieves from stealing the fish or equipment associated with the fish farm business.
 - c) Other land owned by Mr Thacker which was used for the keeping of livestock and which Mark Bradbury was responsible for the care of.
28. It is also clear from the evidence of people who lived in the area that:
- a) They were aware that Mark Bradbury had moved from a dwelling in nearby Weston Underwood to live at the Cabin.
 - b) That Mark Bradbury had moved to the Cabin so as to fulfil his employment duties with Mr Thacker.
 - c) Some of them had seen the Cabin being erected.
 - d) Some of them had visited Mark Bradbury at the Cabin.
 - e) The Cabin was visible from a number of nearby public rights of way (footpaths) that run close to the Cabin.
29. It is also clear that it would have been possible for Mr Thacker to erect the Cabin on a nearby plot of land which was very well screened and had no public right of way running close to it. If Mr Thacker had wanted to hide the Cabin from all public views the Cabin could have been erected in that location.
30. I am aware that Mr Thacker was aware of the system of planning control as evidenced by various planning applications made on his behalf. However, the Council have no evidence as to why Mr Thacker failed to make an application for the Cabin. I quizzed Mark Bradbury (who had been a party to discussions with Mr Thacker over the location of the Cabin) and he assured me that the location had been one that suited his duties as an employee of Mr Thacker.

Mark Bradbury was not aware that there was no planning permission for the Cabin at the time it was erected.

31. I asked Mark Bradbury why the Cabin had not been built adjacent to the Fish Tanks Building. He explained that this would have impacted on the access to the Fish Tanks Building and thus reduced its usefulness. In any event, even if the Cabin had been built there it would have still been hidden from view from Mercaston Lane.
32. Further, local residents living in the area assured me that on clear days the Cabin can be seen across the valley from public and private vantage points within and near Muggington.
33. I do not accept the argument that the Cabin was designed to look like it may have been a building that was used ancillary to the nearby Fish Tanks Building. It is clear from the photographs that the "sitting out area" was formed very soon after Mark Bradbury went into residential occupation of the Cabin. He also erected a TV aerial so that he could watch TV inside the Cabin. I do not consider that the Cabin was designed to look like a mess room for people working on the land. In my assessment it looked like a timber building that was likely to be used residentially.
34. I am aware that the Cabin is sited on low lying ground and that there were pre-existing tree belts that made the Cabin inconspicuous in the landscape. I am also aware that a number of trees were planted on nearby land but there is no direct evidence that these trees were planted to screen the Cabin from public views. The only evidence before me is that the trees were planted because Mr Thacker was very keen on tree planting generally. It was clear from my site visit that many trees had been planted by Mr Thacker. Many of these trees were planted so as to create tree lined avenues along either side of the public rights of way or private tracks over his land. I was also advised by local residents that Mr Thacker had planted acres of trees nearby.
35. Mark Bradbury explained that:
 - a) The trees were not planted to hide the Cabin. They were planted to provide shelter and to improve, in the longer term, the setting of the Cabin.
 - b) The trees that were planted were unbranched young tree seedlings of no more than a metre in height.
36. In any event had Mr Thacker wished to hide the cabin from public view he could have erected 2m high fencing adjacent to the nearby public rights of way which would have effectively blocked off all views from those public vantage points.
37. I therefore conclude that the positioning and design of the Cabin and the planting of trees near the Cabin were not acts of positive deception of the Local Planning Authority in matters that are integral to the planning process. These decisions were taken so as to provide Mark Bradbury with a modest utilitarian dwelling in the most logical position given the duties which he, as the occupier of the Cabin, had to perform in connection with his employment by Mr Thacker.

Other Matters

38. I am aware that:

- a) Mark Bradbury described Mr Thacker as a “likeable rogue” but I suspect that he came to this view after Mr Thacker had left country and gone to live in Thailand leaving behind considerable debts.
- b) Mark Bradbury did not apply to be entered on to the Electoral Register but he explained that he had never voted and had no interest in political matters.
- c) Mr Thacker did not seek Building Regulations Approval for the Cabin. However, there is simply no evidence before me to indicate why that is the case.

39. I do not consider that any of the issues raised by these other matters amount to positive deception of the Local Planning Authority in the planning process.

What is the Extent of the Garden Land Associated with the Cabin?

40. I consider that the land which I have identified on the plan attached to the LDC is, and has been, the garden land connected to the residential use of the Cabin because:

- a) Mark Bradbury has throughout his occupation of the Cabin enjoyed and used this land as his garden.
- b) Mark Bradbury has planted trees (including Christmas trees and fruit trees) and plants within this garden land.
- c) The garden land includes the sitting out area.
- d) The garden land includes the burial plots for pets belong to Mark Bradbury.
- e) There is a domestic greenhouse and garden ornaments on this land.
- f) The grass has been maintained as an informal lawn area.
- g) The land includes the driveway from the gates to the Cabin to the dwelling itself and the associated domestic parking area.

Overall Conclusion – Appeal A

41. For the reasons given above I conclude that the appeal should succeed on ground (d). Accordingly, the Enforcement Notice will be quashed. In these circumstances the appeal under the ground (g) does not need to be considered.

Overall Conclusion – Appeal B

42. For the reasons given above I conclude, on the evidence now available, that the Council’s refusal to grant a LDC in respect of the erection of a log cabin and the use of the log cabin as a dwelling house (falling within Use Class C3) and the associated change of use of land was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act and grant the Appellant a LDC.

Decision – Appeal A

43. The appeal is allowed, and the Enforcement Notice is quashed.

Decision – Appeal B

44. The appeal is allowed and attached to these Appeal Decisions is a LDC describing the extent of the existing residential use and existing operations which are considered to be lawful.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

Anthony Gill of Counsel
Instructed by Robert McGuinness MRICS of RLM Associates.
He called:

Mr. A. Haddon

Mr C. Hutchinson

Mr D. Bush

Mr D. Dovaston

Mr P. Allen

Mr J. Windebank

David Donnelly – Managing Director of the Appellant Company

Mark Richard Bradbury – Occupier of the Cabin.

FOR DERBYSHIRE DALES DISTRICT COUNCIL

Jack Smyth of Counsel
Instructed by the Council's Solicitor (Ms Katie Hamill)
He called:

Chris Whitmore BA(Hons), MSc, MRTPI – Area Planning Officer

INTERESTED PARTIES

Ms K. Stapley

DOCUMENTS

- Document 1 – Jackson –v- Secretary of State for Communities and Local Government (High Court).
- Document 2 – Jackson –v- Secretary of State for Communities and Local Government (Court of Appeal – (Civil Division)).
- Document 3 – Welwyn Hatfield Borough Council –v- Secretary of State for Communities and Local Government and Another (Supreme Court).
- Document 4 – R (Fidler) –v- Secretary of State for Communities and Local Government and Another (Court of Appeal (Civil Division)).
- Document 5 – 6 Cranbourne Close – (APP/J0350/C/14/2218487 & 488).
- Document 6 – 1 Morgan Street - (APP/G5750/C/14/2222601).
- Document 7 – 408 Hackney Road - (APP/E5900/C/14/3000174.).
- Document 8 – 37 The Circle (APP/T5150/C/15/3005287).
- Document 9 – 35 The Circle (APP/T5150/C/15/3004983).
- Document 10 – 8 Beverley Gardens (APP/T5150/C/15/3135149 – 50).

- Document 11 – Western Power Distribution – Vegetation Management – Survey Report dated 30 September 2015 & David Donnelly.
- Document 12 - Appellant's Summary Notes on Appeal Decisions.
- Document 13 - Plan showing extent of the Cabin and its garden as suggested by the Council.
- Document 14 - Plan showing extent of the Cabin's and its garden as suggested by the Appellant.

Lawful Development Certificate (“the LDC”)

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991) (the “1990 Act”)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 5 May 2015 the operations and the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and cross-hatched in black on the plan attached to the LDC, were lawful within the meaning of Section 191(2) of the 1990 Act, for the following reasons:

The erection of the log cabin and its use as a dwelling-house are lawful because no enforcement action can be taken against these developments because the time for enforcement action has expired.

Signed: *Tim Belcher*

Inspector

Date: 21 December 2016

Reference: **APP/P1045/X/16/3148813**

First Schedule

The erection of a log cabin and the use of that log cabin as a dwelling-house (falling within Use Class C3) and the associated change of use of land.

Second Schedule

Aragorn Cabin, Mercaston Lane, Mercaston, Ashbourne, DE6 3BL

NOTES

The LDC is issued solely for the purpose of Section 191 of the 1990 Act.

It certifies that the use/operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful, on the certified date and, thus, were not liable to enforcement action, under Section 172 of the 1990 Act, on that date.

The LDC applies only to the extent of the use/operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations which are materially different from those described, or which relates to any other land may result in a breach of planning control which is liable to enforcement action by the Local Planning Authority.



Plan

This is the plan referred to in the Lawful Development Certificate dated :21 December 2016

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

Aragorn Cabin, Mercaston Lane, Mercaston, Ashbourne, DE6 3BL

Reference: APP/ P1045/X/16/3148813

Do Not Scale

