



Appeal Decisions

Site visit made on 31 January 2023

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 29 March 2023

Appeal A Ref: APP/W4705/C/22/3299619

Appeal B Ref: APP/W4705/C/22/3299620

Bloody Row, Green Lane, Queensbury, Bradford, West Yorkshire, BD13 1LX, 410187, 428665

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Richard Hall against an enforcement notice issued by City of Bradford Metropolitan District Council.
 - The notice, numbered EN07, was issued on 14 April 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a detached structure on the land, as shown in the attached photograph.
 - The requirements of the notice are to: i. Demolish the unauthorised structure ii. Remove all arising materials from the land.
 - The period for compliance with the requirements is 2 months.
 - Appeals A and B are proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeal A is also proceeding on ground (a) and an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matter

2. The notice alleges the construction of a detached structure on the land, but the Council's case and reasons for issuing the notice refer to the development having 'the appearance of a new dwelling'. I do not consider that I can correct the allegation to refer to the structure as an incomplete dwellinghouse without causing injustice to the appellants, as they may have wished to appeal on different legal grounds has the notice been originally issued on that basis.

Ground (c)

3. Section 171B (1) of the 1990 Act provides that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on over or under land, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The Council accepts that there was previously a building on the site which was rebuilt at some point between 2014 and 2015 after suffering significant storm damage several years earlier. They argue that the building was intended to be a dwellinghouse, and as it has not been substantially completed as such the breach of planning control has not subsisted for a period of 4 years and enforcement action can still be taken.

4. The appellants have provided a copy of a plan submitted as part of a planning application in 2008 which is headed 'Plan as Existing Showing Barn to be Converted to Dwelling'. This plan shows a building which is very similar to the building currently on site, including an asymmetrical roof. The main differences are that the configuration of windows on the east elevation shows three rather than the four now present (although the plan does indicate that three of the elevations had window openings on two levels, as is the case in the development) and a double width door compared with the previously narrower door on the south elevation. The Council have accepted¹ that the previous building was a barn, and that it had the same footprint as the new building but that the overall height is now 1 metre higher. Whilst these differences are material, caselaw holds that the character and purpose of a structure falls to be assessed by examining its physical and design features. The features of the previous barn are relevant in this case as it was a matter of fact that there was previously a building of a very similar design in the same location with a lawful agricultural use. The design and materials used match the other agricultural buildings on the appeal site i.e. local sandstone, corrugated iron roof, timber, metal, and breeze blocks. In addition, the building is water tight with four walls, ground floor and a roof, and was being used to store agricultural equipment during the site visit (although I accept that it may have been used in this way at the date of the issue of the notice).
5. Based on the evidence in this appeal, and the physical and design features of the building, it is not evident as a matter of fact and degree that the development is an 'uncompleted dwelling' (as it was in the case of *Sage v SSETR & Maidstone BC* [2003] UKHL 22). The allegation in the notice is 'the construction of a detached structure on the land, as shown in the attached photograph,' and there is no description of use. The Council does not dispute that the structure as alleged in the notice was built as shown in the photograph at some point in 2015, but that it has never been a substantially completed dwellinghouse. This contradicts the reason in the notice which says that it appears to the Council that the breach of planning control has occurred within the last four years (although that may be because the Council do not consider the development to be substantially complete).
6. An appeal under ground (c) is on the basis that the matters stated in the notice do not constitute a breach of planning control whereas the appellants are in fact arguing that at the date when the notice was issued no enforcement could be taken in respect of any breach of planning control which may be constituted by those matters (i.e. an appeal under ground (d)). I have therefore determined the appeals on that basis and find that the operational development which consists of the construction of a detached structure on the land is immune from enforcement action as it was undertaken more than 4 years before the issue of the notice. The allegation does not refer to the use or construction of a dwellinghouse, and it is clear on the evidence before me that the matters alleged in the notice, the construction of a detached structure, were substantially completed more than 4 years prior to the issue of the notice.
7. For the reasons given above, I conclude that the appeals should succeed on ground (d). The enforcement notice will be quashed.

¹ Planning Officer's Report in Application Reference 19/05017/FUL, dated 11 March 2020.

8. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

Zoë Frank

INSPECTOR

Appendix 1

List of those who have appealed

Reference	Case Reference	Appellant
Appeal A	APP/W4705/C/22/3299619	Mr Richard Hall
Appeal B	APP/W4705/C/22/3299620	Mrs Janet Hall