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# Appeal Decision

Site visit made on 24 April 2023

**by P N Jarratt BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 28 April 2023**

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**Appeal Ref: APP/N1160/C/22/3300900**

**St. Anne's House, Jennycliff Lane, PLYMOUTH, PL9 9SN**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Neal Stoneman against an enforcement notice issued by Plymouth City Council.
  - The notice, numbered A222-EN-463, was issued on 13 May 2022.
  - The breach of planning control as alleged in the notice is the erection of a marquee (that covers the open-air swimming pool to the west of St. Anne's House) without the benefit of planning permission.
  - The requirements of the notice are to dismantle and remove the unauthorised marquee.
  - The period for compliance with the requirement is one month.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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## Decision

1. It is directed that the enforcement notice is varied by the extension of the compliance period from one month to three months.
2. Subject to the variation the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## Preliminary Matters

3. The appellant questions the validity of the notice and contends that the notice is a nullity. It is claimed that the notice contains a deficiency on its face, quotes incorrect out-of-date legislation and provides false information in relation to the payment of fees for the deemed planning application.
4. The contents of a notice are set out in s173, and at s173(10), there is a requirement for the notice being accompanied by an explanatory note giving prescribed information as to the right of appeal. In this case the information on the fees payable on appeal refers to superseded regulations and to the fee being split between the LPA and the Planning Inspectorate, which is not the case.
5. The Council acknowledges the error which they consider to be minor in that it does not go to the heart of the notice and the appellant has not been disadvantaged by the error. Contrarily the appellant claims the error could have had serious consequences. It is contended that had the fee been paid incorrectly, the appeal would not have proceeded on ground (a). I find that this

would be an extremely unlikely scenario as any issue over fees is usually resolved with the LPA and the Planning Inspectorate during the processing of an appeal.

6. For a notice to be a nullity it has to be defective on its face, normally by missing some vital element that a notice shall include under s173, which is not the case here as the notice tells the recipient fairly what has been done wrong and what must be done to remedy it.
7. A notice is invalid if it is defective but not a nullity and it cannot be corrected because an injustice would arise. Firstly, whilst an explanatory note accompanies a notice, it is not part of it per se and therefore cannot be corrected in the sense that a notice can. Secondly, I consider that whilst the appellant may have been inconvenienced by the error, there is no evidence of any injustice, particularly as the appellant retains planning consultants for advice on such matters.

### **The appeal site and relevant planning history**

8. St Anne's House is a substantial former vicarage set in large grounds with numerous outbuildings including a stable block converted to residential use and a static caravan. It is a Victorian grade II listed building and within the Jennycliff Green Space, and is included in a biodiversity network and is covered by a Tree Preservation Order. The adjacent land at Jennycliff is within a Strategic Landscape Area, the Undeveloped Coast and the Urban Fringe.
9. To the west of St Anne's House is a swimming pool with a marquee which is described as a lightweight demountable steel-framed structure with transparent PVC roof covering. An evergreen hedge separates the pool area from the grassed area between the house and the road.
10. The appeal site has a long planning history of which the most relevant include a 2020 permission allowing use as a wedding venue and hotel/holiday accommodation which was approved following the refusal of a similar earlier application which included a marquee. An appeal was dismissed in January 2022 (APP/N1160/W/21/3283458) for the retention of the marquee amongst other matters.
11. An appeal has been made but has yet to be determined against the refusal of an application for the erection of a pavilion pool building to replace the temporary marquee. (APP/N1160/W/23/3318375).

### **The appeal on ground (a)**

12. The appeal on this ground is that planning permission should be granted for what is alleged for a temporary period of three years pending the construction of a permanent pool building.
13. The marquee subject to this appeal remains in place in spite of the dismissal of the earlier appeal. It is an unauthorised structure, representing an ongoing breach of planning control which the previous inspector concluded detracts from the character of the local landscape and the visual qualities of the area, and detracts from the setting and significance of the listed building. Additionally, the public benefits of the development were considered insufficient to outweigh the identified less than substantial harm to the heritage asset.

14. Other than the refused application for a pavilion pool building, I have not been made aware of any changing circumstances that would lead me to any different conclusions to those of the previous inspector, which I endorse. I would add, however, that notwithstanding the inspector's comments about visitors focussing their attention on the coast, the views of the site from the more elevated points on Staddon Lane to the south are also important. These views show the unauthorised structure to be a discordant feature which is intrusive in the landscape and harmful to the setting of the listed building.
15. The appellant states that the marquee allows the use of the pool and the occupation of the house for holidays and weddings to continue throughout the off-season providing income that contributes to supporting the optimal viable use of the heritage asset. The appellant suggests that the impact of the marquee could be mitigated by way of a condition requiring additional planting and controlling the colour of the marquee covering. However, the visual impacts of the marquee are significant and the suggested mitigation measures would not minimise the level of harm caused to an extent that a temporary permission of three years would be justified.
16. I have had regard to the public representations made in support of the enforcement action.
17. I therefore conclude that the development conflicts with the objectives of the Local Plan policies DEV23, DEV24 and DEV27 and conflicts with policy DEV21 regarding the effect on the setting and significance of St Anne's House.
18. The appeal on this ground fails.

### **The appeal on ground (g)**

19. The appellant believes that the one month compliance period is unreasonable and that it would be more reasonable to extend the period to 12 months to allow the application for the permanent structure to be determined and permit the business to continue to operate. It is also claimed that there would be difficulty securing a contractor to remove the marquee and that there would be disruption to wedding bookings.
20. The Council is concerned that the development would remain in situ for an unacceptable period and it would not be reasonable to extend the period of completion to the period for the determination of the application for the permanent structure. The Council also point out that in correspondence with the appellant, the marquee can be dismantled and removed within a short time period.
21. The appellant has exercised his right to appeal against the Council's refusal of permission for a permanent structure and this is currently with the Planning Inspectorate awaiting determination.
22. It is now some time since the original refusal of the marquee and the Council considers it expedient to remove the harm caused by the structure to the landscape and to the listed building. There is no information before me to indicate the number of wedding bookings that are in hand or the extent of disruption that the early removal of the marquee would have. Nevertheless, a balance needs to be achieved in respect of the business interest and its value to the maintenance of a heritage asset, with that of the public interest by the

removal of the harm caused. I believe a period of 3 months will go some way to meeting this balance and is reasonable in the circumstances.

23. The appeal on this ground succeeds and I shall vary the compliance period to three months.

### **Conclusion**

24. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*P N Jarratt*

INSPECTOR