



Appeal Decisions

Site visit made on 18 July 2023

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 14 August 2023

Appeal A Ref: APP/W1145/C/22/3308168

Appeal B Ref: APP/W1145/C/22/3308169

Land at Winnie's Wood, AKA Wishtree Agroforest & Permaculture Centre, Black Torrington, Beaworthy, Devon EX21 5JN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. The appeals are made by Ms Hayley Oakwood (**Appeal A**) and Mr Mark Andrews (**Appeal B**) against an enforcement notice issued by Torridge District Council.
- The notice was issued on 2 September 2022.
- The breach of planning control as alleged in the notice is: Without planning permission and within the last 10 years, the change of use of the Land shown on the Plan (attached as Appendix A) to a residential use by virtue of the residential use of a caravan, identified in Annex B attached to this notice, for human habitation.
- The requirements of the notice are to:
 - (i) Cease any residential use of the Land identified in Appendix A
 - (ii) Remove all domestic paraphernalia associated with residential use from the land.
- The period for compliance with the requirements is twelve months.
- The appeals are proceeding on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed and the Notice is upheld with a correction in the terms set out in the Formal Decision below.

Application for costs

1. The Council applied for an award of costs against the Appellants. That application is the subject of a separate Decision Letter of even date.

Preliminary matters

2. The Appeal Site, outlined in red on the plan attached to the Enforcement Notice as Appendix A, is the entirety of the approximately five-acre area of planted and semi-natural woodland owned by the Appellants. It is common ground that the land has long been in use for agricultural activities (such as permaculture, horticulture, and agroforestry) and that this use has continued alongside the residential use. As the Appellants rightly point out, this means that there is now a mixed use of the land taking place, and this should be reflected in the wording of the alleged breach of planning control. I am satisfied that I can correct the notice accordingly, without causing injustice to either party: there is no dispute that the agricultural component of the mixed use is lawful, and will continue to be so whatever the outcome of these appeals.
3. The Appellants contend that the requirements of the Notice have already been complied with, on the basis that they now live in a timber cabin built on the

Appeal Site, and the caravan in which they were formerly living has been removed. It is important to be clear that while the Notice describes the change of use as having been brought about by the residential use of a caravan, it is NOT only the occupation of that caravan which is attacked by the Notice. The Notice clearly alleges the unauthorised residential use of the entirety of the Appeal Site, which includes the use (as distinct from the construction) of any buildings and structures it contains. The requirement to "cease any residential use of the land" has not been – and cannot be – met while the Appellants continue to live on the Appeal Site.

The appeals on ground (d)

4. The ground of appeal is that by the date on which the Notice was issued, the time limit available to the Council for taking enforcement action had expired. The time limit in this case is ten years, beginning with the date of the breach.¹ The Appellants' case is that they have been living on the Appeal Site since January 2021, having purchased the Appeal Site in December 2020 from the previous owners, Mr and Mrs Bagnall, who had themselves been living there since early 2011. They contend that since the unauthorised residential use began in 2011, and has continued unbroken since then, it is now immune from enforcement.
5. The Appellants have each provided sworn statements, as have local residents Ms Julie Smith and Mr David Evans, setting out their understanding of the previous use of the site. The Appellants say Mrs Bagnall showed them around the Appeal Site in September 2020, when she told them that she and her husband had lived there since 2011, initially in a van and then in a caravan and tent, and had paid residential Council Tax since around 2015/6. Ms Smith states that she first met Mr and Mrs Bagnall soon after they bought the Appeal Site in September 2011, that they bought a small caravan in early 2012 and that "I know with certainty they lived there on site." Mr Evans states that "To our knowledge [Mr and Mrs Bagnall] stayed at Wishtree in a van from Winter 2011 and lived at Wishtree in a caravan from Spring 2012".
6. The Council does not accept this version of events. It states that it investigated the Appeal Site in 2016, regarding an allegation of unauthorised residential use of a caravan at the site. At a visit on 26 September 2016 the Council's Officer spoke to Mr and Mrs Bagnall, who said that they had owned the land for five years; had commenced residential use in August 2015; and had paid Council tax for the residential use of the caravan since 1 August 2016.
7. A sworn statement carries considerable weight, and I have no reason to doubt that in each case, the signatory was providing evidence to the best of their ability. However, the assertions made in the statements by local residents are said to be based on "knowledge" for which no supporting or substantiating evidence is provided. The evidence contained in each of the Appellants' statement is largely hearsay; that is, their reported recollection of a conversation with Mrs Bagnall, at the time when they were considering purchasing the Appeal Site. Similarly, while I have no reason to doubt the probity or impartiality of the Council Officer who visited the site in September 2016, the evidence of what was established at that visit is again largely hearsay: a reported recollection of a conversation with Mr and Mrs Bagnall,

¹ S.171B(3) of the 1990 Act as amended.

- with no supporting evidence such as a copy of contemporaneous notes made at that site visit.
8. No explanatory statement, or any other evidence, has been submitted by Mr or Mrs Bagnall in the course of these appeals. However, the Council has provided a copy of a letter from Mr and Mrs Bagnall dated 9 October, which it received following its visit to the site in September 2016. The letter begins "We consider that being present on site at all times, day and night is immensely beneficial to the smooth running of the business. However, we want to establish a good working relationship with the Council, and are therefore prepared to cease our residential occupation of Wishtree Wood."
 9. In my judgment, this is persuasive evidence that Mr and Mrs Bagnall were, at the date of that letter, in residential occupation of the Appeal Site. As to the date on which that residential occupation began, the letter from Mr and Mrs Bagnall says this: "We feel there has been a misunderstanding as to the timeline of our being here – we moved to Devon in August 2015, but as discussed at the time of your visit, we have not been on-site for all this time, staying at a local B&B for several weeks over the winter, volunteering at other projects on and off, then spending the summer on-site to more intensively maintain our project, and deliver courses. We are unsure as to whether this means that we have been using the site residentially as suggested in your correspondence."
 10. I agree with the Appellants that notwithstanding Mr and Mrs Bagnall's own uncertainty, the use they describe is likely to have amounted to residential occupation. The important point is that the letter makes it very clear they "moved to Devon" in August 2015, and that is when the use they describe began. This accords with the email provided by the Council from its "Revenues & Benefits" Department, which states "The mobile home... has been in Council Tax since 1 August 2015 and has been used as main residence since this date."
 11. Taking all of this into account, I am not persuaded that there is sufficient substantive evidence to support the contention that Mr and Mrs Bagnall were living at the Appeal Site prior to August 2015. I appreciate that local residents genuinely believed they were, and I recognise that such a belief is likely to be founded on the amount of time that Mr and Mrs Bagnall spent at the Appeal Site. But it would not be unusual to spend a large amount of time (and frequently camp out) on site – particularly in the early years of setting up a permaculture enterprise - while residing elsewhere. The letter written by Mr and Mrs Bagnall to the Council in the autumn of 2016, which is the only direct evidence available from them, contains a very clear explanation that their residential occupation of the Appeal Site began, at the earliest, in August 2015.
 12. I therefore conclude that, on the balance of probabilities, the unauthorised residential use of the Appeal Site commenced in August 2015. This means that the Enforcement Notice was issued within the ten-year period available to the Council for taking action against the breach of planning control. It follows that the appeal on ground (d) must fail.

Other matters

13. It is perhaps worth addressing here various points made about the status of the timber cabin constructed on the Appeal Site, which was not included in the description of the alleged breach of planning control. The effect of upholding

the Notice will be to prevent its use as a dwellinghouse, but the Notice does not (and could not, since it is not included in the description) require its removal. However, s.173(11) of the 1990 Act will not operate, as the Appellants contend, to mean that planning permission should be treated as granted for the cabin. Subsection (11) only applies to buildings, works or activities included in the description of the alleged breach of planning control in the Enforcement Notice: it does not operate to grant planning permission for other possible breaches of planning control, or for everything else remaining on site once the requirements of the Notice have been complied with.

14. I am mindful that a decision to uphold the Notice means that the Appellants and their children stand to lose their current place of residence. This would be an interference with their rights to respect for their private life and home, and in any such action, the best interests of the children must be a primary consideration.² The period specified for compliance with the requirements of the Notice is twelve months. The Appellants have not themselves sought to argue that this period falls short of what would reasonably be required, and I consider it a fair amount of time to look for alternative accommodation. I am satisfied that the requirements of the Enforcement Notice are proportionate when balanced against the need to uphold the planning system in the wider public interest.

Conclusion

15. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the Enforcement Notice.

Formal Decision

16. It is directed that the Enforcement Notice is corrected by:

At line 2 of section 3(i), deleting the phrase "to a residential use" and replacing it with the phrase "to a mixed use consisting of residential use and agricultural use".

Subject to that correction, **Appeal A** and **Appeal B** are dismissed and the Enforcement Notice is upheld.

Jessica Graham

INSPECTOR

² Per Article 8 of the European Convention on Human Rights, set out in Schedule 1 of the Human Rights Act 1998.