



Appeal Decisions

Hearing held and site visit made on 24 October 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2023

Appeal A Ref: APP/R1038/C/22/3308018

Land at Hagg Hill Hall, Hagg Hill, New Tupton, Chesterfield S42 6JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Melvyn Humphreys against an enforcement notice issued by North East Derbyshire District Council.
 - The notice was issued on 26 August 2022.
 - The breach of planning control as alleged in the notice is the erection on the land of two cabins (one used as a sauna and the other used for barbeques) in the approximate positions marked X on the attached plan.
 - The requirement of the notice is; remove from the land the two cabins (one used as a sauna and the other used for barbeques) located in the approximate positions marked X on the attached plan.
 - The period for compliance with the requirement is six months.
The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/R1038/C/22/3308029

Land at Hagg Hill Hall, Hagg Hill, New Tupton, Chesterfield S42 6JU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Melvyn Humphreys against an enforcement notice issued by North East Derbyshire District Council.
 - The notice was issued on 26 August 2022.
 - The breach of planning control as alleged in the notice is the material change of use of the land coloured blue on the attached land from agriculture to use for recreation and leisure purposes associated with the use of Hagg Hill Hall as holiday accommodation. Integral to and facilitating the change of use are two cabins (one used as a sauna and the other used for barbeques) in the approximate positions marked X on the attached plan, a sand pit in the approximate position marked Y on the attached plan and picnic tables and garden furniture.
 - The requirements of the notice are; a) Cease the use of the land coloured blue on the attached plan for recreation and leisure purposes associated with the use of Hagg Hill Hall as holiday accommodation; b) Remove from the land the two cabins (one used as a sauna and the other used for barbeques) located in the approximate positions marked X on the attached plan; c) Remove from the land the sand pit located in the approximate position marked Y on the attached plan; d) Remove from the land coloured blue all picnic tables and garden furniture; and e) Re-instate the appearance of the land coloured blue to that of a grass field .
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/R1038/W/22/3305874

Hagg Hill Hall, Hagg Hill, New Tupton, Chesterfield S42 6JU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Melvyn Humphreys against the decision of North East Derbyshire District Council.
 - The application Ref 22/00177/FLH, dated 22 February 2022, was refused by notice dated 8 August 2022.
 - The development proposed is retention of two garden cabins.
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Decisions

Appeal A Ref: APP/R1038/C/22/3308018

1. The appeal is allowed and the enforcement notice is quashed.

Appeal B Ref: APP/R1038/C/22/3308029

2. The appeal is allowed and the enforcement notice is quashed.

Appeal C Ref: APP/R1038/W/22/3305874

3. Since the two garden cabins that are the subject of the appeal have been found to be lawful in Appeal A no further action will be taken in connection with Appeal C.

Procedural matter

4. At the Hearing an application for costs was made by the Appellant against the Council. This application is the subject of a separate decision.

Reasons

Appeal A

The ground (d) appeal

5. The two cabins that are the subjects of the alleged breach of planning control were erected on the land in the summer of 2018. To be immune from enforcement action through the passage of time they must have been substantially complete more than four years before the date of issue of the enforcement notice. The onus of proof is on the Appellant to provide sufficient precise and unambiguous evidence to justify a conclusion that the two cabins were substantially complete before 26 August 2018.

6. The Council became aware of the two cabins in 2021 and asked the Appellant to submit a planning application for their retention. Subsequently, the Appellant's Agent submitted an application on 22 February 2022. When filling out the electronic application form she came upon two questions which required her to input the dates on which the development was started and completed. She therefore rang the Appellant and he gave her the two dates from his recollections of the summer of 2018 without referring to any contemporaneous documentation.

7. It is stated on the application form that the development was started on 31 August 2018 and completed on 6 September 2018. The enforcement notice is dated 26 August 2022, which is less than four years after the stated date of completion of the development. On this evidence the two cabins are not immune from enforcement action. But the Appellant now maintains that the two cabins were substantially complete in early July 2018 and therefore more than four years before the date of issue of the enforcement notice.

8. The Council relied on the date of completion stated on the application form when considering when it would be necessary to take enforcement action to prevent the two cabins becoming immune from enforcement action through the passage of time. They maintain that they are entitled to rely on the information stated on the form which, they claim, is certified to be true. The information is not 'certified' but a declaration is made that "I/We confirm that, to the best of my/our knowledge, any facts stated are true and accurate...".

9. In support of their claim the Council has referred to the case of *Regina v National Insurance Commissioner, ex parte Connor [1981] QB758*. This case established what is known as the Connor principle of public policy, which is that a person should not benefit from their own wrong. This principle was significant in subsequent legal cases relating to concealment. There is no justification for any suggestion by the Council that the Appellant has sought to conceal the two cabins at any time since they were erected.

10. Furthermore, there is no indication on the planning application form that the purpose of the question relating to completion of the development is "...to alert the local planning authority to the timescale for enforcement". The question was answered by the Appellant's Agent, having consulted her client by phone, to the best of her knowledge and the Appellant cannot have known the significance of the date of completion that he recalled. The ground (d) appeal will be determined with regard to the evidence now presented by the Appellant.

11. The two cabins were supplied and installed by Arctic Cabins Ltd and a letter from that company, dated 15 August 2022, states that the cabins "...were installed on the 2nd and 5th July 2018". Attached to a statutory declaration by Mr K Ashley, who was a gardener/handyman at Hagg Hill Hall in the summer of 2018, are dated photographs of the two cabins in place on the land. The photograph of the cabin used for barbeques is dated 3 June 2018 and the photograph of the cabin used as a sauna is dated 6 July 2018.

12. The date stated by Arctic Cabins Ltd for the installation of one of the cabins must be incorrect because the installation dates they state are both after the date of one of the photographs. However, there is no reason to doubt the dates of the photographs, particularly as they are attached to Mr Ashley's statutory declaration, which is properly made. The Appellant's statutory declaration, which is also properly made, states that final payments for the cabins were made on 12 July 2018 and extracts from bank statements confirm this to be the case.

13. The Council maintains that though the cabins may have been installed by early July 2018 they were not at that time substantially complete. The erection of the cabins did not involve any contractors other than Arctic Cabins Ltd and it is not likely that final payments would have been made to them if they had not completed the works. The cabins are simple structures with no water supply and no drainage. There are no photographs of the interiors of the two cabins but it is safe to conclude that they were substantially complete in early July 2018.

14. Hagg Hill Hall is a holiday let for groups of up to 22 persons. Mr Hancock, who attended the Hearing in support of the Appellant, referred at the event to a review of the property which was posted on the Tripadvisor website on 24 July 2018. The review mentions the "...fairy house" (aka indoor Bar-B-Q)". This must be a reference to the cabin used for barbeques, which must have been in use over the weekend of 21/22 July. It is likely also that the cabin used as a sauna was available for use by the group who stayed at the property over that weekend.

15. The Appellant has provided precise and unambiguous evidence, corroborated by other evidence, that demonstrates, not even on the balance of probability, that the two cabins were substantially complete by mid-July 2018. At any time in the four-year period after that the Council could have taken enforcement action against the two cabins but did not do so. The two cabins became immune from enforcement action before the date of issue of the enforcement notice. The ground (d) appeal succeeds and the ground (g) appeal does not need to be considered.

Appeal B

The ground (c) appeal

16. The land that is the subject of the enforcement notice is, as alleged in the breach of planning control, in use for recreation and leisure purposes associated with the use of Hagg Hill Hall as holiday accommodation. Prior to being let as holiday accommodation the building was a dwelling and it is the Appellant's contention that the land has been in use by successive residents of the dwelling as garden land since before the Town and Country Planning Act 1947 (the 1947 Act) came into force. He therefore maintains that the lawful use of the land is garden.

17. Historical maps indicate that the land was formerly orchard but was cleared of fruit trees before 1940. There is some hearsay evidence that the land was used as a bowling green in the 1920's but there is no documentary evidence to support such a use of the land. In a statutory declaration by Mr J Brown, who grew up in the house from 1954, it is stated that he and his siblings enjoyed playing on the land but there is no evidence to support a claim that the land was in use as garden before the 1947 Act came into force. The ground (c) appeal thus fails.

The ground (d) appeal

18. To be immune from enforcement action through the passage of time the land must have been in continuous use for recreation and leisure purposes for more than ten years, and the then established use must not thereafter have been abandoned. Hagg Hill Hall, which comprised the main house, now converted barns, other buildings and about 20 acres of land, was purchased by Cottage Style Homes Ltd in December 2001. The Appellant is a Director of that company and has lived at the property since it was purchased.

19. The Appellant has submitted a properly made statutory declaration. In it he states that he and his son "...spent 8 years restoring Hagg Hill Hall...", that "From December 2010, Hagg Hill Hall was let out as holiday accommodation to paying guests and this use has continued to this day", that "At the time of purchase...the land was in use as part of a larger garden/recreational area...", and that "...the land has only been used as a garden/recreational area...by either myself and my family or by guests resident in the holiday accommodation".

20. Originally Hagg Hill Hall was a farmhouse at the heart of a substantial farm, Hillhouse Farm, which was a single planning unit. That planning unit was subdivided in the mid 1950's when Mr J Brown's parents purchased the farmhouse and other elements of the farmstead. It is Mr Brown's evidence that the land was garden land associated with residential occupation of the house. There is, in this regard, no evidence to indicate that the land was in use for agriculture or that it served any purpose associated with agricultural activity nearby.

21. The Council maintains that the change of use of the land from agriculture to use for recreation and leisure purposes occurred when the two cabins were erected

on the land. Prior to this occurring they maintain that the character of the land had not changed from when it was part of the Hillhouse Farm planning unit. Though they accept that Hagg Hill Hall is now a residential planning unit they maintain that the land was itself a planning unit which retained its lawful agricultural use until the two cabins were erected.

22. With regard to the claims of Mr Brown and the Appellant regarding use of the land for recreation purposes the Council maintains that "The land would still have been a field upon which the grass grew. Its use for passive activity from time to time does not mean that there was a material change in its use. More would have been needed to bring about change to the character of the land. However, there is no evidence of any building or structures being erected, no change(s) to its boundaries nor any reduction in the extent of grass for example".

23. A material change of use can occur without the erection of buildings or structures. Since the mid-1950's the land has been in the same ownership as Hagg Hill Hall, which from then has been a house not a farmhouse. The land has been available for use for recreation purposes associated with residential occupation of the house at all times since then. Though the recreation use will have been intermittent it will have been regular and will not have required the cessation or displacement of any agricultural activity.

24. The Council has not provided any evidence to cast doubt on the statements made by the Appellant and Mr Brown in their statutory declarations. The grass on the land continues to grow, as it has since there was, on the balance of probability, a material change in the use of the land, no later than the mid-1950's, from agriculture to use for recreation and leisure purposes. The material change of use occurred more than ten years before the date of issue of the enforcement notice and has not been abandoned. The ground (d) appeal thus succeeds and the ground (a) and (g) appeals do not need to be considered.

Appeal C

25. The two garden cabins that are the subject of the appeal have been found to be lawful in Appeal A. No further action will therefore be taken in connection with Appeal C.

John Braithwaite

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr M Humphreys	Appellant
Ms L Trollope	Planning Consultant
Mr A Shepherd	Heritage Consultant

FOR THE LOCAL PLANNING AUTHORITY:

Ms S Wraith	Planning Consultant
Ms R Waddington	Conservation Officer

INTERESTED PARTIES:

Mr D Hancock	Ward Councillor
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DOCUMENTS

1. Sales particulars of Hagg Hill House Farm dated 2001.
2. Historic record of ownership of Hagg Hill Hall.
3. Sales particulars of Hagg Hill Estate dated 1947.
4. Plan attached to Document 3.
5. Costs application by the Appellant.