
Appeal Decision

Hearing Held on 8 May 2024

Site visit made on 8 May 2024

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date 24 May 2024

Appeal Ref: APP/R1038/C/23/3331303

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 by the Planning and Compensation Act 1991.
- The appeal is made by Melvyn Humphreys against an enforcement notice issued by North East Derbyshire District Council.
- The enforcement notice was issued on 31 August 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the Land from agriculture to residential use. The following works are integral to and have facilitated the material change of use:
 - 1) Subdivision of a building (the garage/workshop building) by the installation of an internal wall at ground and first floor level to form residential accommodation within its rear part. The garage/workshop building is shown cross hatched on the attached plan. The part of the building in residential use is shown coloured brown on the attached plan;
 - 2) Construction of an extension to the garage/workshop building to form a sitting lounge area and kitchen including the installation of kitchen sink and kitchen units and appliances and the installation of a log burner and chimney. The extension is shown coloured blue on the attached plan;
 - 3) Construction of a clock tower to the roof of the garage/workshop building;
 - 4) Installation of WC, bath and washbasin within the first floor of the garage/workshop building and the installation of partition walls to form a bathroom and bedrooms;
 - 5) Installation of an internal staircase;
 - 6) Installation of double glazed first floor windows to the south east elevation of the garage/workshop building;
 - 7) Construction of a summerhouse shown coloured yellow on the attached plan;
 - 8) Construction of a building housing a bar and pizza oven shown coloured orange on the attached plan;
 - 9) Construction of a building with seating shown coloured green on the attached plan;
 - 10) Construction of a building housing a hot tub shown coloured pink on the attached plan;
 - 11) Construction of a pond shown hatched on the attached plan;
 - 12) Placing on the land of statues, barrels, garden pots, garden furniture and garden ornaments;
 - 13) Installation of paving, paths, steps, table, seat and decking in the outside area;
 - 14) Installation of external lighting;
 - 15) Installation of a sewage/septic tank system. The septic tank is located in the position marked with a "X" on the attached plan.
 - 16) Construction of a toilet building marked with a "Y" on the attached plan.
 - 17) Siting of a container in the position marked with a "Z" on the attached plan.
- The requirements of the notice are:
 - a) Cease the residential occupation and residential use of the Land.
 - b) Remove the internal wall within the garage/workshop building at ground and first floor level that has brought about the subdivision of the garage/workshop building to

- form residential accommodation within its rear part.
- c) Remove the internal staircase.
 - d) Demolish the extension to the garage/workshop building (shown coloured blue on the attached plan) that forms a sitting/lounge area and kitchen. The works shall include removal of the kitchen units and appliances, log burner and chimney and the demolition of the structure of the extension.
 - e) Remove the clock tower to the roof of the garage/workshop building.
 - f) Remove the WC, bath and washbasin within the first floor of the garage/workshop building and remove the partition walls that form the bathroom and bedrooms.
 - g) Remove the double glazed first floor windows in the south east elevation of the garage/workshop building.
 - h) Demolish the summerhouse (shown coloured yellow on the attached plan).
 - i) Demolish the building coloured orange of the attached plan. The works shall include removal of the bar and pizza oven and demolition of the structure of the building.
 - j) Dismantle the building with seating shown coloured green on the attached plan.
 - k) Demolish the building shown coloured pink on the attached plan. The works shall include the removal of the hot tub and demolition of the structure of the building.
 - l) Remove the pond shown hatched on the attached plan by the removal of all materials used for its construction. Infill the resultant void with sub soil and top soil.
 - m) Remove from the Land all statues, barrels, garden pots, garden furniture and garden ornaments.
 - n) Remove from the Land all paving, paths, steps, seat, table and decking in the outside area.
 - o) Remove from the Land all external lighting.
 - p) Remove from the Land the septic tank marked with a "X" on the attached plan and associated sewage system. Infill the resultant void with subsoil and topsoil.
 - q) Demolish the toilet building marked with a "Y" on the attached plan.
 - r) Remove the container marked with a "Z" on the attached plan from the Land.
 - s) Remove all demolition debris from the Land except the stone used for the construction of the building coloured green which shall be stored on the Land. Re-instate the appearance of the Land to that of an agricultural building and grass field.
- The period for compliance with the requirements is:
 - Step a) Six months;
 - Steps b) – r) Seven months;
 - Step s) Eight months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (c) (d) (f) 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 as amended.
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Decision

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

Application for Costs

2. At the hearing an application for costs was made by the Appellant against North East Derbyshire District Council. This application is the subject of a separate decision.

Procedural Matter

3. The appeal was heard at a hearing. However, evidence at the hearing was restricted to matters relating to the notice and grounds (c), (f) and (g). It was agreed that I would determine the ground (d) appeal based on the papers

submitted during the appeal process, including statutory declarations, and on which both parties had an opportunity to make written representations.

Appeal on ground (c)

4. The ground of appeal is that matters alleged in the notice do not constitute a breach of planning control. On this legal ground of appeal, the onus of proof is on the Appellant to make his case and the test is the balance of probabilities.
5. There are two issues which are relevant to determining whether what has been alleged in the notice is a breach of planning control. Firstly, what planning unit does the land attacked by the notice belong to. Secondly, whether or not there has been a material change of use of any of the land attacked by the notice to residential use and if there has whether that constitutes a breach of planning control.

Planning Unit

6. Hagg Hill Hall, formerly known as Hagg Hill Farm and Hillhouse Farm, originated as a historic farmstead with evidence of occupation during the 17C by a family of Yeomans and farmers. Auction details dated 20 September 1947 refer to "The attractive residential farm with period stone residence, two entrance lodges, extensive farm buildings and outbuilding, 114 acres, 3 roods and 9 perches of productive land."¹
7. Hagg Hill Farm, with 60/70 acres of farmland, was purchased by the Brown family in 1956. They continued to farm the land and during their occupation they removed the orchard which had previously been established on the Land the subject of this appeal. A substantial garage/workshop building was also erected on that Land, replacing a smaller outbuilding. Mr John Brown states that he and his sister utilised the former orchard in association with the farmhouse as a play area. In addition, during that time a rockery feature and connecting stone steps were added which ran the length of the adjoining lawned area to the West.² The Council do not dispute Mr Brown's evidence.
8. In 2002 the house and farm were sold to Cottage Style Homes. The historic farm buildings (Units 1-6) were converted to residential properties and other parcels of land/paddocks were sold off. The Appellant occupied the Hall, whilst carrying out renovations to it. The garage/workshop was utilised, in part as a joinery workshop associated with those works of renovation. The garden land surrounding the Hall, the service/courtyard to the East of the Hall and adjacent former stable buildings, garage/workshop and former orchard area to its South, were all utilised in association with the residential occupation of the Hall and formed a single planning unit.
9. From 2010 Hagg Hill Hall has been let out as holiday accommodation. Whilst I understand the Council are currently investigating whether a material change of use may have occurred in relation to how that residential property is now utilised, I do not have details of that investigation, and it is not a matter before me in this appeal. Nevertheless, from 2010 it became necessary for the Appellant to find alternative accommodation to reside in during periods when the Hall was being let out (mainly at weekends). The Appellant states that he moved his belongings and personal possessions into the part of the

¹ Appendix 6, Local Planning Authority Statement of Case.

² Statutory Declaration of John Brown dated 14 February 2024 (SD).

garage/workshop which is attacked by the notice and now known as the Annex, during December 2010. At that time the building had a toilet, washing facilities and bedroom/crash pad area on the first floor, and was in use as a workshop and staff facilities in association with the Hall. Shortly after, a kitchen sink, cooker and fridge freezer were installed in the Annex, and over the next few years works were undertaken to upgrade the building. Those works included re-wiring, new windows, new roof/skylights, cavity wall insulation and a new bathroom was installed.³ During those years a mobile home was also brought onto the Land and used as office/reception in relation to the running of the holiday let. On occasion the mobile home was also used to sleep in, for example, when the building was being re-roofed.

10. From the evidence before me, during those years, and up until 2016/17, the Appellant continued to reside in the Hall when it was not let out, at other times he resided in the Annex and mobile home. The building remained in use as a workshop area, including laundry and staff facilities, and part of it was now converted to provide residential accommodation for the Appellant. The Appellant continues to run the holiday let operation and maintain the Hall and its grounds with other staff. He confirmed at the hearing that he was employed as a member of staff by Cottage Style Homes.
11. During 2017/2018 a substantial conservatory was added to the southern elevation of the Annex and the mobile home was removed from the Land. The conservatory has been fitted out with a full kitchen, new fireplace/stove and it functions as a living/kitchen/dining area. The downstairs accommodation in the Annex also includes an office area for administration of the holiday let and maintenance of the Hall. A bedroom and bathroom have been more recently added downstairs to assist with the Appellant's mobility. The Appellant contends that he moved full time into the Annex in 2016 and has continued to live there as one of the members of staff at the Hall, helping to maintain and run the holiday accommodation which includes a swimming pool, hot tubs and garden area.
12. The workshop and the residential accommodation in the Annex are interlinked, with the living accommodation being primarily accessed from within the ground floor of the workshop/garage area. The garage/workshop area is utilised for storage, staff facilities, including washing machines/laundry facilities and a fridge freezer. These facilities are also utilised by the Appellant in association with the adjoining living space and with the running of the holiday let business. A note from a Council Tax Officer, who had undertaken a visit on 25 February 2021, indicated that the accommodation comprised a laundry room and storage, living room/office, reception/dining/kitchen and sale display, gym/bedroom, second bedroom, WC/bathroom and noted that the bathroom facilities and kitchen were also shared by seven employees.⁴
13. Furthermore, the containers in the garden area to the rear of the Annex are utilised to store garden tools/maintenance equipment/lawnmowers and furniture and are utilised in connection with the Hall and its gardens, including the Annex. The service/courtyard area provides vehicular access and parking to the Annex, including the workshop, and there is pedestrian access from this

³ Affidavit Melvyn Humphreys, dated 14 February 2024; Statutory Declaration, Frazer Ryan Humphreys, dated 25 January 2024; Statutory Declaration Julie Holmes, dated 14 February 2024; Statutory Declaration Lindsay J Taylor dated 30 January 2024.

⁴ LPA comments on Appellant's Statutory Declarations.

yard to the Hall via a flight of steps. Similarly, there is stepped access between the garden areas which lie to the South of the Hall and the Annex.

14. From the evidence before me, including what I heard at the hearing and observed on my site visit, the Hall, garage/workshop with the Annex, service/courtyard, former stables and land to the South of the Hall/Annex remain as a single planning unit. The living accommodation provides a residence for a member of staff and its use as such supports and is ancillary to the use of the Hall. There remains a physical connection between the Hall and the garage/workshop and Annex, and their uses are functionally related. A new planning unit has not therefore been created and no material change of use has occurred in that regard.

Material Change of Use

15. The Land the subject of the enforcement notice is, as alleged in the breach of planning control, in residential use. For the reasons set out above, the residential use is, to my mind, for purposes associated with the use of Hagg Hill Hall. It is the Appellant's case that the Land has been in use by successive residents of the Hall/Farmhouse as garden land since before the Town and Country Planning Act 1947 came into force. He therefore maintains that the lawful use of the Land is garden. If that is not the case, he argues that he has utilised it in association with the Hall since his occupation in 2002 (ground (d)).
16. Mr Brown's SD confirms that when his father bought the Farm in 1956 the Land contained an orchard. We heard at the hearing that fruit from orchards would often be used as pig feed on a farm and thus part of its agricultural use. In later years Mr Brown confirms that the orchard was removed, and he remembers playing on this area. This recollection is supported by Historical Maps, which confirm the removal of the orchard.⁵ However, having regard to the auction details for the estate, dated September 1947, there is no evidence to support the claim that the Land was in use as a garden before the 1947 Act came into force.

Conclusion on ground (c)

17. A material change of use of the Land to residential use in association with the Hall took place many years ago (1950/60), when the Hall was occupied by Mr Brown's family and the orchard removed. There has been no planning permission granted for a change of the use of this Land to residential use, and a breach of planning control has occurred. The appeal on ground (c) must therefore fail.

Appeal on ground (d)

18. In relation to a breach of planning control consisting of a material change of use of land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach.
19. The main issue is whether the change of use of the Land to residential use took place on or before 31 August 2013. The burden of proof lies with the Appellant on this legal ground and the test is the balance of probabilities.

⁵ Appendix 4, Local Planning Authority Statement of Case.

20. As set out above, 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 John Brown's parents purchased the farmhouse and other elements of the farmstead. It is Mr Brown's evidence that the Land the subject of this appeal had an orchard on it, which his parents utilised as a domestic orchard, this was then removed in the late 1950's to make a wholly grassed area which throughout his childhood was a play area in association with his house. There is, in that 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. Furthermore, when Cottage Style Homes purchased the property from Mr Brown's family in 2002, and subsequently converted the historic barns for residential use and sold off the paddocks, the planning unit was further subdivided. Hagg Hill Hall, the garage/workshop (Annex), service/courtyard, former stables and land to the South of the Hall/Annex became a single planning unit in residential use. It is clear and not disputed by the Council that since Hagg Hill Hall was first occupied by the Appellant there is no evidence of it, or the Land and building the subject of this appeal, being in use for agriculture. The garage/workshop has been utilised in part as a joinery workshop by the Appellant, but there is no evidence that this was a commercial enterprise. It was utilised in association with renovations to the Hall and subsequently used by staff in association with the Hall, including by the Appellant.
22. Since at least 2002 the Land has been available for residential use associated with the residential occupation of the main house. The Council's evidence relies on aerial images, which from the year 2000 show the Land as rough grassland with at various times nondescript items, debris and vehicles on the Land, including the storage containers. The mobile home is evident in those aerial images between 2013-2016. For the Land to have a residential use it does not have to be grassed lawn or have garden buildings on it. During an investigation in relation to the mobile home on the Land, the Council considered that it was utilised in association with the residential use of the Hall. This is confirmed in the Council's statement of case where it is stated that during a visit in July 2014, it was understood, that the mobile home was providing ancillary staff accommodation and was utilised, together with the garage/workshop, in connection with the use of the Hall.
23. The remaining evidence from the Council relates to when the building was first occupied as residential accommodation by the Appellant. However, the alleged breach relates to a material change of use of Land to residential use. I am satisfied that a new planning unit has not been created and therefore no material change of use to a separate primary dwellinghouse has taken place. The Land and buildings remain in a single planning unit with Hagg Hill Hall, and provide staff facilities and accommodation associated with, and ancillary to the use of the Hall.
24. The enforcement notice alleges a material change of use of the Land to residential use, and whilst it does not allege operational development, it does identify building operations which the Council believe facilitated that use. In that regard it refers to works to convert and extend the Annex, new buildings within the garden area, including a pond, container and foul sewage provision. Those works are predominantly operational development, and having regard to

my findings that a new planning unit has not been created and that the Land has a lawful residential use through the passage of time, that operational development has not facilitated any material change in use of the Land.

25. The material change of use of the Land from agriculture to residential use occurred more than ten years before the issue of the enforcement notice and has not been abandoned. The ground (d) appeal thus succeeds.

Other Matters

26. If any aspect of the development were to be considered against the four-year time limit for taking enforcement action, then the Council suggest that the Connor⁶ principle should be taken into account. However, in this case, the breach of planning control alleged was a material change of use of the Land and for which a ten-year period is the relevant timescale for taking enforcement action. Whilst operational development has taken place without the benefit of planning permission, considering the allegation in the notice and my findings as set out above, this is not a matter for me in this appeal.

Overall Conclusion

27. For the reasons given above, and having taken account of all other matters raised, I conclude that the appeal succeeds on ground (d). Accordingly, the enforcement notice, once corrected, will be quashed.
28. In these circumstances the appeals on grounds (f) and (g) set out in section 174(2) to the 1990 Act as amended do not fall to be considered.

Elizabeth Pleasant

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Linda Trollope	Planning Agent
Andrew Shepherd	Andrew Shepherd Architect
Melvyn Humphreys	Appellant
Frazer Ryan Humphreys	Appellant's Son
Councillor David Hancock	NE Derbyshire Ward Councillor

FOR THE LOCAL PLANNING AUTHORITY

Freddie Humphreys	Kings Chambers, Manchester
Susan Wraith	Planning Consultant, 4 Planning Delivery

⁶ *Regina v National Insurance Commissioner, ex parte Connor* [1981] QB758 held that a person cannot benefit from their own wrongdoing.

Rebecca Waddington

Conservation Officer, North East Derbyshire
District Council

Julian Hawley

Principal Planning Enforcement Officer

Documents submitted at the Hearing

- 1) Legal Note on behalf of the Appellant
- 2) Appeal Decision Ref: APP/R1038/A/01/1076185
- 3) Email correspondence in relation to foul water system, NE Derbyshire and Bolsover Joint Environmental Services Team, dated 30.04.24
- 4) Appeal Decision Ref: T/APP/R1038/A/99/1031266/P4

Documents submitted after the Hearing

- 1) Council's list of suggested conditions and the Appellant's response to them.