



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date 9 August 2024

Appeal Ref: APP/W1850/C/24/3340119

Land at The Prospect Stockman's Cabin, The Prospect, Ledbury, Herefordshire HR8 1QL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Prospect Poultry against an enforcement notice issued by Herefordshire Council.
 - The notice was issued on 6 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a wooden building for residential purposes.
 - The requirements of the notice are to: 1. Cease the use of the building for residential purposes. 2. Remove the building from the land.
 - The periods for compliance with the requirement 1 is 30 days and with requirement 2 is 180 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) of the Town and Country Planning Act 1990 (as amended) (the Act). Since an appeal has not been brought on ground (a), an application for planning permission is deemed to have lapsed.
-

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - i. Deleting the breach of planning control under heading 3 in the notice and substituting it with:

"Without planning permission, the material change of use of the building to a single dwellinghouse."
 - ii. Deleting requirement 2 under heading 5 "What you are required to do" and substituting it with "2. Remove from the building the bed/sofa, shower and fitted kitchen units including the fridge/freezer and cooker."
2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Matters concerning the notice

3. As served, the alleged breach of planning control is the erection of a wooden building for residential purposes. It is clear from the evidence presented by both parties that the building was formerly a moveable equestrian stable/field shelter referred to by the Council as a 'donkey shack'. A previous enforcement notice appeal determined that the stable/field shelter had become a building due to its fixation and permanence.
4. There is no dispute that the land may be used for agricultural purposes. This would appear to be its pre-existing lawful use. While the notice alleges operational development, from the evidence submitted, I consider that breach of planning control is the material change of use of the building which s55(1) of

the 1990 Act describes as “development” for which planning permission is required.

5. Given the manner in which arguments have been advanced by the parties, the notice was correctly interpreted, and it has not caused significant confusion. The recipient could reasonably tell from the four corners of the issued notice what had gone wrong and what needed to be put right. Accordingly, I will correct the notice to more accurately reflect the position and I consider that by doing so, no party would be subject to injustice¹.

Preliminary matters

6. An LDC ref 153302 dated 15 December 2015 was issued to certify the lawfulness of siting a ‘stockman’s caravan’ on the land. This confirmed that the siting of a ‘caravan’ for use as an agricultural worker’s shelter was incidental to the agricultural use of the land and as such did not constitute a material change of use of the land and did not require planning permission. To clarify what was considered lawful, the LDC stated that the use as an agricultural worker’s shelter did not involve the provision of overnight sleeping accommodation or use as a main residence.

Ground (d)

7. To succeed on ground (d), the appellant must show that the material change of use took place four or more years prior to the issue of the notice and continued after the date of change without significant interruption. Once it had acquired lawfulness, it would be too late for the Council to take enforcement action so long as the use had not subsequently been abandoned, superseded by a further material change of use, or a new planning unit formed². In legal grounds of appeal such as this, the burden to make the case rests with the appellant and the test is one of a balance of probabilities.
8. Where an enforcement notice is issued under Section 171B(4), any ground (d) appeal must be considered on the basis of whether the development was lawful on the date the first notice was issued. That is how the ‘second bite’ provisions operate to stop the clock in proceedings. I am satisfied that the first notice concerned essentially the same breach and site. That notice was issued on 30 May 2023, and this becomes the relevant date for the purposes of the ground (d) appeal. Therefore, the appellant must show that the alleged breach of planning control, as amended, had occurred by 30 May 2019 and had continued without significant interruption for the relevant period³.
9. The appeal relates to a wooden building originally used as a field shelter/stable. While there is contradictory evidence from the appellant regarding the permanence of the building, and I note some correspondence in which she asserts that it remains mobile, the structure has been found to be a building due to its permanence and physical attachment. From the presented evidence and as a matter of fact and degree, it seems that this probably occurred when it was positioned on its concrete base and then connected to services. Aerial images show the building in situ dating from 2016.

¹ Section 176 of the Town and Country Planning Act 1990

² *Panton & Farmer v SSETR & Vale Horse DC* [1999] JPL 461

³ Section 171B(2) of the Town and Country Planning Act 1990

10. The building, which has a front elevation of domestic appearance, has electricity and water and is connected to a septic tank. The internal space is modest. One room provides living accommodation in the form of a kitchen and living/bedroom area. A separate shower room and toilet adjoin but are both accessed externally. There is a narrow width of decking to the front and a post and rail fence separates it from the adjacent field. The building is physically attached to further timber structures that are used in association with the poultry that are kept on the land.

The appellant's case

11. The appellant purchased the land in 2007 and installed four field shelters for horses and donkeys grazing the land. In the same year the appellant purchased her home 'The Moats' which is located approximately 3 miles from the appeal site. The appeal land was named The Prospect and was registered for poultry keeping in 2015. The appeal building was originally used in association with the agricultural use of the land.
12. Works to change the use of the building are said to have commenced in late 2017 and completed by January 2018. The residential use of the appeal building is claimed to have commenced when the appellant began renting rooms at her main residence, The Moats, for B&B accommodation. This is stated as having continued until March 2022.
13. From March 2022 the appeal building was said to be let to guests through the 'tourist season' during which time the appellant moved back to The Moats. The appellant claims she moved back to reside in the appeal building over winter 2022, returning it to holiday accommodation for guests in March 2023. This arrangement is said to have ended in September 2023 when renting the appeal building to visitors became incompatible due to increased poultry keeping.
14. The appellant therefore claims that, having moved into the appeal building in January 2018, by January 2022 the lawful use of the building as a single dwellinghouse had been established and the breach of planning control, as alleged, was immune from enforcement by virtue of s171B(2) of the Act.

The evidence

15. To support the claim of residential use of the appeal building, a screen shot is provided which details rooms let to guests at The Moats. The screenshot shows one twin room rented on 29 October 2017, one double rented on 13 January 2018, one super-king en-suite rented on 20 January 2018 and one twin room rented on 8 February 2018.
16. It also shows that on 2 January 2018 the entire house was rented to guests. The booking was for seven guests for four nights to 6 January 2018. During this short period, the appellant states that she vacated her home and moved into the appeal building, which was said to be complete with all the basic requirements to enable it to be occupied as a dwelling. From this point, to increase her income, the appellant claims that she made another bedroom at The Moats available for guest letting and she resided at The Prospect. Staying there overnight was stated as making it easier to combine attending the animals, which she did twice a day, with running the B&B at The Moats.
17. The appellant has provided various receipts/invoices for items such as French doors, a portable stove, wooden doors, a 15kg gas cylinder, an Ikea foam

mattress, insulation and glazing. All are dated December 2017. A letter from a friend states that the appellant bought a stove from his late mother in December 2017 and when they delivered it, they saw that the conversion of the building to living accommodation was almost complete.

18. A letter dated 1 May 2023 states that the conversion of the 'donkey shed' to a 'cabin' was in progress when they visited towards the end of 2017. The letter states that the appellant, having vacated her house for guests, "continued to occupy the cabin except occasionally in Summer 2022 and 2023 when she let it to other people for a few days". A friend who stays at The Moats B&B on a regular basis to attend events at Malvern showground states in his letter dated 26 April 2024 that the appellant would 'slip away there at night leaving the dining table laid, getting back really early in time to serve breakfast'.
19. Another letter dated 25 April 2024 notes that when they stayed at The Moats and looked after the animals in September 2019, the cabin was comfortable with the means to make something to eat and drink, with a bed and a bathroom. When they visited again (staying at The Moats), they observed that more work had taken place 'making the cabin a bit fancier' and that the appellant was 'hoping to let it to guests come spring to recover lost income'. The writer notes that they stayed at the appeal building an additional 3 times between April 2023 and October 2023 after which the appellant went back there to mind the livestock overnight. They state that by March 2024 the large number of livestock and mud meant that it could not be let visitors.

Analysis of the presented evidence

20. While there is no definition of a dwelling within the 1990 Act, in planning terms, a dwelling or dwellinghouse is defined as a self-contained building or part of a building used as residential accommodation, and usually housing a single household. Caselaw⁴ has established that to be a dwellinghouse, a building must have the necessary facilities required for day-to-day private domestic existence.
21. While the appeal building may have all the necessary domestic facilities, it is for the appellant to show that it was *used* as a single dwellinghouse for the requisite period. Although the appellant states that she has used the appeal building for residential purposes, there is a lack of detail demonstrating that The Moats did not remain the appellant's main residence.
22. If the appeal building was the appellant's main residence between 2018 and 2022, one would expect there to be evidence in the form of official documents addressed to the appellant at The Prospect relating to matters such as utility bills showing electricity and water usage, Council Tax, bank or credit card statements, vehicle insurance documents.
23. Furthermore, no information has been presented to indicate how many visitors have stayed at The Moats, how often those visits took place or how long people stayed in her main residence. No supporting information such as marketing or accounts to show a rental income derived from The Moats is provided that would substantiate the claim that the main residence was let to B&B guests and that take up of those rooms directly led to the appellant living at the appeal site.

⁴ *Gravesham BC v SSE & O'Brien* [1982]

24. There is considerable uncertainty in the evidence presented. The onus rests with the appellant to demonstrate her case and, in this instance, there is a lack of clarity and limited corroborative evidence to support her claims for the purposes of immunity. Overall, I consider that although the appeal building may have provided all things necessary for day-to-day living, the appellant's residential use of the building was intermittent and most likely for occasional overnight stays more akin to camping out, and for use during the daytime as shelter when caring for the animals on site.
25. Notwithstanding this, it seems to me that a material change of use of the building for independent residential purposes has occurred and this most likely commenced when it was utilised as holiday accommodation for guests in Spring 2022. Correspondence from the Parish Council appears to corroborate this position. It states that the appeal building had been openly marketed for holiday accommodation since early 2022.
26. In these circumstances, I find the appellant's evidence falls short of discharging the burden proof and I consider that, on the balance of probabilities, the use of the appeal building as a single dwellinghouse has not been affirmatively established for the requisite period. The breach of planning control, as amended, is not immune from enforcement action and the appeal on ground (d) therefore fails.

Ground (f)

27. The basis for an appeal on ground (f) is that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control, or any injury to amenity which has been caused by the breach. The appellant argues that the building has been on site for more than 10 years and the notice goes further than necessary to remedy any breach. It is suggested that a requirement to cease the residential use of the building would allow the building to remain and be used for purposes ancillary to the agricultural use of the land.
28. From the evidence before me, the building was 'erected' for the agricultural use and well before the material change of use enforced against. It has achieved immunity by virtue of s171B(1) in its own right and can be used for the lawful agricultural use of the land. The purpose of the notice is to restore the land to its condition before the breach took place, and as the building was there before the breach occurred its removal is not necessary to remedy the breach.
29. Notwithstanding this, it is deemed necessary, in lieu of its demolition, for the removal of facilities that enable the use of the building as a single dwellinghouse. Where an enforcement notice is concerned with a material change of use, it may not only require the removal of works which would otherwise be immune, but also the removal of those which might not amount to development at all but were integral to and had facilitated an unauthorised material change of use⁵.
30. Therefore, there is partial success on the ground (f) appeal.

S A Hanson INSPECTOR

⁵ *Bowring v SSCLG & Waltham Forest LBC* [2013] EWHC 1115 (Admin)