

Appeal Decisions

Site visit made on 17 September 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 September 2024

Appeal A Ref: APP/Q1153/C/23/3314436

Appeal B Ref: APP/Q1153/C/23/3314437

**Land at Waterhouse Farm, Runnon Moor Lane, Hatherleigh,
Okehampton, Devon, EX20 3PL**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mrs Josephine Willers and Appeal B by Mr Sam Willers against an enforcement notice issued by West Devon Borough Council.
 - The notice was issued on 8 December 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the land, from use for agricultural to a mixed use of agricultural and for the siting of a mobile home for residential purposes, together with the erection of a single story timber lean-to and timber shed (shown in the approximate position marked with an X on the plan and which are shown in photographs 1, 2, 3 and 4 annexed to the notice), which are integral to and facilitate the unauthorised material change of use of the land; and the storage of domestic paraphernalia as shown in photographs 1 and 2 annexed to the notice.
 - The requirements of the notice are :
 - (i) Stop the residential use of the land and remove all domestic paraphernalia from the land;
 - (ii) Remove from the land the mobile home and the single storey timber framed lean-to and shed.
 - The period for compliance with the requirement is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (c), (d) of the Town and Country Planning Act 1990 (as amended).
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

Application for costs

2. An application for costs have been made by the appellants. This is the subject of a separate decision.

Preliminary Matters

3. The appellant claims that the notice is invalid as the notice makes no distinction between operational development and change of use, which are

different forms of development subject to different periods of immunity from enforcement action. It is alleged to be defective and cannot be corrected without causing injustice.

4. I consider the allegation is clear and precise. It is neither hopelessly ambiguous and uncertain such that the recipient could not tell in what respect it was alleged the land had been developed without permission. Whilst the appellants have chosen to set out their case based on the development being a building and not a change of use this has no bearing on the validity of the notice.
5. The notice is clear on its face and it meets these statutory requirements in respect of its drafting. I have therefore determined the appeal on the grounds made.
6. The appellants have not submitted an appeal on ground (a) as they claim that the building that exists is not a change of use and therefore not caught by the notice. The appellants state that there is one structurally coherent building constructed in one, ongoing operation, the entirety of which has been used for residential purposes. Irrespective of my findings over whether the development comprises a change of use or operational development the appellants were not precluded from lodging a ground (a) appeal against what is alleged in the notice.
7. Statements of Truth have been submitted by Josephine Louise Willers, Sam David Willers and Nick Gard, all signed, declared and dated 28th of April 2023.
8. These statements indicate that the caravan was transported to the site on the 17th October 2017. Subsequent building work was completed by the end February 2018 and consisted of the erection of a bedroom structure on a concrete pad and a link corridor used as an entrance lobby and storage space.

Main Issue

9. This appeal hinges on whether the matters alleged relate to operational development involving the construction of a building more than four years prior to the service of the notice or whether the development represents a change of use of land for residential purposes which occurred less than 10 years prior to the notice.

The appeal on ground (b)

10. An appeal on this ground is that the matters alleged have not occurred in that the appellants case is that the erection of a building does not constitute a material change of use of the land. In support they state that the nature and character of the construction itself, its materials and methods; its permanence; its fixation onto and into the ground; and the evidence submitted by an engineer, is consistent with the legal definition of a building.
11. At my site inspection I observed what was clearly a mobile home with sub-frame and wheels and supported on blockwork. It has been modified by the removal of 'lateral structural wall sections' as described by the appellants. It contains a kitchen/living area, bathroom and three bedrooms, one of which is currently used as a home office. The mobile home is connected to water, waste and electricity services. To the rear is a pitch-roofed wooden shed on a

concrete pad used as a bedroom. Between the caravan and bedroom is a covered corridor open to its east side. Adjoining the bedroom and part of the side of the caravan is a wooden lobby corridor and storage area supported on blocks.

12. The Council contends that an unauthorised material change of use has occurred and the operational development described in the enforcement notice facilitated or was integral to that use. They rely on the response of 7 June 2022 by Nicholas Gard to a s330 notice that the use of the land was a mixed-use of agriculture and residential use.
13. I find no evidence to indicate that the Council's assessment of the nature of the development is incorrect. In assessing what constitutes a building operation rather than a change of use, all relevant considerations need to be taken into account, in particular, the factors of size, degree of physical attachment and permanence.
14. The general appearance of the structure is undoubtedly that of a mobile home with a lean-to at one side and a shed at the rear. It appears to satisfy the definition of a mobile home in s29(1) of the Caravan Sites and Control of Development Act 1960. Whilst the add-ons increase the overall size of the structure, they are nevertheless subsidiary to the mobile home. The mobile home and lean-to are sitting on blockwork with a minimal amount of attachment to the ground. Whilst some posts may be concreted into the ground, this alone is not of any significance. The nature of and the construction materials of the mobile home and add-ons do not give the impression that the structure has anything but a limited degree of permanence.
15. When the mobile home was originally moved to the site for the purposes of human habitation, a material change of use of the land occurred. The fact that additions of the lean-to and shed were made facilitates that material change of use.
16. As a matter of fact and degree the matters as alleged have occurred and the appeal on this ground fails.

The appeal on ground (c)

17. An appeal on this ground is that the matters do not constitute a breach of planning control. The appellants maintain that as a building has been constructed, and no change of use has occurred, then there is no breach of planning control. They also claim that the Council's inspection of the development was not subject to adequate investigation and failed to have seen permanent fixings, typical timber framed construction methods, the adaptation of the mobile home, concrete floors and masonry piers.
18. The report of the structural engineer (Gilham Consulting Ltd) identifies the mobile home as a 36 ft by 12 ft Bluebird Caprice MkIII and describes the constructional features of the development. The view is expressed that the towing or lifting the mobile home would not be possible without damage due to the removal of internal walls which have affected its structural integrity. The timber structures are intentionally and physically connected to the mobile home and are mutually dependent for structural stability. The appellants

attach weight to the fact that the whole structure cannot be moved as a single entity and even if disconnected the mobile home would not be capable of being lifted or towed.

19. Even though internal alterations have been carried out to the mobile home, it does not follow that the mobile home is so structurally affected that it cannot be disconnected from the add-ons and moved, lifted and transported. It has not ceased to be a mobile home and meets the requirements of mobility set out in the statutory definition.
20. In reaching this conclusion, I have had regard to the caselaw and the appeal decisions referred to by the parties.
21. The appellants have not shown on the balance of probabilities that the development that has occurred does not constitute a breach of planning control. The appeal on this ground fails.

The appeal on ground (d)

22. An appeal on this ground is that at the time the notice was issued, no enforcement action could be taken as the four year and not the ten year immunity period from enforcement action applies.
23. The allegation relates to a material change of use of the land and the time limits set out in s171(B) (3) apply. This means that it needs to be demonstrated that the unauthorised development occurred and continued for a ten year period prior to the service of the notice. The construction of the lean-to and the shed are integral to and facilitate the change of use and are subject to the same ten year period. The appellants own evidence indicates that the change of use commenced on 17 October 2017 and consequently falls short of the period of immunity.
24. The appeal on this ground fails.

Conclusion

25. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

P N Jarratt

INSPECTOR