



Appeal Decision

Site visit made on 26 November 2024

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2024

Appeal Ref: APP/K1128/C/23/3331782

Land at Morleigh Hill, Moreleigh Road , Harbertonford, Devon TQ9 7TS

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Joanna Sullivan against an enforcement notice issued by South Hams District Council.
 - The notice was issued on 21 September 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, operational development in the form of the erection of a timber building.
 - The requirements of the notice are:
 - Remove the unauthorised building;
 - Remove all associated materials from the land so it is cleared and restored to its original condition.
 - The period for compliance with the requirements is: 2 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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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the word "Harberton" within the section 2 (The land to which the notice relates) and its replacement with "Harbertonford" as well as the deletion of the stated grid reference "SX785 5SW".
 - Deletion of the plan attached to the notice and its replacement with the plan attached at the end of this appeal decision.
2. It is also directed that the enforcement notice is varied by:
 - the deletion of the time for compliance of "two months" within section 6 of the notice and its substitution with "six months".

Subject to the corrections and variation, the enforcement notice is upheld.

Preliminary Matters

3. The "Land to which the notice relates" in section 2 of the notice has errors. Firstly, the grid-references on the notice and the plan are not the same and neither is accurate. Secondly, the same section on the notice refers to "Harberton" whereas the site is actually just outside of "Harbertonford".
4. The post-code is accurate on the notice and the detailed position of the site is shown accurately on the accompanying plan which also refers to the correct village name. Section 176(1)(a) of the Act enables me to correct any defect, error or misdescription if I am satisfied that the correction will not cause injustice to either main party. These matters have not prevented anyone

involved knowing where the site is and what building the notice relates to. There has been no injustice due to the errors.

5. I also have a duty to get a notice in order where that it is possible without such injustice. I will therefore delete the map grid-reference, correct the village name and replace the plan with another which does not contain the ambiguity due to the incorrect grid-reference. I have altered the address in the header above as well.

The Appeal on ground (d)

6. The main issue is whether at the date that the notice was issued, enforcement action could be taken with respect to the development enforced against. The time limits for taking enforcement action are set out in s171B of the Act. That is subject to transitional provisions¹ which retain the previous 4 year time limit for a breach of planning control such as this, consisting of operational development, where substantial completion took place before 25 April 2024. In this case the notice was issued on 21 September 2023 and so the material date that the appellant needs to demonstrate substantial completion of the development, is by 21 September 2019.
7. At my site visit, I saw the large timber building which is raised above the level of the field on brick piers, with a sloping roof and large covered veranda on one side that faces towards the road. There is a glazed door out onto the veranda which has a boarded surface, albeit that the boards are not regular in size or shape and have a temporary, makeshift appearance. There is a step-up to the veranda from the field. Another door is positioned on the front elevation that faces towards the village of Harbertonford although there is no step up from the surface of the field meaning that there is a considerable difference in height, making it difficult to use to get into the building. There is also a channel dug into the ground near to the door making it even more difficult to use. Externally, the building is clad with timber boards and the appellant refers to there being a waterproof membrane under those boards.
8. Inside, there is one main room. In one corner there is a small, raised platform with a mattress on it and others stored on their sides next to it. The floor of this room has sheeting over the top of the structure without any final floor-covering. There is a small side-room which contains a WC. Generally, internal cladding is not entirely complete and wall insulation is exposed in some places. A solid fuel stove is in what appears to be a rather makeshift and precarious raised position centrally within the main room with a flue extending through the roof. Close to the stove is a metal 'acrow' prop which appears to support the ceiling and roof which is also clearly leaking in places given the water I saw on the floor. Internal fittings include a large wooden work-top along one side of the room with a sink, drain and cooker-hob as well as some storage. There are electrical sockets around the room. I also saw power tools in the building such as a bench saw which is set up and be ready for use.
9. The Council has provided photographs from a site visit undertaken on 2 August 2019. At that stage, the building is still clearly in an early stage of construction. The photographs show timber framework with the basic shape of the building being obvious but the floor, which is suspended on brick piers

¹ The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024

as it is now, having limited boarding in one section. That section is the main internal room that I saw at my site visit but at that stage the sleeping platform and small toilet room had not been constructed. The photographs show only 1 end wall with any boarding to cover the frame and there is no roof covering, nor, it would appear, any waterproof membrane.

10. The appellant's stated purpose for the building has been a garden/recreational equipment store and summerhouse. My understanding is that it is intended to provide shelter, storage and basic amenities. The current condition of the building therefore includes some unfinished elements and some that have clearly fallen into disrepair, such as the leaky-roof. The building appears to have had some use despite these deficiencies although it looks like it is still a work in progress.
11. The appellant states that the build programme covered a 12 week period commencing on 3 June 2019 and running up to 20 August 2019 when they say the building was substantially completed. The 'statement of account' of the builder who carried out much of the work confirms that a large majority of the funds were received by 10 September 2019. It is also confirmed that only £198.90 remained to be paid which they say is an incidental amount for cosmetic work including the additional external cladding over what was a weathertight building due to the timber frame being wrapped in the waterproof membrane. This information lacks any itemised information about what had been completed by that time and whether that included the internal amenities that are clearly necessary for the intended purpose of the building.
12. An email from somebody else involved in the construction states that they were on site in the summer of 2021 (after the material date) to install the worktop with the recessed sink. Whilst they confirm that the building at that stage was "essentially complete" with running water and electrical wiring, the lack of the sink would indicate that it was not entirely complete for its intended purpose, until at least the work they were undertaking was finished. They also make no comment about what other internal fittings had been installed by that time. Their comments about the overgrown state of the land gives some indication that there had been a lack of use or activity on the site for a while. That suggests that there had been little building activity or use of the building, although I recognise that period they are talking about would have been when there were Covid-19 restrictions.
13. The information provided by the appellant is not precise. From what has been submitted, it seems probable that even if there had been a basic shell by the material date, it was not by that stage completely useable for the intended purpose. In particular, the building lacked the sink and worktop but I also have no evidence about when other facilities were installed that would realistically enable its use as intended such as the toilet, sleeping platform and insulation. The condition of the building currently allows the ingress of water and requires internal props. I have no evidence about whether this is because it had not been made completely weather tight or if it was for another reason. It appears that a significant amount of other work is necessary to finish the building off to the condition required for its use.
14. As a matter of fact and degree the building had not been substantially completed 4 years prior to the issuing of the notice. The appeal on ground (d) therefore fails.

The Appeal on ground (g)

15. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The appellant requests more time than the specified 2 months to comply with the notice, due to the practicalities and costs involved in doing the work as well as because of their caring duties.
16. There is only a steep, narrow pedestrian access into the site. The road close to that access is restricted in width. Parking here with vehicles to take away the material from the site would be challenging with limited alternative parking nearby. Given these physical difficulties, the demolition and removal would need to be done manually with smaller tools rather than large plant and with smaller vehicles rather than larger lorries. As well as being difficult for the appellant, the intensity of work required within the current 2 month period, particularly if it did require the use of larger equipment and vehicles, could significant impact upon other road users. I am also conscious that my decision will be issued during the hardest part of the winter when such work is at its most challenging.
17. Whilst I have no information about the costs of complying with the notice or the appellant's financial circumstances, the practical issues are more obvious. I consider that the requested 6 month period would strike a more reasonable and proportionate balance between overcoming the harm from the development whilst allowing for less intensive demolition process.
18. The appeal on ground (g) succeeds.

Conclusion

19. For the reasons given above, I conclude that the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeal on ground (g) succeeds to that extent.

Andy Harwood

INSPECTOR



Enforcement Notice Replacement Plan

Plan referred to in the appeal decision Ref: APP/K1128/C/23/3331782

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Enforcement Notice Land at Morleigh Hill - 020985

