



Appeal Decisions

Site visit made on 4 February 2025

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 February 2025

Mena Barn, Lanivet, BODMIN, PL30 5HW

Appeal A Ref: APP/D0840/C/24/3346370

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Wayne Sturgess against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 29 May 2024.
 - The breach of planning control as alleged in the notice is the commencement and partial construction of a residential dwellinghouse and the associated material change of use of land from agricultural to residential. The approximate position of the new residential dwellinghouse is outlined in blue on the plan attached to the notice. Also the construction of a decked area surrounding the dwellinghouse and creation of a hardstanding area shown in the approximate area outlined in green on the plan.
 - The requirements of the notice are :
 - 1 Cease the non-agricultural use of the land shaded in orange on the plan.
 - 2 Remove all services connected to the building outlined in blue on the plan; including but not limited to: electric cabling, water pipes, sewage pipes, etc.
 - 3 Demolish and remove from the land, the building outlined in blue on the plan.
 - 4 Demolish and remove from the land, the decking surrounding the building outlined in blue on the plan.
 - 5 Demolish and remove from the land, the hard standing area outlined in green on the plan and restore the land to its former condition before the engineering operations took place.
 - 6 Remove from the land outlined in red on the plan all materials and debris resulting from the residential use of the land shaded in green on the plan.
 - 7 Remove all materials arising from compliance with (1) to (6) above from the land and reinstate the land to its former condition before the breaches took place.
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c) and (f) 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.
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Appeal B Ref: APP/D0840/W/24/3343590

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Wayne Sturgess against the decision of Cornwall Council.
 - The application reference is PA23/03211.
 - The development proposed is a retrospective extension to existing building as self-contained annexe to main dwelling.
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Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the deletion in full of requirement 5 relating to the hardstanding and the deletion in full of requirement 6 relating to the residential use of land shaded green on the plan.

2. Subject to the variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

3. The appeal is dismissed.

The site and relevant planning history

4. The appeal site comprises Mena Barn, a former stable building partly in use as a beauty studio, a single storey 'annexe' building, a decked area to the annexe, adjoining land in residential use and an area of hardstanding used for parking accessed from a private track from the public highway.
5. The appeal site is in single ownership and the extent of the residential curtilage of Mena Barn is clearly distinguishable as being between the stable and the annexe. The annexe has been constructed outside the curtilage on the edge of a field that drops away to the south. It has a low pitched roof and clad in timber. At the time of my site visit, the annexe was occupied although not connected to the stable building as proposed in the planning application.
6. There is no relevant planning history.

The appeal on ground (b)

7. An appeal on this ground is that the alleged breach has not occurred as a matter of fact. The appellant states that the building subject to the notice is an annexe and not a dwelling and therefore he breach has not occurred. It is claimed that the Council has been unreasonable as no consideration has been given to the appellant's circumstances as the annexe is for the appellant's dependent parents with facilities required at ground floor level.
8. The appellant refers to an appeal in Berkshire¹ in which the Council was criticised for the limited scope of its assessment and draws parallels with the appeal subject to this decision. The appellant is critical that the s78 refusal reason makes reference the retention of a dwelling whereas the application was for the retention of a self-contained annexe. Reference is also made to Uttlesford DC v SSE & White [1992] JPL 171 which relates to accommodation in a self-contained unit although it was intended to function as an annexe only. I note that this case relates to a garage used as a residential annexe and as it was in the same planning unit, a material change of use had not taken place. However, as the appellant points out, a fact and degree judgement must be made on the specific circumstances of the case.
9. The fact that the appellant and the Council are using different descriptions for the development is a fact and degree judgement on the nature of the development which they are entitled to make. In this appeal and for the reasons given below, it is clear to me that what has been constructed exceeds what would normally be considered as an annexe in view of its overall size and siting, its self-contained design and its three bedrooms. It is reasonable to describe it as a dwelling.

¹ Mudhall Cottage APP/W0340/W/22/3291473

10. I could exercise my power under s176(1)(a) to correct the allegation to refer to the erection of a building for residential purposes, but this would serve little purpose and in my view is unnecessary.
11. I am satisfied that what is alleged in the notice has occurred as a matter of fact.
12. The appeal on this ground fails.

The appeal on ground (c)

13. An appeal on this ground is that there has not been a breach of planning control in respect of the land shown in orange on the plan attached to the notice as the appellant claims it is in agricultural use. However, a correct reading of the notice shows this land to contain the annexe building, its decked area, residential uses and a car parking area.
14. The appellant also argues that the fallback position of permitted development rights indicates that there is no breach of control in relation to the creation of a hardstanding. Under Article 3(5) of the Town and Country Planning (General Permitted Development) Order, 2015 (as amended). This is a misunderstanding of the position as a breach of control has clearly taken place and the hardstanding facilitates the unauthorised residential use of the land. Whilst it may be the case that agricultural permitted development rights could allow a hardstanding to be created, it is not relevant to a ground (c) appeal as the fallback position can be considered under a different ground.
15. The unauthorised development referred to in the allegation requires planning permission, but no such permission exists. The appeal on this ground fails.

The appeal on ground (a): the deemed application and the s78 appeal

16. An appeal on this ground is that planning permission should be granted for what is alleged in the notice, which at the time of the notice had commenced but not been completed.
17. In respect of the s78 appeal, this indicates a new link between the stable building and its extension as an annexe to the stable building. The stable building is proposed to be converted to create an external access from within the curtilage of Mena Barn via a large hall to the link connection with the annexe. The remainder of the stable building would comprise the studio and an externally accessed store.
18. As the planning issues are similar, I shall deal with them together. The main issue is whether the development is tantamount to a new dwelling in the countryside or whether it is annexe accommodation. A second issue is the effect that the development has on the character and appearance of the countryside.

Annexe or dwelling?

19. Whether the building is an annexe or tantamount to a new dwelling in the countryside is a matter of fact and degree.
20. The Council's Annexe Guidance Note (May 2020) provides useful guidance on considerations that should be taken into account with such proposals. Taking the considerations in turn, the annexe would have a functional link with the main dwelling although this would be limited to some extent due to it by being separated by a distance of 35m and fenced off.

21. Although in the same ownership, it would not be within the curtilage of Mena Barn but on what had been agricultural land south of the former stable. It has a shared access with the public highway.
22. The advice indicates that proposals including more than one bedroom will normally be refused unless there are compelling reasons for a second bedroom. However the unauthorised building has three bedrooms. The annexe is marginally smaller than Mena Barn but considerably larger than the less than 50% of the footprint size of the host building referred to in the guidance. It cannot be described as subservient. It is not modest in size, the level of accommodation appears excessive for an annexe as described in the guidance and it would not be difficult to subdivide the properties into two independent dwellings, notwithstanding the reasons put forward by the appellant for not wishing to do so.
23. I note the appellant's assessment that he is unable to provide the accommodation as an extension to the main dwelling in view of the physical limitations of the site. However, the plot is not small and a more creative approach to the provision of an annexe within the curtilage of Mena Barn could have been possible such as adapting or rebuilding the stable building.
24. The development is contrary to much of the annexe guidance. Whilst the guidance is not part of the adopted Development Plan, it is nevertheless a material planning consideration to which I attach significant weight. The building would appear to be tantamount to a new dwelling in the countryside which should be considered against policies relevant to a standalone dwelling.
25. Policy 3 of the Cornwall Local Plan outlines the hierarchy for housing in the county. As the building is located in open countryside outside a named settlement, housing proposals are approved only where they meet the limited circumstances set out in the Policy. However, the development fails to satisfy these requirements.
26. The Council has referenced a number of appeal decisions in Cornwall, Wales and Hertfordshire² from which attention is drawn to the Inspectors' reasoning in respect of subservient scale and other aspects considered in distinguishing between a dwelling and an annexe. However, whilst the appellant refers to these comparisons as being materially different to these appeals, they are nevertheless useful as background information. The appellant also refers to a further decision which was granted on appeal³ which I note involves the replacement of an existing outbuilding and is clearly distinguishable on its facts to these appeals.

The impact on the countryside

27. Turning to the impact of the development on the character and appearance of the countryside, the unauthorised development introduces buildings and activities associated with residential uses which are intrusive in the open countryside. Despite the materials used in its construction, the annexe has a relatively high degree of visibility and can be seen in the landscape from some distance away when viewed from the vicinity of Polgoda Farm to the south.
28. However, in the absence of the annexe building, Mena Barn would be more apparent in the landscape but its traditional style and construction materials are not

² APP/D0840/W/223297940; APP/D0840/W/18/3199622; APP/N6845/A/18/3197922; and APP/B1930/W/18/3217177

³ APP/D0840/D/22/3296848

harmful. Nevertheless, this would be offset by the undistinguished stable building on the field boundary which would remain visible in the foreground.

29. On balance, the level of harm to the character and appearance of the countryside is significant as it introduces built development in an area where it had previously been absent. I conclude on this issue that the unauthorised development is contrary to Local Plan Policies 12 on design and Policy 23 on the natural environment.

Fallback

30. The appellant indicates that there is a fallback position of permitted development rights under Article 3(5) of the Town and Country Planning (General Permitted Development) Order, 2015 (as amended).
31. The upholding of the notice would logically lead to the area of land reverting back to its lawful use, which is agriculture. The appellant could then benefit from any available permitted development rights if he chose to do so. The impact of the creation of a hardstanding through this manner would be little different to the existing situation, or it could be greater if the appellant chose to increase the hardstanding area. It is likely that the hardstanding would be reinstated in one form or another. As I consider that the level of visual or other harm caused by the existing hardstanding is limited, I will amend the requirements of the notice accordingly.

Conclusion

32. I conclude that the unauthorised development as built or as proposed in the retrospective planning application is contrary to policies in the Cornwall Local Plan, particularly Policy 3 regarding the location of housing and Policies 12 and 23 regarding the protection of the countryside. The imposition of conditions would not overcome the harm caused
33. The appeals on ground (a) and the s78 appeal are unsuccessful.

The appeal on ground (f)

34. An appeal on this ground is that the requirements of the notice are excessive. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach.
35. The appellant believes that requirement 1 to cease the non-agricultural use of the land shaded orange is excessive as it is in agricultural use. This is patently not the case as the unauthorised building, the decking and the hardstanding are located within the orange area. These are not in agricultural use.
36. The appellant says that as no decking has been outlined in blue, the requirement is imprecise. I find that the wording of requirement 4 is absolutely clear on its face and requires no correction or variation.
37. In respect of requirement 5, the appellant states that the land shown outlined in green is an access used to serve agricultural vehicles. The hardstanding is considered to be agricultural permitted development and it would be unreasonable to require its removal simply for an area almost three times as large to replace it.

For the reasons expressed earlier, the requirement to remove the hardstanding would not achieve any particular purpose and I shall therefore vary the requirements of the notice to remove requirement 5.

38. I note that requirement 6 requires the removal of debris resulting from the residential use of the land shaded in green on the plan. This area is a wedge of land to the west of the stable building and is treed other than for a small storage building close to the stable. The allegation makes no specific reference to such a building or to require its demolition and consequently requirement 6 is imprecise. I shall vary the notice to remove this requirement.
39. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach, with the exception of requirements 5 and 6. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
40. I conclude that the requirements of the notice are excessive to remedy the breach of planning control. I shall vary the enforcement notice prior to upholding it. The appeal on ground (f)] succeeds to that extent.

Conclusions

Appeal A

41. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

Appeal B

42. For the reasons given above the appeal should be dismissed.

P N Jarratt

INSPECTOR