



Appeal Decision

Site visit made on 7 January 2025

by **R Hitchcock BSc DipCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04th March 2025

Appeal Ref: APP/J0405/C/22/3308014

Mill Cottage, Broughton Lane, Bierton, Buckinghamshire, HP22 5AW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act). The appeal is made by Mr Liam Armstrong against an enforcement notice issued by Buckinghamshire Council - North Area (Aylesbury).
- The notice was issued on 2 September 2022.
- The breach of planning control as alleged in the notice is: 1. The material change of use of the Land to residential and 2. The construction of a building for residential purposes.
- The requirements of the notice are to:
 - 1) Cease the use of the Land hatched in black on the attached plan, for residential purposes.
 - 2) Permanently remove the building demarcated by a black 'X' on the attached plan, from the Land.
 - 3) Permanently remove all residential paraphernalia, including trampoline, tables and chairs, from the Land.
- The period for compliance with the requirements is: 12 months.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (d) and (f) of the Act.

Decision

1. It is directed that the enforcement notice is varied and corrected by:
 - deletion of Step 2 in Section 5 of the Notice and the renumbering of Step 3) as Step 2), and
 - the substitution of the plan annexed to this decision for the plan attached to the enforcement notice.
2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Ground (b)

3. An appeal under ground (b) is that the matters alleged in the notice have not occurred. The burden of providing relevant facts rests with the appellant. The appropriate standard for testing the evidence is made on the balance of probabilities, that is to say whether something is more likely than not.
4. The Planning Practice Guidance reflects prior Court judgments. It sets out that an appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous.
5. The evidence submitted by the appellant includes sworn statements from both his mother and himself. His mother owns the land subject of the Notice (the Land) and the wider site including Mill Cottage. The statements refer to land identified on an

attached plan as being in use as garden to Mill Cottage. This use is claimed during the appellant's childhood and throughout his mother's ownership.

6. The plan is absent from both documents. Nevertheless, in referencing 'All of this land in question', it is probable that the statements refer to the entire site shown within the separately submitted Land Registry documentation (Title no.BM143825).
7. While both statements refer to residential use of the land 'at times', there is little substantive evidence to demonstrate that use as an established lawful use of the entire site. The appellant's rebuttal statement refers to a period of over 20 years for the residential use of the site, however, it is unclear within the statements as to why such a distinction is made against the claim in the sworn statement of residential use since 1989.
8. Notably, within the period of the family's ownership, the planning record includes an application in 1994 which sought planning permission for a 'mobile home for use by kennel staff'. The statements are silent on what was probably a commercial use of part of the site indicated by the description of that application.
9. A substantial elongated narrow building along the site's southern boundary together with numerous other buildings, including some of large scale, appear in undated photographs provided by the appellant. Although some buildings were demolished to accommodate the timber cabin on the site, they appear distinct from the domestic style outbuildings and wooden shed towards the front of the site close to Mill Cottage.
10. A snapshot aerial image from 2003 submitted by the appellant shows vehicle tracks extending to almost the eastern extent of the land, a considerable distance from Mill Cottage. This unusual arrangement for a claimed domestic site is not explained.
11. Photographs of family members using mown land alongside, or west of, a pole-fenced (former) excavated area close to the southern boundary show only use of that part of the land ownership close to Mill Cottage.
12. Although there is little to suggest the Land was in agricultural use, as determined by the Council, irrespective of use as a second residential planning unit or extended ancillary residential use, I find the evidence to support the claim of entirely domestic use made by the appellant is insufficiently precise and limited at best.
13. The lack of reference to the kennel use recorded in the planning history, or clarification of the various building uses, results in significant ambiguity as to what former uses took place, when they occurred, or when they may have ceased to cause a change in the status of the planning unit/s.
14. In support of the residential use of the Land, the appellant refers to a site plan submitted with planning application 90/1787/APP. This shows a red line around the whole of the land within the ownership of the appellant's mother. However, this is not definitive of a use of the Land.
15. The appellant highlights that that part of the identified Land closest to Mill Cottage, including manicured gardens and the initial part of the track used to access some domestic outbuildings has established residential use. The Council accepts that claim and has highlighted land that it considers benefits from lawful residential use

in association with the occupancy of Mill Cottage. I find no reason to disagree with those submissions such that the appeal on ground (b) succeeds to that extent. On that basis, I conclude that the plan attached to the Notice should be duly amended. As the Council agrees, and this would effectively reduce the burden of the requirements of the Notice on the appellant, no injustice to either of the main parties would arise if I were to do so.

16. In conclusion, applying the correct test of the balance of probability, I find the appellant's evidence in relation to the use of the remainder of the Land is not sufficiently precise and unambiguous in the face of the site planning record and other evidence before me to demonstrate that a material change of use of the remainder of the Land has not occurred.
17. There is no dispute between the main parties that a building used for residential purposes has been erected on the Land. Accordingly, the appellant's success on ground (b) is limited to the reduction in the area of the Land subject of the Notice.

Ground (d)

18. An appeal on ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any such breach. As above, the burden lies with the appellant and on the balance of probability.
19. On the saving provisions for the time limits for enforcement¹, Section 171B(1) of the Act states that where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on over or under land, no enforcement action may be taken after the period of four years beginning with the date on which the operations were substantially completed. Section 171B(3) states that in the case of any other breach of planning control, no enforcement may be taken after the end of the period of ten years beginning the date of the breach.
20. Pursuant to my finding that there is insufficient evidence of a precise and unambiguous nature to demonstrate that the corrected area of Land benefitted from lawful residential use in association with Mill Cottage, it is not possible to conclude that the use of the accommodation building was ancillary to the occupancy of Mill Cottage at the time the Notice was served.
21. However, there is no dispute between the main parties that the building was substantially complete by 27 April 2018. As a building constructed and designed for residential use with all the facilities to support day-to-day living, its use on a non-ancillary basis is subject to the ten year time limit specified under s171B (3) of the Act. This is reflected in the Council's decision on the appellant's application for a Certificate of Lawfulness (ref. 22/01635/CPE) for the use of the building as a residential dwelling.
22. However, the case of *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467 confirmed that an Enforcement Notice could only lawfully require the removal of operational development that was *ancillary* in nature to an unauthorised use of land. An enforcement notice could not require the removal of buildings that brought about the change of use when that operational development was lawful by virtue of s171B of the Act.

¹ Reg.5 Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024/452

23. Since the building had introduced the alleged residential use of the Land and had been present on the site for more than four years prior to the service of the Notice on 2 September 2022, the ground (d) appeal succeeds to that extent. The requirement to remove the building from the Land is duly deleted from the Notice.

Ground (f)

24. An appeal on ground (f) is that the steps required by the Notice to be taken, or the activities required by the Notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
25. The appellant's claims in relation to removal of the building and the domestic paraphernalia from areas used in association with the occupation of Mill Cottage fall away as a result of the correction and variation of the Notice resulting from the earlier grounds of appeal.
26. The appellant asserts that a reversion of the Land to residential use in association with the residential occupation of Mill Cottage would be sufficient to remedy the breach of planning control. However, pursuant to my conclusion on the earlier grounds, the alleged change of use would persist irrespective of whether a separate residential planning unit had been formed or not. The appeal on ground (f) fails in that regard.

Other Matters

27. I acknowledge that the effect of the Notice could result in the loss of primary living accommodation for the appellant and some of his dependent family; however, human rights and the public sector equality duty set out under s149 of the Equality Act 2010 are not engaged on the grounds of appeal submitted. Having regard to the period specified for compliance with the Notice, and that the appellant has not challenged the notice on ground (g)², I consider that period for compliance strikes an appropriate balance so as not to violate individual rights.

Conclusion

28. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and variation.

R Hitchcock

INSPECTOR

² that the period specified in the notice in accordance with s173(9) fall short of what should reasonably be allowed



Plan

This is the plan referred to in my decision dated: 04th March 2025

by R Hitchcock BSc(Hons) DipCD MRTPI

Land at: Mill Cottage, Broughton Lane, Bierton, Buckinghamshire, HP22 5AW

Reference: APP/J0405/C/22/3308014

Scale: not to scale

