



Appeal Decisions

Site visit made on 26 February 2025

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

an Inspector appointed by the Secretary of State

Decision date: 14 March 2025

Appeals at The Old Orchard, Pylle, Somerset, BA4 6TA (previously known as land at 857 Fosse Way, Pylle BA4 6TA) by Mr Dean Roberts.

Appeal A Ref: APP/E3335/C/24/3336350

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is against an enforcement notice issued by Somerset Council.
 - The notice was issued on 23 November 2023.
 - The breach of planning control as alleged in the notice is within the last four years and without planning permission:
 - i) Operational development, consisting of the construction of a building, being an extension to 'The Old Orchard,' Pylle, Shepton Mallet, BA4 6TA. A building previously granted planning permission (2021/0947/FUL) for conversion from a garage to office (Use Class E).
and:
ii) Further operational development consisting of the construction of a single storey timber garden building in the rear garden of 'The Old Orchard,' Pylle, Shepton Mallet, BA4 6TA.
 - The requirements of the notice are to:
i) Demolish the unauthorised extension and remove the resulting debris permanently from the land.
ii) Demolish the unauthorised outbuilding and remove the resulting debris permanently from the land.
 - The period for compliance with the requirements 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (e), (f), and (g) 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.
-

Appeal B Ref: APP/E3335/C/24/3336351

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is against an enforcement notice issued by Somerset Council.
- The notice was issued on 23 November 2023.
- The breach of planning control as alleged in the notice is without planning permission and within the last 10 years:-
i) The material change of use of the land and buildings from an office to a mixed use of commercial and residential uses;
ii) The breach of Condition 3 of Planning Permission 2021/0947/FUL which states "Notwithstanding the provisions of the Town and Country Planning (Use Classes) Order 1987, as amended, and the Town and Country Planning General Development Order 2015, as amended, the premises hereby approved shall not be used for residential purposes and shall only be used only for purposes only within Class E(g) (uses which can be carried out in a residential area without detriment to its amenity) of the Schedule to the Use Classes Order. The reason given for the condition is that the approved use only has been found to be acceptable in this location and other uses, including those within the same use class, may require further detailed consideration by the local planning authority.
- The requirements of the notice are:
i) Permanently cease the residential use of the land and buildings.
ii) Dismantle and remove permanently from the building the fitted kitchen including all fitted and free-standing appliances.
iii) Remove permanently from the land and building all personal items and chattels associated with the unauthorised residential use of the land.

- The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (e), (f), and (g) 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.
-

Appeal C Ref: APP/E3335/W/23/3328956

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 D Roberts against the decision of Somerset Council.
 - The application ref is 2023/0222/FUL.
 - The development proposed is erection of outbuilding/shed for recreational and storage use (retrospective).
-

Appeal D Ref: APP/E3335/W/23/3328957

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 against the decision of Somerset Council.
 - The application ref is 2023/0221/FUL.
 - The development proposed is a single storey extension to office building (retrospective).
-

Appeal E Ref: APP/R3325/W/23/3333377

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 D Roberts against the decision of Mendip District Council.
 - The application ref is 2023/1661/VRC.
 - The application is to vary condition 3 of planning approval 2021/0947/FUL (conversion of existing building to office use (Use Class E)) to remove the wording "shall not be used for residential purposes".
-

Decisions

Appeal A

1. It is directed that the enforcement notice is varied by the substitution of 12 months instead of 6 months in the the period of compliance. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Appeal D

2. It is directed that the enforcement notice is varied by the substitution of 12 months instead of 6 months in the period of compliance. Subject to the variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

Appeals C, D and E

3. The appeals are dismissed.

Preliminary Matters

4. The appellant claims that the notice fails to accord with the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 in that it is a nullity, being defective and lacking in clarity. However, for the reasons set out in my consideration of the ground (e) and (b) appeals below, I find that the appellant's case in this respect is groundless.
5. Grounds (e), (b), (c) and (d) are legal grounds of appeal and the onus is on the appellant to make out their case on the standard of the balance of probabilities.

The site and relevant planning history

6. The appeal site is located adjacent to the A37 and was previously a plot containing redundant domestic garages set between existing residential development. The original single-storey building comprised an 'L' shaped structure faced with natural stone and boarded elevations under a concrete tile roof. It has been extended across much of the width of the plot without the benefit of planning permission. To the rear is a single storey outbuilding along one boundary. To the front is a gravelled area for parking and turning of a number of vehicles.
7. The original building benefits from planning permission 2021/0947/FUL for its conversion to office use (Use Class E) purposes limited by condition to Use Class E(g) and forbidding residential use as set out in Condition 3 reproduced in the details above in Appeal B.
8. There is an extensive planning and enforcement history largely connected with securing residential use for the land and a garden building. The appellant acknowledges in a Planning Contravention Notice (PCN) that he and his family moved into the property in October 2022 and the residential use was evident from my inspection of the property. The unauthorised outbuilding appears to be used for recreational and storage facilities connected with the use of the property as a dwelling.
9. The Council has requested that this case be treated as intentional unauthorised development on the basis of the history of the site. Despite gaining permission for an office in 2021, the appellant erected an extension, constructed a garden room and moved in with his family. In following up neighbour complaints, the Council had difficulty in inspecting the property and when they were able to do so it appeared that the appellant sought to deceive the Council by creating a charade of office use. There was no evidence of any office use and the property was not registered for business rates or Council Tax. The extended building was laid out as a residential dwelling incorporating an expansive, well-equipped kitchen and 'offices' with ensembles.
10. Having regard to the planning and enforcement history, the Council consider that it is probable that the appellant has always intended the building to be a family home and never used as an office and that his actions and behaviour have proven deceptive. They refer to what is now paragraph 60 of the National Planning Policy Framework (December 2024) that states that effective enforcement is necessary to maintain public confidence in the planning system.
11. In response the appellant states it was assumed that there were permitted development rights to extend the existing building by 50% floor area, although it is

accepted that the extension is larger than this. Similarly the outbuilding replaced an existing outbuilding of similar form.

Appeals A and B :The appeals on ground (e)

12. An appeal on this ground is that copies of the notice were not served correctly. The appellant states that the notice fails to identify upon whom the notice was served and nothing to explain why it was considered expedient to take action or to authorise it.
13. Inserting the names on whom the notice is served is not a requirement of s172(1) (a or b).
14. There is no provision to challenge the expediency of issuing the notice.
15. The authorised signatory of the notice had delegated authority to do so under the Council's constitution, as the appellant has previously been advised.
16. The appeal fails on this ground.

Appeals A and B :The appeals on ground (b)

17. An appeal on this ground is that matters alleged have not occurred on the basis of claimed deficiencies in the plan, the OS extract and the incorrect building being shown. Such arguments are disingenuous as the land to which the notice relates is clearly identified. Even had there been an error in the plan, which there is not, I have the power to correct it so long as any amendments would not cause any injustice.
18. The notice is not ambiguous or uncertain as the breach and requirements are clear and specific.
19. The breaches of planning control have occurred as a matter of fact and the appeal on this ground fails.

Appeals A, B, C and D: The appeals on ground (a) and the s78 appeals

20. An appeal on this ground is that planning permission should be granted for what is alleged.
21. The main issues relate firstly to whether the development is in an appropriate location in the context of Development Plan policies and, secondly, the impact that the development has on the character and appearance of the area.
22. The site lies in in open countryside for policy purposes where development is strictly controlled but may exceptionally be permitted in accordance with Core Policies 3 and 4 of the Mendip District Local Plan.
23. In respect of Appeal B, the appellant claims that the Council has failed to make any distinction between a use of the premises solely for residential purposes and their use for mixed residential and commercial use as referred to in the allegation. It is claimed that no justification is made why a mixed live/work use is unacceptable and any material difference between a live/work use and residential use alone. Despite this criticism of the Council, the appellant fails to provide evidence to indicate the extent of office use or why it is considered to represent a live/work unit. At my inspection, the agent drew my attention to a drawer in one room containing office

related materials. This does not represent evidence of an office use, or of a mixed use, or of a home office. At best it is a *de minimis* use. It does not warrant recognition as either satisfying the Use Class E (g) limitation of Condition 3 of permission 2021/0947/FUL or forming part of a mixed use of the land.

24. Although it is the alleged use at the time the notice is served that is relevant to this appeal, it seems from the Council's inspection of the property that no substantive office use was occurring. Indeed, the Council has taken the appellants' word that some sort of office or commercial use has taken place. Nevertheless, the allegation is that there has been a material change of use of the land and buildings from an office to a mixed use of commercial and residential uses and, although the evidence does not indicate that this is taking place now (if it ever did in any meaningful way), I am relying on the Council's allegation in the notice in determining Appeal B.
25. Furthermore, the decision notice for 2021/0947/FUL is dated 25 June 2021 and condition 1 is the standard time limit requiring the development to be begun within three years and Condition 2 refers to the approved plans. The PCN response of 10 August 2023 indicates that the extension was commenced in August 2020 and completed in September 2022 whereas the implementation of the permission for conversion commenced in January 2022. There is no evidence to indicate that the conversion of the building to offices complied with the approved plans. It is doubtful whether the original conversion and the extension were discrete operations or constituted a single operation raising doubts over whether the planning permission can be regarded as ever having been lawfully implemented.
26. The officer's report in respect of Appeal D, questions the justification for an extension to the office building based on its floorspace and the proposed addition of an extra employee. The site is considered to be an unsustainable location leading to unsustainable traffic patterns, due to its countryside location and limitations of public transport.
27. The case put by the appellant relates to the extension of the office building for office purposes and for the outbuilding as an associated ancillary recreational and storage space. The actual use of the original and extended building and the ancillary use of the outbuilding for residential purposes fails to be addressed in any substantive way but is obscured by a smokescreen relating to office uses, such as drawing attention to the planning policy response to Appeals C and D.
28. The buildings on the appeal site have been constructed for and are used for residential purposes, to which Core Policy 4 relating to sustaining rural communities is key. The unauthorised development does not accord with the provisions under (2) and (4) of the policy which relates to rural affordable housing and occupational dwellings in the countryside.
29. I therefore find on the first issue that the site is an inappropriate location for the development carried out.
30. The character of the area is one primarily of mixed residential and commercial development interspaced with fields alongside a busy road. Housing is largely traditional in form and materials. A farm shop and a business park are located nearby and a petrol station is to the south. The closing of the frontage gap between buildings as a result of the unauthorised extension has occurred through the loss of

the space between the original garage and the neighbouring two storey house at No 857 Fosse Way. However as the extension is single storey, the impact on the loss of the gap is not great. The gap to the property to the north is unaffected. The extension does not cause such a degree of harm to the street scene or to local identity that a decision on the appeals turns on this point.

31. Permission 2021/0947/FUL for conversion to offices was granted due to compliance with Policy DP22 and CP4(4)(c) as it involved the conversion or reuse of a building in the countryside for non-residential use, but this does not apply to the erection of the outbuilding in the rear garden for storage and recreational use. The original outbuilding was of a significantly smaller size and less substantial construction but by May 2017 it had been removed. However, the size of the outbuilding as constructed is reasonably compatible to the area of the land to the rear of the property and causes no harm to the character or appearance of the area.
32. Consequently, on the second issue the development is not harmful to the character and appearance of the area.
33. Notwithstanding the foregoing, the planning arguments need to concentrate on the facts of the case and not on the make-believe pursued by the appellant. The facts are that permission was granted for the office conversion. There is no evidence that indicates it was ever used for that purpose. It has been used as a family home exclusively in residential use albeit, even if there had been a small element of 'office' use, this would not materially have changed the primary residential use of the planning unit. The building has been extended in a form that does not significantly affect the street scene. The rear outbuilding is acceptable in appearance and its size and its ancillary use is not unusual had the appeal property been in a lawful residential use. However, the lack of any significant impact on the character and appearance of the area does not outweigh the policy objections to the development.
34. Considering the issues in the round, it is difficult to set aside the planning and enforcement history of the site and I am fully aware of the importance that the public should have confidence in the planning system. The public do not expect those who choose to deceive a Local Planning Authority or seek to gain an advantage through carrying out unauthorised development eventually to benefit from it.
35. I conclude that the unauthorised development is contrary to local plan policies for the location of development and in particular to Core Policy 4 whereby the development fails to accord with the permitted exceptions for housing in open countryside.
36. Accordingly I dismiss the appeals on ground (a) and the s78 appeals.

Appeals A and B :The appeals on ground (f)

37. An appeal on this ground is that the steps required are excessive.
38. The appellant considers that there is no justification for the demolition of either building but that it would be expedient and proportionate to ensure both the extension and outbuilding are limited in terms of their use to office purposes only for the office extension and purposes ancillary to office use of the outbuilding.

39. The Council remain unpersuaded that the office use was ever implemented and consider that the purpose has been to provide residential accommodation. They consider that the office application was to add a veneer of legitimacy and secure immunity through the passage of time for the residential use.
40. On the basis of the evidence before me, I have reached the same conclusion as the Council. 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. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of both notices do not exceed what is necessary to remedy the breach.
41. This is an unusual case where the appellant has persisted in seeking to achieve a dwelling on the site through what represents intentional unauthorised development and the requirements are lawful, proportionate and reasonable¹.
42. The appeal on this ground fails.

Appeals A and B :The appeals on ground (g)

43. An appeal on this ground is that the compliance period is too short.
44. The appellant seeks an extension to the compliance period to 12 months to provide alternative accommodation and in the light of the attendance of his children at educational establishments in the area.
45. As the Council does not object to extending the compliance period, I will vary both notices in Appeals A and B accordingly.
46. The appeal succeeds in this respect.

Appeal E – variation of condition

47. The permitted office conversion 2021/0947/FUL was assessed against local plan policies and an office was deemed acceptable. However, the officer's report in Appeal E indicates that it was considered both reasonable and necessary to retain the exclusion of residential use for two reasons. Firstly, the history of the site indicated a clear intent to use the building for residential use which has been pursued both through attempting to gain planning permission and without planning permission. The specific exclusion of residential use was therefore considered necessary in this case to provide additional clarity than might otherwise be needed.
48. Secondly, the use of the building under use class E(g) was permitted in accordance with Mendip Local Plan Policy DP22 (Reuse and Conversions of Rural Buildings). DP22 allows for both non-residential uses (under clause 1) and residential uses (under clause 2), with additional policy requirements for the latter. The exclusion of residential uses under condition 3 of 2021/0947/FUL helps to clarify that residential use under DP22(2) would not be acceptable, in the context of the history of this site.

¹ The principal of s173(5) being established in *Murfitt, etc in Kestral Hydro v SoSCLG* [2016] EWCA Civ 784 and others

49. Accordingly, whilst there is no in-principal policy objection to the conversion of the original building to residential use subject to satisfying the restrictions, these have not been met in this case. Consequently the Council has adopted a precautionary approach by imposing Condition 3 which I consider to be reasonable and necessary having regard to the background to the development.

50. The appeal on this ground fails.

Conclusion

51. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices with variations and refuse to grant planning permission on the deemed applications.

P N Jarratt

INSPECTOR