



Appeal Decision

Site visit made on 4 March 2025

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 March 2024

Appeal Ref: APP/W1145/C/24/3337740

Land at Winnie's Wood (known as 'Wishtree Agrofarm'), Black Torrington, Beaworthy EX21 5JN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Ms Hayley Nass against an enforcement notice issued by Torridge District Council.
- The notice was issued on 18 December 2023.
- The breach of planning control as alleged in the notice is: Without planning permission: (i) Without planning permission and within the last 4 years, the construction of a dwelling (attached as Appendix A¹). [*sic.*]
- The requirements of the notice are to: Remove the unauthorised dwelling in its entirety and all domestic paraphernalia associated with residential use and occupation from the land.
- The period for compliance with the requirements is: seven months from the date the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).

Summary Decision: The appeal is dismissed and the enforcement notice is upheld, with corrections.

Application for costs

1. An application for costs was made by Torridge District Council against Ms Hayley Nass. That application is the subject of a separate Decision.

Preliminary Matters

2. The appellant has described the site address slightly differently to the Council. The address in my heading, above, is taken from the enforcement notice ("the Notice").
3. At the site visit, the appellant said that she had changed her name and she is now Hayley Oakwood. However, I have no formal confirmation of this and so the appeal proceeds in the name given on the appeal form.
4. Part of the site is laid out for horticultural use. Within that area, there are a number of structures including some small sheds and storage boxes. Separate to this area is a further shed ("the Shed") that appears to be used for the storage of domestic items including books and a guitar. It also contains a sofa. This appears to be a shed that has been referred to by the Council in previous enforcement proceedings as being used as a site office, and later for storage. It may also be one that the appellant says has previously been used as a dwelling in that it contained domestic facilities, a stove and bed.
5. In the corner of the site are two larger timber clad structures that I shall refer to, simply for ease of reference, as cabins. Nothing should be read into my use of that

¹ Reference to Appendix A here is a reference to Appendix A of the enforcement notice.

word. Both have mono-pitched roofs, with windows and doors. A canopy, constructed partly of timber sheeting, bridges the gap between the cabins which stand at approximate right angles to one another. There is no internal connection between them.

6. The larger cabin, which I shall describe as “Cabin A”, has windows and doors facing towards the horticultural area and a roof that slopes down from that elevation. The smaller cabin, which I shall describe as “Cabin B” has windows and doors facing towards the Shed. Its roof slopes up from that elevation. The timber facing Cabin B has a less weathered appearance than Cabin A, suggesting that it is probably newer.
7. Having not received prior notification, the appellant was unprepared for my site visit. I was unable to enter the cabins as she was otherwise occupied and needed to contain some dogs. Nevertheless, I could see through the windows.
8. In Cabin A, I could see a kitchen area, dining table and sofa. The appellant told me – and her agent and the Council officers in attendance accepted – that there were also two bedrooms, one either side of this area. Cabin B contained a sofa, and a bed on a mezzanine floor. Both cabins also contained a number of domestic items and smaller furniture.
9. The Council have provided me with two versions of the Notice. One, signed, version describes the alleged breach of planning control as “Without planning permission and within the last 4 years, the construction of a dwelling (attached as Appendix A)”. Another, unsigned, version contains the same description but the words in brackets are “within the land attached as Appendix A and identified in Appendix B and C”.
10. The first version, referring only to Appendix A, is the one provided by the appellant. As that is also the version provided by the Council that has been signed, it is, on the balance of probabilities, the one that was issued and served on the appellant. I have determined the appeal on the basis of that Notice, as described in the heading to this Decision.
11. It is, however, noteworthy that appendices B and C, being aerial and ground-level photographs, do not show Cabin B. While those appendices do not appear to have been provided to the appellant with the Notice, it is more likely than not that only Cabin A was present on the site when the Notice was served. I must determine the appeal on the basis of the situation as it was at that time.

The Enforcement Notice

12. An enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it. If necessary, before determining the appeal, I have a duty to put the Notice in order. My powers under section 176(1)(a) of the Town and Country Planning Act 1990 as amended (“the 1990 Act”) include to correct any defect, error or misdescription in the Notice or, under section 176(1)(b), to vary the terms of the Notice, provided that no injustice would be caused to the appellant or the local planning authority.
13. The Notice clearly alleges that operational development, as distinct from a material change of use, has taken place. It is, therefore, unfortunate that the Notice does not seek to specify where on the land subject to the Notice (“the Land”) the

dwelling is, instead of been wholly reliant on the identification of the whole land parcel.

14. However, while there are a number of structures on the Land, only Cabin A contains all the facilities necessary to function as a dwellinghouse. The Shed may once have contained some domestic facilities, but it is very small and there is no substantive evidence that it ever contained all the facilities necessary to function as a dwellinghouse. As it is more likely than not that Cabin B was not present when the Notice was served, there can be no uncertainty as to which building was the target of the Notice.
15. Even if Cabin B was present, it does not, by itself, contain all the necessary facilities to function as a dwellinghouse being, essentially, sleeping quarters and a sitting room. It can, therefore, only reasonably be seen as part of a single dwelling along with Cabin A, or not as the dwelling to which the Notice refers.
16. I, therefore, find that the Notice is sufficiently clear for the recipient to be reasonably certain what the alleged breach of planning control is. The straight forward requirements are also clear. The Notice does not need to be corrected for it to be understood.
17. Nevertheless, within the alleged breach of planning control, the words “without planning permission” are stated twice which undermines clarity. The words “attached as Appendix A” within the alleged breach of planning control are unnecessary because Appendix A is the plan attached to the Notice that identifies the Land. It is already identified in Section 2 of the Notice. As noted above, that plan provides no further information about what matters are being referred to. The reference is, therefore, unnecessary and a little ambiguous. Accordingly, I shall delete those words in the interests of clarity.

Reasons

18. The appeal is made on ground (c), that the matters alleged in the Notice do not constitute a breach of planning control. The appellant’s case is that planning permission for it has been granted through the provisions of Section 173 (11) of the 1990 Act.
19. Section 173 (11) provides that where –
 - (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and
 - (b) all the requirements of the notice have been complied with,then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities.
20. On 2 September 2022, the Council issued an enforcement notice in respect of the same Land (“the 2022 Notice”). Following correction through a subsequent appeal, that notice alleged the change of use of the Land to a mixed use consisting of residential use and agricultural use by virtue of the residential use of a caravan for human habitation. The 2022 Notice required the residential use of the Land to

cease and all domestic paraphernalia associated with the residential use to be removed from the Land.

21. When the Council served the 2022 Notice, they became aware of the presence of the dwelling subject of this Notice. The officers believed it to be under construction, but the appellant says it was completed and occupied in August 2022, such that when the 2022 Notice was served, the residential use was going on in the dwelling, and not in the caravan previously identified. She says that, as the 2022 Notice did not require the dwelling's removal, it gained planning permission by virtue of Section 173 (11).
22. As clarified through *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598 and *Kestrel Hydro v SSCLG & Spelthorne BC* [2016] EWCA Civ 784, an enforcement notice alleging a material change of use can require operational development that facilitates that use to be removed. However, a notice alleging a material change of use can only attack operational development so far as that development is merely ancillary or secondary to the use. It cannot extend to operational development carried out in its own right, or that which is causative of or fundamental to the material change of use.
23. The appellant is forceful in her points that the current dwelling cannot be properly described as a residential use of land and should not be confused with any previous use of the land that was enforced against; and that the dwelling's use for the purpose it was so designed would not in itself create a material change of use of the land. Thus, the operational development must be seen as something separate from the material change of use of the Land targeted by the 2022 Notice. If, as has been suggested, the previous Inspector was mistaken that the 2022 Notice would prevent the ongoing use of the dwelling, that can only be if that dwelling was separate operational development and not part and parcel of the then on-going mixed use of the land.
24. On the balance of probabilities, the evidence indicates that, here, there was a mixed use of the Land including residential, facilitated by a caravan and, possibly, the Shed if it was providing some basic facilities. There was no appeal against the 2022 Notice on the basis that the matters alleged had not occurred. Subsequently, (probably shortly before the 2022 Notice was issued) Cabin A was built. Cabin A alone (but also including Cabin B if it is viewed as part of the same building) provides all the facilities necessary to function as a dwellinghouse and there is no suggestion that it has not always done so.
25. A dwelling has, therefore, been built and it is not ancillary or secondary to some previous use of the land. It is an entirely separate act of development that causes the residential use that flows from it, rather than facilitating or providing ancillary facilities to support a residential use of the Land.
26. Accordingly, the 2022 Notice could not have required the removal of the dwelling and, so, no permission has been granted for it through the provisions of Section 173 (11) of the 1990 Act.
27. Moreover, if the previous Inspector was also mistaken in that the 2022 Notice could have required removal of the cabin(s), then it must have been facilitating the material change of use as an integral part of that use. In that scenario, the 2022 Notice cannot have been complied with as its use as part and parcel of that

previous mixed use has continued. For permission to be granted, Section 173 (11)(b) demands the requirements of the notice to have been complied with.

28. Either way, I find that there is no planning permission for the matters alleged in the Notice. The appeal on ground (c) must, therefore, be dismissed.

Formal Decision

29. It is directed that the enforcement notice is corrected by:
30. In Section 3 'The matters which appear to constitute the breach of planning control': Delete the text "Without planning permission: (i)" and "(attached as Appendix A)".
31. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

M Bale

INSPECTOR