



Appeal Decision

Site visit made on 4 March 2025

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 April 2025

Appeal Ref: APP/Z4718/C/23/3335899

Land to west of Halcyon House, Lower Lane, Gomersal, Cleckheaton BD19 4HY

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Gary Kettlewell against an enforcement notice issued by Kirklees Metropolitan Council.
- The notice was issued on 10 November 2023.
- The breach of planning control as alleged in the notice is “Without the benefit of planning permission, the material change of use of the land to residential; and the formation of a raised platform to facilitate the residential use.”
- The requirements of the notice are:
 - a) Cease the residential use of the land
 - b) Remove the hard surface path, as demonstrated within appendix 1 for clarity;
 - c) Demolish and remove the raised platform and any resulting materials and debris
- The period for compliance with the requirements is 60 days.
- The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is allowed following correction of the enforcement notice in the terms set out in the Formal Decision.

Matters Concerning the Enforcement Notice

1. The enforcement notice (“the Notice”) alleges a material change of use of land to residential facilitated by the formation of a raised platform. ‘Residential use’ usually refers to the purpose of the land being for living, housing or dwelling purposes. The only structures within the land are the raised platform and a path, which are not necessary facilities for living, housing or dwelling purposes. I therefore find the description of the development alleged to be ambiguous.
2. It is clear from the reasons for issuing the Notice that the Council consider the well-maintained nature of the land, coupled with the presence of residential paraphernalia, patio and path, show it is being used for domestic purposes. The appellant’s and Council’s cases address the domestic use of the land and my correction of the allegation in this manner would not cause injustice. For clarity, the corrected allegation shall read *“the material change of use of the land to domestic use facilitated by the formation of a raised platform.”*

Preliminary Matter

3. The appeal site (“the Land”) comprises registered and unregistered land. The north-eastern section of the Land is registered and forms part of a larger parcel owned by the appellant, which includes Halcyon House. The remainder of the Land is unregistered. Land ownership is not decisive in identifying the use of land or the extent of a planning unit.
4. The appellant purchased his property in 2022. He was aware of a previous enforcement notice (“EN1”), which he says required the Land to be tidied up, by

the removal of a greenhouse, two boats and a fishpond. While the appellant did not own all the Land, he entered into an agreement with its former occupier to tidy it as part of the works to complete the construction of his dwelling, Halcyon House. This intention was conveyed to the Council via Abacus Design's letter dated 18 July 2022, which confirmed the Land had been cleared of the specified structures, that new topsoil had been laid and it would be seeded. The appellant advises that the Council took no further action in respect of EN1.

Appeal on ground (b)

5. An appeal on this ground is that the corrected matter alleged has not occurred as a matter of fact. It is for the appellant to show, on the balance of probability, that the Land has not been used for domestic purposes facilitated by the formation of a raised platform.
6. I saw at my site visit that the Land contains the raised platform, an area of lawn with a path running through it, and an area sown as a wildflower meadow with several trees planted within it. From the evidence available, and what I saw at my site visit, the Land, including the raised platform, is used for domestic purposes.
7. The domestic use of the Land facilitated by the formation of a raised platform has therefore occurred as a matter of fact. For this reason, the appeal on ground (b) fails.

Appeal on ground (c)

8. An appeal on this ground is that while the corrected matter alleged has occurred, it does not constitute a breach of planning control. It is for the appellant to show, on the balance of probability, that the domestic use of the Land facilitated by the formation of a raised platform does not constitute a material change of use.

The evidence

9. The statement of truth provided by Jonathan Wright advises that the Land was used by his grandparents, who resided at The Cottage. His grandparents tenanted The Cottage from approximately 1978 until they purchased it in approximately 1998. While their purchase of The Cottage did not include the Land, Mr Wright's statement sets out how his grandparents continued to use it for purposes ancillary and incidental to their occupation of The Cottage. Their use of the Land included the storage of domestic paraphernalia, and growing flowers, fruit and vegetables.
10. Planning permission for the demolition of a small barn and erection of two dwellings on land at The Cottage, but outside the Land, was granted in 2017. The Location Plan provided with that planning application shows The Cottage and land to the north, east and south edged red and the Land edged in blue. The Land continues to be edged in blue in subsequent planning applications relating to these two additional dwellings.
11. For planning application purposes, land edged red is land to which the application relates, and land edged blue is other land in the applicant's control. There is no requirement for the red line to encompass a single planning unit.
12. Historic maps, claimed to date from the 1930's and 1952, show The Cottage with a range of buildings located to the south, where the two new dwellings have been erected, and a further building located to the west, in the Land. The building to the

west is in the approximate position of the raised platform. These historic maps also show the route of a path through the Land in the approximate position of the path that currently runs through it.

13. The appellant's witness statement details his knowledge of the Land before his purchase of what has become 'Halcyon House'. This also includes his engagement with the Council regarding EN1, and the works he has undertaken to improve the visual and physical condition of the Land.
14. The Council claim that evidence provided by the appellant, as well as aerial imagery, shows that the Land was "*used for agriculture before the site was cleared*"¹. The appellant's evidence which the Council seek to rely upon to demonstrate agricultural activities are the "*growing of various plants and crops*"². In the Council's opinion the agricultural use ceased when the Land was cleared, it "*was [then] in nil use for several months before the material change of use to residential occurred*". Further, the Council claim that the material change of use amounts to a new chapter in the planning history of the site.
15. The aerial imagery³ provides snapshots in time of the Land, dating from 2002 to 2024. In each of the aerial images the Land has a significantly different appearance to the agricultural land located to the west and south, which is being put to grass or arable crops. Land to the north, held back by the substantial stone retaining wall, has the appearance of residential lawn, patio area and garden paths. The Land from 2002 to 2011 is predominantly covered with rough grass with some trees and shrubbery. There are no crops, or grazing animals present in any of the images. Furthermore, there is no fencing or other boundary feature separating the Land from The Cottage, its yard or outbuildings.
16. The images from 2015 to 2021 show the Land to have a more managed appearance with the grass appearing to have been cut, pathways having been created and an abundance of materials, structures and other items on it. The image from 2019 also shows the foundation trenches for Halcyon House. The images from 2020, 2021 and 2022 show Halcyon House and the adjacent dwelling in various stages of completion.
17. Having regard to the information provided by the appellant and the adjacent farmer, Malcolm Fewster, the 2022 image shows the Land to have been cleared, top soiled and to be ready for being sown with seed. The final image, dated 2024, shows the Land as it is now, with the western end sown to wildflower meadow with trees and the eastern end lawned with the raised platform and path.

Assessment of the evidence

18. Where a material change of use is alleged, it is helpful to identify the extent of the planning unit. *Burdle*⁴ identifies three criteria for determining the correct planning unit:
 - (a) Where it is possible to recognise a single main purpose of the occupier's use of the land to which secondary activities are incidental or ancillary, the whole unit of occupation is a single use planning unit.

¹ Paragraph 3 of Kirklees Planning Authority's Statement

² Paragraph 6 of Kirklees Planning Authority's Statement

³ Appendix 1 of Kirklees Planning Authority's Statement

⁴ *Burdle v SSE* [1972] 1 WLR 1207 (Div Court)

- (b) Where the occupier carries on a variety of activities across the land and it is not possible to say that one use is incidental or ancillary to another use, the whole unit of occupation is a single planning unit in mixed use.
 - (c) Where there are two or more physically separate and distinct uses, occupied as a single unit but for substantially different and unrelated purposes, each area used for a different main purpose is a separate planning unit.
19. Identifying the unit of occupation is therefore an appropriate place to start. Mr Wright's witness statement confirms the Land was used and occupied by his grandparents throughout their occupation of The Cottage, which commenced in approximately 1978. Mr Wright has firsthand knowledge of the use of the Land due to his familial connection and the fact that he lived with his grandmother from 2017, when he became her primary carer. Mr Wright's evidence provides no recollection of the Land being used or occupied by anyone other than his grandparents or himself.
 20. There is no evidence to contradict Mr Wright's evidence relating to the occupation of the Land by his grandparents from approximately 1978. Although I recognise that occupation did change following the erection of Halcyon House. I will return to this change in occupation later.
 21. In my judgement the above factors show that, on the balance of probability, throughout Mr Wright's grandparents' occupation and up until the two new additional dwellings were erected, there was one unit of occupation at The Cottage, which consisted of the dwelling, its yard, outbuildings and the Land.
 22. Turning now to the planning unit, while parts of the Land may have been used to grow fruit, herbs, plants and vegetables, this activity was carried out by residents of The Cottage for their own enjoyment. It would not be unreasonable to assume that the tomatoes and chillis, referred to by Mr Wright, were grown in the domestic scale greenhouse, which had to be removed to comply with EN1. It would also seem more likely than not that, at the time EN1 was issued, the Council did not consider the growing activities taking place on the Land to amount to agriculture as they would surely not have required the greenhouse to be removed if that were the case.
 23. Mr Wright tells of the raised patio being formed from the base of a building that previously stood on the Land. The historic maps show that a building did stand in the approximate position of the raised platform. Mr Wright also tells of how he used the raised platform for storage and to create a fishpond while helping his grandmother maintain the Land. These are domestic activities incidental to the residential occupation of The Cottage. The appellant's modification of the raised platform to provide a patio amounts to a continuation of the Land's domestic use.
 24. In my judgement, the aerial imagery from 2002 until 2022, along with the plans and statements from neighbouring occupiers, supports Mr Wright's version of events relating to the use of the Land for domestic purposes ancillary and incidental to the occupation of The Cottage. The primary use of The Cottage is residential, which falls within Use Class C3: dwellinghouses. As the use of the Land, as well as the yard and outbuildings, were used for domestic purposes ancillary and incidental to that residential use, they form part and parcel of a single planning unit put to a single primary purpose.

25. The Cottage's single planning unit status existed from at least 1978 until the implementation of the planning permission for the two additional dwellings. The erection and occupation of the two additional dwellings has resulted in the single planning unit being divided into 3 planning units.
26. The division of the single planning unit through the erection of the two additional dwellings does amount to a new chapter in planning terms. This new chapter equates to the subdivision of one planning unit occupied by one dwellinghouse into three planning units, each one occupied by a single dwellinghouse.
27. The Land may not have been shown to be within the planning permission red line site for the two new dwellings, but that of itself does not mean its lawful use for domestic purposes has been lost. The Land remains predominantly grassed, with some being maintained and some not, some trees have been retained and new trees have been planted. While works have been carried out to the former building's floor to form the raised platform, there has been no significant change to the character of the use to which the Land is put.
28. There is no legal definition of what constitutes a material change of use. However, the courts have held that there must be some material change in the character of the use. The Land continues to be used for domestic purposes ancillary and incidental to the occupation of a single dwellinghouse. While the domestic use of the Land has transferred from The Cottage to Halcyon House, this does not, in my judgement, materially change the character of its domestic use.
29. The Council argue that if a material change of use of the Land is found not to have occurred, then what they claim as being a period of non-use over several months amounts to abandonment. The domestic use in connection with the occupation of Halcyon House would then constitute a material change of use from a nil use to a domestic use.
30. The courts have held that the mere cessation of a use is not development. However, where land remains unused for a considerable time, in such circumstances that a reasonable man might conclude that the previous use had been abandoned, then the concept of abandonment applies. The courts have identified 4 areas for consideration to establish whether a use has been abandoned, these are addressed below.
31. The physical condition of the Land has not significantly changed in terms of its appearance or domestic use. The period of non-use of "*several months*" encompasses the time it took the appellant to clear the Land, lay topsoil, seed it and plant trees, to comply with EN1 and as part of the works associated with completing the erection of his dwelling. A reasonable man aware of these circumstances is less than likely to conclude that the domestic use of the Land was abandoned. The Land was not put to any intervening use. Furthermore, the occupier's intention was to tidy the Land up to comply with EN1, which has been achieved. Taking these factors together, I find the domestic use of the Land was not abandoned and has not therefore been subsequently reinstated.

Conclusion on ground (c)

32. For the reasons given above, the appellant has shown, on the balance of probability, that the use of the Land for domestic purposes facilitated by the

formation of a raised platform does not amount to a material change of use of the Land. There has therefore been no breach of planning control.

Overall Conclusion

33. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed.
34. In these circumstances, the appeal on grounds (d) and (f) do not fall to be considered.

Formal Decision

35. It is directed that the enforcement notice is corrected by:

In section 3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL, the deletion of all the words and their substitution with the words “Without planning permission, the material change of use of the land to domestic use facilitated by the formation of a raised platform.”

36. Subject to the correction, the appeal is allowed, and the enforcement notice is quashed.

M Madge

INSPECTOR