

Appeal Decisions

Site visit made on 15 April 2025

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2025

Appeal A Ref: APP/P2935/C/25/3359929

Appeal B Ref: APP/P2935/C/25/3359930

Hillfield Allendale Road, HEXHAM, NE46 2NJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act).
 - The appeals are made by Ms Kathryn Shrimpton (3359929) and Mr Paul Shrimpton (3359930) against an enforcement notice issued by Northumberland County Council.
 - The notice was issued on 30 December 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the Land from agriculture to residential including the erection of a timber chalet.
 - The requirements of the notice are to:
 - (i) Cease the use of the Land as residential.
 - (ii) Remove the timber chalet from the Land.
 - (iii) Restore the Land to its former condition before the timber chalet was situated on the Land.
 - The periods for compliance with the requirements are:
 - (i) 6 weeks
 - (ii) 6 weeks
 - (iii) 10 weeks
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), (e), (f) and (g) of the Act.
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Decision

Appeals A and B

1. The appeals are allowed, and the enforcement notice is quashed.

Appeals on ground (e)

2. An appeal on ground (e) is a claim that a copy of the enforcement notice was not properly served as required by section 172(2) of the Act. Section 172(2) of the Act states that a copy of an enforcement notice shall be served on (a) the owners and on the occupier of the land to which it relates; and (b) any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice.
3. The enforcement notice was served on the appellants, Ms Kathryn Shrimpton and Mr Paul Shrimpton. The appellant's case is that John and Susan Flynn, who have an interest in the land have not been served copies of the enforcement notices. John and Susan Flynn are named on the Land Registry Official copy of register of title and a copy of the Transfer which details that they are the beneficiaries of a restrictive covenant on land at the appeal site. Whilst the Council consider that the restrictive covenant relates to consent regarding any disposition of the land and that there is no disposition in this matter, the appellants detail that the restrictive covenant relates to an overage affecting the appeal site. I am satisfied, from the evidence before me, that John and Susan Flynn do have an interest in the land, which is materially affected by the enforcement notice, and thus should have been served with a copy of it.

4. It is good practice for Councils to carry out adequate prior investigation before taking enforcement action including the serving of either a Planning Contravention Notice (PCN) or Requisition for Information in order to discover who the relevant owners, occupiers and persons with an interest (and entitlement to appeal) are. The evidence submitted indicates that prior investigation on these matters had not been undertaken, with the Council's questionnaire confirming that a PCN had not been served.
5. Section 176(5) of the Act states that where it would otherwise be a ground for determining an appeal under section 174 in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve them.
6. There is no compelling evidence before me to suggest that John and Susan Flynn have any awareness of the enforcement notice. The fact that they have not appealed against the notice also lends weight to the case that they have been prejudiced by the failure to serve a copy of the notice on them.
7. Consequently, I find that the Council failed to serve John and Susan Flynn with a copy of the enforcement notice in accordance with section 172 of the Act and such a failure has resulted in substantial prejudice to both of them. I am unable to exercise the power to disregard the no-service in accordance with section 176(5) of the Act.
8. The appeals on ground (e) therefore succeed.

Conclusion

9. From the before evidence me and the reasons given above, I conclude that the appeals should succeed on ground (e), and the enforcement notice should be quashed and the appeals on grounds (b), (c), (f) and (g) do not fall to be considered.

Chris Baxter

INSPECTOR