



Appeal Decision

Inquiry held on 17 June 2025

Accompanied site visit made on 16 June 2025

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2025

Appeal Ref: APP/D0840/C/25/3359361

Land east of Park Hall, Mount Hawke, Cornwall TR4 8DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Elizabeth Moody against an enforcement notice issued by Cornwall Council.
 - The notice, Council Reference EN24/00360, was issued on 11 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 agricultural to a mixed use comprising of agricultural and residential use, through the erection of two yurts and construction of a large timber outbuilding used for residential purposes and construction of associated timber structures, including a shower/toilet structure, porch/open kitchen area, outdoor toilet, shed (used as bedroom) and domestic style sheds. Also, the non-agricultural use of polytunnels approved under planning permission C1/PA25/0255/96/N and the siting of 2 shipping containers for storage purposes in connection with the residential use.
 - The requirements of the notice are to:
 - (1) Cease the residential use of the land outlined in red on the attached plan.
 - (2) Cease the residential use of the large timber outbuilding shown in the approximate location by a blue 'B' on the attached plan.
 - (3) Cease the non-agricultural use of the polytunnels approved under planning permission C1/PA25/0255/96/N.
 - (4) Cease the residential use of the yurts shown in the approximate locations by two blue 'A's' on the attached plan and remove the yurts from the land outlined in red on the attached plan.
 - (5) Remove from the land all services connected to the yurts, large timber outbuilding and shower/toilet structure for the purposes of independent human habitation, including but not limited to electric cabling, water pipes, sewage pipes, water pump, gas bottles, solar panels etc.
 - (6) Demolish and remove from the land the large timber outbuilding shown in the approximate location by a blue 'B' on the attached plan.
 - (7) Demolish and remove from the land the shower/toilet structure shown in the approximate location by a blue 'D' on the attached plan.
 - (8) Demolish and remove from the land the porch/open kitchen structure shown in the approximate location by a blue 'E' on the attached plan.
 - (9) Demolish and remove from the land the outdoor toilet shown in the approximate location by a blue 'F' on the attached plan.
 - (10) Demolish and remove from the land the shed (bedroom) shown in the approximate location by a blue 'G' on the attached plan.
 - (11) Remove shipping containers and domestic style timber sheds from the land.
 - (12) Remove from the land all materials, paraphernalia and debris resulting from the residential use of the land.
 - (13) Remove from the land all materials and debris resulting from compliance with the requirements of (3) – (12) above and restore the land to its former condition before the breach took place.
 - The period for compliance with the requirements is: 12 months from when the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(c), (d) & (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected and varied to read as follows:

The allegation:

Without planning permission, the material change of use of the land from agricultural to a mixed use comprising of agricultural and residential use, through the erection of two yurts and construction of a large timber outbuilding used for residential purposes and construction of associated timber structures, including a shower/toilet structure, porch/open kitchen area, outdoor toilet, shed (used as bedroom) and two other sheds. Additionally, the siting of a shipping container for storage purposes in connection with the residential use.

The requirements:

- (1) Cease the residential use of the land outlined in red on the attached plan.
 - (2) Cease the residential use of the large timber outbuilding shown in the approximate location by a blue 'B' on the attached plan.
 - (3) Cease the residential use of the yurts shown in the approximate locations by two blue 'A's' on the attached plan and remove the most northeasterly yurt from the land outlined in red on the attached plan.
 - (4) Remove from the land all services connected to the above northeasterly yurt and large timber outbuilding shown in the approximate location by a blue 'B' on the attached plan, including but not limited to electric cabling, water pipes, sewage pipes, water pump, gas bottles, solar panels etc.
 - (5) Demolish and remove from the land the large timber outbuilding used in connection with the residential use of the land shown in the approximate location by a blue 'B' on the attached plan.
 - (6) Demolish and remove from the land the outdoor toilet shown in the approximate location by a blue 'F' on the attached plan.
 - (7) Remove the most northerly shipping container (the northern container marked 'C') used for domestic storage from the land.
 - (8) Remove from the land all materials and debris resulting from compliance with the requirements of (3) – (8) above and restore the land to its former condition (or to agricultural use) before the breach took place.
2. Subject to these corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. All evidence at the Inquiry was given on oath.

The Notice

4. The appellant queried the allegation in terms of 'and domestic style sheds'. I agree that this wording is unclear in terms of how many and which sheds are attacked by the notice. I have therefore amended this to 'and two other sheds' as above. I have also amended the reference to two shipping containers to one, because it appears to me that only one is being used in connection with the unauthorised residential use of the land, as I explain in my reasoning below. Additionally, I have deleted any reference to the polytunnels because, as I explain below, I adjudge them to be being used solely for agricultural/horticultural purposes.
5. For the reasons I explain below, I adjudge the yurt located at the southwest corner of the land together with its attached structures to comprise a building. These structures comprise (moving from the southwest of the yurt around its circumference in an anti-clockwise direction): the bedroom shed ('G' on the plan attached to the notice), the toilet timber shed (one of the 'two other sheds') and the porch/open kitchen structure ('E' on the plan).

6. I also consider that the shower/toilet structure in the position marked 'D' on the plan attached to the notice is effectively a fundamental component of the residential use of the site and therefore of the dwelling comprising the yurt and its structures, albeit it is attached to the shipping container used for agricultural purposes rather than the yurt itself. There is no requirement to remove it, since it has been erected, just like the yurt and its attached structures, for over 4 years, albeit its use for such residential purposes is not lawful for the reasons I explain below.
7. The large timber building (marked 'B' on the plan) appears to be being used as a large additional living/dining room or work room as part and parcel of the appellant's residential use of the land. However, it is not attached to the yurt and so does not form part of that building. The residential use could in theory continue without it because the yurt and structures attached to it have, together with the shower/toilet structure above, all the facilities required of a dwelling; this timber building is not needed for that dwelling to subsist. The requirement to remove it therefore remains.
8. Moreover, no evidence was submitted regarding the second yurt (the second 'A' on the plan), located about 40m to the northeast of the yurt Ms Moody lives in¹. For this reason, the requirement to remove the second yurt remains in the notice.
9. The second of the 'two other sheds' is located between the two shipping containers and is a timber shed which contains various tools and apparatus for making potions and alcoholic drinks made from the produce of the land, all of which I adjudge to be part and parcel of the agricultural rather than the residential use of the land. As such I cannot see any reason to require its demolition.

Reasons

10. Although the appeal is, as well as on ground (g), on grounds (c) and (d), it is in reality on grounds (b) and a combination of grounds (d) and (f) as explained below. That does not invalidate the appeal because all relevant matters were addressed in evidence at the Inquiry. I consider these hidden grounds below.

Ground (b)/(c)

11. Ground (b) is that the matters stated in the notice have not occurred, as a matter of fact. Ground (c) is that those matters (if they occurred) do not constitute a breach of planning control.
12. The appeal here relates to the shipping containers. Despite the appellant's argument that both containers are used for agricultural purposes, it is clear from seeing the contents of the northerly container that it is solely being used for domestic storage in connection with Ms Moody's residential use of the site, as she readily concedes.
13. In her Proof of Evidence an argument was made that the containers benefit from permitted development (PD) under Schedule 2, Part 4, Class A of the GPDO², albeit that was not pursued to any extent at the Inquiry itself. Part 4 relates to temporary buildings and uses. Class A relates to: *'The provision on land of*

¹ The appellant tried to submit such evidence, but this was turned away because it was procedurally out of time, and so I did not read it.

² The Town and Country Planning (General Permitted Development) (England) Order 2015

buildings, moveable structures, works, plant or machinery required temporarily in connection with and for the duration of operations being or to be carried out on, in, under or over that land or on land adjoining that land. That clearly does not apply here because the containers are not temporary structures in connection with any operations being or to be carried out on the land. On the contrary, they are intended to be permanently sited on the land. They do not therefore benefit from PD under Part 4, Class A of the GPDO.

14. The southerly shipping container is being used solely in connection with the agricultural/horticultural use of the land and hence I have deleted any reference to it in the amended allegation and the requirements of the notice. Solely to that extent, this (hidden) ground (b) appeal succeeds. However, for the above reasons, the northern container must be removed because it is used in connection with the unauthorised residential use of the land. The ground (c) appeal fails.

Ground (d)/(f)

15. Ground (d) is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
16. 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.
17. The appellant's ground of appeal in this respect is essentially a combination of both grounds in that she argues that the south-westerly yurt she lives in is a building and that to require its removal would be excessive, given that this 'building' has been in situ for over 4 years.
18. The appellant described to me in detail how the yurt was erected at the Inquiry in response to my question. The ground was levelled. The floor structure of the yurt comprises a central concrete plinth off the top of which span out timber struts (similar to the spokes of a wheel), which in turn rest on bricks that are concreted to breeze blocks which lie on the ground. This provided a level structure to which plywood was attached to form the floor of the yurt, cut with a jigsaw to match the circumference of the yurt. The round pvc walls of the yurt were in turn fixed to a skirting structure encompassing insulation and chicken wire with maritime-type fixings, which fixed the walls of the yurt to the floor structure, in part to secure the yurt from the ingress of rodents as well as rain. The walls of the yurt are firmly fixed to this floor structure; it would not be possible to pack up the yurt like a tent without undoing or dismantling these fixings.
19. Case law³ has identified three primary factors as being decisive in determining whether something is a building: size, degree of permanence and physical attachment. None of the factors is necessarily determinative of itself, and an assessment will need to balance the findings for each.
20. The yurt is about 5m in diameter, not including the attached structures, which make it bigger – it has enough floorspace within it to ensure it has all the necessary facilities of a dwelling (apart from the outside bathroom/shower structure attached to the first container immediately to the north). It is currently

³ *Skerritts of Nottingham Ltd v SSETR* (No. 2) [2002] EWCA Civ 5569

immoveable as explained above. It hasn't been moved since its construction and is intended to be permanent. Whilst the yurt may have been used as a pop-up café by the appellant at various campsites and festivals in the past when she was travelling, that was before it was attached to the existing floor structure. For these reasons I acknowledge that it is a building.

21. There is no dispute that 4 years is the correct time limit, both in respect of operational development in terms of the erection of any buildings on the land or of any change of use of any building to use as a dwelling, rather than the now blanket 10-year immunity period introduced by the Levelling-up and Regeneration Act 2023, because there is no disagreement that all the structures mentioned above that facilitate the residential use of the land have been there for more than 4 years.
22. The appellant argues that the use of the yurt and the large timber building next to it was originally used for a therapy use by her friend, Julie, for trauma-release and healing purposes. She said at the Inquiry that she and Julie had held “*unofficial sessions for small groups of up to 5 people*”. But she also said that they tried to set up this business “*but there were stumbling block*”. Her statutory declaration says that the yurt ‘*was to be used for trauma and healing purposes*’ (my underlining). This evidence is, at best, contradictory and on the balance of probability – the required test here – I find that there was no such initial use of either the yurt or the large timber building for trauma-release or healing purposes.
23. Consequently, although the appellant has been living in the yurt with its completed attached structures for over 4 years, the residential use does not benefit from the original 4-year time limit in s171B(2), since there has not been a material change of use of the building to use as a single dwellinghouse. The residential use has only subsisted from when the porch/kitchen structure attached to the yurt was completed in December 2019, which is considerably less than the 10-year immunity period required for the residential use to be lawful.
24. However, it is at this point that I must consider the hidden ground (f) appeal. The *Murfitt* case⁴ held that where an enforcement notice is issued in respect of a material change of use (MCU) – as is the case here – and works were carried out to facilitate the MCU, the notice may require that the ‘ancillary’ or ‘incidental’ works are removed in order that the site is restored to its previous condition and the breach is remedied. However, the *Caldwell* case⁵ held that the *Murfitt* principle did not apply in circumstances where the operational development is itself the source of or fundamental to the relevant change of use. In particular, the principle does not extend to works that are more than merely ancillary or secondary and are instead fundamental to or causative of the change of use itself. Operational development carried out “in its own right”, or “fundamental to or causative of” the change of use is not “ancillary” to, “secondary” to, “associated with” or “facilitative only of” that change of use, so falls outside the principle in *Murfitt*.
25. The yurt lived in by the appellant including its bedroom, toilet and porch/open kitchen structures is fundamental or causative of the residential use of the land, not ancillary or incidental to it – it is where the appellant lives and has done since December 2019. Consequently, I cannot secure its removal, in the same way that I could not secure the removal of a brick built dwelling house sitting on concrete foundations. But the occupation of the yurt, which was originally erected with its

⁴ *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

⁵ *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

attached structures as a dwelling has taken place for less than 10 years, and so its occupation for such is unlawful and can be enforced against by the notice, which alleges a MCU of the land.

Ground (g)

26. The appellant says that she is a traveller and has nowhere else to move to should the notice be upheld. Furthermore, the Council has no available sites for gypsies and travellers and cannot demonstrate a 5-year supply of gypsy and traveller pitches, which I notice the Council did not deny. From the evidence she has supplied, I agree that the appellant meets the definition of a traveller as set out in the glossary of the Planning Policy for Traveller Sites in that she was a person of a nomadic habit of life until, due to reasons of health and age, she ceased travelling to live permanently here. She claims that her medical circumstances would be aggravated if she were required to live in a normal dwelling, though I have no medical information or opinion to confirm that.
27. For these reasons she argues that the compliance period should be extended from 12 months (1 year) to 5 years on the basis that such a variation would not cause the Council any injustice. I disagree. The residential use of the land together with the structures/sheds that remain attacked by the amended notice are contrary to national and local planning policy as described in the reasons for issuing the notice. Consequently, the unauthorised use results in significant planning harm. There is no ground (a) appeal here.
28. 12 months is a generous time period for the appellant to look for alternative accommodation. Anything more would be tantamount to a temporary permission, which has not been argued in or justified by a deemed planning application.

Conclusion

29. For the reasons given above, I conclude that some of the requirements of the original notice are excessive to remedy the breach of planning control. I shall correct and vary the enforcement notice accordingly. The appeals on grounds (b) and (d)/(f) succeed only to that extent, although the notice, which attacks the unauthorised MCU to residential, is upheld.

Nick Fagan

INSPECTOR

APPEARANCES

FOR THE APPELLANT: Jonathon Clarke of XL Planning Ltd (the agent) instructed by the appellant.

He called the appellant, Elizabeth Moody

FOR THE LOCAL PLANNING AUTHORITY: Oliver Bradbear, Solicitor (in training) to the Council.

He called the Council's Principal Appeals Officer, James Holman, MRICS, MRTPI, FAAV

End of Appearances

DOCUMENTS SUBMITTED AT THE INQUIRY

1. Letter of 20 May 2025 from the Council publicising the Inquiry including list of people and organisations it was sent to
2. Statement of Common Ground dated 17 June 2025 signed by Mr Clarke and Mr Holman
3. Opening Statement on behalf of the Council dated 17 June 2025
4. Opening Statement on behalf of the Appellant dated 17 June 2025

End of Documents