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# Appeal Decision

**by Paul Freer BA (Hons) LLM PhD MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 28 August 2025**

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**Appeal Ref: APP/W1145/C/24/3353988**

**Land at Painters Wood, Meddon, Hartland**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr William Smith against an enforcement notice issued by Torridge District Council.
  - The enforcement notice, numbered E/21/0105/UND, was issued on 9 September 2024.
  - The breach of planning control as alleged in the notice is, without planning permission:
    - (i) Without planning permission and within the last four years, the construction of a dwelling and unauthorised structure
    - (ii) Without planning permission and within the last 10 years, the Change of use of land to a mixed change of use of the land has taken place without the benefit of the necessary planning permission from a mixed use, including residential, forestry and storage.
  - The requirements of the notice are:
    - (a) Demolish the unauthorised dwelling in its entirety and remove all resultant rubble and materials, together with all the associated domestic paraphernalia associated with the residential use from the land.
    - (b) Remove the unauthorised structure.
    - (c) Cease the residential use of the land.
    - (d) Cease the use of the land for the storage or any caravan or motorhome.
    - (e) Remove any caravan or motorhome from the land.
  - The period for compliance with the requirements is six (6) months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b),(c) and (f) of the Town and Country Planning Act 1990 as amended.
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**Summary Decision: the appeal is allowed and the enforcement notice is quashed**

## **Procedural matters**

1. The appeal has been made only on ground (f) as set out in Section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act), namely that the requirements of the notice exceed what is necessary. However, in his Appeal Statement, the appellant explains that in January 2020 the Council granted prior notification for a forestry building on the site (Ref:1/1158/2019/AGR) and that this is the building that has been erected on the site. On my reading, that constitutes an appeal under ground (c) as set out in Section 174(2) of the 1990 Act namely that, namely that the matters stated in the notice do not constitute a breach of planning control.
2. The Council has already responded to that point in its Appeal Statement, together with the appellant's argument that the alleged dwelling is not occupied as such and should more properly be described as being used for the

storage of firewood storage, timber, tools and welfare facilities. On my reading, the latter constitutes an appeal under ground (b) as set out in Section 174(2) of the 1990 Act, namely that the matters stated in the notice have not occurred. I am therefore satisfied that I can consider both of these grounds of appeal without causing injustice to either party.

3. The grounds of appeal on which the appeal was originally made, and the two 'hidden' grounds of appeal that I have identified, do not require any subjective judgments to be made in terms of, for example, the effect of the development on the character and appearance of the area. The appeals on grounds (b) and (c) are both 'legal' grounds that can be determined on the basis of the facts as presented in evidence. In these circumstances, there is no benefit to be gained from a site visit. I am therefore satisfied that I can determine this appeal on the written evidence that is before me.
4. The appellant also considers that the enforcement notice is 'void', which I take to mean that the notice should be considered to be a nullity. This is because the appellant questions the jurisdiction/authority of the Council to issue the enforcement notice.
5. For the avoidance of any doubt, the power for any local planning authority (Torridge District Council in this instance) to issue an enforcement notice is enshrined in Section 172(1) of the 1990 Act. Similarly, Section 171C (1) of the 1990 Act empowers a local planning authority to issue a Planning Contravention Notice (PCN) where it requires more information about activities on land. I am satisfied that the Council was perfectly entitled to issue the Enforcement notice (and the PCN) in relation to this breach of planning control. For that reason, the notice is not a nullity.
6. A total of six individual representations has been received in relation to this appeal, all which support the retention of the dwelling that has been constructed and the use of the land that is taking place. All six representations relate solely to matters that should properly be considered under an appeal on ground (a) as set out in Section 174(2) of the 1990 Act, namely that planning permission ought to be granted for the matters stated in the notice. For example, the representations praise the appearance of the building itself and how the woodland is managed.
7. In addition, the appellant has submitted a petition containing a total 46 signatures confirming that the signatories do not consider that the building and any associated paraphernalia at Painters Wood is harmful to the character and appearance of the area. This is also a matter that should properly be considered under an appeal on ground (a) as set out in Section 174(2) of the 1990 Act. However, because an appeal has not been made on ground (a) and the requisite fee has not been paid, I am unable to take the six representations or the petition into account.

### **The Enforcement Notice**

8. The breach of planning control alleged at paragraph 3 of the notice correctly refers to the breach of planning control as being 'without planning permission' but then repeats 'without planning permission' at the start of paragraph 3(i) and 3(ii). The repetition of the words 'without planning permission' at the start of paragraph 3(i) and 3(ii) is superfluous.

9. The breach of planning control alleged at paragraph 3(i) of the notice includes, amongst other things, the construction of an 'unauthorised' structure. This is repeated in the attendant requirements at paragraphs 5(a) and 5(b) of the notice. The enforcement notice is concerned with a breach of planning control rather than other areas of legislation. The breach of planning control alleged in the notice should therefore refer to the construction of the structure as being 'without planning permission' rather than an 'unauthorised' installation as stated at paragraphs 3(i), 5(a) and 5(b) of the notice.
10. The breach of planning control alleged at paragraph 3(ii) of the notice comprises the change of use of land to a mixed use, including residential, forestry and storage. Two points flow from this.
11. Firstly, the 'change of use' of the land in itself is not development requiring planning permission for the purposes of section 55(1) of the 1990 Act. I should therefore correct the notice to refer to a material change of use of the land as defined in section 55(1) of that Act.
12. Secondly, the notice does not allege a material change of use for the stationing of a caravan or motorhome for residential purposes. The requirements at paragraph 5 of the notice include (d) cease the use of the land for the storage or any caravan or motorhome and (e) remove any caravan or motorhome from the land.
13. As drafted, the requirement at paragraph 5(d) is not clear. Paragraph 3 (ii) of the notice alleges the material change of use of the land for storage. This then raises the question as to what is alleged to be being stored on the land. This is not specified in paragraph 3(ii) of the notice.
14. However, the Council has subsequently indicated that the word 'storage' should be omitted from the breach of planning control alleged at paragraph 3 of the notice, which should in the Council's view should now read:

Without planning permission and within the last 10 years the change of use of land (the land attached as Appendix A) to a mixed use, including residential and forestry.

15. I have already identified the repetition of the words 'without planning permission' in paragraph 3(ii) of the notice and the need to insert the word 'material' before the words 'change of use'. In all other respects, I should correct the notice as suggested by the Council.
16. The Council has also indicated that as a result of this correction to the breach of planning control alleged in the notice, the requirements at paragraphs 5(d) and 5(e) of the notice should also be removed. I concur. In particular, the requirement at paragraph 5(c) of the notice to cease the residential use of the land would be sufficient to achieve the purpose of the notice. The occupation of any caravan or motorhome stationed on the land for residential purposes would be caught by that requirement.
17. Section 176(1) of the 1990 Act provides that a notice may be corrected and/or varied where the Inspector is satisfied that doing so will cause no injustice to the appellant or the Local Planning Authority. However, for the reasons set out below the notice will be quashed and consequently I do not need to correct and/or vary the notice in these respects.

### **The appeal on ground (b)**

18. An appeal on this ground is one of the 'legal' grounds of appeal, in which the burden of proof is on the appellant to show, on the balance of probability, that the matters alleged in the notice have not occurred.
19. The essence of the appellant's appeal on this ground is that the building erected on the site is not a dwelling but is used for the storage of firewood storage, timber, tools and 'welfare facilities'. The appellant indicates that the latter comprises a sink with hot water, a flushing toilet, an area to sit and a place to dry wet gear.
20. It is settled case law that the distinctive characteristic of a dwellinghouse is its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The Council's Appeal Statement describes the building as containing a kitchen and living facilities. This is not overtly disputed by the appellant, albeit the appellant himself explains that the building only has hot water, a toilet and rest facilities.
21. However, there is no evidence before me that there is a functioning kitchen in the building. The appellant does not refer to a kitchen in his evidence and photos provided by the Council show a sink but no cooking facilities (oven, hob, microwave, etc). Had those facilities been present, I would have expected the photographs taken by the Council to show them and/or the appellant to make reference to them. In any event, as a matter of fact and degree, on the evidence before me the building does not have all the facilities required for day-to-day private domestic existence and for that reason is not a dwelling.
22. There is some evidence of the residential use of the land in the photographs provided as part of the Council's evidence. These photographs show, amongst other things, a sectioned-off landscaped garden area including an area of raised beds and a pond (close to which a kayak is visible) and several cars. There are features which in combination would not typically be associated with a forestry use but would be associated with a residential use of the building.
23. In response, the appellant concedes that there were kayaks on the pond but explains that these have now been returned to the appellant's friend who left them there. The appellant also confirms that he was growing vegetables on the land, although this part of the site is now being used solely as a tree nursery. I am satisfied on the basis of this evidence that the kayaks and the raised beds are not being used in conjunction with the use of the building as a dwelling.
24. The Council's Appeal Statement also describes a site visit held on 9 September 2024, following which the Council Officer subsequently recorded:

*There was loud music coming from the site, and upon shouting hello a woman (.....) and two dogs appeared from the building, and quickly shut the door.*
25. The implication of this evidence is that the building is occupied (at least on that occasion) by someone other than the appellant and who did not appear to be involved in forestry (as indicated by the playing of loud music and the presence of dogs inside the building). The appellant explains that he lives in Welcombe with his partner and that the person in occupation of the building at the time of the Council officer's visit was his fact his partner, who visits the woods often to help with its management.

26. The fact that the building was occupied at the time of Officer's visit does not necessarily mean that the building is being occupied as a dwelling. It is entirely possible that the building was occupied during the day, or perhaps for occasional overnight stay. The absence of any cooking facilities would make that even more likely.
27. I am satisfied on the balance of probability that the building is not a dwelling and that the land is not being used for residential purposes. The appeal on ground (b) succeeds to that extent. Nevertheless, on this occasion I do not consider that the enforcement notice should necessarily be quashed as a result. In my view, it is more a matter of how the breach of planning control has been described. The appellant does not dispute that a building has been constructed, and it clearly has. I therefore consider that the notice should be corrected to allege the construction of a building.
28. The question then becomes whether correcting the notice to allege the construction of a building would cause injustice to the appellant or to the Council. In this case, ground (a) has not been pleaded but this was in the scenario whereby the breach of planning control alleged was the construction of a dwelling. I cannot discount the possibility that the appellant may have lodged an appeal on ground (a) if the alleged breach of planning control had been for the construction of a building.
29. I recognise that the appellant has already commented on the need for a building to provide secure storage of tools and equipment in connection with a forestry use. However, that was again in the context of the alleged breach of planning control being the construction of a dwelling. The appellant may have expanded on that argument if the allegation had been for the construction of a building. The Council, too, may wish to have a different focus to its evidence as a result in the change to the description of the breach of planning control.
30. The appeal on ground (a) is unique insofar as it is time-limited following the submission of the initial appeal form and requires the payment of the appropriate fee at the time. That period has long since passed. For that reason, it is not open to me to invite the submission of an appeal on ground (a) at this time. Consequently, I have no option other than to quash the notice: to do otherwise would cause injustice to both parties.
31. Accordingly, the appeal on ground (b) succeeds.

### **Conclusion**

32. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed, albeit it remains open to the Council to issue a fresh notice against the construction of a building if it is considered expedient to do so. It also remains open to the Council to issue a fresh enforcement notice against the construction of a dwelling should more evidence come to light about the facilities provided for day-to-day living.
33. In these circumstances, the appeals on grounds (c) and (f) do not fall to be considered.

**Formal Decision**

34. The appeal is allowed and the enforcement notice is quashed.

*Paul Freer*

INSPECTOR