



Appeal Decisions

Site visit made on 28 August 2025

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4 September 2025

Appeal A Ref: APP/D0840/C/24/3346261

Land west of Tre Gwynsac, Crelly, Trenear, Helston, Cornwall, TR13 0EX

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Ms Sophie Burden against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 15 May 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a kennel building on a cement plinth with surrounding hardstanding, shown in the approximate location by a blue 'A' on the plan attached to the notice. Also, the construction of an associated timber shed and siting of a caravan on a hardstanding area, shown in the approximate locations by a blue 'B' and blue 'C' on the attached plan respectively.
 - The requirements of the notice are:
 - 1) Cease the non-agricultural use of the land outlined in red on the attached plan.
 - 2) Demolish and remove from the land the kennel building shown in the approximate location by a blue 'A' on the attached plan.
 - 3) Remove from the land all services connected to the caravan shown in the approximate location by a blue 'C' on the attached plan, including but not limited to electric cabling, water pipes, sewage pipes, septic tank, gas bottles, etc.
 - 4) Remove from the land the caravan shown in the approximate location by a blue 'C' on the attached plan.
 - 5) Demolish and remove from the land the timber shed shown in the approximate location by a blue 'B' on the attached plan.
 - 6) Demolish and remove the concrete plinth and hardstanding areas from the land and restore the land to its former condition before engineering operations took place.
 - 7) Remove all non-agricultural items and equipment from the land outlined in red on the attached plan.
 - 8) Remove all materials arising from compliance with (1) to (7) above from the land and restore the land to its former condition.
 - The period for compliance with the requirements is eight months.
 - The appeal is proceeding on the grounds set out in section 174(2) (b), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended).
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Appeal B Ref: APP/D0840/W/24/3346234

Tre Gwynsac, Crelly, Helston, Cornwall, TR13 0EX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Sophie Burden against the decision of Cornwall Council.
 - The application Ref is PA22/05040.
 - The development proposed is retention of kennel building, whelping shed and use of land for siting a mobile home (to be used as a crib room and welfare base washing, food and administration).
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Decisions

Appeal A

1. It is directed that the enforcement notice is:
 - corrected by the deletion of the word “cement” and the substitution of the word “concrete” in the allegation; and,
 - varied by the deletion of the words “concrete plinth” in requirement 6.
2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

Appeal B

3. The appeal is allowed and planning permission is granted for the retention of kennel building, whelping shed and use of land for siting a mobile home (to be used as a crib room and welfare base washing, food and administration) at Tre Gwynsac, Helston, TR13 0EX in accordance with the terms of the application, Ref PA22/05040, and the plans submitted with it, subject to the conditions in the schedule attached as an Appendix to this decision.

The site and relevant planning history

4. The appeal site is set in open countryside in a landscape characterised as a high open plateau and is within a 2023 candidate area of Great Landscape Value known as Carmenellis. It forms part of a 7.4ha small holding owned by the appellant and contains a long, low building consisting of 10 kennels and attached storeroom; a garden style timber building containing a freezer, washing machine and for storage; and a single unit static mobile home fitted out for domestic use, including a children’s bedroom, which the appellant states is used as a crib room and welfare base for washing, food and administration. To the south of the kennels is a small field occupied by sheep and pigs and close boarded wooden gates provide access to the highway.
5. The appeal site is stated to form part of a larger holding of up to 7.4 ha. The site is also accessed from a private track passing through the adjoining property known as Tre Gwynsac which is occupied by the appellant’s mother and has land attached occupied by 60 sheep and pigs.
6. The appellant acquired the site from a local farmer in spring 2019. It was previously part of an adjacent small holding owned by the appellant’s parents. The kennel building and timber shed were completed in December 2020.
7. Prior approval was refused in 2020 for a barn and workshop which were proposed to occupy the same location as the kennels.

Appeal A – the notice

8. The allegation in the notice refers to the construction of a kennel building on a ‘cement’ plinth whereas step 5 of the requirements refers to the demolition and removal of a ‘concrete’ plinth. For the purpose of accuracy I will correct the notice by the deletion of ‘cement’ and its replacement with ‘concrete’ in the allegation as I am satisfied that no injustice would be caused to the parties in doing so.

Appeal A – the appeal on ground (b)

9. An appeal on this ground is that the alleged breach of control has not occurred as a matter of fact as the appellant claims that the breach is unclear by not specifying a material change of use of the land.
10. The appeal site is smaller than the appellant's land holding and the Council considers that a new planning unit has been created through the kennel development. Determining the extent of a planning unit is a matter of fact and degree for the decision maker having regard to physical and functional separation. Each area with a different primary use should be considered as a separate planning unit. That is the case here where there is a distinction between the agricultural use and the kennels use. However I note that the small enclosure to the south of the kennels is used by some sheep and pigs but I regard this as an ancillary use to the primary use of the remainder of the appeal site.
11. It would have been helpful had the allegation been more specific and referred to the material change of use of agricultural land to a use as kennels through the construction of a kennel building, associated timber shed and siting of a caravan. However, the brevity of the allegation does not defeat the notice as implicit within the description of the allegation is a change in the use of the land arising from the operational development through the construction of kennels. Even were I to consider the wording of the allegation to be a misstatement of fact I have the power to correct any misdescription in s176(1)(a) but that is unnecessary in this case.
12. Although the appellant considers that the land remains in agricultural use, a material change use has taken place as the development of land for kennels either in terms of operational development or use is not permitted development.
13. I conclude that the breach has occurred as a matter of fact and the appeal on this ground fails.

Appeal A – the appeal on ground (d)

14. An appeal on this ground is that it is too late to take enforcement action. The appellant states that the notice refers to the concrete base and plinth as a standalone building operation. The appellant appears to be interpreting the words of the allegation to make a distinction between the construction of the plinth and the construction of the kennel building but the allegation makes no such distinction. There is nothing in the allegation to suggest that these were not part of the same development.
15. Where works are integral to the use of the land and are solely for the purposes of facilitating the use of the land, the courts have held that whilst such works on their own might not constitute development, be permitted development or immune from enforcement action, they are capable of being specified for removal in an enforcement notice.¹ The 10 year immunity period applies to changes of use and operational development facilitating that use.
16. However, the appellant in her response to the Planning Contravention Notice, states that her original intention was to convert existing stone barns on her parents' property as kennels and to gain prior approval for a new barn and workshop on the

¹ Murfitt v SSE [1980] JPL 598, Somak Travel v SSE [1987] JPL 630, Kestrel Hydro v SSLG & Spelthorne BC [2016] EWCA Civ 784

appeal site. As prior approval was refused, the appellant decided to build what is described as 'non-permanent kennels' instead of a functional barn.

17. The appellant has submitted an invoice from Lockley Civils Ltd for completed groundworks dated 19 September 2019. This act of development was completed more than 4 years before the date of the enforcement notice. It appears from this that the concrete plinth was constructed as a separate operation prior to the determination of the application for prior approval for the new barn and workshop. It is therefore immune from enforcement action.
18. The appellant also claims that the timber shed was constructed in September 2019. In an appeal on ground (d), the onus of proof is on the appellant and the standard of proof is the balance of probability. However, no evidence has been presented to support this claim.
19. The appeal on this ground succeeds in respect of the concrete plinth but fails in respect of the timber shed and the mobile home where the 10 year immunity from enforcement action remains.

Appeal A – the appeal on ground (f)

20. An appeal on this ground is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In the light of my conclusion in respect of the ground (d) appeal concerning the concrete plinth, the notice will be varied accordingly.
21. The appellant claims that the use of the buildings for agricultural purposes would be acceptable and that the mobile home can remain on agricultural land for animal welfare purposes and the timber shed be used to house animal feed.
22. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.
23. The appeal succeeds in respect of the concrete plinth but fails in respect of the other requirements of the notice.

Appeal A – the appeal on ground (g)

24. An appeal on his ground is that the compliance period is too short. The appellant at the time of the appeal was concerned that this would be determined prior to the s78 appeal. However, as both appeals are being determined together, this is a situation that has not arisen.
25. The appeal on this ground fails.

Conclusion on Appeal A

26. I conclude on the balance of probabilities that the construction of the concrete plinth took place more than 4 years prior to the issue of the enforcement notice and so, at

the date that the enforcement notice was issued, the time for taking enforcement action as set out in section 171B(1) of the 1990 Act (as amended) had expired.

27. The appeal succeeds in part on ground (d). The enforcement notice will be corrected and varied prior to upholding it.

Appeal B – The s78 appeal

28. The main issues in this appeal are firstly, whether the development is justified in the open countryside; secondly, the effect the development has on the character and appearance of the countryside; and thirdly, the effect of the development on the amenities of neighbouring occupants.
29. The site area is stated as 1.2ha within the overall 7.4 ha of the small holding. and the kennel building contains 10 pens. At the time of the application, the total number of dogs is stated to have reduced from 18 to 11 but as it is intended to breed dogs, this number would increase. However in paragraph 3.1 of the appellant's statement it is clarified that the appeal proposal is seeking to retain the kennel buildings used to house 10 dogs albeit that the kennels would have the capacity up to 30 dogs depending on the size and breed. However I have determined the appeal on the basis of the 10 dogs identified in the proposal. No commercial breeding is taking place albeit that the intention is to breed once a licence is granted, alongside the keeping of the appellant's dogs.
30. The kennels are 20x2m and 2.2m high, flat-roofed and finished in a trapezoidal green cladding. The timber whelping shed is to the north of the kennel building behind a hedge. Its design is distinctly of the recreational garden building style and has a footprint of 4x4m. Adjacent is a mobile home which is fitted out for residential use although its purpose is as a crib room and welfare base for washing, food and administration.

Justification

31. Cornwall Local Plan Policy 5 indicates that in countryside locations, proposals must be of a scale appropriate to their location and demonstrate an overriding locational and business need such as farm diversification. The development is small-scale and the appellant suggests that the kennels would be part of the diversification of the existing small holding but the Council considers breeding dogs would be a standalone business. However, it is a moot point whether in business terms, breeding dogs is fundamentally different to other farm diversification initiatives, such as a farmhouse B and B or rented holiday accommodation.
32. There is no indication that the appellant has considered alternative sites which is not surprising in view of the appeal site's locational connectivity with her parents' house and smallholding at Tre Gwynsac and the fact that the appellant also lives there. By their very nature, dog kennels could have an impact on the amenities of neighbours such that a rural location is preferable than one in a village or town. This has to be balanced against the sustainability of the site when measured against access by private vehicle, although I note that traffic generation of the development would not be particularly significant.
33. I conclude on this issue that whilst the locational and business case for the development could have been more robust, on balance, it is nevertheless a modest scale development that is in general accordance with Policy 5.

Countryside Character

34. Local Plan Policy 12 concerns design requiring the distinctive character of Cornwall to be retained and Policy 23 relates to natural environments where local distinctiveness and character are sustained.
35. The two buildings and the mobile home do not integrate particularly well with each other or with the traditional buildings of Tre Gwynsac in terms of their siting and external materials. However, the kennel building is low lying and not prominent in the landscape albeit that there is a degree of visibility from the road to the south. The whelping shed and the mobile home are partially screened from the south by a hedgerow and are not particularly intrusive. The overall visual effect of the development is that it has a minor impact on the character and appearance of the open countryside.
36. I conclude that the effect the development has on the character and appearance of the countryside is not significant but mitigation through further landscaping would reduce the impact of the development further.

Living conditions

37. No detailed analysis of the noise environment and potential changes arising from the kennelling of dogs has been submitted but the Council acknowledges that the present acoustic countryside environment is relatively quiet. The nearest dwelling is Tre Gwynsac owned by the appellant's mother who has made representations in support of the appellant and pointed out that there is no noise nuisance, unlike that from the camp site granted permission adjacent to her property.
38. The Council's Community Protection consultation indicates that no noise complaints have been received regarding the site in its current state, however a noise impact assessment to be carried out by a suitably qualified acoustic consultant is recommended.
39. There is understandable concern that if there is no restriction on the number of dogs on the site, there could be harmful impacts on the amenities of neighbouring occupiers eroding their peace and tranquillity. However, the number of dogs could be limited by condition and require the submission of a noise impact assessment for consideration by the Council should the appellant wish to increase the number of dogs above 10.
40. I conclude on this issue that the effect of the development on neighbouring occupiers is not significant and any proposed increase in the number of dogs on the site could be controlled by condition.

Conclusion

41. For the reasons given above and subject to appropriate conditions, the appeal should be allowed. It accords generally with Local Plan Policies 5, 12, 23 and with paragraph 88 of the National Planning Policy Framework (the Framework) in respect of supporting a prosperous rural economy.

Conditions

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43. In order to minimise any possible harm arising from the development, I shall impose a number of conditions that are necessary, relevant to planning and to the development permitted.
44. In view of the variation in the application and appeal submissions in respect to the number of dogs, a condition is necessary to limit the number of dogs occupying the kennels to 10, without the submission and prior written approval of a noise impact assessment to any increase in the numbers.
45. Although the appellant makes it clear in her appeal that the mobile home is not occupied for residential purposes, for the avoidance of doubt, a restrictive condition limiting its use is necessary.
46. The Council has suggested two conditions relating to landscaping and external lighting which I consider are necessary and to which no issues are raised by the appellant. These are required to minimise the impact of the development on the environment and light pollution.

Section 180 Town and Country Planning Act 1990 (as amended)

47. The appellant's attention is drawn to s180 which indicates that where any development has been carried out before the grant of planning permission, the enforcement notice shall cease to have effect so far as inconsistent with that permission.

P N Jarratt

INSPECTOR

Appendix - Schedule of Conditions

Appeal B Ref: APP/D0840/W/24/3346234

Tre Gwysnac, Crelly, Helston, Cornwall, TR13 0EX

1 The maximum number of dogs housed in the kennels shall not be increased beyond 10 without the submission of a noise impact assessment to the local planning authority and their prior written approval.

2 The mobile home shall be used as a crib room and welfare base (for washing, food and administration) only and not be used for residential purposes at any time.

3 That within three months of this grant of planning permission details of treatment of all parts of the site not covered by buildings shall be submitted to and approved in writing by the local planning authority. The site shall be landscaped strictly in accordance with the approved details in the first planting season after the written approval of the details. The details shall include:

- i) a scaled plan showing all vegetation and Cornish hedges to be retained as well as all new trees, hedges and shrub planting.
 - ii) proposed hardstanding and boundary treatment
 - iii) a schedule detailing size, number and density of all proposed trees/plants
 - iv) specifications for operations associated with plant establishment and maintenance that are compliant with best practice
- Any new trees or plants (other than trees) that die, are removed, become severely damaged or diseased within a period of five years from planting will be replaced. Replacement planting shall be in accordance with the approved details (unless the local planning authority gives its written consent to any variation).

4 That within 3 months of this grant of planning permission, a scheme for any external lighting that is to be installed at the site, including measures to prevent light spillage, shall be submitted to and approved in writing by the local planning authority. Any such external lighting as approved under the scheme shall be installed in accordance with the approved drawings and such directional hoods shall be retained permanently. The applicant should demonstrate that the proposed lighting is the minimum needed for security and working purposes and that the proposals minimise pollution from glare and spillage.