



Appeal Decision

Site visit made on 27 May 2025

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2025

Appeal Ref: APP/P3040/C/24/3337651

Riverside, Fairham Brook Lane, Bunny, Nottinghamshire, (459017E, 329132N)

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the Act”).
 - The appeal is made by Dr Julita Geary against an enforcement notice issued by Rushcliffe Borough Council.
 - The notice was issued on 21 December 2023.
 - The breach of planning control as alleged in the notice is “the erection of a structure in the location shown highlighted in blue on the plan attached”.
 - The requirements of the notice are:
 - (1) Demolish and remove the structure from the land.
 - (2) Demolish by breaking up the associated concrete/masonry foundations and the timber cladding which covers them.
 - (3) Remove all resulting materials from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (e) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is corrected in Section 2 by deleting the postcode and inserting “(459017E, 329132N)”.
2. Subject to the correction the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Applications for Costs

3. Applications for awards of costs were made by the Council and the appellant against each other. These applications are subject of separate Decisions.

Preliminary Matters

4. The appellant’s case on ground (c) includes arguments that operational development (the alleged erection of a structure) has not occurred. Whether an alleged matter has occurred or not properly falls under ground s174(2)(b). Additionally, the appellant argues the notice requirements go above and beyond what is required in order to remedy any alleged unauthorised works.¹ This falls under ground s174(2)(f) of the Act. Since the Council have addressed these arguments in their evidence they would not be prejudiced by me dealing with them under grounds (b) and (f).

¹ Appellant Statement of Case, paragraph 1.15

5. The appellant states the postcode on the enforcement notice is incorrect. Nonetheless, neither party has been in any doubt as to which land the notice actually refers to in submitting their evidence. In the banner heading above I have used the grid references provided by the appellant in her submitted appeal form and will correct the notice accordingly for the sake of clarity. No injustice arises to any party from making such a correction.
6. Other than the disputed post-code, and contrary to the appellant's view, the notice sets out clearly within its four corners the alleged breach of planning control, the reasons for issuing it, and the requirements of the notice. It is not therefore a nullity or invalid and in need of any other correction.
7. Grounds (b), (c) and (e) are legal grounds of appeal. The Courts have established that the onus of proof in these grounds falls to an appellant,² with the test of the evidence being on the balance of probabilities.³ Also, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.⁴ These judgments are also reflected in the National Planning Practice Guidance.

Appeal on ground (e)

8. An appeal on this ground is that copies of the enforcement notice were not served as required by s172 of the Act.
9. The key issue is whether the notice was properly served on the owners and occupiers of the land to which it relates, and on any other persons having an interest in the land, being an interest which, in the opinion of the Council, is materially affected by the notice. It is for the Council to decide who is materially affected, but it runs the risk of a notice being quashed if it exercises its discretion erroneously.
10. The service of a copy of the notice on Nottinghamshire County Council, who have no interest in the land, was not a failure of service under s172 given that failure relates only to people who should have been served but were not so served.
11. A copy of the notice was not served on Cema Solutions Limited (CEMA), shown on the land Registry Title Charges Register (LR) as having a charge on the land, hence an interest, from June 2022. However, while the Council were aware of the LR details, they state that updating of LR records lagged by approximately 2 years. As such, prior to issuing the enforcement notice, they served a planning contravention notice (PCN) on 20 June 2023 requiring information about the appeal site. The appellant's response to the PCN indicated there was no other person with an interest in the land.
12. A PCN is a legal notice issued by a local planning authority under s171C of the Act, requiring written responses from its recipient. It includes a written warning that it is an offence for a person to knowingly or recklessly give false or misleading information with regard to material particulars. The person completing the PCN questionnaire is required to sign a declaration confirming the answers given are a

² *Nelsovil v SSE* [1962] 13 P&CR 151

³ *Thrasylvoulou v SSE & Hackney LBC (No1)* [1984] JPL 732

⁴ *Gabbitas v SSE & Newham LBC* [1985] JPL 630, *Ravensdale Ltd v SSCLG & Waltham Forest LBC* [2016] EWHC 2374 (Admin)

true and correct statement of all the information required so far as the same is within their knowledge. Thus it is clear that a PCN imposes a serious and important obligation on its recipient to provide responses with great care.

13. The appellant suggests that CEMA are prejudiced by non-service because were they in future to become a mortgagee in possession of the land they would be liable to prosecution for any failure to comply with the notice.
14. However, the appellant's own evidence in her PCN ambiguously indicates otherwise. Even allowing for some confusion on her part as to *who* had an interest, the appellant nonetheless confirmed that there was no mortgage on the land. That there is no mortgage is again stated in her subsequent appeal submissions.⁵ As such, I am not convinced that CEMA would be prejudiced in the manner suggested by the appellant.
15. It is clear the intention of the Act at s171C is to provide the local planning authority with accurate information so that it can properly rely upon it in carrying out their planning functions. If that were not so the planning system as a whole would be undermined. As such, I find the Council acted reasonably in relying on the appellant's PCN responses to identify persons with an interest in the land and taking the view that the CEMA charge on the land must have been resolved but not yet, at that time, updated by Land Registry.
16. In light of these circumstances I consider on balance that there was no failure of service with regard to CEMA. Nonetheless, even if there was a failure of service, s176(5) provides that a failure may be disregarded if neither the appellant nor the person concerned has been "substantially prejudiced" by that failure.
17. Having regard to all of the information before me I find there has been no prejudice, let alone substantial prejudice, to CEMA's interest. This is because their interest has been protected by the appellant's appeal. The appellant has had the opportunity to argue the appeal on all other available grounds at s174(2)(a) to (g), and has done so in relation to grounds (a), (b), (c) and (f). Ground (d) relating to immunity is clearly unarguable on the evidence, and ground (g) relating to compliance periods is open to me to vary whether lodged by the appellant or not. The Council also have power to vary time limits for compliance taking account of the circumstances of the person requesting. As such, there is no information before me which leads me to conclude that CEMA have been "substantially prejudiced" by a failure of service.
18. S179(3) provides that it shall be a defence for a person to show that he did everything he could be expected to do to secure compliance with an enforcement notice, and s179(7) provides a defence where a person has not been served with a copy of the notice and was not aware of its existence. Notwithstanding these statutory defences, liability to prosecution only arises if there is a failure to comply with a notice. In this case that depends on the outcome of the appeal. As set out above, even if there was a failure of service, CEMA's interest has been protected by the appellant's appeal.
19. Accordingly, the appeal on ground (e) fails.

⁵ Appellant's Final Comments, paragraph 5.3

Appeal on ground (b)

20. An appeal on ground (b) is a claim that the alleged matters (i.e. those matters stated in the notice which may give rise to a breach of planning control) have not occurred as a matter of fact.
21. The notice alleges operational development has occurred by the erection of a structure. The appellant argues that a structure, including foundations, has not been erected. She argues the structure is a caravan or other mobile structure that does not constitute being a building.
22. Section 55(1) of the Act defines “development” to include the carrying out of “building operations”, and a “building” is defined (s336) to include “any structure or erection, and any part of a building”. The Courts have established that the question of whether a “structure” is a building or not should be determined in the context of its size, permanence and physical attachment to the ground.
23. A mobile structure (whether on wheels or not) may also be a caravan if it falls within the definitions set out in s29 of the Caravan Sites and Control of Development Act 1960 and s13 of the Caravan Sites Act 1968, as any structure “designed or adapted for human habitation” which is capable of being moved from one place to another, whether by being towed, or by being transported on a motor vehicle or trailer. This can comprise not more than two sections designed to be assembled on site, which is physically capable when assembled of being moved by road from one place to another, provided the structure does not exceed specified dimensions.

The structure

24. The structure is approximately 19.8m x 6.7m x 3m (height) constructed in timber, with windows, doors and corrugated roof.
25. It sits upon a timber supporting base which the appellant states was originally constructed and used as raised planters. However, the supporting base was only used as planters temporarily from February/March 2023 to June 2023 until they were then used as the supporting base for the structure. The base (planters) was thus incorporated into and forms part of the overall structure, and despite the temporary short time in which it may have originally been used for planting, I am satisfied the whole completed structure subject of the notice (including the base) was carried out as a single operation.
26. Turning to the rest of the construction the appellant states⁶ the structure “...is comprised from two separately constructed sections..”. However, the evidence before me shows that this was clearly not the case. Photographic evidence⁷ of the structure’s construction through to completion shows at least four separate sections (in addition to the supporting base) brought to or constructed on site and positioned to the corners, with another (largest) middle section then added between the constructed ends, with doors and windows added separately, and then a roof separately laid and fixed on rafters over the entire structure, followed by exterior cladding. While some elements of the structure may have been in sections the reality is that the structure was assembled and constructed from the ground up from individual component parts and materials with internal layout, finishes and fixtures subsequently added.

⁶ Appellant Grounds of Appeal, paragraph 2.24

⁷ Council’s Appendix B

27. The appellant states the base was not infilled with concrete prior to the rest of the structure being added. The burden of proof, tested on the balance of probability, lies with the appellant. However, there is no direct photographic or other evidence before me which demonstrates the base was not filled with concrete, and I was unable to see whether it was or not during my visit to the appeal site. In this regard, and in light of the implausible description of the structure being constructed from two sections, I am not convinced on the balance of probability it was not filled with concrete.
28. The structure as a whole is of a substantial size and by sheer weight is physically attached both to the base upon which it sits, and thereby also to the ground. As to permanence it has been in the same place since construction. Even if it could be lifted by crane and moved elsewhere on site, this needs to be considered in terms of significance in the planning context, a principle established in *Woolley*.⁸ When viewed in the context of its appearance in the landscape the structure's significant visual and landscape impact would not be affected to any material extent by any changes in its position, hence any ability to move it around the site would not remove the significance of its presence in planning terms. Thus, having regard to size, attachment and permanence, I conclude as a matter of fact and degree that the structure is a permanent "building" as defined, and not a mobile structure or a caravan.
29. Notwithstanding the structure was constructed on site by the appellant and her husband, it was nonetheless the result of building operations within s55(1) of the Act that would normally be carried out by a builder.
30. The appellant confirms the structure was designed and constructed for use as a "mobile health and welfare shelter", being a facility for people working at the appeal site for sanitary conveniences, washing, changing, resting, sheltering and taking of meals. The purpose of the appellant constructing such a facility, it is said, was to discharge the requirements of the Workplace (Health, Safety and Welfare) Regulations 1992, and its use on site is ancillary to the agricultural use of the land.
31. The Council do not provide any evidence or allege that the structure has been used for human habitation, and I also noted during my visit to the appeal site that none of the rooms in the structure contained beds or otherwise provided sleeping accommodation. The appellant also states⁹ the structure is additionally used for storage of equipment, medicines and various products used for farming activities. In the light of the appellant's evidence, and from my own observations, I therefore accept that the structure was designed for use as a welfare facility for agricultural workers.
32. Even if the structure were a mobile structure (which it is not), it was designed as a workers welfare shelter. As such, it could not fall within the definition of a "caravan" which must be a structure designed or adapted for "human habitation". I note the appellant's references to *Wealden*¹⁰ and an appeal Decision.¹¹ However, both of those cases were concerned with how a caravan might be used, and not whether the structure met the definition of a caravan.

⁸ *R (Save Woolley Valley Action Group Ltd) v Bath and North East Somerset Council* [2012] EWHC 2161 (Admin)

⁹ Appellant's Final Comments, paragraph 3.7

¹⁰ *Wealden DC v SSE & Day* [1988] JPL 268

¹¹ APP/J1860/C/21/3281872

33. Aside from the structure never having been designed or constructed as a caravan for human habitation, the method of construction I have previously set out would also fail to meet the construction test for caravans referred to by the appellant.

34. For all these reasons, the appeal on ground (b) fails.

Appeal on ground (c)

35. Development carried out without required planning permission is a breach of planning control as defined at s171A(1)(a) of the Act. An appeal on ground (c) is that the matters alleged in the notice do not constitute a breach of planning control. The appellant must show therefore, on the balance of probability, that the erection of the structure was not a breach of planning control.

36. As set out in ground (b) the structure subject of the appeal is a “building” resulting from building operations and constitutes “development” as defined at s55 of the Act.

37. It does not benefit from any planning permission (“permitted development”) within the Town and Country Planning (General Permitted Development) (England) Order 2015, (GPDO) and no argument is made otherwise.

38. Since no planning permission has been granted for the building it thereby constitutes a breach of planning control.

39. The appeal on ground (c) fails.

Appeal on ground (a)/deemed application for planning permission

Main Issues

40. These are:

- (i) Whether the structure is inappropriate development in the Green Belt; and
- (ii) the effect on the character and appearance of the area, including the effect on the significance of Bunny Hall, a Grade I Listed Building.

Reasons

Whether the structure is inappropriate development in the Green Belt

41. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Other than types of development listed as exceptions within the Framework¹², development within the Green Belt is generally regarded as “inappropriate development”, which is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Buildings for agriculture are one such exception at Framework paragraph 154(a).

42. The Council argue that any agriculture taking place on the land is very small scale, akin to “hobby farming”, such that the structure cannot be said to be reasonably or functionally required for agriculture. Given the scale of agriculture I saw on site, and that as described in evidence from the parties, I agree that the scale of agriculture is small scale.

¹² National Planning Policy Framework (2024)

43. However, in respect of Green Belts the Framework does not set out any limiting criteria relating to agricultural buildings or the scale of agriculture. The requirement in the GPDO¹³ that buildings must be “reasonably necessary for the purposes of agriculture” relates solely to the consideration of whether a proposal would be permitted development. It is not relevant or applicable to considering the merits of whether planning permission should be granted for an agricultural building in the Green Belt.
44. As set out earlier, the structure was erected as a welfare shelter for workers working in agriculture. Hence, regardless of the size of the building or the limited scale of agriculture on site, the building falls to be an exception within paragraph 154(a) of the Framework.
45. Consequently, the structure is not inappropriate development in the Green Belt. Since it is not inappropriate development there is consequently no requirement to assess any impact on the openness of the Green Belt.
46. As such, there is no conflict with the Framework or thereby with Policy 21 of the Rushcliffe Local Plan (LP) Part 2 (2019).

Effect on character and appearance of the area

47. The appeal site is a countryside field in a predominantly rural area outside of the village of Bunny. The 132.6m² rectangular structure with pitched roof finished in white cladding is of a substantial size, constructed with a porch entrance and with double glazed windows and doors. The southern elevation has five windows, three of them of full height in the middle section and with two further pairs of French doors.
48. As a shelter for workers on this relatively small area of land it appears excessively large and out of scale for its intended purpose. Moreover, its external physical appearance mirrors that of a modern detached residential bungalow which, in combination with its size, results in a significantly incongruous and harmful impact on the character and appearance of the countryside.
49. The appellant refers to other buildings in the locality. However, unlike the subject of this appeal, which has the distinctive appearance of a bungalow, other agricultural buildings I saw were markedly different in character, being designed and constructed in materials and finishes such that they appear in the landscape more appropriately as farm barns or other types of functional agricultural buildings.
50. Planting of hedgerow or trees to screen the structure would not adequately overcome or mitigate the significant harm I have described. Moreover, such a scale and form of planting, necessary to screen the structure, simply highlights its incongruous and unacceptable appearance. Such a form of planting would itself inevitably appear unnatural and out of place given the predominant pattern and context of traditional open vistas across countryside fields, save only for where consolidated trees/hedgerows form linear boundary enclosures.
51. In conclusion I find the development has a significant harmful impact on the character and appearance of the area in conflict with LP Part 1 Policy 10 and LP Part 2 Policy 1 which together, amongst other matters, seek to ensure that all new

¹³ The Town and Country Planning (General Permitted Development) (England) Order 2015 (Part 6, Classes A and B - ‘Agricultural and Forestry’)

development is sympathetic to the character and appearance of the surrounding area and landscape character, and designed to reinforce valued characteristics by having regard to massing, scale, proportion, materials and architectural style and detailing.

Effect on the significance of Grade I listed Bunny Hall

52. Bunny Hall is a large three storey country mansion house rebuilt around 1720 by Sir Thomas Parkyns incorporating his own designs, and has been listed in Grade I in the national list since 1952.
53. The architecture includes a notable and rich variety of period features and embellishments including its strikingly tall landmark castellated belvedere tower, constructed purposely to provide commanding views of the full parkland estate, including that which extends beyond the formal garden, it being laid out in geometric style with fountain and other features adjacent the principal southern elevation and principal rooms of the house.
54. Views to and from the tower and the principal south facing rooms provide extensive views, as purposely intended in their design, across the landscape to the east, and to the south as far as the hedgerow/tree border with Fairham Brook Lane.
55. The Hall is clearly a listed building of outstanding historical, social and architectural value and importance, referred to in the Framework as a 'designated heritage asset'.
56. The **significance** of a heritage asset is defined as the value of a heritage asset to this and future generations because of its heritage interest, and the significance derives not only from a heritage asset's physical presence, but also from its setting.
57. The **setting** of a heritage asset is not synonymous with its 'curtilage' or dependent upon land-ownership. A setting is simply the surroundings in which a heritage asset is experienced. Development within a setting may make a positive or negative contribution to the significance of a heritage asset.
58. The appeal site was formerly open land and part of the historical and functional parkland estate attached to Bunny Hall. Although separately sold off previously, and now in the ownership of the appellant, it nonetheless still forms part of the visual and historic setting to the Hall and contributes greatly to its significance.
59. I have previously described the harmful impact the appeal structure has on the character and appearance of the area resulting from its inappropriate size, design and materials, resembling closely that of a modern bungalow. For the same reasons, it is also harmfully intrusive and inappropriate to the Hall's former open parkland setting which in turn harms the significance of the listed building.
60. I have considered whether planning conditions would adequately mitigate the harm to the character and appearance of the area and to the setting and significance of the Listed Building but there are none that would do so.
61. While the harm to the heritage asset is significant, in the language of Framework paragraph 215 it is "less than substantial", and within that, on a scale of low to high, I consider the harm to be moderate. However, there are no public benefits advanced by the appellant which either by themselves or in combination outweigh the harm I have identified.

62. The Framework makes clear that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any harm amounts to substantial harm, total loss, or less than substantial harm to its significance. Accordingly I attach great weight to the conservation of the heritage asset.
63. As such, the development conflicts with the provisions of the Framework and the requirements of LP Part 1 Policy 10 and LP Part 2 Policies 1 and 28 which taken together seek to ensure that all new development is sympathetic to the character and appearance of the surrounding area and avoids significant adverse effects on listed buildings and their settings.

Other Matters

64. Although it did not form a reason for issuing the enforcement notice the Council refer to the risk of flooding at the appeal site. In response the appellant has submitted information and a copy of a map which is said to show the appeal structure in the context of flood zones. The submitted map is unclear and the information from both parties is inconclusive such that I am unable to properly determine whether there is a real risk of flooding.
65. However, regardless of whether or not there is any risk of flooding, I have found the development to be unacceptable and should not be permitted for other reasons. As such, there is no need for me to consider this matter further.

Overall conclusion on ground (a)

66. As set out earlier, in conflict with the Council's Development Plan policies I have found significant harm to the character and appearance of the area. Further harm results from the effect of the development on the significance of Bunny Hall, a Grade I Listed Building.
67. For these reasons the appeal on ground (a) fails and the application deemed to have been made under section 177(5) of the 1990 Act is refused.

Appeal on ground (f)

68. The Act states that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. Hence, an appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach.
69. In this case the notice requirements seek the demolition and removal of the structure in its entirety. It is clear therefore that the purpose of the notice is to fully remedy the breach of planning control under s173(4)(a).
70. Since the notice requirements go no further than seeking restoration of the land back to the condition that existed prior to the breach occurring, they clearly do not exceed what is necessary for remedying the breach of planning control. No lesser steps would fully remedy the breach.

71. The appellant refers to interference with rights under Article 8 of the European Convention on Human Rights. However, these are qualified rights which may be interfered with in accordance with the law and in the wider public interest.
72. The structure subject of this appeal is wholly unacceptable for the reasons set out and is in conflict with local and national planning policies, those being created in consultation with the public and in the wider public interest, and in accordance with the law. Accordingly I find that any interference by way of dismissing the appeal and requiring the removal of the structure is justified in the balance with the public interest, and thereby constitutes a proportionate remedy.
73. The appeal on ground (f) therefore fails.

Thomas Shields

INSPECTOR