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## Appeal Decision

Site visit made on 22 July 2025

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2 October 2025

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**Appeal Ref: APP/E3335/C/24/3337811**

**Land at Oak Tree Paddock, Whitemill Lane, Frome BA11 4EU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
  - The appeal is made by Ms Catherine Bell against an enforcement notice issued by Somerset Council.
  - The notice was issued on 30 November 2023.
  - The breach of planning control as alleged in the notice is stated in the notice as follows:
    - i) Without planning permission and within the last ten years the material change of use of land approved for agricultural and equestrian to a mixed use, consisting of agricultural, equestrian, and residential arising from the planning events detailed below:
      - Ms Catherine E Bell was refused planning permission (2019/0131/FUL) by notice on 30 August 2019 for the residential occupation of a Yurt.
      - This decision was appealed to the Planning Inspectorate App/Q3305/W/19/3239928) with an Inspector granting a three year temporary planning permission on 25 August 2020 for change of use to residential use of a yurt at Oak Tree Paddock, Whitemill Lane, Frome , BA11 4EU in accordance with the terms of the application, Ref 2019/0131/FUL, dated 18 January 2019, and plans CB19-SLP and MW003/01 rev A, subject to the following condition:
        - “The development hereby permitted shall be occupied by Ms C Bell only and for a limited period being the period of 3 years from the date of this decision. Within 1 month of that limited period, or when the premises cease to be occupied by Ms C Bell, whichever is the sooner, the use hereby permitted shall cease and all materials and equipment brought to the site in connection with the use shall be removed”.
      - Ms Catherine E Bell submitted a further planning application to Somerset Council on 22 August 2023 seeking a ‘Change of use to residential use of a Yurt’ this was refused by notice on 31 October 2023.
      - The Yurt remains residentially occupied by Ms Bell and all materials and equipment brought onto the land in connection with the then approved residential use remain on the land amounting to a breach of planning control defined under s191B(3) Town and Country Planning Act 1990.’
  - The requirements of the notice are to:
    - Permanently cease the residential occupation of the land,
    - Dismantle the yurt and remove the entire structure including the floor permanently from the land,
    - Remove permanently, all materials and equipment brought onto the land to facilitate the residential occupation of the land,
    - Permanently remove from the land all chattels and personal possessions associated with the residential occupation of the land.
  - The period for compliance with the requirement is specified as ‘within two months of the date of the Notice’.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 (as amended).
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**Summary Decision: The notice is invalid and is quashed.**

## **Applications for costs**

1. An application for costs was made by Ms Catherine Bell against Somerset Council. This application is the subject of a separate decision.

## **Procedural Matters**

2. Following the site visit, in a note to the parties I set out my concerns regarding the validity of the enforcement notice subject of this appeal. I have had regard to the responses I have received to this in reaching my decision.

## **The Notice**

3. I have drawn to the parties' attention the powers transferred to Inspectors under section 176(1)(a) of The Town and Country Planning Act 1990 as amended (the 1990 Act). These include to correct any defect, error or misdescription in the enforcement notice or, under section 176(1)(b), to vary the terms of the enforcement notice. In each case, the only test is whether the correction or variation would not cause any injustice to the appellant or the local planning authority.
4. I also highlighted the settled case law that sets out the modern approach to nullity (*Oates v SSCLG v Canterbury CC* [2018] EWCA Civ 2229). This makes it clear that an enforcement notice must inform the recipient with reasonable certainty what the breach of planning control is and what must be done to remedy it.

### *The description of the alleged breach*

5. The description of the alleged breach of planning control in the notice is lengthy. This appears to set out the planning history for the site. Whilst I acknowledge that this is helpful in understanding the matters that the Council suggest have occurred, the length of the description of the breach alone renders the notice imprecise as it does not tell the recipient with a reasonable degree of certainty what they have done wrong.

### *Whether the allegation is correct*

6. Section 173 of the 1990 Act specifies the contents and effect of a notice. Section 173(1) informs that an enforcement notice shall state (a) the matters which appear to the local planning authority to constitute the breach of planning control; and (b) the paragraph of section 171A(1) within which, in the opinion of the authority, the breach falls.
7. The notice refers to paragraph (a) of section 171A(1), which is the carrying out of development without the required planning permission. This is consistent with the first paragraph of the allegation in part 3 of the notice, which refers to a material change of use of the land without the benefit of planning permission. However, the allegation later refers to a condition of the planning permission granted at appeal<sup>1</sup> for 'a change of use to residential use of a yurt'. Having regard to the condition set out in the notice, it is clear that the permission was granted for a period of three years.
8. There is no dispute that the residential use of the land permitted at appeal has continued beyond the period specified in the condition. Regardless of whether the

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<sup>1</sup> Application reference 2019/0131/FUL and appeal reference APP/Q3305/W/19/3239928.

alleged residential use is part of a mixed use of the appeal site, it is clear that the notice seeks to attack the continuation of the residential use beyond the period permitted.

9. Where planning permission is granted for a use of land subject to a time-limited (i.e. temporary or personal) condition, the continuation of the use after the period is not development. Section 72(1)(b) of the 1990 Act provides for the imposition of a time limit and restoration condition, such as that referred to above. The condition circumscribes the entire authorisation of the use and so survives for the purposes of enforcement action. Where a use of land is continued after the expiry of a temporary planning permission, an enforcement notice should be directed against a breach of the condition that required the use to cease at a specified time.
10. In view of the above, the notice is defective in alleging a breach of planning control comprising a material change of use of the land, which it specifies is development without planning permission (a breach falling within section 171A(1)(a) of the 1990 Act). The breach that has occurred in this case is a continuation of the residential use in breach of the condition of the planning permission granted at appeal. There is also a failure to comply with the requirements of the condition to remove all materials and equipment brought to the site in connection with the use. This is a breach of planning control falling within section 171A(1)(b).

#### *The requirements*

11. The first requirement of the notice is to 'permanently cease the residential occupation of the land'. If it is the case that the allegation of a material change of use to a mixed use is correct, this requirement is not consistent with the allegation. A mixed use is a single use of the land. Where a notice alleges a material change of use to a mixed use, to remedy the breach the notice should require the mixed use to cease. Reliance can then be placed on the provisions of section 57(4) of the 1990 Act, which informs that where an enforcement notice has been issued in respect of any development of land, planning permission is not required for its use for the purpose for which it could lawfully have been used if that development had not been carried out.
12. In addition to the above, the first requirement of the notice does not require the use to cease. It might well be that ceasing the 'residential occupation' of the land would achieve the desired effect. However, I am concerned that this requirement achieves neither of the purposes specified in section 173(4) of the 1990 Act. The notice is also invalid for this reason.

#### *The period for compliance:*

13. Whilst I am satisfied that the notice specifies a date on which it takes effect and a period for compliance, the notice states that the period specified is from the date of the notice, rather than from the date the notice takes effect. As the notice is dated 30 November 2023, the two months for compliance has already expired. This provides a further reason to conclude that the notice is invalid.

#### *Corrections and whether injustice would be caused*

14. I have identified above a significant number of defects in the notice. Whilst it is fairly clear how those defects might be corrected, what would result is a substantially altered enforcement notice that would allege an entirely different

breach of planning control. I am not satisfied that the powers granted to me under sections 176(1)(a) and (b) would extend to making such corrections and the required variations to the notice.

15. Notwithstanding this, I have noted the appellant's response to my note. The appellant has made it clear that, had the notice alleged a breach of condition, they would have approached their appeal in an entirely different manner, and they are likely to have made their appeal on different grounds. This leads me to conclude that, even if I were satisfied that I could correct the notice, injustice would be caused were I to do so.

### **Conclusion**

16. For the reasons given above, I conclude that the enforcement notice does not correctly specify the breach of planning control that has taken place, what must be done to remedy the breach, or the period for compliance.
17. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the 1990 Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed.
18. In these circumstances, the appeal on the grounds set out in section 174(2)(a), (c) and (f) of the 1990 Act and the application for planning permission deemed to have been made under section 177(5) do not fall to be considered.

### **Formal Decision**

19. The enforcement notice is quashed.

*J Moss*

INSPECTOR