



Appeal Decision

Site visit made on 29 November 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 22 December 2025

Appeal Ref: APP/D0840/C/24/3336816

Land known as Penwithian Wholesalers, Jelbert Way Penzance TR18 3AS

- 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 “Act”).
 - The appeal is made by Mr Baylor Julian against an enforcement notice issued by the Cornwall Council.
 - The enforcement notice was issued on 7 December 2023.
 - The breach of planning control as alleged is the erection of palisade fencing in excess of 1 metre in height. The means of enclosure includes four pairs of gates - three along Jelbert Way (southern boundary) and one pair on Gwel Lewern (western boundary). The approximate location of the fencing is marked by a blue line on the plan attached to the notice.
 - The requirements of the enforcement notice are to: (1) Dismantle and remove from the land the fencing and gateways shown in the approximate location by a blue line on the attached plan or 2) reduce the height of the fencing and gateways shown in the approximate location by a blue line on the attached plan to 1 metre above ground level in accordance with Schedule 2, Part 2, Class A of The Town and Country Planning Order 2015 (as amended), and 3) remove from the land all materials and debris resulting from compliance with either 1 or 2 above.
 - The period for compliance with the requirements is 4 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e), (b), (a) and (f) of the Act.
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Decision

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

Ground (e)

2. The challenge is that copies of the issued notice were not served as required by s172 of the Act. The law requires a notice must be served on the owner and on the occupier of the land to which it relates, and on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice. An *owner* is defined in s336(1) of the Act, but *occupier* is not. A person may be an *occupier* because of a lease, licence or oral permission but it depends on context and is fact sensitive. The mechanics of service is set out in s329 of the Act.
3. An interest in the land connotes a legal or equitable interest. A person entitled to appeal is specifically defined as a relevant occupier. There is a distinction between occupiers with an interest who must be served, and persons with an interest, which entitles them to make an appeal. I am also mindful of s176(5). It is for the Local Planning Authority to decide who is materially affected, but they risk an appeal on this ground if they exercise their discretion wrongly.
4. Before issuing of the notice, the Council made checks on those persons having an interest in the land by carrying out research through its own enquiries and by reference to HM Land Registry records. In practice, registry documents are available to the public for a fee via online platforms. Faced with this ground of challenge, the Council could, and, in my view, should, have exhibited the relevant registry documents even in redacted form. In the absence of this type of detailed evidence, I cannot be certain the registered freeholder or leaseholder were mailed a copy of the notice at their known place of abode.

5. The Council say that copies of the notice were mailed using recorded delivery postal service, which is confirmed in the agent's letter. The certificate of service certifies personal service at the site to Penwithian Wholesalers Limited and owner/person with a legal/equitable interest, and photographs of the notices affixed to the gates are provided. My attention is also drawn to an application for planning permission to retain the fence¹ that is subject of the notice. The latter was submitted by the agent (appellant) on behalf of the owners and would have certified status at the time. However, the appellant is a planning agent who acts on behalf of the owners or an interested party. They state that that Penwithian Wholesalers is a business which previously operated from the site but no longer occupies or operates from the site. They confirm that the wholesalers have no legal interest in the land. I cannot be certain that the agent has a legal interest in the land or falls within the owner or occupier category.
6. To establish ownership or occupation of land a Council has a wide range of powers at its disposal. It has power to serve a general notice on those involved in managing property, including professional agents, and require them to submit details within set timescales or face prosecution. In the planning context, investigating officers tend to deploy planning contravention notices, which can be used to establish land use patterns or activity and require recipients to tell the LPA who owns, occupies or has an interest in the land and their address. None of this is probably unknown to the LPA but based on the available evidence before me there is nothing to demonstrate such powers were properly exercised in this case. Perhaps therein lies the lesson.
7. I have considered using the available powers in s176(5) of the Act, which allows me to disregard failure to serve a person. Had the LPA clearly demonstrated and evidenced the owner, owner or all those with a material interest has been served, a timely appeal could have safeguarded the interests of those who have not been served with a copy of the notice. However, based on the available evidence, and given the requirements of the notice combined with the liability that comes with a failure to comply, I cannot be certain that all those who needed to be served have properly been served. Proceeding would, in my assessment, risk substantial prejudice.

Overall conclusions

8. My decision is likely to be disappointing: be that as it may, I must determine the pleaded grounds of appeal on the available evidence and, in the context of this case, starting with ground (e). This is because if the notice has not been properly served, it must be quashed. Consequently, the grounds set out in section 174(2) (b), (a) and (f) to the Act, and the application for planning permission deemed to have been made under section 177(5) of the Act, do not fall to be considered.
9. For all the above reasons and having considered all other matters raised, I conclude that the owner(s) and/or occupier(s) have been substantially prejudiced by the non-service of the enforcement notice and this is not a case when I can exercise the power to disregard that non-service in accordance with s176(5) of the Act.

A U Ghafoor

INSPECTOR

¹ PA23/05233 refused on 13 October 2023 (decision attached to the Council's bundle).