



Appeal Decisions

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 26 January 2026

Appeal A Ref: APP/D0840/C/25/3371731

Appeal B Ref: APP/D0840/C/25/3371732

Land at 2 Rookery Cottages, Mile Hill, Porthtowan, Truro, Cornwall TR4 8TY

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeals are made by Mr Alex McCheyne (**Appeal A**) and Miss Naomi James (**Appeal B**) against an enforcement notice issued by Cornwall Council.
- The notice was issued on 30 July 2025.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land for the erection of an independent C3 unit of residential accommodation and associated operational development consisting of a concrete base, septic [sic] tank, decked area, access path, hardstanding, timber fence and covered Heras fencing/screening and associated chattels (e.g., plant pots, outside seating, lighting, etc.) marked with a blue 'A' on the attached plan.
- The requirements of the notice are to:
 - 1) Cease the use of the building marked with a blue A on the attached plan for C3 residential occupation
 - 2) Remove the building marked with a blue A and any associated services, operational development and chattels from the land outlined in red on the attached plan
 - 3) Remove from the land all materials and debris resulting from compliance with the requirements of (1) and (2) above and restore the land to its former condition before the breach took place.
- The period for compliance with the requirements is six months.
- The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decisions: the appeals are dismissed and the enforcement notice is upheld with corrections in the terms set out below in the Formal Decisions.

Background

1. It is common ground that the structure which is the subject of these appeals was built, without planning permission, in 2021. In November 2024 the Appellants submitted an application¹ for retrospective planning permission, which the Council refused in February 2025. In June 2025 the Appellants lodged an appeal² against that refusal but on 30 July 2025, before the appeal had been determined, the Council issued the current enforcement notice. The Appellants lodged appeals (Appeal A and Appeal B) against this notice in August 2025. The appeal against the Council's refusal to grant planning permission was subsequently allowed, and the Inspector's Decision Letter dated 20 October 2025 granted planning permission for "a timber structure used as an annexe at 2 Rookery Cottages".
2. As a consequence of the 20 October 2025 Decision Letter, the Council accepts that the structure now has planning permission. It contends that nevertheless the breach of planning control alleged by the notice is still made out, because the structure has been used as an independent unit of residential accommodation.

¹ Ref PA24/07924

² Ref APP/D0840/W/25/3368052

The Appellants contend that the structure has only ever been used as an annexe, and not as a separate dwelling.

Correcting the Notice, and other procedural matters

3. An Inspector has the power³ to correct or vary the terms of an enforcement notice, provided she is satisfied that the correction or variation will not cause injustice to the Appellant or local planning authority. On 17 November 2025 I wrote an “Inspector’s Note” to both parties setting out my view that in light of the 20 October 2025 grant of planning permission, the notice needs to be corrected to make it clear that the alleged breach of planning control is the use of the building, rather than its construction: amendments to the requirements of the notice are also needed, as clearly it would not be reasonable to require the removal of a building that now benefits from planning permission.
4. I proposed correcting the alleged breach of planning control to read “Without planning permission, the material change of use of the land to use as a separate residential unit”, and correcting the requirements so that only one remains, which reads “Cease the use of the land as a separate residential unit”. Both parties agreed that these corrections would not cause injustice to either of them. The parties also agreed that the appeals should be determined under the Written Representations procedure rather than by way of a Public Inquiry and that, given the nature of the matters at issue, it would not be necessary for me to visit the site.
5. Since the Appellant contends that the alleged use of the building as an independent unit of residential accommodation has not taken place, this constitutes an appeal on ground (b) of s.174(2) of the 1990 Act (that is, that the matters alleged by the notice have not occurred). I shall therefore determine the appeals on ground (b), in addition to the grounds (c), (d) and (f) originally pleaded. I advised the Council of this in my note of 17 November 2025, and gave both parties the opportunity to make further submissions in the light of the contents of that note. I have taken those submissions into account in my determination of the appeals.

The appeals on ground (b)

6. As noted above, the ground of appeal is that the matters alleged by the notice have not occurred. The Appellants do not contest the fact that the construction of the building has taken place: rather, their case on this ground is that its alleged use as an independent unit of residential accommodation has not occurred, since it has only been used as an annexe.
7. As the Council’s Annexe Guidance Note⁴ rightly observes, residential annexes are a common form of development. They can be a mutually beneficial means of enabling relatives to live with their family while maintaining a degree of independence, and may therefore be considered acceptable in circumstances where an independent dwelling of the same size would not. Residential annexes are often (as in this case) equipped with all the facilities necessary for day to day living, and it is not unusual for them to provide the same living accommodation as would be found in a small self-contained dwelling. In terms of appearance and physical characteristics, then, it can be difficult to distinguish between the two

³ Per s.176(1) of the Town and Country Planning Act 1990

⁴ Last updated 24 July 2025

types of development. In order to establish whether a building is a residential annexe or a self-contained dwelling, it is therefore necessary to consider the nature of the use that is made of it, as a matter of fact and degree.

8. The evidence of the Appellants is that the structure was built during the challenging and uncertain period of the COVID-19 pandemic, when their primary concern was supporting and providing care for their elderly relatives. The Inspector who determined the appeal against the Council's subsequent refusal to grant planning permission recorded that "the appellant's evidence states that [the structure's] intended use is not as a separate dwelling, but to accommodate teenage children, elderly relatives and as office space, all in connection with the main house. I have no reason to question that this is how it will be used." He went on to assess the proposal against the criteria set out in the Council's Annexe Guidance, noting among other things that "there would be a functional link with the main dwelling, as teenage children or elderly residents would need support from occupants of the main house" and that "I am satisfied from the appellant's evidence that the proposed use of the annexe will be ancillary to the host dwelling." He concluded that "the detached structure could reasonably operate as an annexe to the main dwelling", and granted planning permission for that use.
9. I have no criticism of that Inspector's reasoning, or his conclusion. I agree that the structure is capable of use as an annexe, and on the basis of the evidence presented to him, that is how it was to be used. It is important to be clear that in order for a structure to constitute a "residential annexe", it is crucial that the subordinate relationship of that annexe to the main dwelling, and the functional link between them, should be maintained. Any separate or independent use would indicate that the relationship had changed, and/or their functional link had lapsed.
10. The Council contends that independent and unconnected use has in fact taken place, because the main house has been used to provide holiday accommodation without the ancillary use of the residential annexe. It has provided evidence in the form of a printed copy of an Air BnB web page. This advertises the main dwelling (but not the residential annexe) at the Appeal Site as "After a year away from hosting and a brand new extension and renovation we are proud to reveal the brand-new Rookery, Porthtowan! The property is available from 21 June 2025." The Appellants have confirmed that the main house has been let via Air BnB, but state that the annexe has never been let, advertised, or made available to paying guests, and that guests staying in the main house have no access to it.
11. I have not been provided with details of the extent, or frequency, of the periods when the main dwelling was occupied by paying visitors rather than by the Appellants and their family. However, it is clear from the Appellants' own evidence that during these periods, the occupiers of the annexe – whether elderly relatives or teenage children – would not be able to use the facilities provided in the main dwelling, and would not be provided with support by its occupiers. During such periods, then, there was no functional relationship between the residential annexe and the main dwelling: the annexe effectively functioned as a separate residential unit, independent from the main dwelling.
12. I conclude that on the basis of the evidence now before me, there was no subsidiary relationship or functional link between the timber structure and the main house during the periods when the main house was let out as holiday accommodation for paying visitors. During these periods, the structure was not a

residential annexe, but a separate residential unit. The appeals on ground (b) must therefore fail.

The appeals on ground (c)

13. The ground of appeal is that the matters alleged by the notice do not constitute a breach of planning control. The Appellants' case on this ground was made in response to the original allegation of "the erection of an independent C3 unit of residential accommodation and associated operational development" and argued, in summary, that the structure was not built for use as a separate dwelling but for use as an annexe. The situation has now moved on, in that planning permission has been granted for the erection of the structure, and it is only its use that remains in question: I shall be correcting the terms of the Notice accordingly, as set out in paragraph 4 above.
14. The breach of planning control alleged by the Notice – *as corrected* – is "Without planning permission, the material change of use of the land to use as a separate residential unit". This is a material change of use which constitutes development, and requires planning permission. While planning permission has now been granted for the use of the structure as an annexe, the structure did not (and still does not) have planning permission for use as a separate residential unit. Its use as such, which I have found to have taken place during periods when the main dwelling was let out separately to paying guests, was therefore a breach of planning control. It follows that the appeals on ground (c) must fail.

The appeals on ground (d)

15. The ground of appeal is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. S.171B of the 1990 Act sets out the time limits for taking enforcement action against various forms of development. These include (as separate categories) operational development, and the change of use of any building to use as a single dwellinghouse.
16. Correcting the notice as set out in paragraph 4 above serves to clarify, among other things, that the breach of planning control here at issue is the *use* of the timber structure, rather than its construction. The Appellants' case is, and has always been, that the timber structure was built to provide a residential annexe, rather than an independent unit of residential accommodation; the Inspector who determined the appeal against the refusal of planning permission found that the structure was capable of operating as an annexe. The structure itself now benefits from planning permission, albeit its specified use is as an annexe. Taking all of this into account, the appropriate time limit in this case is, in my judgment, that which applies to the change of use of any building to a single dwelling. Where that change of use took place before 25 April 2024, the time limit for taking enforcement action is four years.⁵
17. To succeed on ground (d), then, the Appellants would need to demonstrate that, on the balance of probabilities, there had been a material change of use to a single dwelling at least four years prior to the issue of the enforcement notice; that is, by 30 July 2021.

⁵ Changes to the relevant legislation mean that where this type of change of use took place on or after 25 April 2024, the time limit for taking enforcement action is now 10 years.

18. No evidence has been provided that would suggest this was the case. The Planning Contravention Notice (PCN) completed by Mr McCheyne on 1 April 2024 stated that the timber structure was first stationed on the land in October 2021, replacing a cabin and summer house which were previously in that location. It is worth noting here that, as set out at paragraph 6 of the PCN under the heading "Warning", it is an offence knowingly or recklessly to give information, in response to a PCN, which is false or misleading in a material particular. The application form for retrospective planning permission, dated 17 November 2024, states that work on the timber structure began on 11 October 2021 and was completed on 28 January 2022.
19. On the appeal form submitted in respect of the current appeals, the information provided in support of ground (d) states that "upon reflection, it is possible that [the timber structure] was completed as early as July 2021." I appreciate that it can be difficult to be precise about timings of events that took place many years ago, particularly during the stressful time of the pandemic, and I have no reason to doubt the good faith of the Appellants in attempting to recall when exactly the building was constructed. But completion of the structure in July 2021 is only raised as a possibility, rather than asserted as a fact, and is not supported by corroborating evidence of any kind. Further, and importantly, even if the timber structure had been substantially completed before 30 July 2021 there is no suggestion, and no evidence at all, that it had been used as a separate unit of residential accommodation (due to the separate occupation by visitors of the main house) by that date.
20. I conclude there is insufficient evidence to demonstrate that, on the balance of probabilities, the unauthorised change of use here at issue took place more than four years prior to the issue of the enforcement notice. This means that at the date of the notice the time available to the Council for taking enforcement action had not expired, and so the appeals on ground (d) must fail.

The appeals on ground (f)

21. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control. The notice, as originally drafted, included requirements to remove the building and all associated services and operational development from the land; the Appellants' original case on ground (f) was that the complete removal of the building was excessive, and instead modifications could be made to better reflect the physical and functional relationship between the annexe and the main house.
22. However, in the light of the planning permission granted for the structure in October 2025, which authorises its use as a residential annexe, I shall be amending the requirements of the notice as set out in paragraph 5 above. There is, then, no longer any requirement to remove the timber structure or any part of it, or any associated services and operational development. The only requirement is to cease its use as a separate residential unit, and since this accords with the terms of the permission granted for its use as a residential annexe, it is difficult to see how this could be regarded as exceeding what is necessary to remedy the breach of planning control. The Appellants have not suggested any lesser steps which would be capable of remedying the breach, and none are apparent to me.
23. I therefore conclude that the appeals on ground (f) should fail.

Conclusion

24. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections.

Formal Decisions

25. It is directed that the enforcement notice is corrected by:

- At paragraph 3, the deletion of all the text below the heading “The matters which appear to constitute the breach of planning control” and the substitution of the text “Without planning permission, the material change of use of the land to use as a separate residential unit.”
- At paragraph 5, the deletion of all the text below the heading “What you are required to do” and the substitution of the text “Cease the use of the land as a separate residential unit”.
- At paragraph 6, the deletion of the text “For (1) – (3) above,”.

26. Subject to these corrections, both **Appeal A** and **Appeal B** are dismissed and the enforcement notice is upheld.

Jessica Graham

INSPECTOR