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## Appeal Decisions

Site visit made on 2 December 2025

by **M. P. Howell BA (Hons) Dip TP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 29 JANUARY 2025

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**Appeal A Ref: APP/Y1138/C/24/3340219**

**Appeal B Ref: APP/Y1138/C/24/3340220**

**Church Lea, Willand Old Village, Willand, Cullompton, Devon EX15 2RH**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr B Rowe and Appeal B is made by Mrs S Rowe against an enforcement notice issued by Mid Devon District Council.
- The notice was issued on 14 February 2024.
- The breach of planning control as alleged in the notice is without planning permission the erection of a lean-to extension to the existing garage which is forward of the front principal elevation of the House on the Land shown on the Plan coloured blue.
- The requirements of the notice are to:
  - (1) Permanently remove the lean to extension from the Land; and
  - (2) Permanently remove all debris and other material from the Land that result from the dismantling and removal of the lean to.
- The period for compliance with the requirements is: 2 months
- The appeals are proceeding on the grounds set out in section 174(2)(b) and (g) of the Town and Country Planning Act 1990 (as amended).

**Summary Decision: The appeal is dismissed, and the enforcement notice is upheld with a variation.**

### Preliminary Matters

1. The appeal site is subject to two separate enforcement notices; the other enforcement notice on the land alleges the erection of a fence at the same address<sup>1</sup>. For simplicity, the appeals have been dealt with separately.
2. No ground (a) appeal has been pleaded against the operational development alleged in the Enforcement Notice (Notice). As such, issues such as the impact of the development on the character and appearance of the area are not matters before me for consideration.

### The Appeals on Ground (b) and the Matters Concerning the Enforcement Notice

3. The appellants have raised concerns about the validity of the Notice, specifically pointing out that the attached plan incorrectly includes two garages at the front of the property that are not owned by them. To substantiate their claim, they provided an extract from the Land Registry confirming their ownership. They argue that this error invalidates the Notice due to potential confusion about the requirements imposed. Additionally, they highlight that the owners of the garages have been denied the right to appeal, as they did not receive a copy of the Notice.
4. The Council acknowledge the error, conceding that the red line on the Notice's Plan should not have included the two garages. However, it maintains that this mistake does not undermine its decision regarding the unauthorised lean-to extension, nor

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<sup>1</sup> Appeal References: APP/Y1138/C/24/3340213 and APP/Y1138/C/24/3340214

does it affect the grounds for enforcement action. The Council cites relevant case law<sup>2</sup> asserting that a Notice can still be upheld as long as the land and the breach are identifiable based on the Notice's description, independent of the attached plan. It contends that the extension is sufficiently distant from the garages, meaning the Notice allows for the identification of the site and the necessary remedial action.

5. Upon visiting the site, I noted four garages: three flat-roofed ones at the front and one larger pitched-roof garage near the main property, which has the lean-to extension in question. Although all garages are included in the red line of the plan, the attached plan clarifies the specific garage associated with the lean-to extension through the use of a blue area. Despite the red line error on the plan, the Notice is sufficiently clear in identifying the site; the development being alleged as well as the requirements to remedy it. The error on the plan does not introduce confusion regarding the Notice's allegations or required actions.
6. Section 176(5) of the Town and Country Planning Act 1990 identifies that the failure to serve the enforcement notice on a required party does not invalidate the enforcement action, provided that no substantial prejudice occurs to the appellant or the unserved party. Since the Notice does not impose any requirements affecting the neighbours' garages, their lack of service or opportunity to appeal has not resulted in any injustice to the appellant or neighbour.
7. Therefore, I conclude that the current plan can remain unchanged and does not make the Notice invalid. The error in the plan does not result in uncertainty, and neither the appellants nor the neighbours who own the garages have been caused any injustice.
8. The appellants' appeals on ground (b) centre on the highlighted error in the attached plan outlined above. To succeed on this ground, they must prove that the matters alleged in the Notice have not occurred. The burden of proof lies with the appellants. However, aside from the issues with the red line on the attached plan, they have not provided any further evidence demonstrating that the lean-to extension has not occurred.
9. Based on my observations, the extension visible on-site corresponds to the location marked blue on the attached plan and constitutes a building operation under the definition in Section 55 of the Town and Country Planning Act 1990<sup>3</sup>. There is no evidence indicating that the lean-to extension was not erected when the Notice was issued; thus, it has occurred as a matter of fact.
10. Therefore, the appeals on ground (b) fail.

### **The Appeals on Ground (g)**

11. This ground of appeal is that any period specified in the Notice falls short of what should reasonably be allowed. The period for compliance with the requirements is within two months of the Notice taking effect. The appellants assert that they require additional time because they are unable to complete the work themselves. The appellants would, therefore, need to hire a contractor to undertake the work. The appellants have requested an additional ten months, extending the compliance period to twelve months.

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<sup>2</sup> Bracken v East Hertfordshire District Council (2000) and Wiesenfeld v Secretary of State (1992)

<sup>3</sup> Section 55 of the 1990 Act defines 'development' as the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land

12. Considering the required work and the challenges the appellants would face if they attempted the work themselves, I consider that a period in excess of two months can be justified. However, a twelve-month period is excessive given the scale of the development and the works needed to remove the lean-to extension. I consider that a period of six months for the appellant to comply with the requirements of the Notice would be reasonable. This time frame strikes an appropriate balance between having to hire someone to complete the works and the harm identified to the character and appearance of the Willand Conservation Area.
13. Accordingly, the appeals on ground (g) succeeds to this limited extent, and I shall vary the Notice accordingly.

### **Conclusion**

14. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the Notice with a variation.

### **Formal Decisions**

**Appeal A Ref: APP/Y1138/C/24/3340219**

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15. It is directed that the enforcement notice is varied by:

*In paragraph 6, specifying the time for compliance, the deletion of the number '2' and its substitution with the number '6'.*

16. Subject to the variation, the appeals are dismissed, and the Notice is upheld.

*M. P. Howell*

INSPECTOR