



Appeal Decisions

Site visit made on 20 January 2026

by **Elizabeth Pleasant BSc (Hons), DipTP, MRTPI**

an Inspector appointed by the Secretary of State

Decision date 13 February 2026

Appeal A Ref: APP/R0660/C/24/3357438

Appeal B Ref: APP/R0660/C/24/3357439

Land at 6 Burford Crescent, Wilmslow SK9 6BN

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended).
- Appeal A is made by Mr David Tommis and Appeal B by Mrs Laura Tommis against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 14 November 2024.
- The breach of planning control as alleged in the notice is: Without planning permission, the material change of use of the land to a residential domestic garden use.
- The requirements of the notice are to:
 - a) Cease the use of “the Land” for residential domestic garden use.
 - b) Remove from “the Land” all domestic paraphernalia including but not limited to the plastic storage unit, garden furniture and children’s play equipment.
 - c) Remove the timber shed and the wooden steps from “the Land” shown in their approximate position shaded green on the attached plan marked “Plan B”.
 - d) Remove all ornamental flower beds, raised flower beds, shrubs and plants, areas of woodchip and their stone edging from “the Land” and restore the land by covering in topsoil and reseed with grass seed.
 - e) Remove all resulting debris arising from steps b), c) and d) from the land.
 - f) Erect a timber post and rail fence 1 metre in height in the position identified by a black hatched line on the attached plan marked “Plan C”.
- The period for compliance with the requirements is four months.
- The appeals are proceeding on the grounds set out in section 174(2)(f) and (d) of the Town and Country Planning Act 1990 (as amended).

Summery Decision: The appeals are dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Decisions

Decisions on Appeal A and Appeal B

1. It is directed that the enforcement notice is varied by:
 - deletion of all the words in requirement d) of paragraph 5, and substitution with the words “Remove the raised beds and restore “the Land” to its previous condition.”
 - deletion of requirement f) in paragraph 5.
2. Subject to the variations, the appeals are dismissed and the enforcement notice is upheld.

Preliminary Matters

3. Appeal A was made on grounds (a) and (f). However, having regard to the Inspector’s Appeal Decision, dated 4 January 2023, which refused to grant

planning permission for a related development¹, then S174(2A) of the Town and Country Planning Act, 1990, as amended (the Act) is applied and Appeal A on ground (a) is barred.

4. The appeals were not initially made on ground (d). However, Section 4 of the appellants' facts to support their appeals refers to "Continuous Use as Residential Garden", and there is commentary and evidence within their appendices to support that assertion. The appellants have subsequently confirmed their wish to pursue a ground (d) appeal. The appeals have proceeded on that basis, and the local planning authority have been given the opportunity to respond to the ground (d) appeals and so have not been prejudiced.
5. The appellants suggest that the enforcement notice should not have also been served on Fairfield Rents Limited. The Council has confirmed that Fairfield Rents Ltd are listed as the freehold owner on the Land Registry Title for "the Land". Therefore, in accordance with Section 172(2)(b) of the Act, the local planning authority are required to serve a copy of the Notice on Fairfield Rents Limited.

Appeal A and Appeal B on ground (d)

Main Issue

6. In relation to a breach of planning control consisting of a material change of use in the Land, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach (s171B(3)). The relevant date in this case is 14 November 2014, and the onus is on the appellants to make out their case, and the test is the balance of probability.

Summary of appellants' case

7. The appellants maintain that the Land has been continuously used as a residential garden for over 10 years. They purchased the Land in 2020 and have used the Land as a residential garden since their purchase. They also advise that prior to their purchase of the Land it had also been utilised by the previous owner as a residential garden. The previous landowner has provided a statement detailing the nature and timeline of how the Land was used during her ownership², and google images are also provided to support the appellants' case³. The previous landowner states that the Land was fenced off from the adjoining agricultural land in 1985 and used initially for growing vegetables and flowers. Her family created an access and gate from their adjacent property, Lime Cottage, and utilised the Land as an extended garden area. Between 1995-2005 she recalls that her children had a swing set and play equipment on the Land, and around 2005 a lawn was laid. Around 2008 she sited a trampoline on the Land. The statement confirms that her family regarded the Land as part of their residential garden and from 1995 it was used continually for that purpose until it was sold to the appellant in 2020.

Summary of the Council's case

8. The local planning authority do not believe that the aerial images show continual residential use for the ten year period required by the Act. Only one image has

¹ APP/R0660/W/22/3298453.

² Appendix DT5, Letter dated 11 March 2022., Appellants' Statement of Case.

³ Appendices DT6-DT11, Google Earth Images, Appellants' Statement of Case.

been provided by the previous landowner, and that shows a trampoline in situ in 2009. There are no photographs showing how the Land was actually used during her ownership. Aerial images provided by the local planning authority for 2016 through to 2019 do not show the Land in residential use, but instead it appears as grassland in the same condition as the adjacent field/paddock.

Reasons

9. The previous landowner states that she regarded the land as her garden and utilised it as such from at least 1995. She claims that there were swings and play equipment on the Land during that period. However, the appellants' aerial images dated 2003 and 2005 do not provide any clarity or confirmation of that use and the Land in 2005 appears as grassland, connected to and similar in appearance to the adjoining pasture which lies to the West of it. Furthermore, the 2005 and 2008 images do not show the Land as having been laid as lawn, as claimed by the previous landowner. Indeed, the Land's appearance is visually distinct from the manicured lawns of Lime Cottage which lie to the East. The first indication of any residential use is the siting of a trampoline on the Land, as seen in the 2009 image. It is not clear if the trampoline is still on the Land in the 2013 image, or whether the dark circle is just a change in the appearance of the ground which lay beneath it. Nevertheless, by 2016 the trampoline has been removed from the Land and the 2016, 2017 and 2018 images show what appears to be grassland, similar in appearance to the neighbouring pasture and with the gate open between those parcels of land. The 2016 and 2017 images also appear to show agricultural machinery and its tracks on the Land as opposed to it being in residential use.
10. The evidence submitted suggests that the Land has been used intermittently to site children's play equipment. It seems to me that had the Council visited the site between 2016 - 2019 they would have seen little evidence on the ground of a residential use, such that they would not have been able to take enforcement action. There is no substantive evidence that a material change in the use of the Land to residential use took place until the appellants purchased the Land in 2020 and incorporated it into their adjoining garden area, utilising the Land for residential purposes ancillary to the residential use of 6 Burford Crescent.
11. I have had regard to the letter/statement submitted by the previous landowner. However, for the reasons set out above, the submitted google images cast doubt on her recollection of events and on the balance of probability it has not been demonstrated that the Land has been in continual residential use for a period of at least 10years prior to the enforcement notice being issued.
12. I conclude that the appeals on ground (d) fail.

Appeal A and Appeal B on ground (f)

13. Section 173(4) of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose behind the notice is to remedy the breach of planning control.
14. Requirements a), b) and c) of the notice seek to remedy the breach of planning control by securing the discontinuance of the residential use by removal of the offending domestic paraphernalia, timber shed and wooden steps which are

sustaining the unauthorised use. The domestic paraphernalia, including the plastic storage unit, children's play equipment, garden furniture, the shed and the construction of the wooden steps all facilitate the unauthorised residential use, and it is not therefore excessive for the notice to require their removal. There are no lesser steps that would remedy the breach of planning control and thus the purpose of the notice. Those requirements do not preclude the appellants from doing what they are lawfully entitled to do in the future once the notice has been complied with.

15. It is also not excessive to require the removal of the raised beds, which have also been constructed to facilitate the residential use of the Land. However, the flower and shrub plants are not development, and I agree that the removal of that planting is excessive. In the interests of clarity, I shall delete all the words in requirement d) and substitute them with the following words: *"Remove all raised beds from "the Land" and restore "the Land" to its previous condition."*
16. An enforcement notice cannot require improvements to "the Land", and it is excessive for the notice to require the construction of a timber post and rail fence between the original garden to No 6 Burford Crescent and "the Land". I shall therefore vary the Notice to remove requirement f).
17. In the absence of an appeal on ground (a), the matters presented by the appellants relating to the planning merits of the residential use, including arguments in relation to openness, Green Belt, sustainable materials, biodiversity, temporary nature, visual impact and the suggested Section 106 agreement, cannot be considered when determining an appeal on ground (f) and the notice cannot therefore be varied to attack its substance.
18. I conclude that the appeals on ground (f) succeed to the extent that the requirements of the Notice will be varied as set out in paragraphs 15 and 16 above.

Overall Conclusion

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

Elizabeth Pleasant

INSPECTOR