



Appeal Decision

Site visit made on 27 January 2026

by **P N Jarratt BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 February 2026

Appeal Ref: APP/D0840/C/23/3322078

Land East of Toad Hall, Mount Hawke, Truro, Cornwall, TR4 8DL

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr John Manetta against an enforcement notice issued by Cornwall Council.
 - The notice was issued on 11 April 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of land from a mixed use comprising of nil use and allotment to a mixed use comprising of residential, tourism and allotment. Including associated operational development of a wooden chalet, raised decking and associated paraphernalia.
 - The requirements of the notice are
 - 1) Cease the residential and tourism use of the land.
 - 2) Demolish and remove the wooden chalet and surrounding decking shown in the approximate location by a blue 'X' on the plan attached to the notice.
 - 3) Remove all services connected to the chalet for the purposes of independent human habitation, i.e electric cabling, water pipes, sewage pipes, etc.
 - 4) Remove from the land all materials and debris resulting from the residential use of the land, including washing line, plant pots, hammocks, etc.
 - 5) Remove from the land all the materials and debris resulting from the above works and restore the land to its former condition and use before the breaches took place.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d), (f), (g) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended) for the development already carried out, namely the material change of use of land from a mixed use comprising of nil use and allotment to a mixed use comprising of residential, tourism and allotment including associated operational development of a wooden chalet, raised decking and associated paraphernalia at Land East of Toad Hall, Mount Hawke, Truro, Cornwall, TR4 8DL as shown on the plan attached to the notice and subject to the following condition:
 - (i) The development hereby permitted shall be used as holiday accommodation only and shall not be occupied as a person's sole or main place of residence. The owners/operators shall maintain an up to date register of the names of all owners/occupiers, and of their main home addresses, and shall make this information available at all reasonable times to the local planning authority.

The site and relevant planning history

2. The site is to the east of the appellant's dwelling known as Toad Hall on land consisting of old spoil heaps from former mine workings. It is elevated above Toad Hall where a wooden chalet with a flat roof and surrounding raised wooden decking is situated. It is known as The Hyde and contains a kitchen/living room and a bedroom/shower room. The remainder of the site is either wooded or cultivated. The site is within a county wildlife site, the zone of influence of the Penhale Dunes SAC and the St Agnes Mining District World Heritage site.
3. Planning permissions have been granted for a standalone solar panel and for the retention of a polytunnel.
4. In a Planning Contravention Notice (PCN) dated December 2019, the appellant stated that the land has been used as an extended garden, woodland and vegetable garden with woodland planting beginning in 1990 and the extended garden in 2011. The wooden chalet was built in 2017 for paying guests, family and friends and the PCN indicates that on 30 December 2019, the chalet is non-residential and used solely for overnight stays in the chalet .

The appeal on ground (d)

5. An appeal on this ground is that it is too late to take enforcement action. As this is a legal ground of appeal, the onus rests with the appellant to prove the case and the level of proof is on the balance of probabilities.
6. Although the notice attacks a material change of use of land it also includes 'associated operational development of a wooden chalet, raised decking and associated paraphernalia.'
7. It has been held¹ that where a dwellinghouse has been erected unlawfully and used as a dwellinghouse from the outset there would have been no change of use, to which s171B(2) could apply and therefore the unlawful use can be subject to enforcement action within 10 years, even if the building as a structure becomes immune from enforcement action as operational development after four years. The appellant contends that the Council is exceeding what can reasonably be considered to be 'associated' operational development and are using s171B(3) to inappropriately override the immunity from enforcement prescribed in s171B(1) citing the Caldwell judgement².
8. The appellant claims that the change of use of the building to a single dwellinghouse occurred more than 4 years before the date of the notice which was 11 April 2023. It was built as a garden room and used by the appellant's wife (an author and editor) for reading and writing. It was completed in 2017 but in September 2018 the appellant states that a change of use of the chalet to residential accommodation occurred following the fitting out of a kitchen and a wash facility. Reference is made to submitted invoices from Drench 4th July 2018 and Plumbase, Redruth, dated 13th and 17th July 2018 which show the purchase of pipework and sanitary fittings although the invoices do not expressly refer to the chalet.

¹ Lawson Builders Ltd, Paul Lawson and Jennifer Lawson v SSLG and Wakefield MDC[2013] EWHC 3388 (Admin) applying Welwyn Hatfield DC v SSCLG and Beesley (2011).

² Caldwell and Timberstore Ltd v SSLHC & Buckinghamshire Council [2023] EWHC 2053 (Admin)

9. It is claimed that the chalet commenced as a holiday letting unit, when not used by family members. In mid-2019, The Hyde was uploaded onto the Airbnb website and the appellant has provided guest reviews of the chalet since August 2019. Since then the appellant states this has led to continuous occupation other than breaks for changeover days. During COVID lockdowns it was occupied by health workers.
10. The Council consider that the chalet was always built for the purposes of residential use and no other, relying on the appellant's response in the PCN in respect of the original use to be clear and unequivocal confirming its use as a separate unit of accommodation and not as ancillary accommodation to Toad Hall. The appellant contends that the PCN includes a list of ambiguous uses and that the PCN was answered from the current perspective and not in respect of the first use. In any event, the appellant argues that weight should still be given to the plumbing receipts and realise that the PCN was completed in error.
11. In respect of the use of the appeal site, the Council's evidence indicates that there was a change of use of the land to a mixed use comprising allotment and nil use (scrub land) but as this occurred in 2012/2013 it was considered to be immune from enforcement action. They also consider that the appeal site is not within the curtilage of Toad Hall due to separation and physical characteristics of the land and consequently the chalet was not built with the benefit of householder permitted development rights. In the light of this it is clear to me that a residential change of use of the land has occurred.
12. On the face of it, the evidence indicates that the chalet was built as a garden room and later converted to a dwelling through the provision of facilities required for day to day private domestic existence. This evidence should not be rejected simply because it is not corroborated and there is no clear evidence to contradict the appellant's version of events. Whether the chalet was originally built with the intention of eventually using it as an independent dwelling is unclear but the evidence from the receipts suggests that a change of use to a dwelling house could have occurred in September 2018 when it is claimed to have been substantially complete.
13. However, there is a contradiction in the appellant's evidence about the original intentions and use of the chalet which raises doubts over the sequence of events. As the appellant has not demonstrated on the balance of probabilities that the development is immune from enforcement through the passage of time the appeal on this ground fails

The appeal on ground (a)

14. An appeal on this ground is that planning permission should be granted for the alleged development.
15. The Council consider that the chalet results in an unsustainable sporadic form of residential development in open countryside without any overriding justification and contrary to Policy 3 regarding the location of development, to Policy 5 concerning housing in the countryside and to other policies in the Cornwall Local Plan. Additionally, concern is expressed over the visual harm caused by the development in the World Heritage Site.
16. Policy 5 supports the development of new tourism facilities through, amongst other things, the provision of new, high quality sustainable accommodation of appropriate

scale to its location and is accessible by a range of transport modes. Both this policy, the National Planning Policy Framework and the St Agnes Neighbourhood Development Plan support tourism accommodation where open-market housing would not be permitted.

17. The one bedroom chalet is small, low-key and low impact structure, built of appropriate materials for its location within an area of woodland and is not easily visible. It has car parking within the site. Whilst it is in open countryside, I do not consider that its location is so unsustainable for this alone to be a determining factor. It is walkable to Porthtowan and Mount Hawke is 1km distant, albeit without street lighting. Invariably visitors would rely on private vehicles for access to services. It is inevitable that holiday accommodation generates a degree of activity within the site, such as car parking and domestic paraphernalia external to the chalet.
18. The Council has referred to appeals relating to other local holiday developments and the need for consistency in decision making. Similarly the appellant has referred to appeals that support his case. Whilst I have had regard to these decisions, the circumstances in this particular appeal distinguish it from others.
19. Whilst there are policy reasons that could be argued to go against the development, I am mindful of the position in respect of the lawfulness of the associated operational development on the basis of the Caldwell judgement and the date when the chalet was originally constructed in 2017, more than four years before the issue of the notice. On balance, I see little planning purpose in the chalet remaining on-site searching for a lawful use but being prevented from being used for holiday accommodation, which is supported by Policy 5 of the Local Plan.
20. I shall allow the appeal on this ground but subject to the Council's standard condition limiting the use of the chalet as holiday accommodation only, to accord with housing policies under which permanent residential accommodation would not be permitted on the site.

Conclusion

21. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice. The enforcement notice will be quashed.
22. In these circumstances the appeals on ground (f)] and (g) do not fall to be considered.

P N Jarratt

INSPECTOR