

Appeal Decision

Site Visit made on 18 February 2026

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th April 2026

Appeal Ref: APP/D0840/C/24/3355201

Land north of Boswiddle House, Site 2, Boswiddle, Ladock, Cornwall TR2 4NU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeal is made by Mr David Lyness against an enforcement notice issued by Cornwall Council (the LPA).
- The notice was issued on 9 October 2024.
- The breach of planning control as alleged in the notice is, without planning permission, the material change of use of agricultural land to a mixed use comprising of agricultural, residential and storage of non-agricultural items/materials, through the stationing of a caravan and awning used for occasional residential purposes and associated operational development, including the terracing of the land, construction of a track/hardstanding areas, siting and construction of a shipping container structure used for storage purposes including the storage of the owner's carpentry tools, polytunnel, shed, greenhouse, converted horse lorry and associated residential/domestic paraphernalia. The approximate location of the caravan and shipping container structure are indicated by a blue 'X' and a blue 'A' on the attached plan respectively.
- The requirements of the notice are:
 - 1) Cease the residential use of the land outlined in red on the attached plan.
 - 2) Remove the caravan and awning shown in the approximate location by a blue 'X' on the attached plan from the land.
 - 3) Demolish and remove the timber decking from the land.
 - 4) Remove from the land all services used for the purposes of independent human habitation of the caravan, including but not limited to electric cabling, water pipes, sewage pipes, gas bottles, septic tank etc.
 - 5) Remove from the land all materials, paraphernalia, and debris resulting from the residential use of the land, including but not limited to outdoor furniture, shed, greenhouse, polytunnel, raised beds etc.
 - 6) Demolish and remove the shipping container structure shown in the approximate location by a blue 'A' on the attached plan from the land.
 - 7) Cease the use of the land for the storage of non-agricultural vehicles, items and equipment, including but not limited to: converted horse lorry, motor vehicles, building materials, roof tiles, trailers, ladders etc.
 - 8) Demolish and remove the hardstanding areas and track from the land outlined in red on the attached plan.
 - 9) Restore the land to its former condition/contours before the engineering operations took place.
 - 10) Remove from the land all materials and debris resulting from compliance with the requirements of (2), (3), (4), (5), (6), (8) and (9) above, and restore the land to its former condition before the breach took place.
- The period for compliance with the requirement is: nine months.
- The appeal is proceeding on the grounds set out in section 174(2)(d) and (f) of the Town and Country Planning Act 1990 (as amended).

Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words "etc" from sections 5(5) and 5(7) of the enforcement notice; and,

- the deletion of the word “retore” and its substitution with the word “restore” in section 5(9) of the enforcement notice.
2. Subject to the corrections, the appeal is dismissed and the enforcement notice is upheld.

The Enforcement Notice

3. The use of the phrase “etc” within the requirements of the notice is not sufficiently precise. I can delete it without injustice to the appellant or the LPA. There is also a minor typographical error in the requirements with the use of the word “retore”. I am satisfied I can correct this to the relevant word “restore” without injustice to the appellant or the LPA.

Appeal on ground (d)

4. An appeal on ground (d) is brought on the basis that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by those matters stated in the notice.
5. The enforcement notice is directed against a breach of planning control comprising the material change of use of the Land to a mixed use of agricultural, residential through the stationing of a caravan and non-agricultural storage, and separate operational development comprising the terracing of the land, the construction of track/hardstanding areas, the siting and construction of a shipping container structure, polytunnel, shed, greenhouse and converted horse lorry.
6. The appellant’s case on ground (d) relates solely to operational development elements of the breach comprising the terracing of the land, the construction of the track/hardstanding areas, the polytunnel, shed and greenhouse. No ground (d) is made in respect of the construction of the shipping container structure, the converted horse lorry nor the material change of use of the Land.
7. The appellant’s ground (d) appeal also argues that the raised planters are immune from enforcement action. However, they do not form part of the breach of planning control. Thus, I will consider the notice can require their removal in respect of ground (f).
8. The breach of planning control in this instance falls to be considered under the relevant time limits in S171B(1) of the 1990 Act, in accordance with the transitional arrangements introduced by the Levelling Up and Regeneration Act 2023.
9. For the appeal on ground (d) to therefore succeed, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the terracing of the land, the construction of track/hardstanding areas, the polytunnel, shed and greenhouse were substantially completed on or before 9 October 2020.

Terracing and Track/Hardstanding

10. The appellant says the terracing was done in late 2019. In response to a Planning Contravention Notice (PCN) issued by the LPA on 21 February 2024, the appellant indicated that the engineering works to tier the land to create seven levels were completed in approximately October 2019. Moreover, the appellant provides an aerial image from 21 July 2020 which it is said shows the seven distinguishable levels in existence on the Land at that point in time.

11. However, because of the two-dimensional nature of aerial photography, it is not entirely clear from the July 2020 image whether the site had been fully completed in terms of creating seven separate levels with the relevant land levels finalised at that point. There are linear markings in the soils which delineate the separate parts of the Land, however, it is not apparent whether these are the actual tiers to the Land.
12. In contrast, subsequent images from March 2021 and June and July 2022 show increasing activity on the site in the form of engineering operations. There are considerable areas of bare earth which didn't exist in July 2020, whilst there are stockpiles of materials apparent which appear to gradually alter the shape and character of each of the tiers through that time.
13. The appellant also provides date stamped photographs from 22 February 2020, 31 May 2020, 1 April 2020 and 5 October 2020 which are said to show some of the levels created. However, the full extent of the Land cannot be seen and in some of the images, work appears to be ongoing. On 5 October 2020 for example, surfacing works to 'Tier 3' appear to be ongoing with machinery still in place.
14. The appellant's statement also says the PCN response confirms the access track was completed in late 2019. However, there is nothing in the appellant's PCN response which explicitly refers to the access track/hardstanding. Nonetheless, the access track and some hardstanding on the first terrace can be seen in the aerial image said to be from 21 July 2020. The track is only partially visible on the image from 1 April 2020. The hardstanding can be seen on the image from 31 May 2020.
15. However, it is clear from the LPA's aerial images of June and July 2022 that the hardstanding on "Tier 1" has been expanded when compared to July 2020 whilst some form of hard surfacing appears to be under construction on "Tier 2" with material stockpiles present. Hardstanding on "Tier 3" has also begun to be laid. When comparing the images to that from July 2020, it is clear that the full extent of the track/hardstanding area works subject of the notice had not been completed by July 2020. "Tier 3" at that point was largely laid to soil and grass. Moreover, the LPA points to an aerial image from May 2024 which shows further hard surfacing works have taken place on "Tier 3" by that point.
16. Overall, whilst works may have commenced prior to 9 October 2020, I consider the evidence before me indicates that, on the balance of probabilities, the terracing of the land and the construction of a track/hardstanding areas subject of the notice were not substantially completed before then.

Polytunnel, Shed and Greenhouse

17. The appellant states in their PCN response that the polytunnel, shed and greenhouse were erected in March 2020 and substantially completed in April 2020. The structure of the erected polytunnel can be partially seen in the photograph from 1 April 2020, as can the substantially completed form of the shed. Likewise, the substantially completed form of the greenhouse can be seen in the image. Moreover, structures of the approximate size and shape of those on the photograph can be seen in the same position on the aerial image said to be from 21 July 2020.
18. There is little by way of contrary evidence before me. As a result, I am satisfied the evidence is sufficiently precise and unambiguous and demonstrates, on the

balance of probabilities, that the polytunnel, shed and greenhouse were substantially completed before 9 October 2020 and thus, at the date the notice was issued, enforcement action may not have been taken against them because the time for doing so had expired.

19. The *Murfitt*¹ principle establishes that a notice directed against a material change of use may require of works that were ancillary or incidental to the unauthorised use, even if such works would be immune from enforcement action in their own right, such that the land is restored to its condition before the breach took place.
20. The Court held in *Caldwell* that there is a limitation to the *Murfitt* principle, in that a notice cannot require the removal of such works which were fundamental or causative of the material change of use.
21. The material change of use is from agricultural to a mixed use of agricultural, residential and storage of non-agricultural items/materials. The appellant states at paragraph 5.3 of his appeal statement that the shed, greenhouse and polytunnel are used in connection with agricultural purposes including the growing of fruit and vegetables and bee keeping. They do not appear fundamental to or causative of the residential or non-agricultural storage components of the mixed use.
22. As a result, whilst the shed, greenhouse and polytunnel were, on the balance of probabilities, substantially completed before 9 October 2020 and immune from enforcement action, they were not fundamental to or causative of the breach. I will consider therefore whether it is open for the notice to require their removal with regard to the *Murfitt* principle under the ground (f) appeal.
23. Otherwise, it has not been demonstrated, on the balance of probabilities that, at the date when the enforcement notice was issued, no enforcement action could be taken in respect of any breach of planning control constituted by those matters stated in the notice.
24. The appeal on ground (d) fails.

Appeal on ground (f)

25. An appeal on ground (f) is brought on the basis that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters stated in the notice or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
26. The notice does not set out which purpose it seeks to achieve. Nevertheless, since it seeks to cease the unauthorised use and remove all items associated with it, including the associated operational development referred to in the breach, I am satisfied the purpose of the notice is to remedy the breach of planning control by restoring the Land back to its condition before the breach took place.
27. As set out above, the *Murfitt* principle allows for an enforcement notice to seek removal of ancillary or incidental works which have facilitated the material change of use, even if they themselves are immune from enforcement action, in order to remedy the breach.

¹ *Murfitt v SSE* [1980] JPL 598

28. The appellant argues that the terracing and access track/hardstanding elements of the breach have not facilitated the material change of use. However, it is a moot point since I have found, on the balance of probabilities, that they are not immune from enforcement action and it is necessary therefore for the notice to require their removal to remedy the breach of planning control.
29. Nonetheless, as I have set out above, the shed, greenhouse and polytunnel are immune from enforcement action given the relevant time limits set out in S171B(1) of the Act. The appellant argues that those structures associated with the allotment on 'Tier 1' in connection with the agricultural use across the remainder of the Land, have not facilitated the material change of use to a mixed use of agricultural, residential and non-agricultural storage.
30. However, whilst the shed, greenhouse and polytunnel have been used in respect of the agricultural component of the mixed use, and could be used in connection with the lawful agricultural use of the Land, the appellant's submissions are that they are connected to the residential component of the breach since they are used to provide food for himself. Moreover, the shed, greenhouse and polytunnel have been placed on one of the terraces created by the breach. They were subsequent to the material change of use and the other aspects of operational development which have occurred. As a result, I am satisfied that they were part and parcel of the material change of use and have facilitated it. On that basis, applying the *Murfitt* principle, despite being immune from enforcement action in their own right, it is within the scope of the enforcement notice to require their removal in order to remedy the breach of planning control.
31. Likewise, the appellant also argues, under ground (d) that the raised beds within the allotment area are immune from enforcement action in their own right given the passage of time. However, the raised beds do not comprise a component of the breach of planning control. The notice simply requires their removal. As above, I am satisfied the raised beds are not fundamental to or causative of the breach, but for the same reasons as the shed, greenhouse and polytunnel, they have facilitated the material change of use of the Land. To that end, even if they are immune from enforcement action given the time limits under S171B(1) of the Act, the notice can require their removal in order to remedy the breach of planning control.
32. The appellant also argues that the requirement to remove the shipping container structure is excessive, as it does not constitute operational development. However, again applying the *Murfitt* principle it is appropriate for a notice to require the removal of works which, even if not development in their own right for the purposes of S55(1) of the Act, have facilitated the breach. In this instance, the shipping container structure has facilitated the use of the Land for non-agricultural storage. To that end, it is necessary for the notice to require its removal in order to suitably remedy the breach of planning control, regardless as to whether or not it constitutes development in its own right.
33. The appellant also argues that the container structure and the single touring caravan could be retained on the Land for use in connection with the previous lawful use of the Land for agriculture and it is therefore excessive for the notice to require their removal.

34. However, the evidence suggests that neither the container structure nor the siting of the caravan were undertaken for the previous lawful use of the Land. They were done to facilitate the mixed-use subject of the breach. As established in *Kestrel Hydro*², a ground (f) case to retain the works cannot succeed if an appellant merely shows that they could serve a lawful use. To that end, even if they could be utilised for agricultural purposes, it is not beyond the scope of the *Murfitt* principle to require their removal in order to remedy the breach.
35. The appeal on ground (f) fails.

J Whitfield

INSPECTOR

² *Kestrel Hydro v SSCLG & Spellthorne BC* [2016] EWCA Civ 784