

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/24/3348536

Land known as Old Pine Workshop, Skate Park Lane, Mount Hawke, Cornwall, TR4 8BQ

- 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 Andrew Leatherbarrow against an enforcement notice issued by Cornwall Council (the LPA).
 - The notice was issued on 20 June 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the material change of use of the land from a nil use to a mixed use comprising residential and light industrial (Class E g) iii) of the Town and Country Planning Use Classes Order 1987 (as amended)), through the creation of a live/work unit that consists of a residential unit, workshop and associated operational development. The approximate location of the residential unit and workshop are indicated on the attached plan by a blue 'X' and red 'A' respectively. The land has been outlined in red on the attached plan 'The Plan'.
 - The requirements of the notice are:
 - 1) Cease the residential and light industrial use of the land outlined in red on the attached plan.
 - 2) Cease the residential and light industrial use of the buildings shown in the approximate locations by the blue 'X' and red 'A' on the attached plan.
 - 3) Demolish and remove the buildings shown in the approximate positions marked with the blue 'X' and red 'A' on attached plan.
 - 4) Remove from the land all materials and debris resulting from the mixed residential and light industrial use of the land, including but not limited to sheds, washing line, plant pots etc.
 - 5) Remove all materials arising from compliance with (1) – (4) above from the land and restore the land to its former condition before the breaches took place.
 - The period for compliance with the requirements is: 12 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. It is directed that the enforcement notice is corrected by:
 - the deletion of the words, “through the creation of a live/work unit that consists of a residential unit, workshop” from section 3 of the notice”; and,
 - the deletion of the words, “The approximate location of the residential unit and workshop are indicated on the attached plan by a blue 'X' and red 'A' respectively. The land has been outlined in red on the attached plan 'The Plan'” from section 3 of the notice.
2. And varied by:
 - the deletion of the words, “(3) Demolish and remove the buildings shown in the approximate positions marked with the blue 'X' and red 'A' on attached plan”, in section 5 of the notice;

- the deletion of the words “(1) – (4)” in section 5(5) of the notice and their substitution with the words “(1) – (3)”;
 - the deletion of listed number “(4)” and its substitution with “(3)” and the deletion of list number “(5)” and its substitution with “(4)” in section 5 of the notice; and,
 - the deletion of 12 months and its substitution with 16 months as the time for compliance.
3. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

The Enforcement Notice

4. The references in section 3 of the notice to “the approximate location of the residential unit and workshop are indicated on the attached plan by a blue ‘X’ and red ‘A’ respectively” and “the land has been outlined in red on the attached plan ‘The Plan’” are superfluous as section 2 identifies the Land as that edged in red on the attached plan, and the location of the buildings is referred to where relevant in section 5 of the notice. I will delete those phrases from the alleged breach accordingly.

Appeal on ground (d)

5. An appeal on ground (d) is brought on the basis that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control constituted by the matters stated in the notice.
6. The notice alleges a breach of planning control of the material change of use of the land from a nil use to a mixed use comprising residential and light industrial through the creation of a live/work unit that consists of a residential unit, workshop and associated operational development. In essence, it says that material change of use in the Land has occurred because of operational development which has been causative of that material change of use.
7. S171B of the Act sets out the relevant time limits for taking enforcement action. The time limits have recently been amended with transitional arrangements in place¹.
8. The appellant argues that, in respect of the residential use of the Land, the relevant period is four years, under S171B(2) of the Act whilst the commercial use is 10 years under S171B(3) of the Act. However, in this instance, the notice does not allege the material change of use of the buildings on the land to a solely residential use. As a result, the relevant period is ten years beginning with the date of the breach, since a material change of use of the Land to a mixed use falls to be considered under S171B(3) of the Act. That is because a mixed use is a single composite use derived from the component uses. It is not open to me to disaggregate component uses for the purposes of immunity.
9. Nevertheless, since the residential unit and workshop aspects of the breach were fundamental to and causative of the material change of use, they fall to be

¹ Town and Country Planning Act 1990 as amended by Levelling-up and Regeneration Act 2023 (s115(1)(a)) and The Planning Act 2008 (Commencement No.8) and Levelling-up and Regeneration Act 2023 (Commencement No.4 and Transitional Provisions) Regulations 2024 (Part 3(3)(b) and Part 3(5)(a)).

assessed under the relevant time limit of 4 years under S171B(1) of the Act (in the case of a building substantially completed on or before 25 April 2024), having regard to the findings of the Court of Appeal in *Caldwell*². The *Murfitt*³ principle does not extend those elements of the breach.

10. The appellant says the residential use of the Land commenced in March 2020. As such, the material change of use of the Land to a mixed use of residential and light industrial did not take place on or before 20 June 2014 and continue thereafter for a period of 10 years. As a result, the breach of planning control, insofar as it relates to the material change of use, was not immune from enforcement action under S171B(3) of the Act at the date the notice was issued. Associated operational development referred to in the notice, aside from the residential unit and workshop, can also be removed in accordance with the *Murfitt* principle, even if they were substantially completed before 20 June 2020, as they were not causative of the breach.
11. In respect of the residential unit and the workshop, it is necessary for the appellant to demonstrate, on the balance of probabilities, that they were substantially completed on or before 20 June 2020. The appellant submits in the form of a Statutory Declaration that the smaller building was substantially completed in the autumn of 2018 whilst the larger one, in the spring of 2019. There is nothing within the LPA's submissions which disputes the appellant's case on that point. As a result, the operational development aspects of the breach would be immune under S171B(1) of the Act, having regard to the transitional arrangements.
12. However, S171B(4)(b) of the Act states that the preceding sections of S171B do not prevent the taking of further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach. S171B(4)(b) of the Act is, in essence, a 'second bite' provision and is relevant in circumstances where an LPA has issued a notice within the relevant timescales under S171B of the Act but that notice later proved to be defective. This does not have the effect of extending the immunity period, as an LPA may only issue a further notice after the immunity period has passed if they purported to issue the first one in time.
13. The LPA issued a previous enforcement notice on 18 August 2022 and therefore within the four years of substantial completion of the residential unit and workshop under S171B(1) of the Act. The land subject of that notice included the Land subject of this notice, along with the adjacent site, Middle Earth, which is subject to a separate appeal decision⁴.
14. The previous notice alleged a breach of planning control of the entire land of, without planning permission, the material change of use of the land from nil use to residential through the creation of two dwellings and associated operational development. The notice was appealed and subject to an Inspector's decision dated 2 January 2024⁵.
15. In that decision, the Inspector identified that, rather than single planning unit, the two adjacent parcels of land constituted separate planning units. Moreover, the

² *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467

³ *Murfitt v SSE* [1980] JPL 598

⁴ PINS Ref: APP/D0840/C/24/3348537

⁵ PINS Refs: APP/D0840/C/22/3307527 & APP/D0840/C/22/3307542

Inspector concluded on the ground (b) appeal that the land as a whole had not materially changed to a residential use with associated operational development. As a matter of fact and degree, the Inspector found that a material change of use to a mixed use of residential and a commercial light industrial use had occurred. Unable to correct the notice accordingly due to injustice, the Inspector quashed the notice.

16. Whilst the original notice covered a wider area of land than this notice, it clearly included all of the Land subject of this notice. To that end, I am satisfied, as a matter of fact and degree, this notice concerns the same site as the previous notice.
17. Nevertheless, in terms of whether it relates to the same breach, S171B(4) of the Act cannot be utilised to issue another notice in respect of a factually different range or nature of uses or operations on the site. Furthermore, the second notice cannot allege a mixed use comprising a wider range of components than the aggregate of those covered by the first. It was held in *Fidler v FSS & Reigate and Banstead BC* [2004] EWCA Civ 1295 that, even if the local planning authority had intended to direct the first notice at the whole mixed use, it fell materially short of doing so and the later was not a 'second bite' notice.
18. In this instance, the previous notice was directed solely at the material change of use of the Land to a residential use. It was not directed against the material change of use of the Land to a mixed use of residential and light industrial. Even if the LPA had intended to issue the first notice against the mixed use and the facts before the previous Inspector suggested that it was the mixed use that had occurred, to my mind, the notice subject of this appeal is broader in scope than the initial notice. I note the Courts in *Jarmain v SSETR (No. 1)* [2000] EWCA Civ 126, endorsed a pragmatic approach where a notice can benefit from the 'second bite' provisions if it concerns what is in effect the same breach.
19. Nonetheless, in *Jarmain* the two notices were concerned with the same breach. The earlier had simply been misdescribed. Here, as in *Fidler*, the notice before me is directed at additional facts as considered by the previous Inspector. The notice does not describe more accurately what was misdescribed in the earlier notice. The LPA had not previously sought to enforce against the mixed use of the land to residential and light residential. In my view the scope of the notice here goes beyond that, widening the scope of the earlier notice to what is, in effect, a different breach of planning control.
20. Consequently, I find that the provisions within S171B(4) of the Act do not apply. On that basis, the appellant has demonstrated, on the balance of probabilities, that the creation of a live/work unit that consists of a residential unit and workshop was substantially completed on or before 20 June 2020 and, therefore, was immune from enforcement action under S171B(1) of the Act at the date the notice was issued.
21. I conclude overall, therefore, that at the date when the notice was issued, enforcement action could have been taken in respect of the breach of planning control constituted by the matters stated in the notice, insofar as they relate to the material change of use of the land from a nil use to a mixed use comprising residential and light industrial (Class E g) iii) of the Town and Country Planning Use Classes Order 1987 (as amended)) and associated operational development.

22. Nonetheless, at the date when the notice issued, no enforcement action could be taken in respect of the breach of planning control constituted by the matters stated in the notice, insofar as they relate to the creation of a live/work unit that consists of a residential unit and workshop.
23. The appellant submits that any amendment to the notice would be prejudicial as it would have harmed the appellant's right to appeal under different grounds, including ground (a). However, no injustice would occur in my view if I were to correct the notice to delete that part of the allegation relating to the operational development of the residential unit and workshop, as the appellant has demonstrated that part of the breach to be immune from enforcement action. I will correct the relevant part of the allegation and remove the corresponding requirements accordingly.
24. The appeal on ground (d) therefore succeeds but only in part.

Appeal on ground (g)

25. An appeal on ground (g) is brought on the basis that the period for compliance specified in the notice falls short of what should reasonably be allowed.
26. The notice, as corrected, affords a period of 12 months for cessation of the mixed use, the removal of all material and debris resulting from the use and from compliance. The appellant argues that a period of 18 months would be necessary to allow him to secure new accommodation to live in and also to find a suitable business location that would be within his range of affordability.
27. The LPA considers 12 months is sufficient time to locate alternative accommodation. Nonetheless, given the circumstances set out by the appellant in respect of the housing crisis in Cornwall, the LPA considers an extended period of 16 months to be reasonable.
28. The loss of a person's home would be an infringement of their rights under the Human Rights Act 1998 (HRA). The cessation of the use of the land for a mixed use of residential and light industrial would amount to interference and would engage the right for respect for private and family life, home and correspondence set out in Article 8 of the HRA for any person currently residing on the Land. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.
29. The consequence of dismissing the appeal and upholding the notice would be that the occupant of the Land would lose their home and business premises. However, a compliance period of 16 months would allow sufficient time to explore alternative accommodation, even in the circumstances here where there is a demonstrable housing shortage in Cornwall. Likewise, there is little substantive evidence before me that the appellant could not source appropriate alternative premises for his business within the same time period.
30. The planning harm identified in the notice in respect of the material change of use of the land to a mixed use of residential and light industrial is of such weight that upholding the notice would be a proportionate and necessary response that would not violate those persons rights under Article 8 of the HRA. The protection of the public interest cannot be achieved by means that are less interfering of their rights.

31. The appellant argues that 24 months should be afforded to allow the appellant to explore the planning merits of the use of the Land for residential and light industrial in the context of the policies in the revised National Planning Policy Framework. However, it seems to me that 16 months would be sufficient time to prepare and make an application to the LPA, and for the LPA to determine it. Moreover, the LPA has the discretion to extend the compliance period under S173A of the Act if the circumstances dictate accordingly. Consequently, I find a time period of 16 months to be appropriate.
32. The appeal on ground (g) succeeds to a limited extent.

J Whitfield

INSPECTOR