

Appeal Decisions

Site Visit made on 18 February 2026

by J Whitfield BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st May 2026

Appeal A Ref: APP/D0840/C/24/3340377

Appeal B Ref: APP/D0840/C/24/3340378

Appeal C Ref: APP/D0840/C/24/3340379

New Farm, St Mawgan, Newquay, Cornwall TR8 4HH

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
- The appeals are made by Mr and Mrs David and Janet Taylor (Appeal A), Occupier of Timber Clad Building (Appeal B) and Harling Richardson Limited (Appeal C) against an enforcement notice issued by Cornwall Council (the LPA)
- The notice was issued on 7 February 2024.
- The breach of planning control as alleged in the notice is, without planning permission, the construction of a timber clad building with timber decked area, used as a residential dwelling, shown in the approximate location by a blue 'X' on the attached plan, and the associated material change of use of the land shaded in green on the attached plan from nil use to residential. Also, the construction of an associated timber clad outbuilding shown in the approximate location by a blue '2' on the attached plan.
The construction of a timber clad outbuilding, used as a gym/office, shown in the approximate location by a blue '1' on the attached plan, and the associated material change of use of the land shaded in orange on the attached plan from agricultural to purposes incidental to the enjoyment of the dwellinghouse known as New Farm and the residential timber clad building.
- The requirements of the notice are:
 - 1) Cease the residential use of the land shaded in green on the attached plan.
 - 2) Remove all services connected to the timber clad building shown in the approximate location by a blue 'X' on the attached plan; including but not limited to: electric cabling, water pipes, sewage pipes.
 - 3) Dismantle and remove from the land, the timber clad building and decking shown in the approximate location by a blue 'X' on the attached plan.
 - 4) Remove from the land shaded in green on the attached plan, all materials and debris resulting from the residential use of the land.
 - 5) Cease the non-agricultural use of the land shaded in orange on the attached plan.
 - 6) Dismantle and remove the outbuildings shown in the approximate locations by a blue '1' and blue '2' from the land.
 - 7) Remove all materials arising from compliance with (1) – (6) above from the land and reinstate the land to its former condition before the breach 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)(b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 (as amended).

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with corrections and variations.

Appeal D Ref: APP/D0840/X/24/3346523

New Farm, Access to New Farm Bungalow, St Mawgan, Cornwall TR8 4HH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs D and J Taylor against the decision of Cornwall Council.
- The application ref PA24/01862, dated 5 March 2024, was refused by notice dated 21 May 2024.

- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is small rectangle of garden/domestic curtilage land.

Summary of Decision: The appeal is dismissed.

Appeal E Ref: APP/D0840/X/24/3346520

New Farm, Access to New Farm Bungalow, St Mawgan, Cornwall TR8 4HH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs D and J Taylor against the decision of Cornwall Council.
- The application ref PA24/01862, dated 5 March 2024, was refused by notice dated 21 May 2024.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 (as amended).
- The use for which a certificate of lawful use or development is sought is small triangle of domestic curtilage/garden land at New Farm, St Mawgan on long-term basis.

Summary of Decision: The appeal is dismissed.

Application for costs

1. An application for costs was made by Mr and Mrs David and Janet Taylor, Occupier of Timber Clad Building and Harling Richardson Limited against Cornwall Council. The application is the subject of a separate Decision.

APPEAL D

Main Issue

2. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

3. S191(2) of the Act state that uses are lawful at any time if - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. The relevant time limit under S171B of the Act is ten years. Consequently, for the appeal to succeed it is necessary for the appellants to demonstrate that the use of the appeal site as residential garden land took place on or before 5 March 2014 and continued for 10 years thereafter without interruption.
5. The area of land in question is to the front of the farmhouse of New Farm on its south side and lies within the same ownership. The land is separated from the house by the existing front garden and sits at a lower level. The appellants state that the rectangular area of land has been accessed via pedestrian gardens steps and walkways from the existing front garden on a long-term basis. It is said that it was fenced off from the adjacent farmland and with that enclosure, it has been used for pets and other domestic and recreational purposes.
6. One of the appellant's has provided a Statutory Declaration in which it is stated that the land has continuously served as part of the garden of New Farm for in

excess of the last ten years. It is stated that the land has been continually used and enjoyed by their family for the purposes of stationing of a playhouse for children, dog kennels and run, outhouses, as well as garden works and planting along with the erection of a temporary marquee for family events.

7. A Statutory Declaration of a neighbouring resident is also provided, in which they too declare that they have known the land and observed it to been in use as garden to New Farm for in excess of the last ten years.
8. Two photographs are provided. They are undated, although the appellants declare they were taken in August 2006. They partially show a large marquee on the land. It is also said that they show steps from the front garden down to the land. It is said that the marquee was positioned on the Land for a family wedding. This is supported by the Statutory Declaration of Mr Hazell, who also mentions seeing a marquee for a separate wedding around 20 years ago.
9. However, it seems to me that erecting a marquee for a wedding does not necessarily equate to use as a residential garden. Marquees for weddings can equally be found on land which is not put to residential use. Indeed, it is ultimately not an inherently residential activity that would reasonably be expected to occur in a domestic garden.
10. Moreover, there are no photographs before me showing the stationing of a playhouse for children, dog kennels, outhouses nor any garden works or planting. Furthermore, there is no photographic or documentary evidence that the land was ever used for typical domestic activities such as sitting out, socialising, playing or undertaking domestic chores such as the hanging out of washing.
11. Whilst the land may be in close proximity to New Farm and may have been accessible via steps from the original garden, simply being able to readily access the land does not mean it has been used for residential purposes. Indeed, whilst I note Mr Hazell declares that the land has always been accessible from New Farm by following pathways, that does not mean the land has been put to residential use throughout that time.
12. A series of aerial images are provided. The first, said to be from 1999, shows the Land is not delineated from the wider agricultural field to the south. It does, however, appear to be delineated from New Farm and its garden by either a fence or a hedgerow. There is a structure of some description on the land but the image is not of sufficient resolution to ascertain what it is.
13. In the image said to be from 2004, the land appears to have undergone some form of engineering works. The land is no longer laid to grass and the slope of the land appears to have been cut into. There is no physical delineation from the remainder of the agricultural field. Steps appeared to have been created from the garden of New Farm down to the land but the boundary between the two largely remains intact. Nevertheless, other than the fact that physical works have been done to the land and that it can be accessed via steps from the garden of new Farm, there is nothing on the image which exhibits residential use of the land. Likewise, there is a building present on the land, but it is not clear from the image what the building is.
14. In the subsequent image from 2009, further works appear to have been carried out to the land. The building from 2004 appears to have gone. There are darker

patches on the land but it is not clear what they actually area. Again, as with the previous image, there is no evidence of domestic or residential paraphernalia present on the land.

15. The next image is said to be from 2013. The land appears to now have some physical demarcation from the agricultural field to the south. There is a rectangular area within the middle of the land which appears to have been cut into. Otherwise, the landform appears similar to previous, albeit a significant degree of grass cover has returned. Nonetheless, it does not appear to be maintained grass or lawn as one may find in a residential garden. Moreover, whilst there are some items apparent on the land, I cannot tell from the resolution of the image what they are. In essence, the image does not indicate the use of the land for residential garden at that time. There appears to be little evidence of any domestic paraphernalia, such as the trampoline and play equipment that can be seen on the garden land to the north.
16. The following submitted image is said to be from 2016. Little has changed in the condition of the land and whilst structures are visible, it is not clear whether these are of a domestic nature. In any event, even if they were, it would not assist in demonstrating use of the land as residential garden from on or before 5 March 2014. That is also the case with the images said to be from 2019 and 2022.
17. As a result, taken as a whole, the aerial images do little to support the appellants' case that the land has been used as residential garden from on or before 5 March 2014.
18. The appellants submit that the land comprises curtilage of the New Farm. However, curtilage is a legal concept. It does not equate to a use of land. Thus, even if the land were to form part of the curtilage, it does not mean that it automatically has been used as residential garden. I find the appeal decision presented to me from 2009 does not assist in that case.
19. Consequently, I find the appellant's evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the use of the appeal site as residential garden took place on or before 5 March 2014 and continued for 10 years thereafter without interruption, such that, at the date the LDC application was made, it was lawful within the meaning of S191(2) of the Act.

Conclusions

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for small rectangle of garden/domestic curtilage land was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

APPEAL E

Preliminary Matters

21. The LDC application sought to establish that the use of the appeal site for domestic garden land was lawful at the date of the application – 5 March 2024. The LPA granted planning permission for an annexe building on the land on 9 August 2024. The LPA thus state this appeal is “largely academic” given the

overlap with the subject of the application and the grant of planning permission, albeit noting that part of the LDC application site falls outside of the red line boundary of the planning permission. However, having considered the LPA's decision, along with the submitted plans, I consider the permission clearly was granted for the erection of that building. I see nothing in the permission which relates to the use of the appeal site as residential garden. In any event, what matters is whether the use of the land was lawful at the date of the LDC application. The grant of planning permission was subsequent to it. I have therefore determined the appeal on that basis.

Main Issue

22. The main issue is whether the LPA's decision to refuse the LDC application was well-founded.

Reasons

23. S191(2) of the Act state that uses are lawful at any time if - (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
24. The relevant time limit in this instance under S171B of the Act is ten years. Consequently, for the appeal to succeed it is necessary for the appellants to demonstrate that the use of the appeal site as residential garden land took place on or before 5 March 2014 and continued for 10 years thereafter without interruption.
25. The area of land in question is to the east of the farmhouse of New Farm and is separated from the house by the existing garden. The appellants state that the triangular area of land has adjoined the main garden and offered visual affinity within the setting of the house on a long-term basis, providing trees and shelter. They go on to state that it is an area which where pens and runs for pets have been enjoyed whilst there has also been a caravan and garden sheds for ancillary residential purposes from 1999 onwards.
26. One of the appellants has provided a Statutory Declaration in which it is stated that the land has continuously served as part of the garden of New Farm for in excess of the last ten years. It is said that, in 1991, a strip of access land was sold to their neighbours for the creation of a new private vehicular access and as a consequence, the appeal site was severed from the adjoining land due to that access. Consequently, it is said the land became part of the garden of New Farm.
27. They go on to declare that it has been used continually by the family for the purposes of a children's play area including a children's camp, tree climbing, den building, stationing of wooden play structures, tree swings, as well as the siting of caravan for family use, an outhouse/garden store, childhood pets play area, pet houses, pet runs and a sand pit.
28. A Statutory Declaration of a neighbouring resident is also provided, in which they too declare that they have known the land and observed it to been in use as garden to New Farm since the access track was created.

29. However, there are no photographs of the land provided at any point in time. There is no documentation provided which indicates the purchase of such paraphernalia or provision of domestic equipment as mentioned.
30. Aerial images are provided, said to be from 1999, 2004, 2009, 2013, 2016, 2019 and 2022. However, in 1999, 2004, 2009 and 2013 the appeal site is largely covered in trees. There is no evidence of any domestic paraphernalia that points towards use of the site as residential garden. It is apparent that some tree clearance had taken place in 2009 and 2013, however, there is no evidence of residential garden use apparent on the land in either image. No camps, dens or other play or pet structures can be seen. No caravan can be seen on any of those images either.
31. It is only in the image said to be from 2016 where a building appears on the land. It is not clear exactly whether the building is a shed or other domestic structure as referred to by the appellants. There are also other items apparent on the land but again, it is not clear what they are. In any event, even if they were of a domestic nature, given the image is dated from 2016, it does little to assist in demonstrating continuous use of the land for residential garden use from on or before 5 March 2014. That is also the case with the images from 2019 and 2022. Therefore, the aerial images before me do not demonstrate, on the balance of probabilities, that the land has been used as residential garden from on or before 5 March 2014.
32. As with Appeal D, the appellants submit that the land comprises curtilage of the New Farm. However, curtilage is a legal concept. It does not equate to a use of land. Thus, even if the land were to form part of the curtilage, it does not mean that it automatically has been used as residential garden. I find the appeal decision presented to me from 2009 does not assist in that case.
33. As a result, I find the appellant's evidence is not sufficiently precise and unambiguous to demonstrate, on the balance of probabilities, that the use of the appeal site as residential garden took place on or before 5 March 2014 and continued for 10 years thereafter without interruption, such that, at the date the LDC application was made, it was lawful within the meaning of S191(2) of the Act.

Conclusion

34. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for small triangle of domestic curtilage/garden land at New Farm, St Mawgan on long-term basis was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

APPEALS A, B AND C

The Enforcement Notice

35. In their ground (b) submissions, the appellant states that the building identified by an 'X' on the plan attached to the notice, is identified in the wrong location. However, the notice states the building is in the approximate location, not the exact location. I was able to see from my site visit that the building can be clearly identified as being in the approximate location of the 'X' marked on the plan and thus the enforcement notice is not defective.

36. Section 3 of the notice identifies part of the alleged breach of planning control as a material change of use of the land shaded orange on the plan from agricultural to purposes incidental to the enjoyment of the dwellinghouse. It is clear from the notice as a whole that it seeks to target the use of the land in essence for residential purposes. The allegation ought to be framed in those terms. I am satisfied that I can correct the notice to reword the allegation accordingly without injustice to the appellant or the LPA since both parties have made their case on that basis.
37. Likewise, the requirement to cease the non-agricultural use of the land shaded in orange should be positively framed to cease the residential use of the land shaded orange, reflecting the same requirement for the land shaded green whilst also requiring removal of materials and debris resulting from that residential use to be consistent with the requirements in respect of the green shaded land. I am satisfied I can vary the notice accordingly without injustice to the appellant or the LPA.

Appeals A, B and C on ground (b)

38. An appeal on ground (b) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters have not occurred.
39. The appellants state that the buildings referred to in the notice as '1' and '2' are not buildings but temporary structures. However, the appellants do not deny the two buildings or structures exist as a matter of fact. Indeed, I was able to observe both '1' and '2' on my site visit. The question as to whether or not they constitute building operations for the purposes of the Act and thus development for which planning permission is required, is a matter for ground (c).
40. The appellants also state that the land shaded orange and land shaded green on the attached plan are not agricultural use. However, the notice alleges a material change of use of those parts of the Land from agricultural use. The question of whether or not the residential use of those parts of the Land do not constitute a breach of planning control because they have previously deemed to be lawful, is also a matter for the ground (c).
41. The appeal on ground (b) therefore fails.

Appeals A, B and C on ground (c)

42. An appeal on ground (c) is brought on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, that those matters do not constitute a breach of planning control. S171A(1) of the Act defines a breach of planning control as including (a) carrying out of development without the required planning permission.
43. The notice alleges the construction of a building used as a dwellinghouse, the change of use of two parts of the Land to residential and the erection of two outbuildings.
44. In respect of the construction of a timber clad building with timber decked area, used as a residential dwelling shown marked 'X' on the attached plan, planning

permission was granted by the LPA on 9 August 2024 for a single-storey annexe¹. The annexe for which planning permission was granted is the same building subject of the notice.

45. The LPA states that the enforcement notice is directed against an unfettered residential use of the building and not its use as an annex. However, the notice is directed against a breach of planning control comprising the construction of the building used as a residential dwelling. It is not targeted at a breach of planning control consisting of the material change of use of the building to a dwellinghouse without planning permission nor the breach of a condition restricting use of the building to accommodation ancillary to New Farm. Consequently, it is clear to me from the four corners of the notice that it is directed against the operational development without planning permission comprised in the construction of the building.
46. To that end, the construction of a timber clad building with timber decked area does not constitute a breach of planning control, since planning permission has been granted for it. The appeal on ground (c) succeeds in that respect and I will correct the notice to delete that part of the breach.
47. In respect of the alleged material change of use of the areas shaded green and orange on the plan to residential use, the appellant argues that the use is lawful as garden land associated with New Farm. However, it seems to me that the change of use of land from agriculture or a nil use to use for residential purposes is material, in that there is a significant difference between the character of activities from what has gone on previously to those which have taken place. The appellant does not argue that the changes of use are not material and thus, it seems to me that those components of the alleged breach constitute development having regard to S55(1) of the Act. There is no evidence of planning permission having been granted for either of the shaded areas, either expressly or by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). As a consequence, the material change of use of the areas shaded green and orange on the plan to residential use constitutes development without planning permission and thus a breach of planning control.
48. Insofar as whether the use of the shaded parts of the Land for residential use were immune from enforcement action at the date the notice was issued, that is a matter for ground (d) which I will return to in due course. As a result, the ground (c) appeal fails in respect of the material change of use of those parts of the Land shaded green and orange on the plan to residential use.
49. Turning to buildings '1' and '2', the appellant argues that they do not constitute building operations but are temporary structures. S336(1) of the Act defines a building as "any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building." What constitutes a building is a matter of fact and degree. In *Cardiff Rating Authority v Guest Keen Baldwin's Iron and Steel Co Ltd* [1949] 1QB 385, endorsed by CoA in *Skerritts of Nottingham Ltd v SSETR (No.2)* [2000] 2 PLR 102, three primary factors were identified as decisive of what was a building: size, permanence and physical attachment

¹ LPA Ref: PA23/09648

50. The appellants state that the two structures are not permanent and have no foundations. However, in respect of both structures, I was able to see from my site visit that they are of substantial size. There is no indication that they were brought onto the land in their complete form and were not constructed on site. Whilst the appellant argues that neither are physically attached to the ground, they are both clearly of such size that they are capable of being located in the same position and kept in place under their own weight. It is also apparent that they have been located the same place since May and June of 2022. That suggests a significant degree of permanence.
51. I find therefore that the structures marked as '1' and '2' on the plan constitute buildings and thus development for the purposes of S55 of the Act. There is no evidence that an express planning permission exists for either building. There is a question as to whether the buildings would be granted planning permission by virtue of Article 3(1) of the GPDO, albeit it is not one the appellants make. Class E of Part 1, Schedule 2 of the GPDO states that the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development.
52. Setting aside the question of whether or not either building is within the curtilage of the dwellinghouse, even if building '1' were, it sits forward of the principal elevation of the dwellinghouse of New Farm. As a result, building '1' would not be permitted development given the limitation under E.1(c) of Class E of the GPDO.
53. Moreover, the height of the eaves or overall height of building '2' is not before me. I cannot therefore be sure that the building falls within the height limitations set out E.1(e) of Class E.
54. As a result, it has not been demonstrated, on the balance of probabilities, that at the date the notice was issued, planning permission for either building had been granted by virtue of Article 3(1) of the GPDO. Consequently, the ground (c) appeal fails in respect of buildings '1' and '2' as their construction amounts to a breach of planning control.
55. The appeals on ground (c) succeed but only to the limited extent set out above.

Appeal on ground (d)

56. 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 any breach of planning control which may be constituted by those matters stated in the notice.
57. The appellants' case is brought on ground (d) solely in respect of the material change of use of the green and orange shaded areas on the plan to residential. To that end, it is necessary for the appellant to demonstrate, on the balance of probabilities, that the associated material change of use of the land shaded in green on the attached plan from nil use to residential and the associated material change of use of the land shaded in orange on the attached plan from agricultural to purposes incidental to the enjoyment of the dwellinghouse known as New Farm and the residential timber clad building, took place on or before 7 February 2014 and continued thereafter without interruption for 10 years.
58. However, I have found in Appeal D that it has not been demonstrated, on the balance of probabilities, that the use of that part of the Land shaded orange as

residential garden was lawful on 5 March 2024 because the time for taking enforcement action had expired.

59. As I have set out in respect of my discussion of the evidence on Appeal D, the evidence before me does not indicate that the circumstances were different such that the material change of use of the land shaded in orange on the attached plan from agricultural to purposes incidental to the enjoyment of the dwellinghouse would have been immune from enforcement action on 7 February 2024.
60. Likewise, I have found in Appeal E that it has not been demonstrated, on the balance of probabilities, that the use of that part of the Land shaded green as residential garden was lawful on 5 March 2024 because the time for taking enforcement action had expired.
61. As with Appeal D, as I have set out in respect of my discussion of the evidence on Appeal E, the evidence before me does not indicate that the circumstances were different such the material change of use of the land shaded in green on the attached plan from nil use to residential would have been immune from enforcement action on 7 February 2024.
62. I therefore find that, at the date when the notice was issued, enforcement action could then be taken in respect of those aspects of the breach of planning control stated in the notice.
63. The appeals on ground (d) therefore fail.

Appeals A, B and C on ground (f)

64. 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 or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
65. The notice, as corrected, alleges a breach of planning control comprising the material change of use of two parts of the Land to residential, along with the erection of two outbuildings. The notice requires the use to cease and the buildings to be dismantled and removed from the land. On that basis, it seems to me that the purpose of the notice is to remedy the breach of planning control.
66. The appellants state that the LPA's approach is excessive and unwarranted and that enforcement action was avoidable given their willingness to reduce the building identified on the plan as 'X'. They state the buildings are all considered to be well sited, discreetly positioned in the garden and that they blend with the natural setting. However, such arguments go towards the planning merits of the development. In the absence of a ground (a) appeal, it is not open to me to consider the planning merits. The question for the ground (f) appeal is whether the requirements exceed what is necessary to remedy the breach of planning control.
67. It seems to me that any steps which stop short of ceasing the uses and removing buildings '1' and '2' would not remedy the breach of planning control. Indeed, there are no lesser steps that would. On that basis, the steps do not exceed what is necessary to remedy the breach.
68. The appeals on ground (f) therefore fail.

Appeals A, B and C on ground (g)

69. An appeal on ground (g) is brought on the basis that time period for compliance with the notice falls short of what should reasonably be allowed.
70. The appellants' case on ground (g) is brought largely in respect of the time scale of the demolition of the building identified by an 'X' on the plan being unduly short. However, the building no longer forms part of the breach of planning control stated in the notice, as corrected, and the notice no longer requires its removal.
71. It seems to me that a period of 12 months is reasonable time to cease the use of the two parts of the Land for residential purposes and to remove the buildings identified as '1' and '2' on the plan.
72. I note the loss of the building from which the appellants' daughter's home business is ran would be an infringement of their rights under the Human Rights Act 1998 (HRA). The demolition of the building 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. This is a qualified right, whereby interference may be justified if in the public interest, applying the principle of proportionality.
73. The consequence of dismissing the appeal and upholding the notice would be the appellants' daughter would lose the building in which they run their home business. However, a compliance period of 12 months would allow sufficient time to explore alternative accommodation.
74. The planning harm identified in the notice in respect of the building 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.
75. The appeal on ground (g) fails.

FORMAL DECISIONS

APPEAL D

76. The appeal is dismissed.

APPEAL E

77. The appeal is dismissed.

APPEALS A, B AND C

78. It is directed that the enforcement notice is corrected by:
- the deletion of the words, "the construction of a timber clad building with timber decked area, used as a residential dwelling, shown in the approximate location by a blue 'X' on the attached plan and", and "associated" in section 3 of the notice;
 - the deletion of the words, "purposes incidental to the enjoyment of the dwellinghouse known as New Farm and the residential timber clad building"

and their substitution with the words “residential use” in section 3 of the notice.

79. And varied by:

- the deletion of Section 5(2) and Section 5(3) of the notice in their entirety;
- the deletion of the words “non-agricultural” and their substitution with the word “residential” in Section 5(5) of the notice;
- the insertion of the words “and remove all materials and debris resulting from the residential use” following the words “plan” in Section 5(5) of the notice; and,
- the deletion of the words “(1)-(6)” and their substitution with the words “(1), (4), (5) and (6)” in Section 5(7) of the notice.

80. Subject to corrections and variations, the appeals are dismissed and the enforcement notice is upheld.

J Whitfield

INSPECTOR