

Appeal Decisions

Site visit made on 17 June 2026

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th July 2026

Appeal A Ref: APP/D0840/C/25/3367244

Appeal B Ref: APP/D0840/C/25/3367245

Land at Nicholas, Halamanning, Goldsithney, Penzance, Cornwall TR20 9HT

- 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 Brian Baker (3367244) and Mrs Shelia Baker (3367245) against an enforcement notice issued by Cornwall Council.
- The notice was issued on 8 May 2025.
- The breach of planning control as alleged in the notice is:
Without planning permission:
 - (1) *the material change of use of agricultural land to a mixed use comprising of agricultural, residential and domestic use, to include:*
 - (a) *the stationing of 2 caravans used for residential occupation,*
 - (b) *the siting of a yurt used for residential occupation with associated raised decking area,*
 - (c) *the residential occupation of a building constructed on the land, and*
 - (2) *the operational development on agricultural land to construct:*
 - (a) *domestic play equipment, and*
 - (b) *a building used as a domestic recording studio.*
- The requirements of the notice are to:
 - (1) *Cease the use of the land outlined in red on the attached plan for residential and domestic purposes.*
 - (2) *Cease the use of the building in the approximate position shaded light blue and marked A on the attached plan for residential purposes.*
 - (3) *Remove from the building shown in the approximate position shaded light blue and marked A on the attached plan (a) the kitchen area to include the kitchen cupboards, cooking facilities, sink and kitchen appliances, (b) the bathroom and shower room facilities to include the toilets, baths, showers and wash hand basins, (c) all domestic items and paraphernalia, and (d) the services that have been connected to the building to include electricity and water.*
 - (4) *Remove from the land the residential caravans shown in the approximate positions outlined in green and numbered 1 and 2 on the attached plan.*
 - (5) *Remove from the land the residential yurt and associated raised decking area shown in the approximate position marked hatched orange on the attached plan.*
 - (6) *Remove from the land the play equipment shown in the approximate position marked hatched dark blue on the attached plan, to include the play tower with climbing wall, slide, swings, mud kitchen, zip wire, seesaw, free-standing slide, boat, table and chairs and playhouse structure.*
 - (7) *Demolish and remove from the land the domestic recording studio building shown in the approximate position marked solid black on the attached plan.*
 - (8) *Remove from the land outlined in red on the attached plan all non-agricultural items and paraphernalia associated with the residential and domestic use of the land.*
 - (9) *Remove from the land outlined in red on the attached plan all materials and debris resulting from compliance with (1) – (8) inclusive above.*
- The period for compliance with the requirements is 18 months.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Act.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
 - The deletion of sub-paragraph 3 and substitute with:

3. THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL

Without planning permission:

- (1) The material change of use of agricultural land to a mixed use comprising agricultural and residential use, to include:
 - (a) the stationing of 2 caravans used for residential occupation;*
 - (b) the siting of a yurt used for residential occupation with associated raised decking area, and**

- (2) The operational development to construct:*

- (a) a building used as a recording studio.*

- The deletion of sub-paragraph 5 and substitute with:

5. WHAT YOU ARE REQUIRED TO DO

- (1) Cease the mixed use comprising agricultural and residential use on land outlined in red.*
- (2) Remove from the land the residential caravans shown in the approximate positions outlined in green and numbered 1 and 2 on the attached plan.*
- (3) Remove from the land the residential yurt and associated raised decking area shown in the approximate position marked hatched orange on the attached plan.*
- (4) Demolish and remove from the land the recording studio building shown in the approximate position marked solid black on the attached plan.*
- (5) Remove from the land outlined in red on the attached plan all non-agricultural items and paraphernalia associated with the residential use of the caravans and the yurt.*
- (6) Remove from the land outlined in red on the attached plan all materials and debris resulting from compliance with (1) – (5) inclusive above.*

- The deletion of the number “(9)” from sub-paragraph 6 and substitute with “(6)”.

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

The Enforcement Notice

3. Section 176(1) of the Act provides a wide-ranging power to correct or vary terms of an enforcement notice provided that it would not result in injustice to the parties.
4. I have removed reference to the term “domestic” as this does not add anything to the notice given “residential” is referenced. As discussed below I have found that appeals on ground (d) have succeeded insofar as reference to matters in sub-paragraph 3(1)(c) and 3(2)(a) and therefore these have been removed from the notice. The requirements in sub-paragraph 5 are subsequently varied to remove reference to the matters detailed in sub-paragraph 3(1)(c) and 3(2)(a). The numbering is therefore corrected in sub-paragraph 6 to reflect the variations in sub-paragraph 5.

5. Given the corrections and variations are limited to reflect my findings below and to ensure the notice is well read, I am satisfied that no injustice to the appellant or the Council would arise by me correcting the notice in terms I have set out in paragraph one above.

Preliminary Matters

6. The appellants in their statement of case have made submissions with regards to “The Lodge” building. This Lodge building does not form part of the enforcement notice and therefore this matter is not an issue for consideration as part of these appeals. I have therefore dealt with the matters that are subject of the notice and the grounds that are subject of these appeals.
7. The rights of the appellant and/or third parties as enshrined in the Human Rights Act 1998 to a private and family life, home and correspondence and to enjoy their property are not engaged by the legal grounds (ie. ground (c) and (d)) or ground (f). This is because an Inspector has no discretion when deciding questions such as whether the enforcement notice was served as required by Section 172 of the Act, what is alleged has occurred, or the requirements exceed what is necessary to remedy the breach. The legal grounds and ground (f) simply do not allow for consideration of the effect of the decision on individuals and their rights. I have therefore dealt with the appeals accordingly.
8. The appellant, as well as third party correspondence, has raised planning merits as part of their evidence which would normally fall for consideration under a ground (a) appeal. However, as ground (a) was not pleaded and a fee was not paid the planning merits raised in the evidence cannot be considered as part of these appeals. I have dealt with the appeals accordingly on this basis.

Appeals on ground (c)

9. An appeal on ground (c) is that the matters alleged in the notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (c) appeals is on the appellant, and the test of the evidence is on the balance of probability.
10. The appellants argue that a number of the matters alleged in the notice do not constitute a breach of planning control as they do not involve material changes to the buildings. It is also argued that a lot of matters raised within the notice are minor breaches of planning control, if not at all. With the appellant stating for instance, the stationing of a caravan on land, internal alterations to buildings and the use of land for a temporary period for example of up to 28 days.
11. The appellants provide minimal evidence explaining which specific matters in the notice they consider does not constitute a breach of planning control, nor do they provide substantial evidence in terms of their claims that the changes are not material. The Council have indicated that they consider that the site was in agricultural use providing planning history of the site which substantiates this claim. A change of use from agriculture to a mixed use of agricultural and residential use is a “material change of use” and constitutes “development” as defined in Section 55 of the Act.
12. Planning permission is required for the development described in the notice. There are no permitted development rights to make such a change within the Town and

Country Planning (General Permitted Development) Order 2015 as amended, and no planning permission has been granted by the Council.

13. Therefore, the making of a material change of use of agricultural land to a mixed use of agricultural and residential use, and the construction of play equipment and a recording studio building does amount to “development”. Since the development has been carried out without the required planning permission it thereby constitutes a breach of planning control. The appeals on ground (c) therefore fail.

Appeals on ground (d)

14. In order for an appeal on ground (d) to succeed it has to be shown that at the time the notice was issued it was too late for enforcement action to be taken. The burden of proof is on the appellants, and the relevant test is the balance of probability. If the Council has no evidence itself to contradict or otherwise make the appellant’s version of events less than probable, an appeal on ground (d) can succeed, provided that the appellant’s evidence alone is sufficiently precise and unambiguous.

Building A

15. The appellants indicate in their statement of case that building A was built circa 2018 and used as a garden room in association with the day centre use. It is then claimed that the building was converted in 2019 to a residential property and has been continuously occupied as a single dwellinghouse since. However, in contradiction to this, the Planning Contravention Notices (PCNs) that were completed by the appellants state that building A was substantially complete in July 2020 with the only use of the building being described as residential. Whilst it is noted that there may have been an initial intention for building A to be a garden room associated with the day centre, there is no convincing evidence that indicates that this use was ever brought into effect and therefore the building that was built is a dwellinghouse given this has been its only use.
16. The time limits for taking enforcement action are set out in Section 171B of the Act and also the Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024. No enforcement action may be taken under Section 171B(1)(a) of the Act where there has been a breach of planning control consisting in the carrying out without planning permission of a building, and no action may be taken after the end of the period of four years beginning on the date on which operations were substantially completed, where that took place before 25 April 2024.
17. The PCN provides clear evidence that building A was substantially complete as a dwellinghouse in July 2020 with further evidence detailing that the appellants began living in the dwellinghouse from September 2020. I am satisfied on the balance of probability that building A has been built as a dwellinghouse and lived in as a dwellinghouse by the appellants for a continuous period of over four years.
18. With specific regard to building A, the appeals on ground (d) succeed.

Yurt and decking

19. The stationing of makeshift structures is normally taken as constituting a use of land, even if the use and therefore the stationing is intended to be permanent. It is for the appellant to demonstrate that the structure in question is or is not a structure constituting a use of land on their facts.

20. From what I saw at my site visit and from the evidence submitted, the yurt and the decking, which I consider to be ancillary to the yurt, is the stationing of a structure that constitutes a use of land. Therefore, with regards to use of land, section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. In order for the yurt and decking to be lawful, the alleged use must have commenced at least 10 years before the date of the enforcement notice (hence before 8 May 2015) and continued without any significant interruption thereafter for at least 10-year period of time.
21. The appellants have stated that the yurt and decking have been in place for at least 10 years and advertised on Air BnB for the majority of this time, although there is minimal evidence in terms of Air BnB bookings or advertisements to show this. Google aerial images have been provided from 2017 which shows that the yurt was in place at that time. The PCN states that the yurt and the decking were positioned on the land in 2015, although there is no specific date provided.
22. The submissions do not provide any compelling evidence that the yurt and the decking, and therefore the use of the land, had commenced before 8 May 2015. Therefore, on the balance of probability, I find as a matter of fact and degree that the use of the land for the yurt and decking has not been in place for more than 10 years on a continuous basis prior to 8 May 2025.
23. The appeals on ground (d) with reference to the yurt and decking fails.

Caravans 1 and 2

24. At my site visit I saw that caravan 1 had been removed from the site. Nevertheless, I have addressed the actual breach as alleged in the enforcement notice which refers to the stationing of two caravans.
25. The stationing of caravans is normally taken as constituting a use of land, even if the use and therefore the stationing is intended to be permanent. The appellant should demonstrate that the structures in question are caravans on their facts.
26. From the submitted evidence and my observations at my site visit, the structures are the stationing of caravans that constitutes a use of land. Therefore, with regards to use of land, section 171B(3) of the Act states that no enforcement action may be taken after the end of the period of 10 years beginning with the date of the breach. In order for the caravans to be lawful, the alleged use must have commenced at least 10 years before the date of the notice (hence before 8 May 2015) and continued without any significant interruption thereafter for at least 10-year period of time.
27. The appellants claim that the caravans have been on the site since at least 2014 and whilst utilised by several different occupants, they have been continuously used with minimal vacancies for over 10 years. Google aerial images show that the caravans are on the site in 2014.
28. The submitted PCN details that the caravan 1 was used as a quiet space for service users from 2008 to 2016 and then from 2016 was used as residential accommodation for a Mr Manning. With regards to caravan 2, the responses in the PCN states that the use of the caravan was “storage studio music therapy for LD and Autistic”.
29. Having regard to all the evidence before me, I find as a matter of fact and degree and on the balance of probability, that caravans 1 and 2 have not been in residential use for more than 10 years on a continuous basis prior to 8 May 2025.

30. Therefore, the appeals on ground (d) with regards to caravans 1 and 2 fail.

Play equipment

31. Section 171B(1)(a) of the Act provides that no enforcement may be taken in respect of any unauthorised operational development after the end of the period of four years.
32. The appellants statement of case states that the play equipment has been in place since 2019 with the PCN indicating that the play equipment was substantially completed in 2016. The appellant also states that the play equipment is shown on Google aerial images. The Council have not raised any arguments with this evidence.
33. The Council have referred to the *Murfitt*¹ judgement and state that they consider that the play area is now in domestic use and falls outside any lawful domestic curtilage, therefore representing a use of land which has a 10-year period of immunity. It was held in *Murfitt* that where a notice issued in respect of a material change of use, the notice may require that the 'ancillary' or 'incidental' works are removed in order that the site is restored to its previous condition and the breach is remedied. From the evidence before me, there is nothing substantial to convince me that the play equipment is ancillary to or facilitated the material change of use alleged in the notice. Therefore, the *Murfitt* principle is not relevant in this instance and the immunity period for the play equipment is four years.
34. As a matter of fact and degree, and on the balance of probability, the play equipment was in place more than four years before the notice was issued and it was too late for the Council to take enforcement action on this specific matter.

35. The appeals on ground (d), with specific reference to the play equipment, succeeds.

Recording studio building

36. At my site visit I saw that the recording studio building had been removed from the site. I have, however, addressed the actual breach of the operational development to construct a building used as a recording studio, as alleged in the notice.
37. The appellants have not provided any substantial evidence detailing that the recording studio building has been in place for more than four years. The PCN states the recording studio building was substantially completed in September 2021.
38. I therefore find as a matter of fact and degree, and on the balance of probability, the recording studio building was not in place more than four years before the notice was issued and it was not too late for the Council to take action.
39. The appeals on ground (d), with regards to the recording studio building, fail.

Appeals on ground (f)

40. An appeal on ground (f) is that requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach. The notice requires the cessation of the mixed use along with the removal of structures, buildings, items and paraphernalia, and therefore the purpose is to remedy the breach of planning control. The appellants arguments are specific to the requirements in steps (4) and (8) and consider that they are excessive.

¹ *Murfitt v SSE* [1980] JPL 598

41. Step (4) requires the removal of the caravans, and the appellant argues that this is excessive as the stationing of caravans on land in of itself would not constitute a breach of planning control. The *Murfitt* principle applies in this instance however, as the caravans are ancillary and facilitate the residential use of the land and therefore the notice can require the caravans to be removed so the breach is remedied. The requirement for the removal of the caravans is therefore not excessive.
42. The appellant argues that step (8) of the requirements is non-specific and generic in nature. The non-agricultural items and paraphernalia are required to be removed, and the appellants are therefore best placed to initiate which items need to be removed. I therefore consider the requirements in step (8) to be acceptable and not excessive. Following my findings in the ground (d) appeal, this step has been varied to narrow the requirements specifically for the caravans and yurt structures.
43. The appellant had raised concerns with the requirements in step (3) relating to building A, however, given my findings under ground (d), I do not need to address this matter as I have varied the notice to remove this requirement.
44. The requirements in steps (4) and (8) go no further than remedying the breach of planning control. For these reasons, the appeals on ground (f) fail.

Conclusion

45. I have found that the appeals fail on grounds (c) and (f). With regards to the appeals on ground (d), I have found a partial success on this legal ground and therefore the enforcement notice has been corrected to omit reference to building A and the play equipment. The appeals on ground (d) do fail with regards to the material change of use of agricultural land to a mixed use comprising of agricultural and residential use including the stationing of 2 caravans, and the siting of a yurt and associated raised decking; and the operational development of a building used as a recording studio.
46. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with corrections and variations.

Chris Baxter

INSPECTOR