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## Appeal Decisions

Site visit made on

Site visit made on 5 August 2026

**by Andy Harwood CMS MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 August 2026

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### **Appeal Refs: APP/K1128/C/24/3355070 & APP/K1128/C/24/3355071**

#### **Land at Lower Washbourne Farm, Totnes, Devon TQ9 7UE**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended)(the Act).
  - The appeal is made by Mr James Skevington and Mrs Liz Mortimer Richards Skevington against an enforcement notice issued by South Hams District Council.
  - The notice was issued on 10 October 2024.
  - The breach of planning control as alleged in the notice is in summary: The erection on the Land of a building which does not comply with planning permission reference 0872/20/FUL and a non-material amendment reference 1466/22/NMM. (see the schedule at the back of this decision for the full description of the breach of planning control).
  - The requirements of the notice are: You must remove the unauthorised building and any associated paraphernalia from the Land.
  - The period for compliance with the requirement is: 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(b), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
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### **Decisions**

1. The appeals are dismissed, and the enforcement notice is upheld.

### **Preliminary Matters**

2. A decision was made when the appeal was submitted that ground (a) and the deemed planning application were barred. That was because a planning application to retain the building had been considered by the Council and refused. As such, under the provisions of s174(2A) because the notice was issued during the time allowed for determining the related planning application. It is not for me in this decision to re-visit the determination of that matter as relayed to the main parties in correspondence from the Planning Inspectorate dated 7 March 2025. I also do not need to revisit what planning fee should have been requested or any broader implications of that.
3. I therefore do not need to consider the planning merits of the proposal which has other implications for how I need to consider the remaining grounds of appeal.

### **The Appeal on ground (b)**

4. To succeed on ground (b), it is incumbent on the appellants to demonstrate that the matters which are stated in the allegation, have not occurred, as a matter of fact. I need to reach a view on the balance of probabilities.
5. The development as alleged is detailed in the header above and schedule below. This relates to the erection of the building without complying with previously

approved plans. The appellants are asking me to amend the terms of the notice to include reference to an alleged use as a dwellinghouse although at the same time are also arguing that the building is not a dwellinghouse.

6. Whilst the Council in the reasons for issuing the notice refers to the building having a design which does not reflect the agricultural function and instead has the appearance of a “residential dwelling”, the notice is not enforcing a material change of use, it is directed at operational development that has not complied with a planning permission. The reference to the appearance of the building relates to the planning merits of what had been approved compared with what has been constructed. Given the barring of ground (a) I am not considering the planning merits of the case.
7. The appellants are suggesting that the notice should be amended and that this would then bring their right to appeal under ground (a) back into the equation. That goes beyond my powers under s176(1) because to broaden the terms of the notice and this appeal to include the use would cause injustice to the Council. It is also not for me to revisit the decision previously made about ground (a) being barred as I have explained above.
8. The notice relates to operational development which has been carried out allegedly not in accordance with plans that were previously approved. The appellants have not demonstrated that the allegation has not occurred as a matter of fact. They have actually confirmed in their introduction to their statement, that there are deviations from approved plans both in terms of the appearance and position of the building. It has not been demonstrated that the allegation is wrong or that it requires correction or variation.
9. The appeal under ground (b) therefore fails.

### **The Appeal on ground (f)**

10. The appeal on this ground is that the steps required exceed what is necessary to achieve the purpose of the notice. The Council states that the purpose of the notice is to remedy the breach of planning control. They also refer to remedying the harm caused. Given that the requirements seek the removal of the building, that is clearly seeking to restore the land to its condition before the breach took place, which therefore relates to s173(4)(a) of the act. I have interpreted what the Council say as meaning that this would also remedy the harm caused because there would no longer be a building at all. They have not, for instance, sought to require physical changes to the building or the site to ameliorate any alleged impacts from not complying with the approved plans.
11. Requirements should be proportionate in the sense of being the minimum necessary to achieve the purpose of the notice, in this case, remedying the breach of planning control. I am referred by the appellants to various legal authorities. Important here is *Tapecrow*<sup>1</sup>. This refers to the wide powers that inspectors have to decide whether a solution short of a complete remedy of the breach would be acceptable in planning terms. However, I cannot reconsider the planning merits of this case as there is no appeal under ground (a) and so cannot reach a view on whether changes to the building as suggested by the appellant would satisfactorily overcome the harm.

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<sup>1</sup> *Tapecrow Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744

12. I am also mindful that planning permission has been given for a building on the same site. Firstly, planning permission (0872/20/FUL) was granted on 26 June 2020 for the erection of a new agricultural barn and associated track. That was required, by reason of condition 1, to be begun not later than 3 years from the date of approval, so by 26 June 2023. A further approval was given to non-material minor amendments on 19 January 2021. It has been found that it is possible to commence a development for the purpose of s56 of the Act, thereby meeting a deadline with a time-limiting condition of a planning permission, only to then later deviate from the permitted works in a manner that does not interfere retrospectively with the commencement of the development. It is necessary to look at the similarities of what has been undertaken and not just the differences that may have cropped up possibly later during the construction process.
13. The appellants have not provided evidence about these matters although suggests that the building should be allowed to remain subject to required amendments to fenestration to bring it in line with earlier approvals. That may have been a judgement to make were I considering the planning merits of this case. I do not know from what is submitted, whether the previous permission remains extant which would then enable me to vary the notice to enable the potential obvious alternative of requiring that the building is altered to comply with the previous planning permission. That would be acceptable under the provisions of s173(4)(a) which states that remedying the breach could be achieved by making the development comply with the terms of any planning permission. I would not need to consider the merits in those circumstances, only whether the planning permission could be relied upon.
14. Whilst I do not have sufficient information to be able to consider a variation of the notice to require compliance with that previously approved planning application, it is also worth bearing in mind that an enforcement notice cannot interfere with existing planning permissions. Based on what is before me however, there does not appear to be an obvious alternative scheme that the notice could require is implemented.
15. The appeal under ground (f) therefore fails.

### **The Appeal on ground (g)**

16. The appeal on this ground is that any period specified in the notice falls short of what should reasonably be allowed. The notice allows for compliance within 6 months.
17. The appellants do not suggest that the work could not be carried out within 6 months but requests more time in order to discuss alternatives with the Council. In this case, I am taking the alleged harm as specified in the notice at face value because I have not re-considered the planning merits. The notice needs to strike a reasonable and proportionate balance between that harm and the ability of the appellants to comply.
18. The harm alleged relates to the visual appearance as well as the effect on a dark landscape which as stated does not comply with the development plan for the area. It is important for the proper planning of the district to bring under control breaches of planning control which do not comply with the development plan. In the absence of evidence to demonstrate that 6 months is insufficient time to either comply or find an alternative, acceptable solution, I consider that it does strike the correct balance.

19. The appeal on ground (g) therefore fails.

**Conclusion**

20. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice.

*Andy Harwood*

INSPECTOR

## Schedule

### **THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**

The erection on the Land of a building which does not comply with planning permission reference 0872/20/FUL and a non-material amendment reference 1466/22/NMM for the following reasons:

- (a) the building has been constructed in a different position and with a different orientation to the development which was approved by the planning permission, and is therefore unauthorised;
- (b) the building deviates from the approved drawings giving it a domestic appearance and with the revised internal layout, does not reflect the agricultural function of the building as follows:
  - (i) glazed double doors have been installed on the west elevation, in a similar position to the shutters shown on the west elevation drawings of the approved non-material amendment reference 4181/20/NMM;
  - (ii) windows have been installed on the east and north elevations of the building in a similar position to the shutters shown on the approved east and north elevation drawings of 4181/20/NMM;
  - (iii) there has been a change in the design of the windows installed on the southern elevation;
  - (iv) the door has been removed on the southern elevation;
  - (v) glazed double doors have been installed on the western elevation, in place of the approved window;
  - (vi) there has been a change to the ground floor window design on the western elevation.