LAND AT RAMBLING ROSE FARM, PEBBLE LANE, WINTERBOURNE, NEWBURY, WEST BERKSHIRE RG20 8AS

ENFORCEMENT NOTICE REF: 24/00385/05NOAC ISSUED 3 JUNE 2025

APPELLANT'S COMMENTS

ON THE OTHER PARTIES' CASES

Local planning authority

Nullity

1. At paragraph 1.6 of its Appeal Statement of Case, the LPA asserts:

   (i) The Council is clear in the EN that condition 1 of permission 19/02178/FULMAJ has been breached by not removing the cabin within the period stipulated in the condition;

   (ii) It is clearly stated in EN paragraph 3(a) that the notice relates to the continuing unauthorised retention of a log cabin on the site. This is the breach of planning control; and

   (iii) The subsequent EN paragraph 3(b) defines the breach to the condition through the retention stated in EN paragraph 3(a).

2. These three points fail to grapple with the appellant's nullity case relating to EN paragraph 3(b). Thus:

(i) The Council is not clear in the EN that condition 1 has been breached by not removing the cabin within the stipulated period. EN paragraph 3(b) merely sets out the terms of the condition 1 and alleges a breach of it. It does not state the way (or ways) in which condition 1 is alleged to be breached. Contrary to Town and Country Planning Act 1990 section 173(1)(a), EN paragraph 3(b) thus does not state the matters which appear to the local planning authority to constitute the breach of planning control. The EN is therefore a nullity;

(ii) The Council's reliance upon EN paragraph 3(a) plainly fails to meet the appellant's case on EN paragraph 3(b); and

(iii) The Council's case that EN paragraph 3(a) "is the breach" but that EN paragraph 3(b) "defines the breach" is:

(a) nonsensical;

(b) contrary to the plain words of the EN, which do not link EN paragraph 3(b) to 3(a); and

(c) inconsistent with its own paragraph 1.14, which asserts that "there is both a breach in regard to unauthorised development and a breach of condition."[1]

3. EN paragraph 3 refers to "matters" (plural). EN paragraphs 3(a) and 3(b) are disjunctive, as there is nothing linking them on the face of the EN. The appellant is thus correct to read EN paragraphs 3(a) and 3(b) separately. The Council's paragraph

[1] Emphasis added.

1.7 does not rebut the appellant's case. Moreover, the Council refers to "conditions" (plural) whereas the EN refers to only one condition (singular).

4. It thus remains the case that the EN is a nullity in that EN paragraph 3(b) is contrary to Town and Country Planning Act 1990 section 173(1)(a) and/or the EN is hopelessly unclear.

5. The LPA's paragraph 1.9 is wrong in law. An EN which is a nullity cannot be corrected or varied.

6. The LPA's paragraph 1.10 is irrelevant, as its subjective contentment is not the nullity test.

Invalidity

7. The appellant notes that there is no invalidity heading in the LPA's Appeal Statement of Case. It wrongly elides nullity and invalidity.

8. To repeat, the Council's assertion in paragraph 1.14 that there are two alleged breaches of planning control is inconsistent with its own case that EN paragraph 3(a) is "the breach" (singular).

9. The appointed Inspector will note the LPA's concession that the EN should have referred to section 171A(1)(b). It asserts that adding a reference to this would not cause injustice on the premise that it would clarify that "the breach" (singular) is relevant to both (a) and (b) of section 171A(1). This assertion underlines the inherent weakness in the LPA's case, as a *singular* breach cannot be relevant to *both* section 171A(1)(a) *and* (b).

10. If the EN is invalid, as opposed to a nullity, it remains the case that it cannot be corrected/varied without causing injustice.

11. The Council's paragraph 1.15 is misplaced. If the EN is a nullity or invalid, EN paragraph 3(a) will not save the EN even *if* it is correctly drafted.

Ground (b)

12. The Council again states, in paragraph 1.20, that it is "content". So be it. Ground (b) does not turn on its subjective contentment.

13. The Council's reliance upon the application form for planning application 25/01171/FULMAJ is obviously misplaced. It quite clearly states that the number of *existing* residential units = 0 and that the number of *proposed* residential units = 1. It patently contradicts the Council's case that the cabin was in residential use or occupation between 30 April 2023 and 3 June 2025.

14. Moreover, the agent's Planning, Design and Access Statement does *not* state that the cabin *is* in residential use or occupation, or that it *was* in residential use or occupation between 30 April 2023 and 3 June 2025. On the contrary, it clearly states that the appellant lives in a rental property (which is not the cabin) at a rent of £18,000 p.a. In point of fact, the appellant only completed the purchase of the appeal property on 28 March 2025. Were the appellant to be driven by necessity to use the cabin for residential use *in future*, it would have no bearing on the merits of the ground (b) appeal.

15. As for the 1 July 2024 Strutt & Parker sales particulars, these clearly state that the "chalet" (aka the cabin) "does not benefit from any planning consent". The undated internal photographs plainly do not demonstrate residential use or occupation of the cabin between 30 April 2023 and 3 June 2025 (nor could they, if the particulars are dated 1 July 2024). The Council puts no documents in evidence as to application 23/01295/FULMAJ, the appeal as to which was withdrawn before 1 July 2024 (and

hence long before 3 June 2025). On 22 April 2025, the appellant informed the Council that the cabin's water supply had already been disconnected.

16. The Council quite simply fails to demonstrate that residential use or occupation of the cabin continued between 30 April 2023 and 3 June 2025 or that any materials and equipment brought onto the land during that period were in connection with any residential use of the cabin.

Ground (c)

17. None of the Council's paragraphs 1.21 to 1.26 rebuts the simple legal proposition that "retention" of the log cabin is not "development".

Ground (g)

18. The LPA states in paragraph 1.27 that the compliance period "was set to 6 months to allow for the submission of an application…" That is no answer to the appellant's case that the compliance period falls short of what should reasonably be allowed to comply with the requirements of the EN.

Peter Palthe, Winterbourne Parish Meeting

19. There has not been "a string of failed Planning Applications". There has been only one refused planning application.

20. The appellant does not understand the reference to an "Implementation Notice". Mr Palthe's other points add nothing.

Andy Shipman

21. The appellant's ground (b) case is that the cabin was not in continuing residential use or occupation between 30 April 2023 and 3 June 2025. Mr Shipman's assertions do not

contradict that case. Indeed, his statement that the previous owners moved out on 26 September 2024 *supports* the appellant's ground (b) case.

22. To repeat, there is nothing in the undated internal photographs in the 1 July 2024 sales particulars to demonstrate residential use or occupation of the cabin between 30 April 2023 and 3 June 2025.

23. Mr Shipman refers to ground (c), but his representations are irrelevant to the appellant's ground (c) case.

24. As for ground (g), Mr Shipman is wrong to assert that the EN compliance period ends on 7 October 2025 (as the EN has not taken effect). The appellant's knowledge or otherwise in late 2024 does not bear on the reasonableness of the compliance period.