

Appeal Decisions

Inquiry held on 21 and 22 February 2017

Site visit made on 22 February 2017

by Diane Lewis BA(Hons) MCD MA LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 March 2017

Land at Belle Vue, Minnis Lane, River, Dover, Kent CT15 7DN

Appeal Ref: APP/X2220/C/15/3140978

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Gordon Graham against an enforcement notice issued by Dover District Council.
- The enforcement notice, numbered ENF/RIV/15/00049, was issued on 10 November 2015.
- The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the erection of a new dwelling on the land.
- The requirements of the notice are: Demolish to ground level all of the unauthorised new dwelling as illustrated by photographs A, B and C and clear all resulting materials from the land.
- The period for compliance with the requirements is three (3) calendar months.
- The appeal proceeded on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended. The appeal on ground (f) was withdrawn at the inquiry and an appeal on ground (g) added.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Appeal Refs: APP/X2220/C/16/3146357, APP/X2220/C/16/3146358

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr G Graham and Mrs C Graham against an enforcement notice issued by Dover District Council.
- The enforcement notice, numbered ENF/RIV/16/00005, was issued on 15 February 2016.
- The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the material change in use of the land from agricultural to mixed use of agricultural and permanent residential.
- The requirement of the notice is: Cease use of land for permanent residential.
- The period for compliance with the requirements is six (6) calendar months.
- The appeal by Mr G Graham proceeded on the grounds set out in section 174(2)(a), (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. At the inquiry the appeal on ground (f) was withdrawn and an appeal on ground (g) was added.
- The appeal by Mrs C Graham proceeded on the grounds set out in section 174(2) (c), (d) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal has lapsed. The appeal on ground (f) was withdrawn and an appeal on ground (g) was added.

Summary of Decisions: The appeals are dismissed and the enforcement

notice is upheld with a correction and variations.

The Inquiry

1. All oral evidence at the inquiry was given under solemn affirmation.
2. The Council and the appellants agreed that in the material change of use notice there was no need for the word 'permanent' in respect of the residential use and that it was open to me to correct and vary the wording of the notice accordingly.
3. The enforcement notices each state a period for compliance, as they are required to do under section 173(9) of the 1990 Act. However, the notices do not state when the periods for compliance start, which must not be before the notice has taken effect. I will correct the notices to make the position clear.

APPEALS: Material Change of Use

Appeals on grounds (c) and (d)

4. The appeal site is a rectangular area of grazing land of 1.1 hectares, where a newly constructed timber cabin is set back from the road frontage behind a mature hedgerow. On the north eastern boundary is a former stable block that is used to keep hens and ducks and for incidental storage.
 5. The appellants' case on the legal grounds was clarified at the start of the inquiry. In short, there was residential use of the property for significant periods of time, both in the 1950s and earlier, and of more relevance in the 1970s to 1990s. The residential use had never been abandoned and accordingly the use of the cabin as a dwelling house did not constitute development and did not require planning permission. A second related issue of principle was whether a right to a use survives the demolition of a building and its replacement.
 6. In brief, the Council's case referred to an extensive planning history for the site. There was no residential use of the land from 1955 to 2014, a period of 59 years. It appeared that the old bungalow had been vacant and used for storage from 1955 to 1977, there was no residential use in the 1980s and no evidence of any use from 1990 to 1998. The land was used for agriculture between 1998 and 2014, followed by the unauthorised change of use to a mixed agricultural and residential use. If any residential use prior to 1955 had acquired immunity, it was abandoned, or in the alternative lost through a new use of the land.
 7. A main issue therefore became whether the cessation of any residential use of the land was temporary or amounted to abandonment. In essence, in order for the concept of abandonment to apply a residential use of the land first had to be lawful. The lawful rights are capable of being lost if a building or land has remained unused for a considerable period of time, with no intention to resume the use at any particular time, in circumstances such that a reasonable man might conclude that the previous use had been abandoned. The courts have confirmed four principal factors are to be taken into account: the physical condition of the land or building, the period of non-use, whether there had been any other use and the owner's intentions as to whether to suspend the
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use or cease it permanently. The weight of any particular factor depends on the circumstances of the case.

Was there an existing lawful residential use of the land in the 1950s?

8. Mr Graham stated that when he acquired the appeal site on 14 September 2014 there was a residential bungalow in the north western corner of the land. He produced Google earth images and Ordnance Survey (OS) plans to demonstrate that the bungalow had been present since at least 1940.
 9. The earliest image for 1940 is not clear enough to make out a dwelling, although the image for 1960 shows a building in the corner of the site. The rest of the land appears as agricultural land. The OS maps for 1937-1961 and 1956-72 both indicate a building existed. The planning history provided by the Council is more helpful as regards a use.
 10. In 1967 planning permission was refused for "the erection of a new dwelling following the demolition of Belle View", a decision that went to appeal. The decision letter dated 10 September 1968 is the best available information on the site at that time and so it is worth repeating the most relevant details. The site was described as a roughly rectangular shaped field enclosed by hedges and covered in tall grass except at its western corner where the bungalow known as Belle View was located. The building was said to be a vacant unsightly structure in a very poor state of repair, comprising seven rooms including a kitchen and bathroom with WC. In the main the walls were of breeze blocks rendered externally but having an area clad with weather boarding. The roof was covered with bituminous felt tiles. In the following paragraph the building was described as substandard in construction, in a dilapidated condition and which had remained vacant for 13 years. The conclusion was that the presence of a dilapidated bungalow on the site could not justify the erection of a new dwelling to which there were strong planning objections.
 11. In 1970 a proposal to rebuild a bungalow was refused planning permission. The associated documents referred to 'demolition of existing dwelling now derelict' and putting the land 'to use as a smallholding as it has been in the past'. The following year a further application was made for the rebuilding of Belle Vue, which was described as unoccupied and uninhabitable. The layout plan of the 'existing building' is very similar to the shape of the building on the OS plan and whilst the annotations are very difficult to read the rooms appear to provide residential accommodation.
 12. A consistent theme within this evidence is that the building on the land was a dwelling in the form of a bungalow. The indication is that the land had at one time been a smallholding. There is no information as to when the bungalow was erected or for how long there may have been a dwelling on a smallholding. Equally there was no suggestion in the planning assessments that the bungalow and its residential use was not an existing lawful use.
 13. When Mr Graham applied for planning permission in 2015 he stated that he was proposing to repair the original building, which had always been a farm house because the land was a smallholding. This description or knowledge was not expanded on in Mr Graham's written statement but under cross examination he explained that he got the history from a work colleague Mr Lawham whose parents lived there and had animals. They left in 1948. This
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information was supported by a letter from Mr B Lawham dated 5 May 2015 who confirmed that he lived for a number of years at Belle Vue with his parents from when he was a boy until when he went to war aged 19. They were self-sufficient because they grew vegetables and kept all sorts of livestock. No evidence was presented to the contrary.

14. In conclusion, the probability is that the old bungalow was built and a residential use existed, in conjunction with an agricultural smallholding, some years before 1948¹. The development was carried out lawfully and the existing use right was a mixed agricultural residential use of the plot, with the use continuing to at least the 1950's. The concept of abandonment applies.

Was the residential use abandoned?

The physical condition of the building

15. Mr Graham's description of the condition of the bungalow in 2014 was of a building that at its eastern end had suffered damage to its roof, the floorboards had given way and the front wall was missing. The remainder of the bungalow was described as weather tight, constructed with a mix of brick, block and wood walls, a tiled roof and 4 chimneys of brick. Some of the window glazing was broken but every room had its full ceilings and walls were plasterboard. There was power and water, an Aga in the kitchen and a few items of furniture in one of the bedrooms. He described the state of the site as overgrown, with brambles over the roof.
16. Mr Graham carried out repairs over a period of months². He stated he intended to demolish the east room and therefore he concentrated on the kitchen, lounge and bedrooms. Work was done to the floors and walls. As a result of his work all rooms were said to be clear and tidy with the lounge and kitchen largely ready for occupation. He considered that the work needed to the roof space was very significant and the plumbing and wiring would be a lot of expense³. After discussion with his wife he decided to make arrangements to demolish the bungalow and replace it. At the time he stopped the works Mr Graham said the building was something he could live in but not his wife.
17. Mr Sedgwick's description of the old bungalow, before any works were done, was similar to Mr Graham's. He also mentioned that there was some ivy on the roof. He accepted that the building was not capable of being lived in when bought. After work had progressed Mr Sedgwick said inside the bungalow everything was in pretty good order, although no repairs had been done to the eastern end. In his view when it was decided to demolish the bungalow the building was habitable, albeit most people would want to carry out works to make it comfortable. Despite a collapse in part of the roof and part of a wall missing he confirmed he definitely would have moved in, having lived in a house when being built at Castle View.
18. A written statement from Mr Robinson, who assisted in the demolition, described the bungalow as a dilapidated detached single storey building. He noted that the concrete ring beam had been lifted in places by the ingress of trees and other shrubs. Mr Tappenden in his written witness statement referred

¹ 1 July 1948 was the "appointed day" for the purposes of the Town and Country Planning Act 1947.

² Mr Graham's written evidence indicates 3 to 4 months, his oral evidence suggested 7 months.

³ In response to one of my questions Mr Graham said that he put new timbers in the roof and that it was not unsafe but needed a lot of work doing to it.

to his first visit to Belle Vue in October 2014. He described a large 4 bedroom timber frame constructed bungalow weathered with partial wall and roof collapse, with 4 brick chimney stacks complete with pots.

19. With reference to the aerial photographs, the building appears to have been standing in a clear space in 1960 whereas by 2002 and in the following years to 2013 the building is not easily visible, with vegetation dominant. These images are consistent with the description in the statutory declaration by Ms Rachel Smith, who stated that access to the old bungalow was difficult because it was surrounded by thick overgrown vegetation.
 20. The officer report on Mr Graham's planning application in May 2015 for the restoration of the old bungalow stated that the building was derelict and only the foundations and a few parts of the external walls were standing. However, there was no first hand evidence from the Council's witnesses as to the state of the building in 2014 as the first visit made by Mr Bootes was in March 2015 when the new cabin was under construction.
 21. The Council's documents provide descriptions of the building at various points in time. Reference has already been made to the description of the bungalow in the 1968 appeal decision. In an appeal decision dated 2 May 1977 regarding an enforcement notice the description is of a completely derelict bungalow, which was used for storing building components such as window and door frames. A planning application made in 1970 refers to a 'void bungalow'. Having regard to the associated documents there is no indication that was an incorrect description. In an application in 1971 Belle Vue was stated to be uninhabitable by the then owners. In addition to the observation by Ms Smith, Mrs Clements in her a statutory declaration explained that she moved into Loganberry Farm opposite the site in 1977. The dwelling at Belle Vue was dilapidated and not suitable for living in. She further stated that between 1977 and 2007 the state of the property deteriorated.
 22. The picture that emerges is of a building that deteriorates in condition from being dilapidated in 1968 to completely derelict, uninhabitable and surrounded by overgrown vegetation. Interestingly a resident of the neighbouring property, who has known Minnis Lane for over 35 years, recalled a building with two chimney stacks and a caravan in the early 1980s. During subsequent years the land was let for keeping horses and the buildings were abandoned. Another resident of Minnis Lane considered the cabin to be an improvement on the collapsed derelict dwelling previously there.
 23. In conclusion, the probability is that the old bungalow was in a very bad state of repair as far back as the late 1960s and uninhabitable by the 1980s. In 2014 the shell of the bungalow remained and the basic room layout was evident but in view of the state of the walls, roof, floors and windows it was not weather proof or habitable. After Mr Graham had carried out several months of works the roof had not been repaired adequately and the plumbing and wiring was outstanding. Such building elements and services are important to the provision of the essentials of daily living and to make the building safe and provide protection from the weather. Therefore I consider that the building was not habitable. It is significant that even after a capital outlay on the old bungalow Mr Graham decided for reasons of cost to demolish the building and
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to erect the cabin⁴. Furthermore, even before the passage of many years of no active use of the building, the proposals in the 1970s were for rebuilding a replacement dwelling not renovating the existing bungalow. All these factors strongly indicate the building was beyond reasonable economic repair.

The length of time the building was not used for residential purposes

24. Mr Graham's knowledge of the site was limited and he confirmed in his oral evidence that he did not visit the land in the 1980s or 1990s. However, he stated that he worked with a person known as Diesel Johnny for 3 or 4 years in the early 1970's. Diesel Johnny repaired steam engines at the site, although he did not live there. However, 'an old boy and his son', who worked for Diesel Johnny lived on the site for 3 or 4 years around 1972. He did not know whether they lived in the building or a caravan.
25. The appellants relied primarily on the evidence of Mr Sedgwick. In summary, Mr Sedgwick said that he visited the site and went into the bungalow when he was a boy because his father used to go to Belle Vue to buy animals. A man and his wife were living at Belle Vue at that time in the old bungalow. He dated these visits to the mid/late 1950s and early 1960s, when his family were living at Castle View in Dover. He also recalled visiting Belle Vue in the 1970s and 1980s, perhaps 2 or 3 times a month, to see the steam engines. At that time he thought the man doing up and looking after the steam engines lived on the site, because he was always there, he came from the old bungalow whenever they visited and smoke was always billowing from the bungalow's chimneys. There were a few younger men on site giving a hand but he didn't know if they lived there. Mr Sedgwick confirmed he didn't go into the old bungalow and could not say what it was like inside in the 1970s. He stopped going to the site in the late 1980s because by that time the steam engines had gone. He was unable to assist with the period during the 1990s and agreed that no-one was living at Belle Vue between 1998 and 2014.
26. Therefore the appellants' evidence is that Belle Vue was in residential use in the 1960's, 1970s and 1980s through the occupation of the old bungalow. No evidence was produced in respect of the period of the 1990s through to the present day. The Council's witnesses contradict the appellant's version of events.
27. Mr Peall worked as a planning officer with the Council from April 1974. By reason of ongoing enforcement investigations at two sites he visited Belle Vue during the period from 1976 through to early 1977 on a weekly and sometimes bi-weekly basis. All his observations were from the public highway, from where good views were possible because of the low hedgerow at that time. Mr Peall maintained that at no time during his official investigations was there any residential presence on the land because the bungalow was totally uninhabitable, partially collapsed and a ruin. Over the period 1977 to 2003 he drove past the site on many occasions, about every 2 months, and was not aware of any residential activity. He recorded building materials many times and at the inquiry he confirmed the materials were stored both inside and outside the building. He recalled seeing steam engines on the land, similar to Mr Sedgwick.

⁴ Mr Graham in examination in chief.

28. Mrs Clements stated that to her knowledge between 1977 and 2007 the building was never lived in and the use of the land remained for the grazing or keeping of horses. A small touring caravan on the land was used for storage and was incidental to the equine activity. She believed that if someone did live on the land she would have become aware of it because of living opposite. I consider that this is a reasonable observation because of the proximity of the land to her property and her permanent presence as a resident herself.
 29. As to documentary evidence, the enforcement investigations referred to by Mr Peall led to an appeal against an enforcement notice alleging the use of land at Belle Vue for the storage of builders' materials and equipment, plant and equipment. In an appeal decision dated 2 May 1977, the site was described as being divided into two portions. The rear portion was an open field. The front portion was grass covered and contained a completely derelict bungalow, which was used for storing building components such as window and door frames. The remainder of the front portion of the land was also in use for the storage of considerable quantities of building components and materials. Plant and equipment consisted of 2 bulldozers and 4 antique steam rollers.
 30. The planning applications submitted in 1968, 1970 and 1971 indicate changes in the ownership of the land. I have referred to the descriptions given of the physical condition of the bungalow in the section above. There was no indication the land was in active use for residential purposes when in 1970 a Mr Bright made an application. Mr John Ullman (Diesel Johnny) and Mr McGarry were the certified owners in 1971. At that time Belle Vue was stated to be uninhabitable. In the 1977 planning application by the same people the present use was stated to be dilapidated timber building, with the last previous use given as a domestic dwelling.
 31. Turning to the later period, Rachel Smith stated that she rented the land known as Belle Vue from 1998 to 2014 for the keeping of horses and ponies. The old bungalow was not lived in during that period of time and a touring caravan sited close to the bungalow was not in a suitable condition for any use.
 32. Conclusions. The probability is that the land was a smallholding with a dwelling in the 1940s when Belle Vue was in the ownership of the Lawham family and into the 1950s when Mr Sedgwick visited as boy. Into the late 1950s and 1960s there is less certainty bearing in mind the appeal decision stated the building had been unoccupied for 13 years. In view of the state of the building described in 1968 it is reasonable to say that it would not have been occupied for several years. The subsequent planning application lends support to the absence of a residential use through to 1970.
 33. During the 1970s and 1980s there is contradictory evidence from the appellants and the Council. Mr Sedgwick was the only person giving oral evidence who had actually been on the site in that period but his main interest at the time clearly was the steam engines. He did not see inside the old bungalow and he assumed the man on site lived there. He accepted that the man could have been taking shelter, living there or using the building for anything else and that the smoke could be from work on the land. Overall his evidence, based on memory, fails to demonstrate that the old bungalow was used for residential purposes. There was nothing submitted by the appellants in the form of documentary evidence specific to the claimed residential occupiers of the old bungalow.
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34. In the Council's evidence, that of Mr Peall has most weight, bearing in mind he is an 'independent' witness who no longer works for the Council and whose credibility as a witness is unquestionable. At the time he was investigating potential breaches of planning control, he visited the site very regularly without notice and would have been alert to any signs of residential use. His records of stored materials accorded with the description in the 1977 appeal decision. Taking into account the evidence of Mrs Clements there is nothing to support a residential use of the building or land during this period. The appellants' evidence is not sufficiently precise and unambiguous to be accepted in the light of all of the contrary evidence.
35. There is no record of any use, let alone a residential use, over the period 1990 to 1998. With nothing from the appellants to contradict Ms Smith's evidence, the probability is that the land at Belle Vue was used solely for the keeping of horses and ponies between 1998 and 2014.

Any other use

36. The appellants submitted that the old bungalow had not been used for any purpose other than for residential use.
37. That may be correct in so far as the lawful use of the building is concerned in the immediate period after its construction. Mr Peall's evidence and the 1977 appeal decision show convincingly that the building was used for storage, more particularly according to the appeal decision: "This building (referring back to a 'completely derelict bungalow') is now used for storing building components such as window and door frames." Also relevant is the decision on the requirements of the notice. The requirement to cease the storage use and to remove the stored items was confirmed. The requirement to restore the property to the same unencumbered condition as before the unauthorised development took place was deleted.
38. There is not the evidence to show on the balance of probability that the building returned to residential use in the 1980's. During Ms Smith's involvement with the land from 1998 and 2014 the likelihood is that the building was not used for any purpose.

Owner's intentions

39. Mr Graham explained at the inquiry that in 2014 he was coming up to retirement and because he was brought up on a farm he wanted to have a smallholding, with a view to topping up his pension. The property came up for sale at the right time. He decided to acquire Belle Vue, carry out some repairs to the bungalow and then move in with his wife. He confirmed that he started works on the bungalow in order to live there. However, in due course he decided that it would be cheaper and quicker to demolish the old bungalow and to put up a smaller cabin. He acknowledged that the bungalow was larger than his wife wanted. Mr Graham sold his house and lived with his daughter temporarily whilst the renovation and construction works were in progress. Mr Graham confirmed that that he thought he could live on the land because there was a house there. Included in his appeal documents is a stamp duty return where Belle Vue is stated to be a residential property.
40. Mr Bootes met Mr Graham on the site in April 2015 by which time work was progressing on the cabin. According to Mr Bootes, Mr Graham told him that
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the building was not going to be lived in but it would be a bolthole where he and his wife would go to relax at weekends. Mr Graham could not recall having said this but Mr Bootes was clear in his recollection and would have been alert to any suggestion of a residential use. Nevertheless, the probability is that Mr Graham did intend to live on the site when he bought the land, bearing in mind that he sold his previous house.

41. There is no direct evidence from Mrs Graham. However, Mr Graham indicated that he knew before he purchased the site that the bungalow was much larger than his wife wanted in terms of floor space. When the repairs were ongoing Mrs Graham too was concerned about the cost of the project and had looked into replacing the bungalow with something smaller. Mr Graham accepted that his wife would not have found the old bungalow habitable at the time when they took the decision to demolish it. Mr Sedgwick said that he knew Mrs Graham was keen to have a new cabin instead. In his oral evidence he thought that Mrs Graham had a big say in the demolition of the bungalow because she wanted a log cabin. I have come to the view that Mrs Graham probably had no intention of living in the old bungalow from the outset.
 42. There is no first hand evidence from the previous owners of the land and reliance has to be placed on the documentary evidence. Mr Graham stated that he purchased the site from Mr Bill McGarry. In the 1970s the planning applications for a replacement dwelling strongly indicate that the owners Mr Ullman and Mr McGarry sought to use the land for residential purposes. The last planning application for 'rebuilding of existing building for human habitation' was refused planning permission in 1977. It was not until 1998 that Ms Smith rented the land from Mr McGarry and Ms Ainger. There is nothing in her declaration to suggest she had any intention of residential occupation, rather she confirmed that the old bungalow was not lived in during the time she rented the land. Information from others indicates that investment was directed towards the erection of new stable block.
 43. Therefore there was a long period of time of some 20 years between the final residential proposal and the rental of the land to Ms Smith for an equine use and a further 16 years before the land was sold. The owners may have retained a wish for a residential use in order to maintain the hoped for land value but in reality there is nothing to suggest that any work was done on the old bungalow or to the land to safeguard a residential use. There were no actions on their part to keep the use alive. The conduct of the owners in renting out the land after many years for the keeping of horses showed they had no use for the land. This arrangement lasted some 16 years before the land was finally sold and was not compatible with the continuance of a residential use. These actions are consistent with an acceptance by the land owners that a residential use was not possible due to planning restrictions and would not be resumed.
 44. As to the observations of others, the phraseology used to describe the bungalow, such as 'completely derelict bungalow', 'totally uninhabitable, partially collapsed and a ruin', conveys a sense of the residential use being abandoned. In fact, a neighbour stated that the buildings were abandoned during the years when the land was let for the keeping of horses.
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Conclusion on abandonment

45. The issue, with reference to the *Hartley* judgement⁵, is whether the cessation of the residential use was merely temporary or constituted abandonment. A conclusion is fact sensitive and depends on the particular circumstances of the case.
46. The old bungalow was in a very bad state of repair as far back as the late 1960s and uninhabitable by the 1980s. This derelict state was recorded in all the descriptions by local residents, owners of the land and planning officers and inspectors. In early 2015 even after Mr Graham had carried out several months of works the building was not habitable. It was beyond economic repair. The probability is that the old bungalow was last in residential use in the mid 1950s, resulting in a period on non-residential use of some 60 years before Mr Graham purchased the land. The only other recorded use, in the 1970's, was unlawful when the derelict bungalow was used for storing building components.
47. The ownership of the land changed several times over the relevant period. There is very little positive to indicate that the former owners Mr Ullman and Mr McGarry intended to safeguard or revive a residential use after the unsuccessful planning applications, culminating in the planning refusal in 1977. Thereafter there is little evidence of use until Ms Smith's period of tenancy from 1998 to 2014. Mr Graham intended to live on the land and run a smallholding when he acquired the site in 2014, an intention that has been constant since. Mrs Graham may well not have shared the same intention of ever living in the old bungalow, wishing to have a smaller dwelling.
48. The weight to be attached to Mr Graham's intentions is reduced because he was making an opportunistic purchase of the land in order to fulfil his aspirations. Of more relevance are the probable intentions of the former owners, one of whom (Mr McGarry) had a stake in the land for some forty or more years during which time the old bungalow was derelict. The apparent abandonment of pursuing any residential use by the former owners subsequent to 1977 is significant. Even if the intentions of Mr Graham as the site owner take precedence, they are not decisive because the test must be the view taken by a reasonable man in the knowledge of all the relevant circumstances.
49. Evaluating the four factors the balance weighs heavily against the appellant. I conclude that the existing lawful use right for residential purposes was lost as a result of abandonment. A resumption of the use would amount to development requiring planning permission.
50. In coming to this conclusion I have taken account of an appeal decision dating to March 1980 referred to by the appellants. The Secretary of State accepted the conclusions of the inspector that a residential use of the appeal property had not been abandoned because the evidence did not disclose any firm intention to do so. Accordingly it was determined that the proposals to resume the residential use of the property would not constitute development requiring planning permission. In examining the details of the history of the vandalised property, the reporting of the damage to the police and the subsequent prosecutions were important to the conclusion on the owner's intentions. No such events took place at the Belle Vue and the case illustrates how in applying the legal principles each case has to be determined on its own facts.

⁵ *Hartley v Minister of Housing and Local Government* [1970] 1QB 413

Survival of lawful use rights

51. Two additional matters were raised in the submissions of the Council and the appellants, which I will deal with briefly following my conclusion on abandonment.
52. The Council, relying on *J L Engineering*⁶, submitted that if there was not abandonment there was a material change of use to agriculture during the period of 16 years the land was occupied by Ms Smith. In my view the key issue is abandonment because the site of the old bungalow and the immediately adjacent land was put to no use at all during the occupation by Ms Smith rather than being in an active agricultural use. The position may be distinguished from the case cited, where the land in question was cultivated and used for the purposes of agriculture.
53. The appellants' argued that the residential use associated with the original building survived its demolition and replacement because in every measure the new cabin is less harmful and not materially different in planning terms. Therefore, the appellants said, the use rights passed to the new structure. The position was distinguished from the circumstances in the case of *Aston*⁷.
54. My understanding of the point being made is that the erection of the cabin on the site did not constitute a radical change or new chapter in the planning history of the site. Therefore the appellants were entitled to the existing residential use rights, which attached to the site, inside the building. However, there is a difficulty reconciling this principle with the circumstances of the case, where the residential use right was extinguished through abandonment. Also the relevance of the *Iddenden*⁸ judgement cannot be dismissed lightly. At Belle Vue the residential use appears to have been primarily associated with the old bungalow itself. That being the case, the residential use did not survive its demolition.

Conclusions on grounds (c) and (d)

Ground (c) appeals

55. Having concluded that the residential use was abandoned and the appellants did not enjoy a right of use of the cabin as a dwellinghouse, the main issue is whether the use of the land for a mixed agricultural and residential use amounted to a material change in the use of the land.
56. For there to have been a material change of use there needs to have been some significant difference in the character of the activities taking place on the land from what had gone on previously. The planning unit is the physical area against which to assess the materiality of change. There is no reason to depart from taking the unit of occupation, namely the appeal site, as the planning unit in this case. The Council in the description of the alleged breach described the former use as agricultural.
57. There is no evidence to contradict the equine use of the land over the period 1998 to 2014. Ms Smith described her use as the keeping of horse and ponies.

⁶ *J L Engineering and Another v Secretary of State and Another* [1994] 68 P & CR 504

⁷ *Aston v Secretary of State for the Environment* (1982) 43 P & CR 331

⁸ *Iddenden v Secretary of State for the Environment* [1972] 26 P&CR 553

She stated that an old caravan had its roof missing and was not suitable for any use.

58. The aerial photographs show a stable block on the eastern boundary and the old caravan near the old bungalow, which by that time was no longer distinct through the vegetation. There was another structure near to the stables, which may be the cabin referred to by Mr Graham and the yellow portacabin noted by the neighbour at Windsong. The remainder of the land appeared as grazing land enclosed by boundary hedgerows.
59. According to Mr Sedgwick there was a great deal of junk strewn around the site by 2014 and the stables required a lot of clearing. Mr Graham considered that the improvement and less harmful character of his use of the land could not be a material change of use. However, there are no grounds for thinking other than part of the site was untidy and that a new owner was keen to remove an accumulation of debris. Storage was not shown to be a primary use.
60. The cabin has been erected in the north western corner of the land and is in residential use, with a small patio, shed and some residential paraphernalia outside such as a trampoline. The cabin is occupied by the appellants as their only residence. Members of their family, including their grandchildren, come to visit. The activity and pattern of comings and goings would be different to that associated with the former equine use. The stables are now mainly used to house hens and ducks, with related ancillary storage of equipment and such like, including an incubator. The remainder of the plot is rough grassland, with an area near the former stables being fenced off to form a paddock.
61. The establishment of a home and the beginnings of a smallholding has led to a significant change in the activities on the land. My conclusion is that as a matter of fact and degree a material change in the use of the land has occurred. No planning permission has been granted for this form of development and hence there has been a breach of planning control. The appeals on ground (c) do not succeed.

Appeals on ground (d)

62. The time limits for taking enforcement action are set out in section 171B of the 1990 Act. The enforcement notice alleges a material change of use of land to a mixed use and does not allege operational development or the change of use of an existing building to a single dwelling house. Therefore the limit that applies falls within section 171B(3) and is ten years beginning with the date of the breach.
63. The case of *Arun*⁹, relied on by the appellants, concerned a different type of breach and type of property. The time limit at issue was in respect of a breach of planning control where the breach was a failure to comply with a planning condition requiring an extension to be used solely for purposes incidental to the main dwelling house. Therefore the circumstances were not comparable and the four year time limit confirmed in *Arun* is not applicable to this appeal.
64. The issue is whether the material change of use to a mixed agricultural and residential use occurred before 15 February 2006, with the mixed use continuing thereafter for a period of 10 years.

⁹ *Arun District Council v First Secretary of State and another* [2006] EWCA Civ 1172

65. The assessment of the history of the land shows on the balance of probability that the land was in agricultural and residential use until the mid 1950s. The residential use was later abandoned and the whole of the planning unit was in agricultural use or possibly a mixed use for agriculture and the keeping of horses. Therefore I have not accepted the fundamental submission of the appellants' ground (d) case that there was an established right to use the land for residential purposes, which was not abandoned and which is retained in the use of the cabin as a dwelling house.
66. As a matter of fact Mr Bootes found on 25 August 2015 that the interior of the cabin structure was still incomplete and there was no evidence that the building was being used for residential purposes. On 20 January 2016 the cabin was found to be fully furnished and on 21 January Mrs Graham reportedly told Mr Bootes that they moved into the cabin a few weeks previously. This evidence was not challenged by the appellants. The Council received notification from a local resident on 12 January 2016 that the cabin was occupied.
67. Therefore the probability is that the material change of use occurred in the first few weeks of January 2016. The development is not immune from enforcement action by reason of the passage of time. The appeals on ground (d) do not succeed.

Appeals on ground (a): mixed use and erection of dwelling

68. Belle Vue is located outside the urban boundary and rural settlement boundary, in the Kent Downs Area of Outstanding Natural Beauty (the AONB).
69. The development plan for the area includes the Core Strategy for Dover District adopted in February 2010 (Core Strategy). Policy DM 1 does not permit development on land outside the defined settlement boundaries unless specifically justified by other development plan policies, or there is a functional need for such a location or it is ancillary to existing development or uses. Policy DM 15 protects the countryside and Policy DM 16 protects landscape character. The appellant relied on Policy DM 8 that sets out the criteria for permitting replacement dwellings in the countryside. Policy DM 4 is not relevant because it relates to the re-use or conversion of rural buildings, not new build.
70. The policies in the National Planning Policy Framework (the Framework) are material considerations. At the heart of the Framework is a presumption in favour of sustainable development. Great weight should be given to conserving landscape and scenic beauty in AONBs.
71. Due weight should be given to the relevant policies in the Core Strategy according to their degree of consistency with the Framework. A core planning principle of the Framework is to take account of the different roles and character of different areas, recognising the intrinsic character and beauty of the countryside. More particularly in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and isolated new homes in the countryside should be avoided unless there are special circumstances. Policies DM 1, DM 8, DM 15 and DM 16 are generally consistent with the Framework. In addition the Council is able to demonstrate a five year supply of deliverable housing sites. On that basis for the purposes of these appeals the relevant Core Strategy policies are up to date. In view of these two conclusions the Core Strategy policies have full weight.
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72. There are two deemed planning applications – one for the dwelling and the other for a material change of use. Nevertheless the planning merits of the two developments are related and will be considered together. The main issues are whether the developments are (i) justified by a functional or economic purpose, (ii) would conserve the landscape and scenic beauty in AONB, (iii) be supported by the planning history of the site, (iv) meet the criteria for a replacement dwelling in the countryside; and (v) promote a sustainable settlement pattern. Other considerations to weigh in the balance include the matter of intentional unauthorised development, the personal circumstances of the appellants and the potential use of planning conditions to mitigate any harm. I also will have in mind throughout the appellants' Convention rights under Article 8 – the right to respect for private and family life and the home and under Article 1 of the First Protocol – the right to the peaceful enjoyment of their possessions. The existence of a fallback position, in the right to use the cabin as a dwelling house, has no weight following my conclusions on abandonment and the survival of existing use rights.

Justification

73. The purpose of the cabin is to provide a home for the appellants in their retirement, on land where Mr Graham is able to have a smallholding. As Mr Graham explained at the inquiry, the smallholding is intended to be a hobby, providing some income to top up a pension. At the time of the inquiry site visit there were hens and 20 or so ducks and some sheep and pigs were due to be added to the stock. No particular animal welfare, security or husbandry / equipment issues were identified that would require an on-site residential presence.
74. The smallholding use and activity would be small scale, with no essential functional need demonstrated for an on-site permanent residential presence. There is no proposal to develop an agricultural business that would support a full time worker. Accordingly there is no functional or financial reason to justify either the dwelling house or the residential element of the mixed use. In the absence of a functional requirement for a location outside the rural settlement confines there is conflict with Policy DM 1. Special circumstances for a new isolated home in the countryside, indicated by paragraph 55 of the Framework, do not exist.

Landscape character, planning history

75. The appeal site lies on high ground to the west of the settlement of River, lying on lower ground in the valley. Belle Vue is separated from the edge of the built up area by woodlands on the steep valley slopes and open fields on the plateau. Farmsteads and other freestanding properties are located at irregular intervals along Minnis Lane, with Windsong adjacent to the eastern boundary of the site and Loganberry Farm opposite. Hedgerows define the field boundaries along the rural lane but as Mr McEwen (the Council's planning witness) observed post and rail fencing is replacing the hedgerow network within the field pattern.
76. With reference to the Landscape Assessment of Kent, the site is within the local character area of Alkham and the wider character area of the East Kent Downs, a remote peaceful area of downland. In describing the condition of the landscape the negative impact of 20th century farmsteads, residential areas and
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the linear development of villages along access roads are highlighted. Visual detractors from the open mainly pastoral landscape include recent ridge top settlements, whilst the open hill top fields and pockets of scrub and naturalist vegetation restore an element of functional integrity to the area. Much of the built form is not regarded to be of distinctive character but the inherent pattern of open coastal downs and isolated valleys is said to contribute to a moderate sensitivity. Decaying hedges, derelict buildings and abandoned farm machinery are identified as signs of a landscape under economic stress.

77. The Kent Downs AONB Landscape Design Handbook lists key characteristics of the locality, including scattered woodlands on steep valley sides, decaying hedges and dominant long ridges and isolated valleys. I consider Minnis Lane displays such characteristics. Design guidelines are directed towards sensitive management of the grasslands, pastures and woodlands, conserving the open undeveloped downland character, use of sympathetic local materials and reinstatement of hedgerows.
78. The Framework encourages the effective use of land by reusing land that has been previously developed¹⁰, provided that it is not of high environmental value. The site as a whole probably is not of particular biodiversity value, the main habitat and landscape features being the boundary hedgerows and the trees near the cabin. The value is derived from its location in the AONB, a designation that bestows the highest status of protection, and its small scale contribution to the key landscape characteristics – the predominantly open hill top pastoral field, with pockets of scrub and vegetation and a peaceful presence.
79. The land was occupied by a permanent structure in the form of the old bungalow. As a matter of fact it was described by an independent inspector in 1977 as 'a completely derelict bungalow'. Since then the probability is that the bungalow was left to deteriorate further given the lack of use of the land thereafter. During Ms Smith's occupation of the land the bungalow was not accessible because of surrounding vegetation. By 2014 there was partial wall and roof collapse, the shell of the structure was at the least partially covered by brambles and ivy and trees had lifted the base concrete ring beam in places. On a photograph taken by Mr Bootes on his visit in March 2015, when work had started on the new cabin, one of the chimneys on the remains of the demolished bungalow was visible through the vegetation and trees.
80. Referring to the series of aerial photographs, on the 1990 image the form of the bungalow and the caravan at the rear are discernible. In 2002 and 2003, the vegetation is more dominant and the bungalow is much less clear and almost obscured, with the white caravan prominent. Views are similar in the images dated 2006 and 2007. By 2013 the bungalow is almost totally obscured by vegetation and the caravan is no longer obvious. None of the images over the period from 2002 to 2013 indicate a residential curtilage, with the more heavily vegetated area in the north western corner of the site merging with the adjoining grassland.

¹⁰ The meaning of previously developed land is found in Annex 2: Glossary to the Framework. It states "Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure". Within the exclusions are land that is or has been occupied by agricultural or forestry buildings and land that was previously developed but where the remains of the permanent structure or fixed surface [infra] structure have blended into the landscape in the process of time.

81. The evidence that is available leads me to conclude that the old bungalow had to a large degree blended into the landscape before Mr Graham acquired the land. The site is in an area of high environmental value. The condition of part of the site as previously developed land has very limited weight.
 82. Against that background, the change of ownership has resulted in the demolition and removal of a derelict building, removal of general waste materials and debris and the clearance of overgrown areas. The tidying up and care of the land by the appellant has been welcomed by one near neighbour. The improvements have removed features that contributed to the signs of a landscape under economic stress. The fact that the appellants wish to live on the land and Mr Graham aims to spend time developing his smallholding suggest a higher level of land management and small scale investment in buildings than appears to have been the case in the past. The appearance of the local landscape could benefit, although there is little to suggest that a residential use is essential to securing such benefits.
 83. The new cabin is a single storey dwelling with a shallow pitched roof and external walls clad in timber. The number, position and type of windows, together with the patio doors give the cabin a domestic appearance. The cabin is of a standard design, not of a design or materials that are characteristic of dwellings in the locality. The appellant was willing for materials to be subject to a planning condition. However, in my view such a condition would not be reasonable because in effect the walls would have to be rebuilt. Whilst the building form was regarded to be an improvement on the old bungalow, I consider that would not necessarily be the case. The derelict building probably had become visually unobtrusive. In the alternative, a renovated bungalow could better reflect the history of the site and display distinctive features, such as the chimneys that reinforce a sense of place.
 84. The siting of the cabin is towards the front of the plot, with the long elevations across the width of the site. The position probably is not exactly on the same footprint of the old bungalow, as indicated by the evidence of Mr Bootes, the photographs taken at the time of construction and my observations on site. The cabin is sited in close proximity to a tree, which has matured into a landscape feature on the site. No assessment has been made of how the dwelling would affect the future health and amenity value, either directly or indirectly though pressure to lop or even cut down the tree.
 85. In relation to the surrounding topography, the site is on high ground in a ridge top location that is not supported by landscape design guidelines. The boundary hedgerows provide reasonably good enclosure along the site frontage and to a lesser extent along the western boundary. Planting with appropriate native species, secured through a planning condition, could 'gap up' and strengthen the hedgerows and ensure the cabin would not be visually prominent from Minnis Lane. Even so the intrinsic harm to landscape character would remain.
 86. The probability is that there has been no active and apparent residential use of the land for some 50 to 60 years. The introduction of a residential use in association with the dwelling, alongside the agricultural use, would bring a very significant change in the character and appearance of the plot. The residential use would extend across the front portion of the site, as indicated on the plan submitted with the statement of common ground. Instead of an open area of
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grassland as part of the larger field there undoubtedly would be residential paraphernalia and over time probably extension of a planted garden, plus vehicle parking areas and a drive. A permanent residential presence would be marked by a pattern of activity typical of domestic life and indicators such as lighting in and around the home. The open undeveloped downland character would not be conserved. A residential use that is not justified by the needs of the smallholding would not be in keeping with the settlement pattern.

87. Planning conditions to remove permitted development rights to extend the cabin, control external lighting and vehicle parking provision and define the extent of the residential use would be directed at controlling details, rather than overcoming the harm arising from the inevitable and reasonable requirements associated with the residential use and building.
88. In conclusion, the planning history and former residential use contribute little to supporting the change of use of the land and the erection of the cabin. The dwelling house alone would lead to limited harm to the appearance of the locality by reason of its size and relatively enclosed position. However, its siting has not responded fully to the land's characteristics and context and more fundamentally the loss of land to a residential use would be out of keeping with the distinctiveness of the highly valued landscape character of the AONB. Planning conditions would be unable to reduce the harm or incorporate design measures to mitigate the impacts to an acceptable level. The developments are not supported by Policy DM 16. Local distinctiveness would not be reinforced, contrary to paragraph 60 of the Framework.

Replacement dwelling

89. Policy DM 8 is directed at proposals for replacement dwellings, where the expectation is that demolition of any existing dwelling has not occurred. The first part of the policy sets out the requirements for the existing dwelling. The second part applies to the criteria for the replacement dwelling. In this case development has been carried out. The old bungalow was the existing dwelling and the replacement dwelling has been built in the form of the timber cabin.
90. Following on from my earlier conclusions, the old bungalow at the time of its demolition was not a permanent structure in lawful residential use, nor was it capable of continued residential use. Even though it probably was of no architectural or historic value the first two factors very strongly weigh against permitting a replacement dwelling.
91. The replacement cabin would be acceptable in terms of flood risk. Site coverage and scale would be appropriate but the siting is not convincing. The cabin is appropriate in its style and form but not the use of materials. It would harm the character of the countryside, taking account of the landscape assessments and design guidelines for the AONB. All matters considered the development is contrary to Policy DM 8.
92. The Framework at paragraph 51 states that local planning authorities should identify and bring back into residential use empty housing and buildings in line with local housing and empty homes strategies and, where appropriate, acquire properties under compulsory purchase powers. Policy DM 8 is directed at different specific situations and types of proposals within the countryside. Moreover, the criteria of Policy DM 8 are generally in agreement with a core planning principle the Framework to recognise the intrinsic character and
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beauty of the countryside and supporting thriving rural communities. Within paragraph 55 attention is directed to re-using redundant and disused buildings, not new build. Notwithstanding the submissions for the appellant, Policy DM8 is consistent with the relevant policies of the Framework and has full weight. The fact the cabin fails to comply with the policy is a very significant factor against the development of a new dwelling.

Other considerations

Accessibility

93. Minnis Lane is not on a bus route and the lane has no footway or street lighting and is quite steep. The site is sufficiently far away from the nearest settlement and the lane is of such a character to discourage access to local services by foot, especially for residents who are less mobile, whether for health reasons or age. The occupants of the cabin would not have a real choice about how they travel and would be reliant on the car. There is no possibility of maximising sustainable transport solutions even allowing for the location of the site in a rural area. Having regard to the policies in the Framework for promoting sustainable transport and healthy communities, this factor weighs against the developments to a moderate degree.

Personal circumstances

94. Mr Graham is a self-employed builder. He purchased Belle Vue as a retirement home for himself and his wife. The property is in an area where he has family living near by, which enables his daughter and grandchildren to visit regularly. Mrs Graham was in hospital recently but is now well enough to be at home.
95. Their former property in Dover was sold before the old bungalow was demolished and the cabin was available to live in. At that time temporary arrangements were made to live with their daughter. Mr Graham indicated that such arrangements would not be feasible in the future and they could not live with their daughters who were grown up with their own families. In the event the appeals were unsuccessful Mr Graham confirmed that he would be in serious financial difficulties, although he accepted that he would look to rent a property.
96. The dismissal of the appeals would potentially result in appellants losing their home and chosen lifestyle during retirement. However, the evidence does not indicate that there are strong compassionate or cultural reasons to support continued residential occupation of the site. No case was made that the appellants would become homeless or that alternative affordable and suitable accommodation would not be available to them.
97. The best interests of a child are a primary consideration and so no other consideration can be inherently more important. There was no suggestion from the appellants that regular contact with grandchildren would be lost or that the interests of the children would be best served by the appellants continuing to live on the site.
98. Planning controls are concerned primarily with the use of the land rather than the identity of the user. I conclude that the personal circumstances of the appellants have limited weight.
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Appeal decisions

99. In an appeal decision relating to a plot of land adjacent to Sherries, Eastchurch¹¹, the inspector recognised that there was a permanent building on the site many years before but her main focus was on the protection and enhancement of the quality, character and amenity of the wider countryside. The site was not in an AONB and was close to a complex of three prisons. Although located outside a settlement boundary where there was a rural character the proposed dwelling was assessed as to how it would integrate into the street scene.
100. A second appeal decision relied on by the appellant at Hoodland Place, Hambrook related to a proposed dwelling in the Green Belt¹². An uninhabitable bungalow on the site had been destroyed by fire and demolished. The inspector commented that in accordance with *Iddenden* the lawful residential use of the appeal site might well have been extinguished. He took account of the unforeseen events outside of the appellant's control and the consequences flowing from those exceptional circumstances. His conclusion was that very special circumstances existed to justify the proposal.
101. These two cases illustrate how, as in the Belle Vue appeals, the planning history of a site may be very relevant to an assessment of the merits of a proposed development. The weight to be attached is down to the decision maker. In the Eastchurch case the history of the site was probably given less weight than the site history in the Hambrook appeal. In both cases there was no specific finding that the residential use had been abandoned. The specific facts of the planning histories, the site locations and various other matters that weighed positively in the balance are not directly comparable to Belle Vue. In particular in the Hambrook appeal the Inspector was satisfied that a decision by the appellant to demolish a bungalow was taken on grounds of personal safety after serious fire damage. The appellant was seriously ill with a progressive disease and would have difficulties securing alternative suitable accommodation. The consequences of an adverse outcome of the appeal were described as being catastrophic for the appellant. Such exceptional circumstances do not exist in respect of Belle Vue. Therefore the decisions are of limited assistance in informing the outcome of the deemed planning application in this appeal.
102. The 1968 appeal decision for a replacement dwelling on the site remains relevant and holds good despite the passage of time. The Minister concluded that whilst the presence of the existing dilapidated bungalow on the site was of interest and relevant to the consideration of the appeal, it could not in itself justify allowing the erection of a new dwelling to which there were strong planning objections. Arguably the planning objections are stronger in view of the passage of time and abandonment of the residential use.

Intentional Unauthorised Development

103. The planning policy statement¹³ highlights the Government's concern about the harm that results from development intentionally carried out in advance of

¹¹ Ref APP/V2255/A/14/2215852 dated 21 July 2014

¹² Ref APP/P0119/A/00/1054071 dated 29 March 2001

¹³ On 31 August 2015 the Secretary of State issued a planning policy statement on Green Belt protection and intentional unauthorised development. The statement was laid before the House as a Written Ministerial Statement on 17 December 2015.

obtaining planning permission because the opportunity to appropriately limit or mitigate the harm caused is removed.

104. The Council informed the appellants on 17 February 2017 that the written ministerial statement would be referred to at the inquiry. The Council submitted that the intentional unauthorised development is a material consideration that weighs against the grant of planning permission.
 105. The erection of the cabin took place without the necessary planning permission. The appeals were received after 31 August 2015 and therefore the planning policy statement applies. The probability is that Mr Graham would have been unaware of the planning policy statement, although that does not affect its applicability to this appeal.
 106. I accept that Mr Graham was reliant on others for advice and guidance as to whether planning permission was required for the residential use of the land and the erection of a dwelling. The old bungalow and his knowledge of a residential use of the land many years ago also are reasonable factors supporting a view that Mr Graham's initial work on the old bungalow did not amount to a deliberate attempt to carry out unauthorised development.
 107. However, Mr Graham was advised by Mr Bootes of the likely need for planning permission in March 2015. A stronger warning about a breach of planning control was communicated verbally and in writing in April 2015. Works on the new building continued whilst a planning application was under consideration and after permission was refused. Mr and Mrs Graham moved into the cabin after the first enforcement notice was issued. All these factors are consistent with carrying out intentional unauthorised development. In addition, Mr Bootes' evidence was that Mr Graham had told him in April 2015 the cabin was to be a bolthole, not a dwelling. Mr Graham could not remember saying that. The probability is that the description of the development on the application form was provided by Mr Graham to the Council. It was not accurate in that it related to the repair of an original building, not the erection of a new building. Mr Graham was not able to explain this discrepancy. These factors indicate that Mr Graham was not open about his actions and there was a degree of concealment.
 108. In this case harm has been caused to the AONB as a result of the development and the possibility of mitigating any harm was precluded by the developments proceeding without the necessary permissions. The Council has had to take enforcement action, a process that is time consuming and results in expense. The Government is seeking to address such matters through the policy introduced by way of the written ministerial statement.
 109. I conclude that the development is "intentional unauthorised development" within the meaning of the 2015 planning policy statement, which weighs against granting planning permission. Even so I attach limited weight to this consideration, taking into account the fact that Mr Graham embarked on the project with the intention of restoring the old bungalow, a retrospective planning application was submitted and he was at a disadvantage by reason of dependency on others for basic literacy skills and advice.
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Sustainable development

110. The smallholding is intended to be a hobby, not a rural enterprise or diversification of an agricultural business. The dwelling is not necessary to support the proposed small scale agricultural activity and on that basis is not in the right location. Consequently it is not possible to conclude that the developments would make any significant contribution to the rural economy.
111. The developments would meet the housing need of Mr and Mrs Graham and an extra dwelling would be added to the housing stock. Nevertheless, there are no grounds for considering that the dwelling would fulfil a wider social role in supporting the vitality of the rural community.
112. The management and stewardship of the land is not dependent on a mixed residential/agricultural use or the erection of a dwelling. The developments would not contribute significantly to the protection and enhancement of the AONB. The appellant has not drawn attention to any design features of the dwelling that would support the move to a low carbon future and a reduction in greenhouse gas emissions. The site's location severely limits the option for the use of sustainable means of transport.
113. On all three dimensions the mixed use and the new dwelling are not sustainable forms of development and they are not supported by the Framework.

Conclusions

114. The starting point is that the plot has a lawful agricultural use and there is no existing use right to use the land for residential purposes.
 115. The cabin fails to comply with the criteria for replacement dwellings in the countryside and therefore in accordance with Policy DM 8 should not be permitted. The dwelling would adversely affect the character of the countryside within the AONB and is not justified by the needs of agriculture or to sustain the rural economy or the rural community. There is not the support from Policy DM 15. By reason of the harm to landscape character the development conflicts with Policy DM 16. Considerable importance and weight is attached to the harm to the AONB. In the light of these conclusions Policy DM 1 directs that the dwelling should not be permitted because of its location outside the urban boundaries and rural settlement confines. The development is not in accordance with the development plan when considered as a whole. Given my findings on the sustainable development matters there are no material considerations that warrant a decision other than in accordance with the development plan.
 116. The material change of use to a mixed agricultural and residential use would be harmful to the character of the countryside within the AONB and is not justified by the needs of agriculture or to sustain the rural economy or the rural community. Policy DM 15 does not permit the change of use. By reason of the harm to landscape character the development conflicts with Policy DM 16. Considerable importance and weight is attached to the harm to the AONB. The mixed use incorporating a primary residential use should not be permitted under Policy DM 1. In view of these fundamental policy conflicts the mixed use is not in accordance with the development plan when considered as a whole. Given my findings on the sustainable development matters there are no
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material considerations that warrant a decision other than in accordance with the development plan.

117. These conclusions indicate that to be acceptable the developments have to rely on success through a proportionality assessment of the human rights implications.

Article 8 Proportionality assessment

118. The land is the home of the appellants and if they are unsuccessful in their appeals they will be required to leave the site in order to comply with the enforcement notices. The interference with their home, private and family life would be serious. In this respect the site functions as a place where the appellants' close family visit most weekends, when their daughter and grandchildren stay over. Potentially the Article 8 rights of children, a primary consideration, are involved. However, the appellant did not seek to challenge the submission of the Council that there did not appear to be any interests of the children engaged by the weekend trips and no information was forthcoming on the number or ages of the grandchildren, what their best interests may be and how they would be affected. Therefore I shall proceed on the basis that the Article 8 rights at issue are those of Mr and Mr Graham. The consequences for their wellbeing would be of such gravity as to engage the operation of their Article 8 Convention rights.
119. There has been no suggestion to date that the interference would be against the law provided that planning policy is lawfully applied. The interference would be necessary to regulate land use in an area that is environmentally sensitive and has a high level of protection in the public interest.
120. A proportionality assessment is required in order to undertake the fair balance set out in Article 8(2). Its purpose is to determine whether the protected rights of the appellants would be disproportionately interfered with if the rights of the community are upheld by protecting the AONB and upholding settlement policy. The assessment will draw on the limited factual information forthcoming from the appellants and the community interests that have been considered above.
121. As a general rule it is highly relevant whether or not the home was established unlawfully in considering whether a requirement that the individual leave his or her home is proportionate to the legitimate aim pursued. In this case Mr Graham stated he did not realise planning permission would be needed because of the history of residential use and the presence of the old bungalow on the land. Nevertheless the erection of the cabin continued after the Council had made clear planning permission would be required. The appellants' position is slightly weaker as a result.
122. Relevant considerations relating to the enjoyment of private and family life. Mr and Mrs Graham have been living at Belle Vue since January 2016. Belle Vue was as an opportunity for Mr Graham to fulfil his wish to have his own smallholding, given his upbringing on a farm and especially when nearing retirement. Mr Graham described himself as a self-employed builder and stated that his wife is retired. The indication is that they have lived in the Dover area for many years. Their former home was sold to finance the purchase of the property and consequently Belle Vue is their sole residence and home. Although no detailed evidence was provided there is no reason to doubt that Mr
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Graham would be in serious financial difficulties were he to lose the cabin and the ability to live at Belle Vue. In his words it would just about finish him.

123. At the inquiry I learnt that the appellants have two daughters who live in the surrounding area and who have their own families. Mr Graham is unable to read or write and has been helped by one of his daughters in matters to do with the appeal and previous correspondence with the Council. He engaged a solicitor when purchasing Belle Vue and it appears that he did not make clear that he was intending to live in the old bungalow.
124. Mrs Graham was in hospital on two occasions recently but is well enough to be at home now. Mr Graham did not refer to any specific health problems of his own. Belle Vue has enabled Mr Graham to make a start with building up his smallholding and he has plans to introduce more animals onto the land. Their grandchildren come to visit as part of their family group at weekends and stay overnight in the cabin.
125. When asked about future living arrangements in the event the appeals are not successful, Mr Graham expected that he would rent somewhere and confirmed that renting would be a manageable outcome. He was concerned about the effect on his retirement plans, his dogs and his animals. He indicated that his wife may live on her own as she was fed up with all the planning difficulties.
126. Public or community interests. The purpose of the planning system is to contribute to the achievement of sustainable development by fulfilling economic, social and environmental roles. Positive improvements should be sought in the quality of the built and natural environment as well as in people's quality of life in order to meet not only present but also future needs. The regulation of land use is in accordance with the statutory framework. The interference with the exercise of an individual's Article 8 right may be necessary in the interest of the well-being of the country, a legitimate aim that includes protection of the environment. Belle Vue is located in an AONB, which has the highest status of planning policy protection in relation to landscape and scenic beauty. A decision maker has a statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of the AONB¹⁴.
127. The significant harm caused by the developments is fully explained in the reasoning on the planning issues. In brief, distinctive characteristics of the landscape have been eroded. The dwelling and residential use are not justified in a countryside location and would not contribute to securing a sustainable pattern of development. The mitigation that could be secured through planning conditions would not adequately offset the harm.
128. Fair balance. The probability is that it would be in the best interests of Mr and Mrs Graham to be able to continue living at Belle Vue, which was specifically bought with retirement in mind. A move away may interfere with family life in so far as their family, including their grandchildren may not be able to visit them as regularly. Financial resources would be put under severe strain, which in turn may affect health and well-being.
129. The private rented sector was identified by Mr Graham as a realistic housing alternative. It appeared that no assistance had been sought from the Council in

¹⁴ Section 85 of the Countryside and Rights of Way Act 2000

exploring housing options. There was no indication from the appellants that they anticipated that they would be made homeless. The enforcement notices are directed at the residential use and building at Belle Vue and the development of a smallholding would not necessarily be affected.

130. In conclusion, the disruption to home and family life would be serious. Nevertheless conserving the AONB has considerable importance and weight and the developments do not comply with policies to ensure promote the proper planning of the district. The interference with the appellants' article 8 rights is necessary and proportionate in the public interest.

Article 1 of the First Protocol

131. Article 1 of the First Protocol is also a qualified right and requires a fair balance between the right of property and the requirements of the general interest. Any action taken must be proportionate given all the circumstances. The dismissal of the appeals would engage the rights of the appellants under Article 1. The issue is whether there would be an interference with this right and if so whether the interference is justified.
132. With reference to the main points made by Mr Graham in his evidence, the most relevant factors in respect of Article 1 are: Belle Vue is his only property purchased as a retirement home for himself and his wife, the previous temporary living arrangements would no longer be feasible and he would be in serious financial difficulties.
133. It would be the case that the cabin would have to be removed from the land and the residential use would have to cease. The appellants would not be deprived of their possessions in the sense that there would be no expropriation of property. Agricultural use of the land could continue. No information was provided about the how the value of the cabin would be affected in so far as there may be the ability to dismantle the structure and salvage the materials, possibly for use elsewhere. Even so there would be a serious interference with the appellants' right to peaceful enjoyment of their possessions.
134. As explained above in relation to Article 8, the public interest centres on regulating the use of land, upholding planning control in accordance with the statutory framework and protecting the landscape of the AONB. My conclusion is that the interference with the appellants' rights under Article 1 of the First Protocol is proportionate and necessary in the public interest.

Conclusions on ground (a) appeals

135. The new dwelling is in a location that does not accord with the Core Strategy's settlement hierarchy and policies to protect the countryside and AONB. Sustainable development would not be achieved, contrary to the key aim of the Framework. I conclude that the appeal should not succeed. Refusal of planning permission on the deemed application is necessary and proportionate in the public interest and no violation of the appellants' human rights would result.
136. The material change of use introduces a mixed use where the residential component is not justified, resulting in significant harm to the quality and landscape character of the AONB. A sustainable form of development would not be secured. Therefore the development is not supported by the development
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plan or national policy in the Framework. Refusal of planning permission on the deemed application is necessary and proportionate in the public interest and no violation of the appellants' human rights would result.

137. The compliance periods will be considered under the ground (g) appeals to ensure the planning policy objectives are achieved with the least interference necessary to the appellants' rights.

Appeals on ground (g)

138. When submitting their appeals against the enforcement notice ground (g) was not raised but the matter was introduced at the inquiry. I am satisfied that to consider the appellants' submissions will not cause injustice to the Council because there was the opportunity for the Council to explain the reasoning behind the compliance periods stated in the notices. The issue is whether the compliance periods fall short of what should reasonably be allowed.

Operational development

139. The compliance period for demolishing the cabin to ground level is three months. The appellant has requested a period of one year.
140. The probability is that the physical works of demolishing the cabin could be carried out within the three month period, especially as the Council is not requiring all foundations to be removed and backfilled with top spoil. However, within the same period of time the occupants would have to find a new home. In view of the serious implications for Mr and Mrs Graham resulting from the loss of their home, three months would be too short and disproportionate. Adequate time should be allowed for them to reconsider their retirement plans and to find a new home as well as to subsequently carry out the physical works of demolishing the cabin. A period of twelve months would be reasonable and proportionate.

Material change of use

141. The stated compliance period for ceasing the use of the land for residential purposes is six months. The appellant has requested a period of one year.
142. Similar considerations apply as for the cabin and it would make sense for the two periods to be the same. Accordingly a period of twelve months would be reasonable and proportionate.
143. The appeals on ground (g) succeed and the notice will be varied accordingly.

Overall Conclusion

144. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the deemed applications.

DECISIONS

Appeal Ref: APP/X2220/C/15/3140978

145. It is directed that the enforcement notice be varied in paragraph 5 by the deletion of the stated time for compliance and the substitution of the words "Twelve months after this notice takes effect". Subject to this variation the
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appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal Refs: APP/X2220/C/16/3146357, APP/X2220/C/16/3146358

146. It is directed that the enforcement notice is corrected in paragraph 3 by the deletion of the words "mixed use of agricultural and permanent residential" and the substitution of the words "a mixed use for agricultural and residential purposes".

147. It is directed that the enforcement notice is varied by:

- The deletion of the wording of the requirement in paragraph 4 and the substitution of "Cease the use of the land for residential purposes."
- The deletion of the stated time for compliance in paragraph 5 and the substitution of the words "Twelve months after this notice takes effect".

148. Subject to the correction and variations the appeals are dismissed and the enforcement notice is upheld. In respect of the appeal by Mr G Graham, ref APP/X2220/C/16/3146357, planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Admas Habteslasie	Of Counsel
He called	
Mr Gordon Graham	The Appellant
Mr William Sedgwick	Demolition contractor

FOR THE LOCAL PLANNING AUTHORITY:

Miss Emmaline Lambert	Of Counsel, instructed by Mr D Thorman, Planning Solicitor, Dover District Council
She called	
Mr John Peall JP BTP MRTPI	Planning consultant
Mr Gary Bootes	Senior Investigator, Dover District Council
Mr Jim McEwen BA(Hons) MRTPI	Principal Planner Enforcement, Dover District Council

DOCUMENTS submitted at the inquiry

By the Appellant

- 1 *Aston v Secretary of State for the Environment* (1982) 43 P&CR 331
- 2 Appeal decision ref APP/5289/G/79/20 March 27 1980 JPL
- 3 Appeal decision Hoodland Place, Hambrook
APP/P0119/A/00/1054071 dated 29 March 2001
- 4 Appeal decision Land adjacent to Sherries, Eastchurch
APP/V2255/A/14/2215852 dated 21 July 2014
- 5 Opening submissions
- 6 Closing Submissions

By the Council

- 7 Opening submissions
- 8 Chronology
- 9 *Ravensdale Ltd v Secretary of State for Communities and Local
Government* [2016] EWHC 2374 (Admin)
- 10 Dover District Council Authority Monitoring Report 2015/16
- 11 *Gladman Developments Ltd v Daventry District Council* [2016]
EWCA Civ 1146
- 12 *Arun District Council v First Secretary of State and another* [2006]
EWCA Civ 1172
- 13 Proof of evidence of Mr Bootes (complete copy)
- 14 *J L Engineering and Another v Secretary of State and Another*
(1994) 68 P&CR 504
- 15 Closing submissions

General

- 16 Letters of notification of the appeals and date of the inquiry
 - 17 The Landscape Assessment of Kent 2004 (extracts)
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