



Appeal Decision

Site visit made on 26 May 2020

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2020

Appeal Ref: APP/C9499/C/19/3231818

Land at Cowside Barn, Langcliffe, Settle, North Yorkshire BD24 9PZ

- 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 McKenna against an enforcement notice issued by Yorkshire Dales National Park Authority.
 - The enforcement notice was issued on 14 May 2019.
 - The breach of planning control as alleged in the notice is, without planning permission, change of use of the building situated on the land (known as "the Old Dairy") to use as a self contained dwelling house including as part of such change of use the erection of timber decking and fencing around said building and internal alterations to the building to facilitate the change of use including the installation of domestic kitchen units and appliances and bathroom fittings.
 - The requirements of the notice are:
 - i) Stop using the building as a self contained dwelling house
 - ii) Dismantle and remove from the land the timber decking and fence
 - iii) Dismantle and remove all internal fixtures and fittings within the building which facilitate the residential use, including kitchen units and appliances and bathroom fittings.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (d) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld as corrected in the terms set out below in the Formal Decision

Procedural Matters

1. The breach of planning control alleged in the notice includes aspects of operational development and internal fittings that the Yorkshire Dales National Park Authority (the Authority) describes as being part of the change of use. The former includes the erection of timber decking and fencing. The latter includes the installation of domestic kitchen units and bathroom fittings.
2. The appellant accepts that the timber decking constitutes development requiring planning permission, but contends that there is no requirement to obtain planning permission for the fencing. Specifically, the appellant contends that the fencing constitutes permitted development under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. In addition, the appellant contends that the internal fittings referred to in the notice do not constitute development for the purposes of section 55 of the Town and Country Planning Act 1990 (the 1990 Act), and as such do not require planning permission.

3. In other circumstances, I would have been inclined to treat the appellant's position in these respects as comprising an appeal under ground (c) as set out in section 174(2) of the 1990 Act: namely, that in respect of any breach of planning control that may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control.
4. However, in this case the notice is directed primarily at a material change in the use of the land and building. It is settled law that a notice directed at a material change of use may require the removal of works integral to and solely for the purpose of facilitating the unauthorised use, even if such works on their own might not constitute development, or be permitted development, or be immune from enforcement¹. If the appeal fails on other grounds, as I found it should, I do not need to determine whether the fencing is or is not permitted development because those works can be removed anyway.
5. The question before me, then, is whether the timber decking, the fencing and the internal fittings are works integral to and solely for the purpose of facilitating the unauthorised use. For the reasons that I set out below in relation to the appeal on ground (d), it is in my opinion likely, on the balance of probability, that the material change in use alleged in the notice commenced in or around January 2018. I must therefore consider whether those works were part and parcel of the material change in the use of the building that occurred at that time.
6. The evidence before me is that the internal fixtures and fittings, including the new kitchen and bathroom, were installed as part of the improvements and alterations to the building made between October 2017 and the end of December 2017. It is evident that these internal fixtures are an integral part of the unauthorised use, insofar as they provided facilities required for day-to-day private domestic existence. These internal fixtures are also solely for the purpose of facilitating the unauthorised use, there being no lawful use of the building in connection with which they are used or were used prior to the commencement of the unauthorised use. Having regard to settled case law, I am satisfied that the notice can require the removal of these internal fixtures and fittings, even if their installation did not itself require planning permission.
7. The appellant confirms that the timber decking and fencing were erected in or around January 2018. Although erected immediately after the building was first occupied for residential purposes in or around 2 January 2018, the decking and the fencing are also both integral to that unauthorised use and facilitate that use. There is no lawful use of the building in connection with which they are used or were used prior to the commencement of the unauthorised use.
8. Where an enforcement notice is directed against a material change of use of premises, and where that change of use has entailed subsequent physical works to facilitate and support it, the courts have held those works to be integral to the unauthorised use. In those circumstances, the statutory scheme for planning enforcement allows the enforcement notice to require the removal of such works as well as the cessation of the use itself. I am therefore also satisfied that, in this case, the notice can require the removal of the timber decking and the fencing, even though the latter may have constituted permitted development at the time it was erected.

¹ *Murfitt v SSE* [1980] JPL598; *Somak Travel v SSE* [1987] JPL630; *Bowring v SSCLG & Waltham Forest BC* [2013] EWHC 1115 (Admin); *Kestrel Hydro v SSCLG* [2015] 1654 (Admin)

The Enforcement Notice

9. The breach of planning control alleged in paragraph 3 of the notice refers to the change of use of the building to use as a self-contained dwelling house. The meaning of development for the purposes of the 1990 Act is defined at section 55(1) of that Act as including the making of any *material* change in the use of any building or other land (my emphasis). It follows that the allegation in the notice of a change of use, without alleging that it constituted the making of a *material* change of use, would not constitute development for purposes of section 55(1) of the 1990 Act.
10. The appellant has not overtly made an appeal on ground (c) as set out in section 174(2) of the 1990 Act. It is therefore apparent that the appellant has understood the notice and accepts that the matters stated in the notice, insofar as they relate to the material change of use, do constitute development requiring planning permission. I am satisfied on that basis that I can correct the notice to refer to a material change of use of the building to use as a self-contained dwelling house without causing injustice.

The appeal on ground (d)

11. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the use had been continuous for a period of four years beginning with the date of the breach. The test in this regard is the balance of probability and the burden of proof is on the appellant.
12. It is settled law that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence². In determining when the four-year period for the purposes of section 171B(2) of the 1990 Act will begin to run, it is necessary to look at both the physical works (the date the premises were capable of providing viable facilities for living) and when the use actually commenced. Neither is decisive and it is a matter of fact and degree as to when the change of use occurs. I have approached this case on that basis.
13. The building known as 'The Old Dairy' had been used as a bathroom showroom pursuant to a planning permission granted in September 2009. In January 2011, the building was largely destroyed by fire but between December 2012 and January 2013 was rebuilt to match the former appearance of the building. In his sworn statement, the appellant, Mr McKenna, explains that the building was briefly used as a domestic garage and store in association with Cowside Barn but that he occupied The Old Dairy as a separate dwelling in March 2013. The precise date on which Mr McKenna moved into The Old Dairy is not stated in his sworn statement, but the appellant's appeal statement gives this date as 31 March 2013.
14. It is explained in the appellant's appeal statement that both internal and external works were required to make the building suitable for domestic habitation. The resultant accommodation is said to have comprised a kitchen; bathroom facilities; a living area and a sleeping area, but is described as being a 'very basic standard of living accommodation'.

² *Gravesham BC v SSE and O'Brien* [1983] JPL 306

15. The sworn statement produced by Mr Tomlinson explains that he undertook works to the building between 4 March 2013 and 11 March 2013, and that he assisted Mr McKenna to move into the property on 12 March 2013. The works undertaken included the fitting of floor and ceiling insulation, and the installation of electrics, telephone and television/internet cables. Mr Tomlinson also explains that he fitted a second-hand kitchen but, whilst he refers to the fitting of water pipes, makes no reference to installing any bathroom or toilet facilities.
16. In his sworn statement, Mr Robinson, the occupier of a neighbouring dwelling, confirms that when he visited The Old Dairy in April 2013 it had the facilities to live there comfortably. These included a fitted kitchen, toilet, sleeping area and living area. It is evident from Mr Robinson's statement that he went inside the building at that time. Mr Robinson also confirms that the building has been lived in continuously from March 2013 but does not indicate who occupied it at various points throughout that period.
17. Another neighbour, Mr Logan, confirms in his sworn statement that the Old Dairy had all the facilities to live there comfortably. According to Mr Logan, these facilities included a fitted kitchen, bathroom facilities, a living area and a sleeping area. Mr Logan also confirms that the appellant moved into The Old Dairy by the end of March 2013, and that the building has been lived in continuously from that date.
18. A third neighbour, Mr Myatt, was made aware that The Old Dairy was occupied as separate living accommodation in a conversation with the appellant in or around December 2014. However, on my reading, there is no indication in Mr Wyatt's statement that he went inside the building at that time.
19. The appellant has also supported his case with documentary evidence. Four of these documents relate to the period of time around the initial conversion of The Old Dairy. The first document is an invoice for demolishing the building, dated 20 November 2012 and addressed to Mr McKenna at The Old Dairy. The second document is a letter from solicitors in relation to the court hearing held in July 2012 concerning the claim for fire damage to The Old Dairy. The third document is an invoice from the same solicitors for the professional charges and legal costs incurred in pursuing the claim against the insurers in relation to the fire damage to the building. The last document is an invoice for bathroom fittings dated 24 July 2013.
20. The first, second and third documents all relate to events prior to the claimed occupation of The Old Dairy for residential purposes, and therefore add little to the appellant's case. The fourth document is of more relevance but does not, in my view, necessarily support the appellant's case. Two points arise from this document.
21. The first point is that the date of the order to which the invoice relates is stated as 24 July 2013, with delivery taking place two days later. If these fittings were intended for installation in The Old Dairy, one possible explanation could be that there was not a bathroom in the building before that date, there being nothing in the evidence before me to suggest that Mr McKenna replaced an existing bathroom at that time. This would be entirely consistent with the sworn statement produced by Mr McKenna, in which he explains that he ate, slept and relaxed in The Old Dairy without making any reference to bathing there.

22. The second point is that the invoice is addressed to 'IM Bathrooms' at The Old Dairy. The clear implication is that the order was made in the name of IM Bathrooms rather than Mr McKenna as the private occupier of a dwelling. In the absence of any explanation from the appellant as to why correspondence was still being addressed to IM Bathrooms in July 2013, at a date on which he claims the building was being used as a private residence, I cannot discount the possibility that the invoice is for bathroom fittings purchased by IM Bathrooms as a company operating from the premises rather than for installation in a private domestic residence at The Old Dairy.
23. In addition to the above, the appellant has also produced an Assured Shorthold Tenancy Agreement (ASTA) between Mr McKenna and a Christopher Flemming, dated 23 January 2015. The term of that ASTA was on a month-by-month basis until such time as either party terminated the tenancy, with payment of the rent on a weekly basis. In that ASTA, Mr McKenna gives his address as being Cowside Barn. The appellant explains the background to this arrangement in his sworn statement and, whilst it would not be appropriate to rehearse the details here, it is sufficient to say that this was only intended to be temporary arrangement. Indeed, Mr McKenna explains in his sworn statement that he resumed occupation of The Old Dairy in June 2016.
24. I have some difficulty with this ASTA. Although dated 23 January 2015, the copyright at the bottom of the document clearly states "©2002-2019 Law Depot.co.uk®". No explanation is given by the appellant as to why an ASTA ostensibly dated 23 January 2015 carries a copyright dating to 2019. There is, to my mind, no logical explanation as to why the copyright of the document ends in 2019 unless, that is, 2019 is the year in which the document was produced. In that context, I am mindful that the appeal was submitted during 2019. This leads me to question the veracity of the document submitted.
25. My concerns in that respect are reinforced by the fact there is no independent statement from Mr Flemming to confirm that he entered into this ASTA; that he occupied The Old Dairy; or what the facilities were within the building when he occupied it. There is also no documentary record of the rents received or relating to the termination of the ASTA. It is striking that neither Mr Robinson, Mr Logan nor Mr Myatt make specific reference to the occupation of The Old Dairy by Mr Flemming in their statements or, for that matter, by any tenant. I find that somewhat surprising, given their close proximity to the building, their familiarity with it and the specific reference in their respective statements to other subsequent occupiers of the property.
26. For all these reasons, I find little credence in the appellant's version of events insofar as it relates to the occupation of The Old Dairy by Mr Flemming. In his sworn statement, Mr McKenna explains that for personal reasons he did not himself occupy The Old Dairy between January 2015 and June 2016. The obvious corollary of my finding in relation to any occupation by Mr Flemming is that there would have been a gap in the occupation of The Old Dairy for residential purposes of some 18 months or so when the building was not occupied by Mr McKenna. A gap in occupation of that duration could not be regarded as *de minimis* and therefore constitutes a substantial gap in occupation.
27. Even if it could be said that The Old Dairy provided all the facilities required for day-to-day private domestic existence from January 2013 (but see below), this

break in occupation would mean that the four year period for the purposes of section 171B(2) of the 1990 Act would then run from June 2016. The enforcement notice was served on 14 May 2019, less than three years after occupation of the building resumed. It follows that the use would not have been immune from enforcement proceedings by that date.

28. My other difficulty with the appellant's version of events is that it is not entirely supported by the photographic evidence. Whilst not contemporaneous with the original conversion of The Old Dairy as described by the appellant, the Authority has provided a series of photographs of the inside of the building taken on 20 June 2017. These photographs do show some of the features described by the appellant in relation to the initial conversion of the building. For example, there appears to be ceiling insulation and what appears to be a computer screen with the attendant cabling. There is also a piece of furniture with a sleeping bag on top which appears to be being used as a bed. A second piece of furniture incorporates an oven. There is a seating area comprising a sofa and an armchair. To this extent, the photographs are consistent with the appellant's description of very basic living accommodation.
29. The photographs taken by the Authority show that the building comprised more than just the specific areas described by the appellant. A significant proportion of the available floorspace is taken up by gym equipment, including at least two exercise machines (the Authority indicate 5 in total) and a punchbag. Much of the wall space visible in the photographs taken by the Authority is occupied by shelving. It is not possible to discern from the photographs what is being stored on that shelving, but the notes compiled by the officer from the Authority at the time of her visit refer to household equipment, garden equipment and tools.
30. These photographs are supported by notes taken by the officer from the Authority during her site visit. The notes describe the kitchen as being partially fitted, and also record that one section of the building was separated for use by dogs. The notes refer to some of the items depicted in the photographs and, where they do, are consistent with the photographs. This degree of consistency, and the comprehensiveness of the notes, lead me to the view that the notes can be relied upon as an accurate record of the situation at the time of the visit.
31. The provision of a separate area for use by dogs, the storage of garden equipment and the dedication of much of the available space for gym equipment does not necessarily preclude use of the building as a dwelling house provided that it otherwise provides the facilities required for day-to-day private domestic existence. The photograph and the officer's notes are evidence that the building provided areas for sleeping and relaxing within a structure that, whilst basic in terms of furnishings, was ostensibly weather-tight.
32. It is significant, however, that the photographs do not show any bathroom or toilet facilities within the building. Similarly, the Officer's notes do not make any mention of bathroom, shower or toilet facilities. Given that the Officer's notes are comprehensive in all other respects, I am confident that bathroom and/or toilet facilities would have been recorded in those notes had those facilities been present in the building at the time. The Appeal Statement submitted by the Authority, which sets out a detailed description of the inside

- of the building as of 20 June 2017, also indicates that no toilet or bathroom facilities were present in the building at that time. In this context, it is again instructive that the sworn statement produced by Mr McKenna explains that he ate, slept and relaxed in The Old Dairy, but makes no reference to bathing there.
33. On the evidence available to me, it is more likely than not that no toilet and/or bathroom facilities were present within the building on 14 May 2015, that being the date four years prior to the date on which the enforcement notice was issued. It follows that the building did not provide all the facilities required for day-to-day private domestic existence on that date.
34. There is also a question over the cooking facilities. The appellant maintains that the building included kitchen facilities when first occupied in March 2013. This is supported by the sworn statement of Mr Tomlinson, who indicates that he installed a second-hand kitchen at around that time. This is also supported by the sworn statements of others with knowledge of The Old Dairy albeit, on my reading, of those only Mr Robinson has actually been inside the building.
35. Against that evidence, the photographs taken by the officer from the Authority in June 2017 show a cooker in situ but with little evidence of extraction equipment, cooking implements and other paraphernalia to indicate that the cooker was in use. The notes taken by the officer as part of her visit refer to the kitchen as being partially fitted and, to my mind, the photographs support that assessment.
36. I am not convinced on the evidence available to me that The Old Dairy did provide cooking facilities in the period between March 2013 and June 2017. I am therefore not persuaded that the building did provide this facility required for day-to-day private domestic existence. However, in view of my findings relating to the absence of any bathroom facilities, it is not necessary for me to reach a conclusion on this point.
37. The chronology provided by the appellant indicates that between October 2017 and December 2017 improvements and alterations were made to The Old Dairy in order that it could be occupied by Mr McKenna's parents-in-law. The works undertaken are described in the sworn statement of Mr Tomlinson as including the fitting of cavity wall insulation; the installation of new internal walls; new windows and doors; new electrics; a new kitchen; and a disabled bathroom. The timber decking and fencing was installed soon after the building was occupied by Mr McKenna's mother-in-law on or around 2 January 2018.
38. The appellant has provided documentary evidence in support of this version of events. These documents include an invoice for flooring and associated materials dated 18 December 2017, and an invoice for timber products related to the decking and fencing dated 31 January 2018. However, I note that the goods in the former are described as being sold to and shipped to 'IM Bathrooms' at The Old Dairy, again suggesting that this company was operating from that address at that time.
39. As part of its evidence, the Authority has provided photographs of The Old Dairy taken in November 2018. These photographs show that the building provided a fully equipped kitchen, a bathroom, bedrooms and an area for relaxing at that time. Having regard to these photographs, and to the appellant's evidence relating to the installation of these facilities towards the

end of 2018, I am satisfied that The Old Dairy provided all the facilities required for day-to-day private domestic existence from the beginning of January 2018.

40. Included within the appellant's evidence are documents that do not appear to directly relate to any of the above chronology. These include a certificate to reconnect a boiler to an existing supply, dated 30 June 2017. This document is titled as 'Minor Domestic Electrical Installation Works Certificate', and is addressed to Mr McKenna at The Old Dairy. This document tends to support the appellant's claim that The Old Dairy was occupied for residential purposes at that time. As does a letter from the Department for Work and Pensions (DWP) dated 24 March 2017 addressed to the appellant at The Old Dairy.
41. The other documents, however, point in a different direction. The first is an invoice for various bathroom fittings dated 11 February 2016. This invoice was addressed and delivered to 'I M Bathrooms Ltd' at The Old Dairy. Again, in the absence of any other logical explanation, I cannot discount the possibility that this invoice relates to bathroom supplies in relation to a bathroom company operating out of The Old Dairy.
42. The second document is a letter relating to the inspection of cavity wall/loft insulation, dated 27 June 2017. The letter is addressed to Mr Ian McKenna at Cowside Barn. The attendant customer survey form gives the customer as being Mr McKenna, and the address as Cowside Barn. Neither document makes any mention of The Old Dairy.
43. The appellant maintains that this was a mistake and that the certificate was actually issued in relation to The Old Dairy. But there is no evidence to support that, and no explanation as to why a company operating under the auspices of a Government Insulation Scheme would fail to make any mention of the building for which the grant was actually allocated.
44. In this context, I am mindful that in his sworn statement Mr Tomlinson refers to the installation of the cavity insulation and new boiler in the same context as the works that he undertook between October 2017 and December 2017 in preparing The Old Dairy for occupation by Mr McKenna's parents-in-law. That is not consistent with the dates of the above documents, these being dates close together in June 2017. This was some four months prior to the date on which Mr Tomlinson indicates that he started on the improvements and alterations to The Old Dairy. This is particularly relevant because, on my reading, the letter in relation to the cavity wall insulation relates to the inspection of insulation already fitted.
45. There are two possible explanations for this anomaly. The first is that the insulation was fitted into The Old Dairy but that Mr Tomlinson is mistaken in his recollection as to when this insulation was installed in the property. The second possible explanation, and in my view the more likely, is that the cavity wall insulation was not fitted into The Old Dairy but was fitted into Cowside Barn. This would be entirely consistent with the letter being addressed to Cowside Barn, and no mention of The Old Dairy being made in either that letter or the attendant certificate.
46. I recognise that Mr McKenna has produced a properly made sworn affidavit explaining his use of the building for residential purposes. I have afforded the appropriate weight his statement as well as to the other sworn statements

provided in support of his appeal. However, against the appellant's evidence, the evidence provided by the Authority shows that the building did not provide bathroom facilities until improved and altered between October 2017 and December 2017.

47. It was, therefore, not until January 2018 that The Old Dairy provided all the facilities required for day-to-day private domestic existence, such that it was capable of being a separate dwelling. My conclusion in this respect is based not only on the facilities shown in the photographic evidence produced by the Authority, but also on the amount of work required to bring the building up to that standard from its previous condition, as evidenced in Mr Tomlinson's sworn statement. It follows that, on the balance of probability, the use of The Old Dairy as a self-contained dwelling commenced less than eighteen months before the enforcement notice was issued.
48. In addition, some of the other evidence provided by the appellant does not entirely support his case. For example, I recognise that Mr McKenna has accepted full liability for the payment of Council Tax in relation to The Old Dairy and has agreed a payment plan to address the arrears with Craven District Council. In support of that, the appellant has submitted a copy of the Council Tax bill for the period back to April 2013. However, whilst stating the address of the property to which the Council Tax is payable as The Old Dairy, the address for Mr McKenna himself is given as Cowside Barn. It is significant, in my view, that the local authority responsible for the collection of Council Tax has made a clear distinction between these two addresses and has treated them as separate entities.
49. This is therefore yet another instance whereby correspondence has been addressed to Mr McKenna at Cowside Barn rather than The Old Dairy. The appellant claims that this is because he has been unable to register The Old Dairy as his postal address but that is clearly not the case: the letter from the DWP was addressed to The Old Dairy and was evidently delivered there.
50. Furthermore, on at least three separate occasions throughout the period of time in which Mr McKenna claims to have been living in The Old Dairy, correspondence has been addressed to a company called 'IM Bathrooms' at that address. It is reasonable to conclude that the senders of those letters were given the address as The Old Dairy by their customer/client (i.e: IM Bathrooms) because that is how the customer/client wished correspondence to them to be addressed. The appellant has offered no explanation as to why IM Bathrooms was giving its address as The Old Dairy at a time when he claims it was a self-contained dwelling.
51. At the same time, correspondence has been sent to Mr McKenna at Cowside Barn. In my view, this is indicative that not only there was some use of The Old Dairy for purposes other than as self-contained dwelling, but also that Mr McKenna made use of Cowside Barn.
52. I fully accept that it is possible, and indeed probable, that The Old Dairy was used for occasional overnight stays in connection with that business (i.e: IM Bathrooms) or for some other purpose. But to my mind, this discrepancy with these addresses raises a very serious question as to whether Mr McKenna ever resided at The Old Dairy on a permanent basis. At the very least, this evidence supports the Authority's view that there is an ongoing functional relationship between The Old Dairy and Cowside Barn, such that the use of the Old Dairy

for any overnight or temporary sleeping accommodation was not self-contained.

53. My view in this respect is then further reinforced by the medical records for Mr McKenna submitted, at my request, in relation to matters arising under the Human Rights Act 1998 (see below). On the document titled 'Patient Record', the entry under "Contact Details" gives Mr McKenna's 'Current Home Address' as Cowside Barn. These records, produced on 3 July 2020, then give Mr McKenna's 'Previous Home Address' as again Cowside Barn, giving the relevant dates as between 7 January 2014 and 11 September 2018. The document makes it clear that it only covers the period after 1 June 2013. Nevertheless, had Mr McKenna been residing at The Old Dairy during that period, it is reasonable to conclude that his medical records would have reflected that.
54. The Patient Record for Mr McKenna is produced by his doctors' surgery and for that reason can be relied upon. Because they come from a reliable source, I attach significant weight to these records. It is instructive that the period covered by Mr McKenna's Patient Records extends across the entirety of the four years immediately prior to the issue of the enforcement notice, a period in which the appellant contends he was living at The Old Dairy. The obvious corollary is that, according to Mr McKenna's own medical records, at no time within the four years before the notice was issued was The Old Dairy occupied by Mr McKenna as his permanent place of residence.
55. This is not a situation where the local planning authority has no evidence of its own to contradict that of the appellant or to make his version of events less than probable. On the contrary, I find that the appellant's evidence is not sufficiently precise to counter the evidence produced by the Authority and that he has not discharged the burden that falls upon him. Indeed, some of the appellant's own evidence does not support his case. I therefore conclude that, on the balance of probability, the use of the land as a self-contained dwelling has not been shown to have subsisted for four years beginning with the date of the breach of planning control, such that the Authority was able take enforcement action in respect of that breach of planning control.
56. Accordingly, the appeal on ground (d) fails.

The appeal on ground (a) and the deemed planning application

57. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.
58. The application deemed to have been made under section 177(5) of the 1990 Act is for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control. In this case, the breach of planning control, as I propose to correct it, can be summarised as being the material change of use of the building situated on the land known as The Old Dairy to use as a self-contained dwelling house including as part of such change of use the erection of timber decking and fencing, and internal alterations to the building.
59. The deemed planning application that is before me encompasses the breach of planning control in its entirety (as I propose to correct it). I have therefore considered the deemed planning application on the basis of the evidence before

me and my observations during the site visit, applying these to the development plan for the area and the guidance in the National Planning Policy Framework (Framework).

60. However, the requirements of the notice are also material to my consideration of this ground of appeal. In this case, the requirements of the notice include the dismantling and removal from the land of the timber decking and fence but are silent in relation to other aspects that might affect the external appearance of the building. The latter include the external materials and the fenestration.
61. Section 173(11) of the 1990 Act provides that, where an enforcement notice in respect of any breach of planning control could have required buildings or works to be removed, or an activity to cease, but has stipulated some lesser requirement which has been complied with, then, so far as the notice did not so require, planning permission shall be deemed to be granted under section 73A for that operation or use. This provision relates not only to the use that notice sought to attack, but also to any works integral to and solely for the purpose of facilitating the unauthorised use.
62. In drafting the notice, it was open to the Authority to require the land/building to revert to its condition immediately before the breach of planning control took place. Given then that the Authority has not stipulated the removal of the external materials or fenestration as a requirement of the notice, when it could have done so, it is reasonable to conclude that the Authority is satisfied that the appearance of the building without the timber decking and fence would be acceptable in planning terms. Furthermore, it is again reasonable to conclude that, in the Authority's view, it was the addition of the timber decking and fence that 'tipped the balance' and caused in the harm cited in the notice.
63. The corollary is that my consideration of the ground (a) appeal, insofar as it relates to any impact on the enhances the landscape and scenic beauty of the Yorkshire Dales National Park, must focus upon the contribution made to the character and appearance of the building by the timber decking and fence. The appellant's appeal on this ground is, in any event, confined to the timber decking.

Main Issues

64. The Authority has stated one substantive reason for issuing the enforcement notice, from which the main issues raised are:
- whether the appeal site is a sustainable location for a new dwelling, and
 - whether the development conserves and enhances the landscape and scenic beauty of the Yorkshire Dales National Park.

Location for a new dwelling

65. Policy SP3 of the Yorkshire Dales Local Plan (Local Plan) provides that, unless there is a justifiable reason why another location is more sustainable, new development will be located within or adjacent to specifically identified settlements³. In relation to new dwellings, Policy SP3 goes on to indicate that proposals for new build housing will only be permitted elsewhere in accordance with an exceptional need for affordable housing or the needs of a rural based

³ Those settlements are listed in Table 1 of the Local Plan

enterprise. This policy is supported by Policy C3 of the Local Plan which provides that new residential accommodation will only be permitted where all the criteria listed in that policy are met, including that the functional needs of agriculture or some other essential rural-based enterprise require that a full time worker must live at the location. Both of these policies are underpinned by Policy SP1 of the Local Plan which, amongst other things, indicates that the Authority will presume in favour of development that is sustainable.

66. The appeal site is outside of any of the settlements identified in Table 1 of the Local Plan. The appellant has not demonstrated that the new dwelling meets an exceptional need for affordable housing, or that the functional needs of agriculture or some other essential rural-based enterprise require that a full-time worker must live there. Neither has the appellant provided a justifiable reason why this location is more sustainable than sites within or adjacent to the settlements set out in Table 1.
67. I conclude that the appeal site is not a sustainable location for a new dwelling. I therefore conclude that the breach of planning control stated in the notice would be contrary to Policies SP1, SP3 and C3 of the Local Plan.
68. For the reasons set out above, the development also fails to accord with the guidance at paragraphs 78 and 79 of the Framework. Although the development is close to other dwellings, it is physically separate and remote from any settlement. I therefore consider that the development constitutes an isolated home for the purposes of paragraph 79 of Framework. That paragraph confirms that isolated homes in the countryside should be avoided unless one or more of five circumstances applies. In this case, I consider that none of those five circumstances does apply.

Landscape and scenic beauty of the Yorkshire Dales National Park

69. A comparison between the photographs taken in June 2017 and those taken in November 2018 show that the building has undergone a significant change in its overall character and appearance. Compared to the building that stood in June 2018, the building as it stood at the time of my site visit exhibits a more domestic appearance. The fenestration and the external materials employed played an important role in that transformation. The effect is then exacerbated by the addition of the timber decking and fencing. The building now exhibits a distinctly domestic character, and has the appearance of a domestic dwelling.

The appeal site is located in an area of landscape and scenic beauty outside of any settlement. The overtly domestic character and appearance of this building fails to conserve and enhance that landscape and scenic beauty. I recognise, as the appellant points out, that the timber decking has been constructed out of timber to match the existing building. But the decking is not viewed in isolation: it is viewed as part of the building, and contributes significantly to the domestic character and appearance of the building. In my view, that contribution is sufficient in itself to harm the landscape and scenic beauty of this location, and therefore of the Yorkshire Dales National Park as a whole.

70. I conclude that the development fails to conserve and enhance the landscape and scenic beauty of the Yorkshire Dales National Park. I therefore conclude that the breach of planning control is contrary to Policies SP1 and SP2 of the Local Plan. These policies indicate, amongst other things, that development

that prejudices the statutory National Park purpose of conserving and enhancing natural beauty will not be permitted.

Other considerations

71. I am fully aware that the dismissal of this appeal would result in the appellant losing his home. This would interfere with his rights under the European Convention of Human Rights, as incorporated into domestic law by the Human Rights Act 1998 (HRA). In particular, his rights under Article 8 (right for respect for private and family life, home and correspondence) and Article 1 of the First Protocol (right to respect to property) would be interfered with. Both of the above are qualified rights, and interference with them may be justified where lawful and in the public interest.
72. The issue of an enforcement notice is in accordance with the law, specifically section 172 of the Town and Country Planning Act 1990 as amended. There is, therefore, a clear legal basis for the interference with the rights under Article 8 and Article 1 of the First Protocol held by the appellant.
73. As the Authority point out, the continued residential use of the building would be contrary to important and long established policies in the development plan. The Authority explains that those policies were adopted after extensive public consultation and independent examination, and are applied in the wider public interest.
74. The appeal site is also within the Yorkshire Dales National Park, the statutory purpose of which includes conserving and enhancing its natural beauty. I have found that the breach of planning control alleged in the notice fails to conserve and enhance the landscape and scenic beauty of the Yorkshire Dales National Park, such that upholding the notice accords with the statutory purpose of the National Park and as such is again in the wider public interest.
75. The appellant explains that he has been subject to a series of traumatic events since 2011, including the fire that destroyed The Old Dairy and a period of ill health. In relation to the latter, I have been provided with Mr McKenna's medical records. It is neither necessary nor appropriate for me to rehearse the details of Mr McKenna's medical history here. It is sufficient to record here that these medical confirm that Mr McKenna does suffer from a number of medical conditions.
76. The appellant goes on to explain that The Old Dairy is in close enough proximity to Cowside Barn to allow regular access to his two young children and to allow the family to function as a family. The proximity of The Old Dairy to Cowside Barn has also allowed Mr McKenna's family to care for him during periods of illness and hospitalisation, calling the paramedics and air ambulance in times of emergency. The appellant considers this proximity to be essential and is of the opinion that, without it, he would have died as a result of his medical condition(s). The appellant confirms that this position is not going to change in the short term, and that he needs a safe and secure home in close proximity to his family unit.
77. I do not underestimate the value of family cohesion or the importance of family support during periods of illness, particularly where that illness is of a serious nature. Neither have I closed my mind to the possible implications if help is not close at hand at times of medical emergency. However, whilst Mr

Mckenna's medical records have been provided, I am not qualified to interpret those records. There is no supporting letter from Mr McKenna's GP, nor from any specialist consultants that may have treated Mr McKenna. In the absence of that medical advice, I am not in a position to reach any informed conclusions as to the level of care/support that Mr McKenna requires on a daily/weekly basis, to the extent that the medical conditions from which Mr McKenna suffers do necessitate that he lives in close proximity to his family at Cowside Barn. On the limited information available to me, I am not persuaded that this is the case.

78. I have taken all of the appellant's personal circumstances into account but note that the some of the traumatic events referred to have taken place in the past. Apart from ongoing medical conditions, the appellant has not alerted me to any particular personal circumstances prevailing at this time. In addition, as far as I am aware, no children currently reside at the appeal premises (i.e: The Old Dairy). It follows that I do not need to take the best interests of any children into account.
79. I have considered whether a temporary and/or personal condition is appropriate. The Planning Practice Guidance indicates a condition permitting a use for a temporary period should only be used if a trial run is required to assess the effect of the development or to permit a temporary use of a vacant building prior to a long-term proposal coming forward. Neither of those circumstances is applicable here. I therefore consider that a temporary permission would not be appropriate in this case.
80. In terms of a personal permission, the Planning Practice Guidance indicates that planning permission usually runs with the land and that it is rarely appropriate to provide otherwise. The Planning Practice Guidance goes on to indicate that there may be exceptional occasions where development that would not normally be permitted may be justified on planning grounds because of who would benefit from the permission. These are generally only appropriate to restrict occupation to a particular category of person in order to comply with policy (eg agricultural worker).
81. In my view, an exception to the advice in the Planning Practice Guidance could in principle be appropriate on the basis that the medical needs of an individual dictate that he/she lives close to family and/or their carers. My difficulty in this case is that I have no evidence to show that Mr McKenna fall into that category or that the appellant's personal circumstances are exceptional on that basis. In the absence of that evidence, I consider that a personal permission would not be appropriate in this case either.
82. Finally in this context, I have given careful consideration to the appellant's suggestion that a condition could be imposed on any planning permission granted limiting the occupation of the dwelling as ancillary to Cowside Barn. There are, however, two considerations that lead me to the conclusion that this would not be appropriate.
83. Firstly, the breach of planning control specified in the notice is use of the building as a self-contained dwelling house. There is no indication in the notice that the use was ancillary accommodation to the Cowside Barn, and neither has the appellant sought to argue that the breach of planning control was inaccurate in that respect. It is not permissible to grant planning permission for the creation of a self-contained dwelling but then restrict its use to ancillary

accommodation only through the imposition of a condition. To do so would negate the planning permission. I therefore consider that this is not an option available to me.

84. Secondly, as indicated above, I am not satisfied on the evidence before me that Mr McKenna's personal circumstances are so exceptional as to justify accommodation ancillary to Cowside Barn. The condition suggested by the appellant would therefore not accord with the tests for the imposition of conditions set out in the Planning Practice Guidance, specifically that of being necessary.
85. Having regard to the above, I am satisfied that the relevant planning policy objective could not be achieved by means which interfere less with the appellant's rights and could not be met by a less intrusive action. In that context, I am satisfied that the requirements of the notice are the minimum necessary to achieve the planning policy objective. Balancing the appellant's rights under the HRA against the wider public interest, I conclude that in this case the interference with those rights is proportionate and justified.

Conclusion on ground (a) and the deemed planning application

86. Section 38(6) of the Planning and Compulsory Purchase Act 2004 indicates that if regard is to be had to the development plan for the purpose of any determination to be made under the Planning Acts the determination must be in accordance with the plan unless material considerations indicate otherwise. I have found that the breach of planning control conflicts with the development plan. However, I have not been advised of any material considerations of sufficient weight to indicate that determination should be made otherwise than in accordance with the development plan. Neither could the imposition of conditions overcome the harm that I identified above, either in relation to the physical appearance of the building or its use.
87. Accordingly, I conclude that planning permission ought not to be granted.

Conclusion

88. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

89. It is directed that the notice be corrected by inserting the words 'the material' after the words 'Without planning permission' in paragraph 3 of the notice.
90. Subject to that correction, the appeal is dismissed, 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.

Paul Freer
INSPECTOR