



Appeal Decisions

Site visit made on 7 July 2020

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 01 September 2020

Appeal A Ref: APP/J9497/C/3237496

2 Beacon Cottages, Buckland-in-the-Moor, Devon TQ13 7HL

- 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 Dr Stephen Hopwood against an enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice, numbered (1), was issued on 15 August 2019.
 - The breach of planning control as alleged in the notice is use of the building ('North Cabin') in the approximate position shown edged blue on the attached plan for overnight accommodation, in breach of Condition 2 attached to planning permission reference 0197/05.
 - The requirements of the notice are permanently cease using the North Cabin for overnight accommodation.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/J9497/C/3237493

2 Beacon Cottages, Buckland-in-the-Moor, Devon TQ13 7HL

- 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 Dr Stephen Hopwood against an enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice, numbered (2), was issued on 15 August 2019.
 - The breach of planning control as alleged in the notice is operational development consisting of the creation of a shower room and covered veranda attached to the building ('North Cabin') in the approximate position shown edged blue on the attached plan.
 - The requirements of the notice are permanently remove the shower room and veranda from the North Cabin; and restore the building to that approved under planning reference 0197/05.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal C Ref: APP/J9497/C/3237494

2 Beacon Cottages, Buckland-in-the-Moor, Devon TQ13 7HL

- 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 Dr Stephen Hopwood against an enforcement notice issued by Dartmoor National Park Authority.
- The enforcement notice, numbered (3), was issued on 15 August 2019.

- The breach of planning control as alleged in the notice is change of use of the building ('South Cabin') in the approximate position shown edged in blue on the attached plan, from a use as a domestic workshop to a separate independent unit of residential accommodation.
 - The requirements of the notice are permanently cease using the South Cabin as a separate independent unit of residential accommodation.
 - The period for compliance with the requirements is 28 days.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) of the Town and Country Planning Act 1990 as amended.
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Appeal D Ref: APP/J9497/C/3237491

2 Beacon Cottages, Buckland-in-the-Moor, Devon TQ13 7HL

- 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 Dr Stephen Hopwood against an enforcement notice issued by Dartmoor National Park Authority.
 - The enforcement notice, numbered (4), was issued on 15 August 2019.
 - The breach of planning control as alleged in the notice is operational development consisting of the creation of a shower room and extension of the decking/veranda attached to the building ('South Cabin') in the approximate position shown edged in blue on the attached plan.
 - The requirements of the notice are permanently remove the shower room and the decking/veranda extension from the South Cabin; and restore the building to that approved under 0006/02, as amended by planning permission reference 0235/04.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (d) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected. The reference in paragraph 1 of the notice to paragraph (a) of Section 171A(1) of the Act shall be substituted by reference to paragraph (b). Subject to this correction the appeal is dismissed and the enforcement notice is upheld.

Appeal B

2. It is directed that the enforcement notice is varied by deleting the words "*and veranda*" from requirement 5.1 so that the requirement now is simply to permanently remove the shower room, as is the requirement in 5.2 to "*restore the building to that approved under planning permission reference 0197/05*". Subject to these two variations the enforcement notice is upheld, the appeal is dismissed and planning permission is refused on the application deemed to have been made under Section 177(5) of the Act as amended.

Appeal C

3. The notice is upheld and the appeal dismissed.

Appeal D

4. Requirement 5.1 of the notice is altered to: "*Permanently remove the shower room and the decking/veranda extension (i.e. that part of the existing decking/veranda outside the area under the veranda roof shown in Photograph*

3 of Appendix 4 of the LPA's appeal statement) from the South Cabin" for the sake of clarity. The National Park Authority is requested to attach this photograph to the amended enforcement notice accordingly. Other than this variation the notice is upheld, the appeal is dismissed and planning permission is refused on the application deemed to have been made under Section 177(5) of the Act as amended.

Procedural Matters

5. Appeal B is subject to an appeal on legal ground (d) in addition to grounds (a) and (f). However, the appellant's central argument here is actually a hidden ground (c) appeal because the shower room of the North Cabin is under the veranda roof and so he argues it is not development within the meaning of S55(2) of the Act. I therefore address this matter under legal ground (c), in addition to addressing whether the development has occurred within four years of the date of the notice under ground (d).

Reasons

Appeal A – Use of the North Cabin

6. The appeal is made under ground (d) only. This ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. The onus is upon the appellant to demonstrate, on the balance of probability, that those matters do not constitute a breach of planning control.
7. This ground of appeal assumes that at some stage there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four or ten year periods laid down by Section 171B of the Act.
8. The relevant period here is ten years, a matter uncontested by the main parties. That is because the permission for the North Cabin (LPA Ref 0197/05 dated 7 June 2005), in which it is referred to as a Studio/store, includes Condition 2 that states: "*The building hereby approved shall not be used for overnight accommodation.*"
9. Paragraph 1 of the notice states that the breach of planning control falls within paragraph (a) of Section 171A(1) of the Act. Since the matter which appears to constitute the breach is the failure to comply with this condition, the notice should refer to paragraph (b) of S171A(1). This is the reason for correcting the notice, as set out above. Since the breach is clear to all parties this technical correction to the notice does not cause any injustice.
10. It is also the case that the North Cabin possesses no toilet now and that anyone occupying it must use the toilet in the main house. There was a short time when a toilet was installed in the North Cabin but it was removed following complaints from neighbours and the appellant makes no case that the building was ever used as a dwelling sufficient to comply with the four year immunity period set out in S171B(2).
11. The appellant has submitted a range of documents to back up his contention that Condition 2 has not been complied with for ten years. These are a number of letters from people who state that they have lived in the North Cabin. There are also two affidavits from the appellant and Guy Chapman, the builder who

says he constructed the extension to this Cabin in 2013, both dated 18 September 2019. However, neither of these affidavits refer to who lived in or slept in this Cabin, or when they did so.

12. However, I have also taken note of the Local Planning Authority's (LPA) officer report concerning the recent application by the appellant for a Certificate of Lawful Existing Use or Development (CLUED, LPA Ref 0107/19)¹ for the North Cabin as providing overnight accommodation. This report refers to the evidence provided at the time by the appellant to support the CLUED.
13. I have taken the record set out in this report concerning the submitted evidence as accurate in the absence of any expressed disagreement about it from the appellant. I have compared Dr Hopwood's evidence from his statutory declaration of 15 April 2019 to the evidence in the letters submitted by past tenants/lodgers as part of this appeal.
14. There are letters from some of the named tenants/lodgers of the North Cabin, namely David Shaler, Scott Hudson, Rowana Rowen and Guy Chapman. Bank statements were supplied with the CLUED application showing that rent of £390 per month was paid by Daniel Vacara between 22 July 2014 and 19 April 2018.
15. But there are no letters from Colin Williams or Josh Thawane who were said to have slept in the Cabin between June 2011 and January 2012, nor from Joseph Taylor who is said to have slept there from May until August 2012. The occupation of the Cabin by Mr Williams and Mr Thawane overlap by two or three months. Nor is there any corroboration from the appellant's mother or sister that these people occupied the Cabin, although his mother and sister corroborate the other tenants' occupation above. The evidence of the Cabin's occupation by these people is therefore open to doubt.
16. The appellant stated in the CLUED application that friends and family used the Cabin intermittently in the spring of 2012 and that it has been used by Airbnb guests since July 2018. Only one Airbnb transaction of £519 on 1 August 2018 was set out on any bank statement.
17. Even if the appellant's evidence of occupation of the North Cabin set out in his affidavit submitted with the CLUED application were to be accepted as accurate, there are a number of gaps in its occupation. There is a gap of two months between September and November 2011, between its stated occupation by Colin Williams and Josh Thawane. There is a gap in the spring of 2012 when it was only used intermittently by friends and family. There is a gap of two months between August 2012 and October 2012, between its stated occupation by Joseph Taylor and Guy Chapman. There is a gap of two months between May 2012 and July 2012, between Daniel Vacara and when the appellant says he started using it for Airbnb guests.
18. More fundamentally, it is very unclear how many Airbnb lettings have taken place and for how long since July 2018; there is only evidence of one and it is unclear how long this was for.
19. I also note that the letter of 9 May 2019 submitted by Stephen Munday for the appellant following the refusal of the CLUED application states: "*When the northern cabin has been used as ancillary overspill space for the house it has*

¹ Submitted 4 March and refused 29 April 2019

been slept in only when there has not been a spare bedroom in the house.”

This implies to me that its recent occupation for overnight accommodation, outside of the period it was said to be occupied by the above tenants/lodgers, has certainly not been continuous and may well have been intermittent.

20. There is insufficient evidence that it has been continuously used for overnight accommodation since July 2018 based on this evidence. The gaps in the alleged continuous use are, as a matter of fact and degree, significant enough such that they each ended the breach of the condition. As such, the next breach reset the immunity clock thus starting off a new ten year period.
21. For these reasons I conclude that there is no ten year continuous period when the use of the North Cabin for overnight accommodation has taken place. The appellant has failed to support his claim for such with sufficient documentary evidence. Consequently, Condition 2 does not appear, on the balance of probability, to have been continuously breached for any ten year period since the original permission for a Studio/store was approved in 2005.
22. Mr Munday’s letter highlights what he considers to be relevant caselaw as set out in the attached blog thread from planning law expert Martin Goodall². This blog rightly makes clear that, in order to become immune from enforcement, a breach of condition must be continuous. Following a relevant period of continuous breach so as to achieve immunity from enforcement (whereby the change of use becomes lawful), uninterrupted continuity of the use is not thereafter necessary, as set out in *Panton*³.
23. But immunity has not been established here and the use of the North Cabin for overnight accommodation is not therefore lawful. The *Thurrock*⁴ and *Swale*⁵ cases established that a use can only become lawful in this way if there was never a time during the ten year period when the LPA could not have taken enforcement action. In this case there were several periods within the ten year period, as set out above, when the LPA would have been unable to take enforcement action because the Cabin was not being used for overnight accommodation.
24. For these reasons Appeal A fails.

Appeal B – Operational development of the North Cabin

Hidden Ground (c)

25. The appellant’s case is that the North Cabin’s shower room is under the veranda roof and so is not development within the meaning of S55(2) of the Act. The relevant part of S55(2) states:

The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land–

- (a) *the carrying out for the maintenance, improvement or other alteration of any building works which–*
 - (i) *affect only the interior of the building, or*

² 28 January 2014 Breaches of planning control – the need for continuity (5)

³ *Panton & Farmer v SSETR & Vale of White Horse DC* [1999] JPL 461

⁴ *Thurrock BC v SSETR & Holding* [2002] EWCA Civ 226

⁵ *Swale BC v FSS & Lee* [2005] EWCA Civ 1568; [2006] JPL 886

(ii) *do not materially affect the external appearance of the building*

26. The shower room is a timber room enclosed on all sides by tongue and groove pine elevations with a different roof to that of the second veranda roof. The roof is comprised of different quality Perspex and is flatter than the mono pitch of the veranda roof to its south east constructed in 2013. It looks very different to what the open space under the veranda roof would have looked like before early 2018 when the shower room was constructed.
27. The building here is the North Cabin including its two veranda roof extensions. The building looks very different when standing under the veranda roof, on the decking outside the roof and from the main Cabin's facing windows than it would have looked before the shower room was constructed. It is barely visible, if at all, from the windows of any of the houses at 1-6 Beacon Cottages or from their amenity or parking areas including at the bottom of the steps up to North Cabin. However, the elevational changes without a doubt materially affect the external appearance of the building as a whole.
28. Caselaw has held that the nature of the building and the nature of the works are also relevant in this regard. The building was permitted (under LPA Ref 0197/05) as a studio/store including with Condition 2 that it shall not be used for overnight accommodation. The provision of the shower room seems antithetical to its primary purpose and increases the likelihood that it will be used for unauthorised purposes.
29. For these reasons I consider that the shower room materially affects the external appearance of the building. It is therefore development. This development has occurred within the last four years and no planning permission exists for it. The appeal under hidden ground (c) therefore fails.

Ground (d)

30. The basis of an appeal on ground (d) and its determination is set out under Appeal A above. Operational development is immune from enforcement having subsisted for a period of four years as laid down by Section 171B(1) of the Act.
31. The appellant's most relevant evidence is set out in two affidavits. He states in his affidavit of 18 September 2019 that the "*first extension*" as he calls it, which he clarifies as "*involving the outward projection of the roof*" of the North Cabin was constructed as part of the original building in 2006 and that it extended along the entire front face of the Cabin. The "*second extension*" as he calls it, he states "*was completed more than six years ago and built by Guy Chapman, who was a lodger in the cabin at the time*", in 2013.
32. Mr Chapman, in his affidavit of the same date, confirms the dates of these constructions. The LPA queries whether the "extensions" referred to in these affidavits are the same as the veranda with a covered roof and open sides as now exist and which form the subject of the enforcement notice (the notice). However, having inspected the totality of the building during my visit, there are no other extensions. So, I am satisfied that the extensions referred to in these affidavits are the two separate construction phases of the veranda roof, with a valley gutter running between them.
33. No contrary evidence has been submitted by the LPA, or indeed anyone else, that either the first or the second veranda roofs have not existed on site for

over four years from the date of the notice. The materials they are constructed of also appeared to me to have been there for a good few years. Consequently, I consider that reference in the notice to the covered veranda attached to the building should be deleted.

34. However, both affidavits also confirm that recent changes – within the last four years (in early 2018) – have been carried out. Mr Hopwood in his affidavit states: *"I put a shower into one corner of my extension and a sink and created some internal sub-division"*. This is the shower room as set out in Photograph 1, Appendix 4 of the LPA's appeal statement, which includes a sink and included a toilet on its first installation, but which was removed as referred to above due to neighbours' complaints.
35. The appeal on ground (d) succeeds to the extent that the two veranda roofs have been in place for at least four years prior to the date of the notice and I shall vary the notice to delete the veranda accordingly. By deleting this requirement in the notice, but leaving it in the notice's allegation, Section 173(11) of the Act will have the effect of granting planning permission for it. But the appeal fails in respect of the shower room, including its roof.
36. Requirement 5.2 of the notice seeks restoration of the building to that approved under its original planning permission LPA Ref 0197/05. However, this original permission has been implemented and in effect spent. It can't be re-implemented. Since the notice alleges solely operational development, all that is needed is to require the shower room to be removed.

Ground (a)

37. Ground (a) 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 or, as the case may be, the condition or limitation ought to be discharged. The appellant raises no specific planning case for retaining the operational development in relation to this ground.
38. The LPA's case is that it harms nearby residents' living conditions and adversely affects the character and appearance of this part of the National Park, and is contrary to a number of policies in the development plan, the National Planning Policy Framework (NPPF) and the National Parks Circular 2010 (the Circular).
39. Dartmoor Core Strategy (CS) Policies COR2 and COR15 and Development Management and Delivery (DMD) Policy DMD23 set out that housing development outside Local Centres and Rural Settlements will be restricted to that serving the proven needs of agriculture and forestry or other essential rural businesses, through the appropriate conversion of rural buildings to meet identified local needs for affordable housing, or low impact residential development compliant with DMD Policy DMD30. DMD30 requires compliance with eight criteria including that the proposal requires a countryside location, is tied directly to the land on which it is located and involves agriculture, forestry or horticulture. That is not the case here.
40. The appellant is not seeking via this appeal to create a separate dwelling house in the North Cabin, but simply to allow the retention of the shower room and veranda roof. But granting permission for the shower room would increase the

likelihood in the future of permission being sought for a separate dwelling, since all that would be required would be the re-addition of a toilet to provide all the facilities for a dwellinghouse. This would be inappropriate since it is directly contrary to the above policies and far beyond the permission granted for a studio/store with no overnight accommodation in 2005.

41. A range of policies – COR1, COR2, COR3, DMD1b, DMD7 and DMD24 – stress the need to protect the character and appearance of the local area and promote development that conserves and enhances the natural beauty, wildlife and cultural heritage of the National Park. Policy DMD24 relates to extensions and alterations to dwellings and the North Cabin is not a dwelling. But for the above reasons I consider this policy to be of some relevance.
42. Retention of the shower room here would be contrary to all these policies as well as similar requirements in the NPPF and Circular because it's design and appearance would be likely to facilitate at least overnight accommodation if not residential occupation of the North Cabin. Its design is not particularly at odds with the original permission for North Cabin as a studio/store. But its purpose and function is and therefore its retention would be inappropriate since it would comprise an inappropriate structure outside any settlement of the National Park, which is likely to prolong an unauthorised use of a building unrelated to its permitted ancillary function to the dwellinghouse at 2 Beacon Cottages.
43. As set out above, there is very limited view, if any, of the shower room from neighbouring property and as such I cannot see how, in visual terms, its design and appearance harms neighbours' living conditions. However, its retention has and is likely to continue to have in the future the effect of prolonging the unauthorised use of the building for overnight sleeping accommodation, which is unacceptable for all the above reasons.
44. For these reasons the ground (a) appeal fails and I shall not grant planning permission for the shower room.

Ground (f)

45. Ground (f) is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any breach.
46. In this case the reason for issuing the notice is essentially concerned with remedying the breach by restoring the land to its condition before the breach took place as set out in S173(4)(a) of the Act. In view of my conclusion on ground (d) above the notice as varied will solely relate to the requirement to remove the shower room.
47. I cannot see what lesser steps the LPA could reasonably take to resolve the breach set out in the notice. Consequently, the ground (f) appeal fails.

Appeal C – Use of the South Cabin

48. As in Appeal A, the appeal against the use of the South Cabin is on ground (d) only. Again, the basis of an appeal on ground (d) and its determination is set out above.

49. This ground of appeal assumes that at some stage there has been a breach of planning control, but that it is immune from enforcement, having subsisted for the four or ten year periods laid down by Section 171B of the Act.
50. The relevant period here is agreed between the parties to be ten years because the appellant's case is that, contrary to LPA permission Ref 0006/02 dated 25 March 2002 for a timber workshop, the building was originally constructed as a dwelling and so S171B(3) applies rather than the four years for a change of use to a dwelling under S171B(2).
51. The appellant has submitted his above affidavit as well as a narrative history and several letters from previous occupiers of the South Cabin including his son Robert and his son's girlfriend Sumer Freeth. There are also letters from his mother and sister, which confirm that the building has been used as an independent dwelling since its construction in 2003.
52. I have also taken into account the LPA's Officer Report on the CLUED application Ref 0108/19, on the basis that this report refers to the evidence provided at the time by the appellant to support the CLUED. I have taken the record set out in this report concerning the submitted evidence as accurate in the absence of any expressed disagreement about it from the appellant.
53. The appellant states that the South Cabin *"was originally constructed so that it could function as an independent dwelling with the construction of a purpose built mezzanine sleeping platform, a kitchenette, wood burner, electric, telephone, internet, shower and toilet."*
54. However, there is contrary evidence provided by the LPA. Tabitha Crook, who confirms⁶ she was a tenant of the building from April 2011 to January 2012, says that her tenancy included the use of the kitchen, bathroom and washing machine in the main house and that there was no kitchenette, hot water and only a cold shower outside the South Cabin. I have no reason to doubt the contents of this letter, which I am satisfied establishes that the South Cabin did not itself have sufficient facilities to allow its occupation as an independent dwelling within the requisite ten year period.
55. There are some contradictions in terms of the appellant's account of who occupied the building when. For instance, his narrative history submitted with the appeal says that Joe Fuller lived in the building between September 2010 and May 2011, whereas in the CLUED application he indicated that Scott Hudson was a tenant during that period, albeit Mr Hudson's letter of 3 December 2018 states he occupied the North Cabin and not this building. I also note that the appellant says Jacob Erben was a tenant from October 2013 to October 2016, although Sumer Freeth claims in her letter to have occupied it with his son, Robert Hopwood, from August 2016 to February 2018. It seems unlikely that they occupied the building for three months at the same time as Mr Erben. These anomalies call into question the occupation of the building.
56. Even taking account of Dr Hopwood's narrative history, there is a three or four month gap between 'Carlo the salsa dance teacher's' departure in May 2010 and Mr Fuller's occupation in September 2010. After April 2018 Dr Hopwood says he occupied the South Cabin and then it was occupied by Airbnb guests.

⁶ In her letter of 25 March 2019 – Appendix 3 of the LPA appeal statement

But no documentary evidence of any Airbnb guests has been submitted nor any bank statements or other evidence of receipt of moneys for such a use.

57. The onus lies with the appellant to demonstrate that the building has been used as an independent dwelling for ten years. For the above reasons I conclude there is insufficient evidence, on the balance of probability, that it has been continuously used as an independent dwelling for any ten year period since the original permission for a timber workshop was granted in 2002.
58. A use can only become lawful if there was never a time during the ten year period when the LPA could not have taken enforcement action. In this case there was at least one period and, on the balance of probability, other recent periods within the ten year period, as set out above, when the LPA would have been unable to take enforcement action because the Cabin was not being used as a separate independent unit of residential accommodation.
59. Consequently, Appeal C fails.

Appeal D – Operational development of the South Cabin

Ground (c)

60. Ground (c) is that those matters stated in the notice do not constitute a breach of planning control. The onus is upon the appellant to demonstrate that.
61. Planning permission LPA Ref 0006/02 was granted for a timber workshop dated 25 March 2002. But, as the appellant states, an independent dwelling rather than an ancillary workshop building was constructed. A subsequent permission Ref 0235/04 dated 8 June 2004 was granted for the installation of a multi-fuel burner flue and the retention of six velux rooflights to this building. Neither of these permissions included any decking or verandas.
62. Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 permits the provision within the curtilage of a dwellinghouse of any building or enclosure for a purpose incidental to the dwellinghouse. But this does not apply in a National Park if the total area of ground covered by buildings and enclosures is situated more than 20 metres from any wall of the dwellinghouse and would be over 10m². That is the case with the South Cabin building. Part E.1(h) also makes clear that development is not permitted where it would include the construction or provision of a veranda, balcony or raised platform. But more fundamentally, the building, including its veranda and shower room, was constructed as a dwelling for which no planning permission exists.
63. Alternately, the appellant's case is that this shower room is under the veranda roof and so is not development within the meaning of S55(2) of the Act. The relevant part of S55(2) is set out under paragraph 25 above. Development has not occurred if the operations do not materially affect the external appearance of the building.
64. The shower room is a timber room enclosed on all sides by tongue and groove elevations. The space under the veranda roof looks very different now to what it would have looked like before the shower room was constructed. These elevational changes without a doubt materially affect the external appearance of the building as a whole.

65. The South Cabin including the shower room and additional decking is undoubtedly likely to be seen from many of the windows of the houses at 1-6 Beacon Cottages or from their gardens, notwithstanding some shielding by vegetation in the gardens especially in the summer.
66. Caselaw has held that the nature of the building and the nature of the works are also relevant in this regard. The building was permitted as a timber workshop. The provision of the shower room and additional decking seems antithetical to its primary purpose and increases the likelihood that it will be used as an unauthorised dwelling.
67. For these reasons I consider that the shower room and additional decking materially affects the external appearance of the building. It is therefore development. No planning permission exists for it.
68. Consequently, there clearly has been a breach of planning control and so the appeal on ground (c) fails.

Ground (d)

69. The basis of an appeal on ground (d) and its determination is set out above under Appeal A. Operational development is immune from enforcement having subsisted for a period of four years as laid down by Section 171B(1) of the Act.
70. The appellant's most relevant evidence is set out in his affidavit of 18 September 2019. In it he states that the extended roof was built at the same time as the Cabin was constructed in 2002 and that there has always been a shower in its current location.
71. The current shower is contained in its own room at the southern end of the veranda roof. Photographic evidence supplied by the LPA shows that this shower room was not there in 2004 or 2005.⁷ The LPA also sets out, in its conclusion to the report on the CLUED application Ref 0108/19, that this shower room, as well as an extension to the decking next to the building was erected in the summer of 2018.
72. I am unclear from all the submitted documentation exactly when the shower room was constructed. I am also unclear as to when any of the decking was constructed, though it seems very likely that decking under the veranda roof shown in the LPA's Photograph 3 in 2005 has existed since that date.
73. But as for the extended decking outside of the area covered by the veranda roof and the shower room itself no evidence is provided by the appellant to conclusively demonstrate that both were constructed four years prior to the issue of the notice. For instance, no invoices from builders have been provided for these works. Conversely, there is contrary evidence from neighbours saying that these works occurred in 2018. The onus lies with the appellant to demonstrate this, but he has failed to do so.
74. For these reasons I conclude that the veranda roof and the decking beneath it were constructed more than four years before the issue of the notice. But ground (d) fails because there is insufficient evidence to prove that the shower

⁷ LPA appeal statement, Appendix 4 – Photographs 2 and 3

room and the rest of the decking outside the South Cabin has existed for four years.

75. For the avoidance of doubt I consider that the notice needs to be varied to make clear the authorised portion of the veranda roof and decking, as opposed to the shower room and extended decking area beyond the veranda roof, is that clearly shown in Photograph 3 taken on 5 April 2005 as contained in Appendix 4 of the LPA appeal statement.

Ground (a)

76. Ground (a) is that planning permission ought to be granted, as set out in Appeal B above. The appellant raises no specific planning case for retaining the operational development in relation to this ground.
77. As in Appeal B, the LPA's case is that it harms nearby residents' living conditions and adversely affects the character and appearance of this part of the National Park, and is contrary to a number of policies in the development plan, the National Planning Policy Framework (NPPF) and the National Parks Circular 2010 (the Circular).
78. The same considerations in Appeal B apply to this appeal but even more so. Here the appellant is simply seeking to retain the shower room and the extended decking area. But unlike in Appeal B, where the North Cabin is sought to be used for overnight accommodation, the appellant is seeking here, as demonstrated in Appeal C, to establish the South Cabin as an independent dwelling in its own right. Granting planning permission for the shower room and the large area of additional decking would make such a proposition more attractive and more likely by encouraging the pursuit of unauthorised residential occupation. This would be inappropriate since it is directly contrary to the above policies and far beyond the permission granted for a timber workshop in 2002.
79. The same policies apply here as they do in Appeal B. For the same reasons as set out under that appeal, retaining the shower room and additional decking here contravene CS Policies COR1, COR2, COR3 and DMD Policies DMD1b, DMD7, DMD23, DMD24 and DMD30. There is no reason to allow such inappropriate extensions to a residential outbuilding contrary to these development plan policies.
80. For these reasons planning permission should not be granted and the appeal on ground (a) fails.

Conclusion

81. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notices with a correction and variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended, as set out in the Formal Decisions above.

Nick Fagan

INSPECTOR