



Appeal Decisions

Inquiry held on 26 & 27 October 2021

Site Visit made on 27 October 2021

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 12 November 2021

Notice A – Appeal Ref: APP/V1505/C/19/3224862

Land at the Eastern End of Cornwall Road, (Opposite Property known as Fairview and known as Ivy Cottage), Cornwall Rd, North Benfleet, SS13 2LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Douglas Dean against an enforcement notice issued by Basildon Borough Council.
- The notice, numbered 17/00348/UCO, was issued on 21 February 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the operational development consisting of the construction of an independently occupied dwellinghouse.
- The requirements of the notice are to: (i) cease using the dwellinghouse for residential occupation; (ii) remove all residential paraphernalia; (iii) demolish the dwellinghouse shown outlined in red on the attached plan and remove all debris from the land outlined in red on the attached plan; (iv) return the land to its former condition by levelling and allow the land to naturally afforest restoring it to its former condition.
- The periods for compliance with the requirements are: for (i) and (ii) 3 months and for (iii) and (iv) 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e) of the Town and Country Planning Act 1990 as amended.
- Identical appeals except for the ground (a) have been by James Blyth (3224863) and Jack Blyth (3224864).

Notice B - Appeal Ref: APP/V1505/C/19/3224866

Land at the Eastern End of Cornwall Road, (Opposite Property known as Fairview), Cornwall Rd, North Benfleet, SS13 2LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Douglas Dean against an enforcement notice issued by Basildon Borough Council.
- The notice, numbered 17/00348/UCO, was issued on 21 February 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change in the use of the land from woodland to the storage of construction and waste materials and domestic furniture.
- The requirements of the notice are to: (i) cease using the land for the storage of construction and waste materials and household furniture; (ii) remove all items associated with the storage of construction, waste materials and household furniture; (iii) remove the boundary fences shown in blue on the attached plan; (iv) demolish all structures that facilitate the authorised use of the land labelled A, B and C on the attached plan and remove all the consequent debris from the land; (v) remove all deposited scalplings and hardcore from the land; (vi) return the land to its former condition by levelling and allow the land to naturally afforest restoring it to its former condition.
- The periods for compliance with the requirements are: for (i), (ii) and (iii) 3 months; for (iv), (v) and (vi) 6 months.

- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e) of the Town and Country Planning Act 1990 as amended.
- Identical appeals except for the ground (a) have been made by James Blyth (3224867 and Jack Blyth (3224868)

Notice C – Appeal Ref: APP/V1505/C/19/3224872

Land at the Eastern End of Cornwall Road, (Opposite Property known as Fairview), Cornwall Rd, North Benfleet, SS13 2LA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Douglas Dean against an enforcement notice issued by Basildon Borough Council.
- The notice, numbered 17/00348/UCU, was issued on 21 February 2019.
- The breach of planning control as alleged in the notice is without planning permission, the material change in the use of the land from woodland to residential garden amenity space.
- The requirements of the notice are to: (i) cease using the land for residential garden purposes; (ii) remove the boundary fences shown in blue on the attached plan; (iii) remove all resulting debris from the land; (iv) return the land to its former condition by levelling and allow the land to naturally afforest restoring it to its former condition
- The periods for compliance with the requirements are: for (i) 1 month; (ii) and (iii) 2 months and (iv) 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d) of the Town and Country Planning Act 1990 as amended.
- Identical appeals except for the ground (a) are made by James Blyth (3224873 and Jack Blyth (3224874)

Decisions

Notice A, Appeals 3224862, 3224863 and 3224864

1. The appeals are 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.

Notice B, Appeals 3224866, 3224867 and 3224868

2. It is directed that the enforcement notice is varied by the deletion of requirement (iii) and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to this variation and substitution, the appeals are 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.

Notice C, Appeals 3224872, 3224873 and 3224874

3. The appeals are 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.

Preliminary Matters

4. It was agreed at the inquiry that the plan attached to enforcement notice B did not show the correct boundary between the appeal site and land to the rear of Marguerite, a correct plan was provided by the Rule 6 parties. This simply cut off the corner of the appeal site as this land had been annexed by Marguerite many years before.
5. There was also a suggestion that the wording of notice B could be altered but in my view storage of construction and waste materials and domestic furniture

- would seem to fairly describe what the Council saw at the time the notice was served.
6. The notice also referred to various structures used for storage on the land, labelled A, B and C on the plan. A fourth structure, known as the barn, is currently being used for the keeping of pigs, as I saw on my site visit, but is alleged was being used for storage purposes in the past. The notice is directed against the material change of use of the land, the buildings A, B and C are referred to only in the requirements as they facilitate the storage use. Although requirement (iv) says "demolish all structures that facilitate the authorised use of the land...." it goes on to say "..... labelled A, B and C on the attached plan". I do not think a fair reading of that requirement can be said to encompass structures other than A, B or C. To correct the notice to include the barn would be to extend its scope, which would be a clear injustice to the appellant.
 7. Mr Firmstone suggested the reason the barn was not included was because it did not exist at the time of his site visit which was sometime in 2017 prior to the drafting of the notice. This was denied by Mr Dean and the existence or otherwise of the barn is outside the scope of this inquiry. However, what I would say is that it was clearly not in place in the 2013 or 2014 aerial photographs but is in the 2017 photograph. I can't accept the barn is entirely hidden by the tree canopy in those older photographs, especially given the visibility of other buildings through the trees and as Mr Dean says he has not cut down any trees protected by the TPO, and the barn is obvious in 2017. The barn is constructed of poles with a lean-to roof so would not require significant works to erect. It also occupies the site of a building marked on the land registry plans which is clearly visible next to the highlighted building A on the enforcement notice plan. Mr Dean suggested this showed the barn had always been there. This is not supported by the aerial photographs, which are pretty definitive on this point. The discrepancy is probably explained by the fact that other land registry base maps used for the various notices show the same building outline labelled 'Hive Cottage'. As it is clearly not the Hive Cottage subject to this appeal, I am inclined to accept Mr Firmstone's suggestion that it was the location of a much older cottage or shack that was built on the land by Mr Dean's father and has long since disappeared. The fact that the barn is in the same location is coincidental.
 8. The barn is adjacent to building A, which, as I saw, was a lorry body. Mr Dean said it had been in various locations around the site over the years and used for a variety of purposes, including as a hen house, and I agree this is a moveable structure, rather than a building, and so does not require planning permission. However, its involvement in the storage use is a matter for the inquiry, and if it has been used for that purpose then it can be required to removed.

Background to the Appeals

9. Cornwall Road is part of a larger area of plotlands that lie in the green belt. They have largely been developed for individual houses. The road leads past several houses to a dead-end with agricultural fields beyond to the east, a large plot containing Fairview to the north and the appeal site to the south. Fairview was originally Mr Dean's home and his father lived there until his death in 2013. At about the same time Mr Dean moved out to his current

address elsewhere and Fairview, and various other chalet type dwellings on the Fairview plot, are currently let out. One, called by Mr Dean, Farmview stands on the very edge of the Fairview plot up against the field edge and next to the road. It is in front of Farmview that notice C identifies the material change of use to a garden.

10. Cornwall Road separates Fairview from the appeal site to the south, which is an open area of grass, shrubland and trees. It is on this land that Hive Cottage was built, the storage uses undertaken and the small garden area created. The Fairview Plot is narrower than the appeal plot, but the final length of Cornwall Road where it runs adjacent to Fairview has been claimed as vacant possession by Mr Dean and he is now the legal owner. Essex County Council were the previous owners and they retain a right of way along Cornwall Road as far as the beginning of the Fairview plot. Essex CC still own the appeal site, but part of that is, I understand, contested by Mr Dean. Nevertheless the precise details of the ownership of the land do not affect the outcome of these appeals. I shall deal with the implications of the annexation of the end of Cornwall Road by Mr Dean under Appeal C.
11. To the south of the appeal site are the back gardens of various properties that lie to the north of Clarence Road which runs parallel to Cornwall Road and the owners of two of these houses gave evidence at the Inquiry. Over the years several of them had extended their gardens into the back of the appeal site and the Council had issued notices against them all. However, at the time of the Inquiry, all but one of the notices had been withdrawn as the owners have either negotiated to buy the land from Essex CC or successfully claimed it by adverse possession. Since the Inquiry the final notice affecting Rosemount was withdrawn.

The Tree Preservation Order

12. The appeal site and the 'appropriated' back gardens are all covered by a TPO issued in 1992. This is a blanket woodland TPO that describes the wood as mixed woodland consisting mainly of salix, crataegus, prunus, sambucus, quercus and ilex, or willow, hawthorn, cherry, elder, oak and holly. Although not an expert I would suggest there are now only oak and hawthorn surviving on the appeal site.
13. Mr Dean argues that the TPO is no longer valid, and advances two reasons. Firstly that it was not properly served in the first place and secondly that it was removed by Essex CC. On the latter point, Essex did, for some reason, write to a number of owners of the land and suggested the TPO had been removed. This was a mistake. The TPO was imposed by Basildon Council and has not been removed. The former argument is based on the fact that Mr Dean was supplied by Essex CC with a copy of the TPO, which suggested it had been imposed on Acacia Road, another plotland road some way to the west.
14. What seems to have happened is that Essex sent a mix of paperwork to Mr Dean, some referring to Acacia Road, but some to Cornwall Road. The Council's copy of the TPO is in order. It seems Mr Dean may have had some trouble in getting a proper copy of the TPO from Basildon, but that does not mean it was ever improperly served. As the Council pointed out, even if there was some confusion when it was served in 1992, which they deny, the TPO clearly refers to the correct area in its plan and description. Mr Dean and his father before him have always been aware of the TPO and had a leaflet from

the 1990s explaining what they could and could not do. Mr Dean maintains, on the advice of that leaflet, they have only ever removed fruit trees, that are not covered by the TPO or dead and dying trees, as is their right.

15. It is not for me to rule on whether the TPO has been breached or not, but for these appeals it is sufficient to note the land is covered by a lawful TPO. A subsidiary argument revolved around the width of the land covered by the TPO. At its northern end it excludes Cornwall Road (and excludes the section now owned by Mr Dean) and it clearly runs up to the end of the land as far as a line drawn south from the eastern boundary of Fairview. However, the fields to the east do not form a straight line boundary from Fairview, but halfway down the appeal site the site widens and the curved boundary with the field is clearly marked on the plans attached to the notices and to the TPO. The appeal site thus is partly wider than a straight line drawn south from the eastern boundary of Fairview and the TPO plan follows this wider boundary exactly. It seems to me therefore clear that the whole of the appeal site is covered by the TPO and building B referred to in Notice B lies within the TPO area and not outside it as claimed by Mr Dean.

Notice A – the appeals on grounds (e) and (c)

16. Ground (e) is that the notice was not properly served, but this ground can only succeed if the appellant has been prejudiced as a result. It appears the enforcement notice was wrongly addressed to the owner and occupier of Ivy Cottage, rather than Hive Cottage. However, the notice on its face is correct as is the plan. Mr Dean, who is the owner, was correctly served at his home address and has made the appeal subject to this inquiry. So the wrong address would not seem to have caused any confusion or any prejudice.
17. Although there is a ground (c) for this notice, no ground (c) argument has been put forward. I assume that the case is really that the dwelling doesn't require planning permission because it is immune from enforcement action and that is a ground (d) appeal.

Notice A – the Appeal on Ground (d)

18. Having set out in some detail above the wider background to the appeal, ground (d) focusses solely on Hive Cottage. This lies roughly in the middle of the site outlined in notice B but should not be confused with the Hive Cottage shown on some plans which occupies the place of the current barn structure. Notice A includes only the building itself within the red line, and on the ground it is clear Hive Cottage has no defined curtilage or garden. Mr Dean explained the occupiers were free to park in front of it and use the surrounding land as they saw fit, subject to the caveat that in his opinion the whole plot lies within the curtilage of Fairview. I shall deal with the curtilage argument under notice C.
19. The background to Hive Cottage is that a wooden shack was built by Mr Dean's father, back in the 80s and possibly lived in, but that shack is long gone, and its history has no bearing on this appeal. More pertinently, in 2008 the first Hive Cottage was built, in the same location as the current one. This was a proper brick building with a flat roof and was let out to tenants. The aerial photographs from 2006 show no building here but it is clear in 2010. Various tenancy agreements have been provided from 2012 and 2013 and a council tax

- bill for 2013/14. This latter is wrongly called Hyde Cottage, but I have no reason to doubt it refers to Hive Cottage.
20. Unfortunately in 2012 a large tree fell down right next to the cottage and, according to Mr Dean, severely damaged it. In 2014 he and his sons carried out works to renovate the cottage, creating the new Hive Cottage that stands today. There is some dispute as to how much of this is true, as at the same time Essex CC became aware that the old Hive Cottage had been built on their land and they required it to be demolished. Documents from their solicitors show they were satisfied this had been carried out by March 2014. Apart from some 'trenching' the buildings had been removed.
 21. Mr Dean denies this ever happened and claims Essex CC are in collusion with Basildon. However, given that in 2014 Essex would have had no inkling that the future of Hive Cottage would become an issue 5 years later it is unclear why they, at that date, made up the claim the building had been removed. An aerial photograph from 2014 shows the building demolished to its concrete slab. Mr Dean, and various witnesses he provided, have described the situation in various ways, sometimes referring to it as a renovation, sometimes to demolition and rebuild. Mr Dean suggested only a few courses of bricks remained, but also did seem to acknowledge it was removed down to the slab. Mr Ilascu said in writing it was demolished and the materials stacked up for re-use. This is confirmed by Mr Keenleyside who lives directly behind the site of Hive Cottage. He saw the building materials stacked up for re-use when he purchased his house in July 2014.
 22. There is some dispute as to how much Mr Keenleyside can see from his garden. Although there are some tall trees on his boundary, there are now clear views towards the back of Hive Cottage. The land may have been more overgrown in 2014/15, but even so, Hive Cottage is substantial and only a few meters from the boundary. Various photographs referred to by Mr Dean showing the undergrowth did not really show much in the way of a vegetational screen. I have no doubt Mr Keenleyside had a reasonable view of Hive Cottage. In any event his recollection agrees with Mr Ilascu's, and the general consensus was that, regardless of the reason (tree damage or threats from Essex CC) the old Hive Cottage was demolished to slab level in early in 2014. Mr Dean's photograph entitled demolition about to begin is dated March 2014. This also fits with the evidence from Essex CC and there is no need to consider any collusion on their part.
 23. This is important for establishing the four years required. The new cottage was a different building, albeit on the same site as the old. It was agreed it had a 15-20% bigger footprint, a larger pitched roof and in my view was essentially a new dwelling. Thus whatever immunity may have been built up by the old cottage, a new page in the planning history is turned and the four years begins again. The notice was issued in February 2019, so the new cottage needs to have been substantially completed by February 2015. This is a tight timescale given that demolition didn't begin until March 2014.
 24. The question of whether the building was substantially complete was explored in full at the Inquiry. The term 'substantially complete' was given a meaning by Lord Hobhouse in the Sage¹ judgement, a decision by the House of Lords in 2003. If a building operation is not carried out, internally and externally, fully

¹ Sage v SSETR & Maidstone BC [2003] UKHL 22

in accordance with the planning permission, then the whole operation is unlawful. In this case there is no planning permission to enable a comparison to be made between what the building should have looked like as to what state it was in in February 2015, but a high bar has been set as it does not matter if the outstanding works are only internal and would not, by themselves, require planning permission. Thus a dwelling could be habitable but not substantially complete, these two are different concepts.

25. Two issues arise in this appeal, what works were outstanding and when were they completed? Because Mr Dean did not seek building regulations approval there is no documentary evidence, all I have is the conflicting views of the various witnesses.
26. The story starts with Mr Keenleyside's roof tiles. He bought Hazeldene in July 2014 but did not move in until August 2015. In the meantime major works were carried out to improve the house. Hazeldene backs onto the appeal site, and as noted above, and there is a good view of most of Hive Cottage from the back garden fence. Mr Keenleyside was in attendance a lot of the time as the works on his house progressed. Mr Keenleyside says that once the old roof tiles had been removed it was agreed with Mr Dean that he could take them for his own use. The initial contact between them was in November 2014 when Mr Keenleyside's son-in-law was putting up a new rear boundary fence; the Deans took away the tiles in December and later used them on the roof of Hive Cottage.
27. Mr Dean and his son James Blyth both agreed with this version of events, except for the dates. They recall collecting the tiles sometime before October as Hive Cottage was virtually complete by October. Mr Blyth described it as rentable, if not completely finished by then. Mr Dean has a photograph showing the roofing of Hive cottage being undertaken and he dates that picture as 2 October 2014. The picture also shows the internal works at the cottage had not progressed very far; it appears to be a brick shell. I only have Mr Dean's word for the date of the photograph, but it is a sunny day and the surrounding trees are still in full leaf. There is no suggestion the re-roofing took place as late as summer 2015 and there is an electrical installation certificate dated March 2015 which suggests to me the roof must have been on my then. By Christmas 2014 the trees would have shed their leaves so a date of October or early November does seem reasonable. My Keenleyside has a letter from the Council's building regs organisation chasing up architect's drawings and structural calculations dated 8 October 2014. However, all this tells me is that the builders had not sent on the correct documents. No planning permission was required for the works so I would be surprised if there was no activity before sorting out the building regulations.
28. Consequently, I consider the evidence suggests the re-roofing was carried out in October or November. There is a letter dated 19 December 2014 concerning a complaint by another neighbour that Mr Dean has "erected a further bungalow on the same site", and a letter, dated 5 February 2015, from the Council to Mr Dean noting a single storey dwelling had been built on the land. So it is pretty clear to me that by 21 February 2015 the dwelling had been constructed and was not obviously missing a key component such as a roof.
29. One date that all of Mr Dean's witnesses are agreed on is the birthday BBQ at the house on 21st December 2014, attended by Mr Dean, his sons, Mr Ilascu

and Mr Dempsey amongst others. Several people say they stayed in the cottage at that time around Christmas and the new year, but even if they did, and that is disputed, it does not really help given my comments above on substantial completion. If I accept, despite the confusion of overlapping stays, that the cottage was habitable by Christmas 2014, with running water, electricity and heating then what were then the outstanding works?

30. Mr Dean describes them as tiling the bathroom, plastering the bathroom ceiling, putting down laminated flooring in the part of the cottage known as the 'extension' and applying the finishing render externally. There was also the refitting of a door, repairing a leak in the kitchen floor, painting the kitchen and painting the skirting boards in the extension. I do not think these latter items are relevant as they sound more like normal maintenance works to me. I do not think rehangng a door and some minor decorating would suggest a dwelling had not been substantially complete. However, the tiling, plastering, flooring and render are all important elements that would be required to substantially complete a dwelling. You might move into a new house with some minor snagging works still to be finished, but not with the bathroom needing plastering and tiling, nor part of the flooring incomplete nor the outside walls unfinished. This suggests to me the house was not substantially complete.
31. What date were these works finished? Mr Dean suggested it was all done in January 2015, but there is no independent evidence for this. The Courts have held that if one side provides clear, cogent and compelling oral testimony that is not gainsaid by the other side then it should be accepted without the need for documentary proof, so is that the case?
32. The first documents for a tenancy agreement are for Mr Radu from November 2015. Prior to that Mr Dean's written and oral testimony was that Mr Sandhu was the man helping build the cottage and he lived in a caravan until Hive Cottage was habitable. He went home for Christmas, presumably missing the BBQ, because then Mr Ilascu's friends and family stayed there. Mr Sandhu returned after Christmas and moved into the cottage, carrying out building works on other buildings on the plot until replaced by Mr Radu. This is repeated by Mr Blyth and Mr Ilascu, the latter stating in his witness statement that friends and family stayed in hive Cottage over new year. Mr Dempsey says in his witness statement that he had hoped to stay in the cottage for personal reasons but fortunately didn't need to.
33. However, under oath Mr Ilascu added that his brother and other relations stayed there in April for several weeks for a party to celebrate the birth of his son. It was then the pipes leaked in the kitchen requiring the floor to be repaired. His nephew also stayed for some time in January and February. He estimated all the internal works were completed by April 2015. Mr Dempsey also changed his story and did stay in the cottage around the new year. It is possible he fitted this in between Mr Ilascu's friends and his nephew, but it is odd that all these extra comings and goings weren't mentioned before and doesn't explain how Mr Sandhu fitted in.
34. Mr Keenleyside is clear the cottage wasn't finished until after he moved into Hazeldene in August 2015. The use had definitely recommenced by March 2016. He knows this because he saw people in and out doing building work in the meantime. He is also clear that people first started living in the large shed

(that became building C on Notice B) before Hive Cottage was occupied and possibly the office (building B). I wasn't able to see inside building C, and it has clearly changed over the years, but looking in the windows one part was wired up as if for uses other than mere storage. I also noted the 'toilet' in building B actually consisted of a toilet, bath and sink. As the rest of building B was also wired up it could easily have been used for temporary residents. Various chalet buildings have been added to Fairview and are let out as dwellings, and Mr Dean has allowed people to stay in caravans and in Hive Cottage on the appeal site so it is quite possible other buildings have been occupied residentially at one time or another as well. The point of this is that there is nothing inherently unbelievable about Mr Keenleyside's claims.

35. Taking this altogether, the conflicting oral testimony from various witnesses, the conflicting evidence from Mr Dean's own witnesses and the lack of any independent witness or documentary evidence I cannot conclude that on the balance of probability Hive Cottage was substantially complete by February 2015. As such it does not benefit from the 4 year rule, and the appeal on ground (d) fails.

Notice A – the appeal on ground (a)

36. This ground was not vigorously pursued by Mr Dean. The land is green belt and the construction of new buildings in the green belt is inappropriate development. Paragraph 149 of the NPPF sets out 7 exceptions to this rule. Exception (d) is the replacement of a building providing it is in the same use and not materially larger. In this case it is agreed the building has a 15-20% larger footprint and a correspondingly larger pitched roof, whereas the old Hive Cottage was flat roofed. The new cottage is clearly materially larger so this exemption does not help.
37. For the same reason exception (g) is not relevant as regardless of whether the land was previously developed or not the new building is materially larger and so has a greater impact on the openness of the green belt and there is no evidence of an identified affordable housing need in the area. In any event the carving out of a curtilage along with the extra size of the building would cause substantial harm to the openness of the green belt.
38. Consequently, the development is inappropriate and should not be allowed unless there are very special circumstances. The very special circumstances put forward are that the house causes no visual harm, it is surrounded by other houses, there has been no loss of any protected trees and there is a need for affordable homes.
39. Only the last of the list is actually capable of being a very special circumstance. The others are examples of where no harm is being caused. Although I would say the building is visually harmful as it intrudes into what should be a woodland setting on the very edge of this area of plotlands. There may well be a need for affordable houses in Basildon, although I have been shown no actual evidence for this, but even so the provision of a single, possibly sub-standard, dwelling does not amount the very special circumstances required to outweigh the harm to the green belt. The appeal on ground (a) therefore fails.

Notice A – Conclusions

40. The appeals fail on all grounds. I shall dismiss the appeals and uphold the notice. Mr Dean has 3 months from the date of the issue of this decision to cease the use of the building and a further 3 months to demolish it.

Notice B – appeals on grounds (e) and (c)

41. The ground (e) appeal is based on the same arguments as for Notice A and fails for the same reasons. The ground (c) is that the matters alleged already benefit from planning permission, or do not require it because, for example, they do not constitute development. As the matter alleged is a change of use to storage and there is no dispute that storage requires planning permission then there can be no success on ground (c). The requirements refer to 3 buildings, one of which, A is not a building but is a moveable structure. Nevertheless if it is part and parcel of the alleged storage use it could still be included within the requirements of the notice. I shall deal with building A below.
42. Mr Dean has also made various claims that the whole or part of the site falls within the curtilage of Fairview. If that is the case then an argument could be made that buildings B and C were curtilage buildings under class E of the GPDO. Such an argument has not been made, but the issue of curtilage was raised several times, particularly in relation of Notice C, and I shall deal with it there.

Notice B – appeal on ground (d)

43. The allegation is storage both in the open air and in buildings A, B and C. Mr Dean argues that such storage uses have been going on for many years, at least since the 1990s. He accepts that in 1995 the Council issued an enforcement notice alleging such storage uses. The plan attached to that notice encloses within the red line the central section of the current appeal site. Mr Dean appeared to argue two points, firstly that this was a mistake, as the whole site should have been included and secondly the notice was never complied with.
44. It would perhaps have been better, with the benefit of hindsight, had the whole of the current appeal site been included in the 1995 notice, but the Council are at liberty to draw the red line where they see fit. The aerial photograph from 1995 does show a substantial pile of stored materials in a woodland clearing in the central section of the site, but apart from a few vehicles pulled up on the roadside no other activity or buildings, so it does not seem unreasonable to draw the red line where they did.
45. It is accepted that if the notice was complied with then it is still live and any further use of the same area of land for storage purposes would be unlawful and could not benefit from the 10 year rule. In 1996 it was obvious to the Council the enforcement notice was being ignored and there is correspondence between them and Mr Dean's father requesting compliance. A further internal memorandum from October 1996 shows the enforcement officer now considered the land had been cleared and photographs from the same period show just that. Aerial photographs from 1999 and 2000 also show that apart from some possible storage on the road, which lies outside the 1995 enforcement notice area, the whole area is once again overgrown with trees

and shrubs. This situation is more or less as described by Mr Dean himself, although he argued there was some storage under the tree canopy and so not visible in the aerials. I note it would nevertheless have been visible to the Council when they visited and decided the notice had been complied with so I have no reason to disagree with their assessment.

46. Further aerial photographs have been provided. One from 2006 shows little activity off the road, while another from 2006 shows a couple of piles of aggregates or soil on the edge of the road and the toilet block part of building B. These are still visible in 2008 but no other buildings or use of the land which remains overgrown. In 2010 three photographs show that more land has been cleared in front of Fairview and the original Hive Cottage has been built. There is a scatter of objects around the toilet block and vehicles on the road, but nothing else is visible. An out of focus photograph from 2011 appears to show the same. In 2013 Hive Cottage is clearly visible and the area between it and the road has been cleared and seems to be being used for parking. There are some possible telegraph poles stored nearby on the site, but the land in front of Farmview appears to be becoming overgrown again, possibly over some small piles of aggregate or other materials. There also does not seem to be any sign of the toilet building (building B). In 2014 the old Hive Cottage has been reduced to its concrete slab, the land in front is churned up with just a couple of vehicles parked on it, and just on the edge of the photograph appears to be part of what would become building C. There is still no sign of building B, but there is definitely some storage of materials in front of Farmview. Mr Dean suggested a white splodge was the roof of the toilet building but compared to later photographs it is clearly in the wrong place and looks more like a pile of materials to me.
47. By September 2017 there have been major changes, with the clearance of more trees, the toilet block and associated office (building B) have been built and two parts of what would later become building C are there along with the barn. The whole area between Hive Cottage is laid to hardstanding with cars parked on it, a number of them quite possibly taxis, similar to those I saw on my site visit. The land immediately in front of Farmview has been turned into a yard or garden and fenced off from the rest of the site. The only major change since then is that building C has been created apparently by joining together several smaller buildings and the yard in front of Farmview has gone.
48. Mr Dean has provided a number of terrestrial photographs of his own, but those showing piles of random storage date from the 1990s. Other photographs scattered across time do show piles of what can best be described as junk just lying around Hive Cottage in a very similar fashion to nowadays, but they mostly lie within the 1995 notice area. If there has been any storage outside of that area it has been at best sporadic. I do not believe the amount of storage, such as would be necessary to trigger a material change of use, could be consistently hidden under the tree canopy, especially as that canopy had shrunk considerably by 2017.
49. A photograph of a bonfire on the land between Hive Cottage and the road does show in the background a flat roofed building that Mr Dean suggested was the toilet, but that certainly doesn't appear in any of the aerial photographs. I can only assume it was a movable structure that came and went.

50. Pulling all this together the evidence suggests to me the following: outside storage in the centre of the site has been unlawful since 1995 and remains so. Storage beyond the 1995 enforcement notice site has been sporadic and too inconsistent to trigger a material change of use until 2017 at the earliest. It would have been difficult if not impossible for the Council to issue an enforcement notice alleging unlawful storage at many times during the period between 1996 and 2017 on land outside of the 1995 notice area, so that no period of 10 consecutive years storage has been established.
51. As for the buildings A, B and C, in 2019, when the notice was issued they were being used for storage purposes. Building C still is and building B was being used to store household furniture during an officer's visit and this has not been challenged. Building A is a lorry body that has been used for chickens and also various storage uses over the years it is a structure that can be removed as part and parcel of the unlawful storage use. Building B, the toilet/office may well have had antecedents over the years but in its current form is recently constructed (it can't be dated further back than 2017 on the evidence) and so does not benefit from the 4 year rule. Building C is a new creation, as two older sheds were merged together with an infill construction to form a new building. This seemed to have happened around 2018 according to the Council and the photographs show the two separate parts of the building in 2017, but it was complete by 2019. The building is thus relatively new and does not benefit from the 4 year rule. As both B and C were being used for storage purposes when the notice was issued they are part and parcel of the unlawful storage use and so can be required to be demolished. The appeal on ground (d) fails.

Notice B the Appeal on Ground (a)

52. The site lies in the green belt. The material change of use of land and the re-use of buildings can both be not inappropriate according to paragraph 150 of the NPPF. In the case of uses, they must preserve openness. The lawful use of the land is woodland and the storage of building materials and other junk in piles around the site clearly does not preserve openness. Similarly the buildings B and C have been built within 4 years of the issue of the notice and have no lawful use associated with them. Their construction in the first place thus harmed openness and so whether considered on their own or as part and parcel of the storage use they are inappropriate development. Such development is by definition harmful to the green belt and should only be allowed in very special circumstances.
53. Mr Dean argues that fruit trees have been planted, the use has no wider impact beyond the site and is surrounded by other buildings. On the latter point it is not surrounded by buildings, as there are fields to the east, but if it was used for its lawful purposes, that is woodland, then it would play an important role as a green space in this now residential area. The fact that other trees may have been planted is not linked to the storage use and could have happened at any time. Consequently, no matters have been raised that outweigh the harm I have identified to openness and so no very special circumstances exist and the appeal on ground (a) fails.

Notice C – the Appeals on Grounds (b), (c) and (d)

54. The appeals against this notice turn on two issues, Mr Dean's assertion that he owns the land and that it is within the curtilage of Fairview. The red line of the notice encompasses a small rectangle of land in front of Farmview. As noted

above, the 2017 aerial photographs show the land in front of Farmview was fenced off to form a yard or garden. Most of this yard stretched over the end of Cornwall Road and some, the part covered by the notice, extended beyond the road into the wider site covered by Notice B. It is this small strip that is affected by the notice.

55. It would seem likely, following the evidence I heard at the Inquiry, that Mr Dean now owns the part of Cornwall Road that runs in front of Fairview and Farmview. It seems he also claims the part of Cornwall Road that runs beside the appeal site as outlined in Notice B and Fairview's neighbour Sunset Strip. This is apparently contested by Essex CC. Nevertheless, Notice C only affects the land in front of Farmview. Regardless of who owns that land the use as a garden could be a material change of use that requires planning permission. The ownership and rights of passage over Cornwall Road are thus a red herring and I can make no further comment on that dispute.
56. Although detailed evidence concerning curtilage was not provided, Mr Dean at several points argued the whole of notice B land (and so also notice C) was within the curtilage of Fairview. I think there is again a confusion between ownership, occupation and curtilage. The latest evidence is that Essex CC own the whole of the notice B land, but I understand Mr Dean contests at least some of that. Nevertheless, curtilage is not directly linked to ownership or to use. You can use land as a garden and indeed land can be lawfully residential garden land but need not be within your curtilage.
57. Curtilage is a concept that has no statutory definition but occurs in a lot of places in planning, not least in the GPDO where you can carry out certain activities and erect certain buildings within your curtilage without obtaining a specific planning permission. There are a host of court cases involving curtilage, but a rough distillation of them is that a number of factors should be taken into account, none of which are decisive on their own. These include a functional relationship to the dwelling, the formation of an enclosure with a dwelling, a proportionate relationship to the dwelling - a stately home would have a larger curtilage than a terraced cottage - and although it need not be fenced off its extent should be readily apparent.
58. In this case the curtilage of Fairview is obvious on the ground and it is bounded by Cornwall road to the south. The appeal site lies in a separate parcel of land which has a separate use and is (or certainly was at one time) in separate ownership. Cornwall Road and the area used as a yard in front of Farmview were all consistently separated from Fairview by walls and fencing until the yard itself was created sometime around 2017 - or as Mr Dean said about 6 years ago - that is 2015, either way there is no evidence it was more than 10 years before the notice was issued. Currently, the whole area in front of Farmview has been cleared and is part of the larger parking area between Fairview and Hive Cottage. None of this suggests to me the creation of any curtilage beyond Cornwall Road.
59. I have no doubt the wider area of land outlined by Notice B does not fall within the curtilage of any building, including Fairview. Similarly the smaller area outlined in Notice C, falls within the Notice B area and is also not within the curtilage of Fairview. At most it could have fallen within the curtilage of Farmview, which would seem to be a separate planning unit to Fairview, but

even then, the curtilage of Farmview would seem to be defined by Cornwall Road.

60. The lawful use of the land outlined by Notice C is thus the same as that in Notice B, which is woodland and does not fall within the curtilage of any buildings. The change to residential garden amenity is therefore a material change of use, so there can be no success on grounds (b) and (c) and as noted above there is no evidence it took place ten years or more before the notice was issued so ground (d) cannot succeed either.

Notice C – the appeal on Ground (a)

61. As in the other ground (a) appeals the site lies in the green belt, and a material change of use is only not inappropriate development if it preserves openness. The erection of a boundary, whether fence or walls, and the use of the land as a garden, with all the usual garden paraphernalia involved would have a harmful effect on openness compared to woodland. The change of use is therefore inappropriate development and can only be allowed if there are very special circumstances.
62. Mr Dean has made a number of arguments for retaining the garden land, but only the planting of fruit trees and the fact that it is surrounded by buildings and sprawl could count as very special circumstances. In fact, if the land around it were used for its lawful purpose then it would not be surrounded by buildings and sprawl, and the planting of fruit trees elsewhere does not depend on the use of this particular parcel as garden land. There are no matters to outweigh the harm I have identified to openness and so no very special circumstances exist and the appeal on ground (a) fails.

Conclusion

63. The only outstanding matter is the issue of boundary fences along the southern boundary of the land outlined in Notice B. These fences have changed position as the boundary is slightly different, and in any event, the neighbours who line this boundary all have their own fences so it is difficult to see what is the objection to the fences, such as they are. I shall delete this requirement from notice B
64. The appeals all fail. Subject to correcting the plan attached to Notice B and deleting requirement (iii) I shall dismiss the appeals and uphold all three notices.

Simon Hand

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Douglas Dean

Called

Gary Dempsey

Marian Ilascu

James Blyth

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Fraser – of counsel

Called

Martin Firmstone

RULE 6 PARTY:

Sebastian Charles

Called

Brian Keenleyside

Paul Harvey

DOCUMENTS

1. Mr Dean's proof
2. Statement by A J Traynor of A C Blake
3. Letter from London Building Control
4. Council's closings
5. Rule 6 party's closings



The Planning Inspectorate

Plan

This is the plan referred to in the appeal decision dated: 12 November 2021

by **Simon Hand MA**

Land at: Eastern End of Cornwall Road, (Opposite Property known as Fairview and known as Ivy Cottage), Cornwall Rd, North Benfleet, SS13 2LA

Reference: APP/V1505/C/19/3224866

Scale: not to scale

