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## Appeal Decision

Inquiry held on 19 October 2022

Site visit made on 18 October 2022

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 October 2022**

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**Appeal Ref: APP/P1615/C/21/3278524**

**Woodland adjacent to Coppice Road, Lower Lydbrook as identified by Land Registry Title GR 123047, Gloucestershire, GL17 9RJ**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mark Dew against an enforcement notice issued by Forest of Dean District Council.
  - The notice was issued on 10 June 2021.
  - The breach of planning control as alleged in the notice is Within the last 4 years and without planning permission, works in progress for the construction of a building ("the building"), having the appearance of a dwelling house, with direct connection to the main grid electrical supply and the construction of adjoining stone walling, stone steps and associated groundworks ancillary to the construction of the building on the Land ("the unauthorised development").
  - The requirements of the notice are: within the area outlined in RED on the attached plan: With the exception of the retention of the rear (south elevation) retaining wall of the building at its height before the unauthorised works to construct the building commenced and a short 'outcrop' of 1 .5m extending from each side elevation to serve as buttressing: (1) Disconnect from the building the electric power supply and remove the junction box installation. (2) Demolish the roof structure and remaining elevations of the building and remove from the Land all its constituent component parts including external stone steps. (3) Remove the foundations and floor-slab of the building where not directly supporting the south elevation retaining wall and buttressing. (4) Remove from the Land all of the stone retaining wall immediately abutting the west elevation steps that rise to the first floor entrance of the building. (5) Remove from the Land all other miscellaneous waste, pallets, bricks, tiles, sheet wood panels, buckets and general building material paraphernalia: Then (6) Level the Land to contour with that of the immediate surrounding ground surface to the satisfaction of the Local Planning Authority.
  - The period for compliance with the requirements is: 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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### Decision

1. 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.

### Applications for costs

2. An application for costs was made by the Council and is subject to a separate decision.

## **Preliminary Matters**

3. In opening it was agreed the appeal was continuing on grounds (c), (a) and (g). Grounds (d) and (f) were withdrawn.

## **The Appeal on Ground (c)**

4. This ground is that there has not been a breach of planning control, because, in this case, the appellant argues he has merely restored an existing house. That is clearly not the case. There was much discussion at the Inquiry concerning the issue of abandonment, which I shall deal with under ground (a), but it was clear from photographs of the site taken in the 1990s and in 2020, as well as the appellant's Historic Building Survey that there was not a great deal of fabric left of the original house. Whether abandoned or not, the works to turn it back into a house have been extensive.
5. Development is defined in the Act by s55 as (and I will paraphrase here) "*the carrying out of building or other operations in, on, over or under land...*", and at s551(A) '*building operations*' includes "*(b) rebuilding*". Which is what has happened here. No claim has been made that the rebuilding benefits from permitted development rights granted by the GPDO and they clearly do not. Whether the works are described as a rebuild or restoration, they still amount to development which requires planning permission. The appeal on ground (c) fails.

## **The Appeal on Ground (a)**

6. Sweet Cottage stands on the southern side of Coppice Road on the side of a steep hillside that rises up to Joy's Green to the south and falls away to the valley bottom to the north. There is a straggle of houses along Coppice Road, which otherwise is thickly wooded on the southern, uphill, side, and lined by trees and woodland but with some views across the valley on the northern, downhill, side.

### *Abandonment*

7. It is common ground that a cottage once stood on the site and this dates back to at least Victorian times. However, the Council argue that cottage was abandoned and so the residential use has been lost and the land has reverted to woodland.
8. The facts such as they are, are drawn from an appeal decision<sup>1</sup> in 1992 when a previous owner, Mr Fear, tried to get planning permission to rebuild the cottage. This was refused. The Inspector recorded that a house existed on the site up to the mid-1960s. He records in the decision that Mr Fear "*accepted that the building had been substantially demolished and the use abandoned*". This was the Council's view also. I note that Mr Fear was professionally represented so it is reasonable to conclude that he and his team agreed with that statement. Much was made that the Inspector didn't make a specific finding on this point, merely noting that Mr Fear agreed with the Council. However, had it been manifestly not the case the Inspector would have been bound to consider it further, so it seems to me clear there was no dispute that in 1992 the general view was the building had been demolished and the use

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<sup>1</sup> APP/P1615/A/92/205587/P2

abandoned. I make the point here that once abandoned a use is lost and would require planning permission to be re-instated.

9. The photographic evidence from the 1990s and the HBS both confirm that the 1992 view was correct. The photographs show very little at all remaining on site. The new cottage sits on the footprint of the old – that much is agreed – and consists of a main range with a small wing, creating an 'L' shape. It is cut into the hillside so the back wall to the full height of the new cottage acts as a retaining wall. It is clear that parts of this retaining wall remained in the 1990s, in places up to 4m in height. Some old floor remained, although lost to view under vegetation. The front and parts of the side wall of the side wing also remained up to about shoulder height, although in a ruinous state. A water pipe in that part of the building also survived. There may have been other parts of the walls of the main part of the house remaining, but in the photographs they are lost in the vegetation. The HBS was carried out once the re-build was well underway. It records that some parts of the new cottage clearly contain old walls with an average height of 0.5m and the taller rear retaining wall contained a water tank within its thickness, which I saw on site and survives from the original cottage. This is all consistent with the photographs.
10. Mr Dew's description of the cottage as he found it implied it was rather more substantial than that but the photographic and HBS evidence is against him. It seems clear to me that in the 1990s there was very little left of the cottage, and it would not have been obvious to the casual observer what the building had been used for. Mr Dew didn't buy the site until 2007, over 10 years later when it would have been likely to have further deteriorated.
11. In addition Mr Dew accepted that Mr Fear had knocked part of the cottage down with a digger before he even applied for permission for the replacement dwelling that led to the 1992 appeal, and that Mr Dew used the huge pile of rubble and stones to rebuild the new cottage. Mr Dew did argue that the last occupant of the cottage was not rehoused until the 1980s, so it must have been liveable in then, but that was hearsay from a local. It seems highly unlikely that a fully functioning house had fallen into complete disrepair and become overgrown as shown in the 1990s photographs in a few short years. In any event this suggestion pre-dates the 1992 appeal.
12. The four factors that should be considered in a case of abandonment are set out in various court cases<sup>2</sup> and are the physical condition of the building, the period of non-use, whether there had been any other use, and the intentions of the owner. In this appeal the physical condition in the 1990s was ruinous and this remained so until 2020 when Mr Dew began work. There had been no other uses on the land and the period of non-use was at least 40 years (from the 1980 alleged rehousing to when works commenced on the re-build), but more likely 60 years. The intention of the owner in 1992 was that the use had been abandoned. It was not clear until 2020 that the new owner did not share this view. But that does not matter as by then the use had long been abandoned and the building largely disappeared.
13. The appellant suggested it was important that the facts of the two court cases (mentioned in the footnote below) were different from this appeal. I agree

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<sup>2</sup> Hughes v SSETR & South Holland DC [2000] EWCA Civ 506; The Trustees of the Castell-y-Mynach Estate v The Secretary of State for Wales and another [1984] CO/1459/83

there are some differences, but that does not mean the principles set out in those case when considering abandonment can be ignored. I have no hesitation therefore in determining that the use was abandoned. What we have here therefore is a new build dwelling on a woodland site.

### *Housing policy*

14. It is accepted that the Council cannot demonstrate a five year housing land supply and so the tilted balance from paragraph 11(d)(ii) of the NPPF comes into play. Nevertheless the development plan is still a relevant material consideration and still the starting point for any decision. There was no dispute the site lay outside the settlement boundary as defined in policy 28<sup>3</sup> and adjacent to but not in the AONB. The settlement hierarchy set out in CSP16<sup>4</sup> identifies Joy's Green as part of a group of villages along with Lydbrook and Worrall Hill that have, between them, sufficient services to warrant some development within their boundaries. The policy description notes they are heavily constrained by landscape constraints. CSP4 directs new development to within settlement boundaries, exceptions being for local affordable housing, building conversions and local employment. None of these exceptions apply in this case and the policy notes that land outside of the settlement boundaries is to be treated as countryside.
15. In other words the Council has a sensible housing strategy that is in line with the NPPF and aims to direct new houses to within existing settlements. The dwelling at Sweet Cottage is contrary to these policies and this was not really contested by the appellant.

### *Choice of transport modes*

16. Where the parties do differ is whether the site is locationally sustainable. Policy AP1 requires development to meet the sustainability tests of the NPPF and the development plan. The NPPF makes it clear that housing should be located where there is a genuine choice of transport modes and in rural areas where it will enhance or maintain the vitality of rural communities. The Council argue the road network is so poor that the only reasonable way to the three local villages that make up the Joy's Green group is by car.
17. As noted above the site is on a steep slope and Coppice Road is narrow, steep, and winding, with steep drops to one side in some places. It was described, accurately, as a 'hostile environment' for pedestrians as there are no footpaths or verge. Not far along Coppice Road from the site is a steep set of stairs that leads up to Joy's Green, so it would be possible to walk there, if not a tempting route. However, the only facility in Joy's Green is a primary school and the walking route would be even less tempting to a parent and their small child (or children). It was suggested there was a bus service in Joy's Green, but I have no evidence as to its regularity and accessing the village is difficult as already noted.
18. Otherwise a car would be the only sensible option to access the other villages in the group. Mr Dew suggested he walked to various places quite happily and he had a friend who regularly cycled to see him. But the policy is not whether certain people are prepared to brave the topography to go by foot or cycle but whether there is a genuine choice of transport modes and there isn't here.

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<sup>3</sup> Forest of Dean DC, Allocations Plan 2018

<sup>4</sup> Forest of Dean DC Core Strategy 2012

19. It follows that if the occupants of the site are most likely to use their car to get about the contribution of the site to maintaining the local community will be diminished as once they are in their car they could travel anywhere for their shopping, entertainment etc. I do not consider the site to be locationally sustainable.

#### *Highway issues*

20. The highways authority have argued that the access onto Coppice Road is dangerous and sufficient visibility splays cannot be provided. The road is deregulated with a notional 60mph speed limit, although both parties agreed that actual speeds would be much lower. Mr Dew felt they would be 10mph, the Council preferred 20mph. I agree the road is tricky to drive on and there are sharp bends either side of Sweet Cottage which will keep traffic speeds down, but 10mph is unrealistically slow, especially as drivers would not be expecting to meet much traffic on such a road. The highway officers made several visits to the site and witnessed vehicles travelling over 20mph and being forced to reverse around bends to accommodate oncoming vehicles. I have no doubt it is a potentially dangerous road and that any new dwelling would have to have safe access and egress.
21. Mr Dew maintains that he can provide plenty of off-road parking and even space to turn on site so vehicles can arrive and leave in forward gear. I saw the site had a short, steep, narrow drive up to a narrow level area in front of the cottage. There is an area at the foot of the drive, beside the road, where a car can pull off the road but that is more like a passing place not a long term parking solution. At the back of this space there is a steep uphill track where Mr Dew parked a van, but this was also described as a forest track that he was unlawfully blocking.
22. From this description it seems to me that extra care is needed to ensure that vehicles can safely enter and leave the site. Clearly visibility to the west which is also uphill towards a sharp bend is limited. Mr Dew had placed a marker on the far side of the carriageway to show at least 30m could be achieved, but this assumed one was on the very edge of the road. Standing back even a metre obscured visibility considerably. The highways officers record the best visibility splay they could measure was suitable only for 16mph speeds which they and I consider to be unreasonably slow. To edge out into the road to see better would be to block it and this would clearly be dangerous.
23. It might, theoretically be possible to provide adequate parking, but no plans or design drawings have been provided to show how it would happen. The block plan provided with the planning application that was returned by the Council, is simply a sketch which appears to bear little resemblance to the actual topography of the site. No evidence has been provided to suggest the highways observations are incorrect. Mr Dew's arguments rely on his own 'commonsense' observations but they do not tally with the highways' officers or my own. I conclude that safe parking and access cannot be provided.
24. Since the Inquiry closed the appellant has provided photographs purporting to show 20mph and 5mph speed limit signs on Coppice Road. The Council however, point out these are unofficial signs and nothing to do with the Council. I have not taken them into account in reaching my decision.

### *Landscape and design*

25. Policy CSP1 requires consideration to be given to landscape impacts. The appellant argues the site has been tidied up and an attractive cottage in the local vernacular has been built, the landscape has therefore been enhanced not harmed. I agree that Sweet Cottage is attractive and does seem to be very much built in the local style with local materials. That however misses the point. This is not a brownfield site but has the lawful status of (technically) agricultural land, but realistically of woodland. The Council have treated it as the loss of a piece of woodland and its replacement with a house. However attractive the house, to build it in a wood in the countryside is against all local policies, as demonstrated above, and the NPPF. So replacing woodland with a house is clearly harmful to the character of the area, which is predominantly woodland.
26. I do not accept that the site has been tidied up. I have no idea what it looked like in 2020 before work started but given the photographs from the 1990s I would suggest that if nothing happened it would quickly return to the forest. I would also add I also have no idea what the original cottage looked like and no evidence has been provided apart from its footprint. Even if this was simply being treated as restoring a historic building, there is nothing on which to base the restoration, especially the 3 storey house that has been erected. But it isn't the restoration of a historic building it is a new build in the countryside. Consequently it does harm the landscape and so is contrary to CSP1.

### *Other Matters*

27. The appellant relied quite heavily on a comparison with other houses along Coppice Road, that Sweet Cottage had better access arrangements, was a more attractive design and that it was no worse in terms of access to facilities. This may be so, but again misses the point that this is a new build, which is required to meet certain standards, particularly of safety. Because existing houses may not have safe accesses doesn't mean another new house should be allowed also without a safe access.
28. The 1992 decision was refused solely on highway grounds. The Inspector found the dwelling was an acceptable addition to a small group of existing houses. This was in line with then government policy outlined in PPG7. This is no longer government policy which is now set out in the NPPF as described above and which is centred around the issue of sustainability as defined in paragraph 8. Consequently the positive finding from 1992 no longer is of any great weight.
29. Finally the appellant asks what purpose would be served in demolishing a perfectly good house. But to surrender to that line of argument would mean that anyone could build a nice looking house wherever they wanted regardless of local or government policy. It should never have been built in the first place as it is in the wrong place, in a location with poor access to facilities, that harms the landscape and cannot provide a safe access to the road.

### *Conclusions*

30. It is clear from the above that my view is that despite the tilted balance being engaged and the benefit of providing 1 extra house in an area with a shortfall in housing numbers the other material considerations that I have identified

significantly and demonstrably outweigh the benefits when considered against the policies in the NPPF as a whole. S38(6) requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. The tilted balance in the NPPF is one such material consideration, but in this case does not suggest the plan led conclusions should be set aside. I have considered the conditions discussed at the Inquiry but none would overcome the problems I have identified above. The appeal on ground (a) fails.

### **The Appeal on Ground (g)**

31. Although not withdrawn the appellant provided no further explanation for this ground beyond that in the appeal form that the time of 6 months was too short. It does not seem to me it should take that long to demolish the house and remove the materials. The appeal on ground (g) fails.

### **Conclusion**

32. I shall dismiss the appeal and uphold the enforcement notice.

*Simon Hand*

INSPECTOR

## **APPEARANCES**

### **FOR THE APPELLANT:**

Mr Robert Wade:  
He called  
Mr Mark Dew - appellant  
Mr Neil Jeffersons – historic building consultant

### **FOR THE LOCAL PLANNING AUTHORITY:**

Mr Christian Hawley of counsel  
He called  
Stephen Colgate – Forest of Dean DC

### **INTERESTED PARTIES:**

Mrs Rachael Mowatt  
Mr Bruce Hogan  
Mr Charles Morgan  
Ms Marion Scrivens

## **DOCUMENTS**

1. Email from Gloucestershire CC highways department
2. Council's openings
3. Council's costs claim