



Appeal Decision

Site visit made on 20 May 2025

by **L Douglas BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2025

Appeal Ref: APP/Y9507/C/22/3306468

Land at Wispers, Titty Hill, Milland, Midhurst, West Sussex

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act).
 - The appeal is made by Mr Mark Reynolds against an enforcement notice issued by Chichester District Council on behalf of the South Downs National Park Authority.
 - The notice was issued on 27 July 2022.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a dwelling house in the approximate position shown on the attached Plan.
 - The requirements of the notice are: (i) Demolish the said dwellinghouse; and (ii) Remove the resulting debris from the Land.
 - The period for compliance with the requirements is six months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(b), (c), and (f) of the Act.
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Decision

1. The enforcement notice is quashed.

Ground (b)

2. To succeed under this ground the appellant needs to show that the alleged breach of planning control stated in the notice has not occurred, as a matter of fact.
3. It is the appellant's case that the building which has been erected is not a dwellinghouse. The notice specifically describes the alleged breach as the erection of a dwellinghouse, not a building 'capable of being used as' or 'tantamount to' a dwellinghouse, as referred to in the Council's appeal submissions.
4. The term 'dwellinghouse' is not defined in any relevant legislation, but it was accepted in *Gravesham BC v SSE & O'Brien* [1983] JPL 306 that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
5. The Council first inspected the building in July 2019, by which point the timber frame of the building had been completed. The building was awaiting external cladding to its walls and tiles to its roof. It had two large door openings on its south elevation and an integral brickwork fireplace positioned roughly centrally at ground floor level. It is not disputed that two doorframes had been inserted at first floor level, a foul sewer connection was in place, and electrical wiring and copper piping ran through the building. Windows had been inserted on the part-hipped gable ends at first floor level, which the appellant has referred to as arrow-slit openings to provide natural light/ventilation.

6. At a later inspection shortly after the notice was issued, the Council describes the building as being in use as a private motorbike repair workshop, with pictures hung on the walls, a rug on the floor, and a rack of rugs and hay bales stored.
7. The internal layout, fireplace, window openings, insulation, electrical wiring and plumbing are typical of a residential building. Moreover, the building does not accurately reflect the livestock and general-purpose barn permitted¹, even if it was in use for such purposes during my visit. The appellant may have intended to add kitchen, bathroom and sleeping facilities and use it as a dwellinghouse in the future; however, it does not follow that the building was necessarily a dwellinghouse when the Council inspected it.
8. It is not disputed that there has been no residential occupation of the site. The Council claims part of the rear of the building 'could' function as a kitchen, utility, and/or shower room on account of the positions of a foul sewer connection and rooflights. It is also claimed that this area provides space where a staircase to the first floor 'may be located within a residential property'. Even if I were to accept these points, the mere possibility that such facilities may be installed in the future would not qualify the building as a dwellinghouse.
9. There is no evidence of any kitchen, shower, toilet, or other cooking/washing facilities being installed. There is no evidence of a staircase being installed. The building has a first floor level with doorframes apparently for the purpose of creating separate rooms, but even by the time of my visit there were no partition walls in place at that level.
10. In summary, the building comprises a watertight shelter with the capability to house a kitchen, bath/shower room, utility room, bedroom(s) and living space. Many buildings with water, electricity and foul sewer connections would also have the same capabilities. This does not mean they should all be considered dwellinghouses, even if there may be an intention for them to be used for such purposes in the future. Furthermore, a building with such services should not be considered a dwellinghouse simply on account of an internal layout, windows, fireplace, and insulation of domestic standards.
11. With regard to the relevant case law, the building does not afford the facilities required for day-to-day private domestic existence, such as cooking, toilet, washing, or sleeping facilities, and it is not a dwellinghouse. The description of the alleged breach is therefore wrong, resulting in the notice being invalid and in need of correction.
12. I have wide powers under section 176 of the Act to correct any defect, error or misdescription in the notice if I am satisfied that doing so will not cause injustice to any parties. Although the appellant has made representations claiming the building benefits from planning permission, it is likely they may have considered pursuing other grounds of appeal or appeal arguments had the notice referred to the erection of an unauthorised building in general, rather than specifically the erection of a dwellinghouse. For this reason, I find that correcting the notice to replace references to 'dwellinghouse' with references to 'building' would cause injustice to the appellant.

¹ The National Park Authority's ref: SDNP/17/03640/FUL

13. The notice is therefore invalid and incapable of being corrected without causing injustice. It would be a matter for the National Park Authority to consider whether it would be expedient to issue a new notice relating to a corrected description of the alleged breach, taking section 171B(4)(b) of the Act into account.
14. The appeal under ground (b) succeeds and the notice will be quashed.

Conclusion

15. For the reasons given above, I conclude that the alleged breach of planning control stated in the enforcement notice has not taken place, as a matter of fact. It is not open to me to correct the error in accordance with my powers under section 176(1)(a) of the Act, since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances, the appeal on the grounds set out in section 174(2)(c) and (f) of the Act do not fall to be considered.

L Douglas

INSPECTOR