



Appeal Decisions

Site visit made on 20 October 2025

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 07 November 2025

Appeal A Ref: APP/C3105/C/23/3329405

Appeal B Ref: APP/C3105/C/23/3329406

Land at Fairview Cottage Main Road, Swalcliffe, Banbury OX15 5HB

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the Act") against an enforcement notice issued by Cherwell District Council.
- The appeals are made by Mr Frazer Argyros-Farrell (Appeal A) and Mrs Helen Argyros-Farrell (Appeal B).
- The notice was issued on 15 August 2023.
- The breach of planning control as alleged in the notice is: Without planning permission, the construction of a timber outbuilding and associated engineering operations, including the raising of land levels and the construction of a retaining wall.
- The requirements of the notice are: (1) Remove the timber building from the land; (2) Remove the gabion baskets forming part of the retaining wall adjacent to Gulliver's Cottage from the land; (3) Remove the additional brickwork constructed above the original retaining wall parallel to the gully adjacent to Gulliver's Cottage, restoring the wall to its original height before the breach took place and remove all resultant waste from the land; (4) Lower ground levels adjacent to Gulliver's Cottage to match the height of the original retaining wall; and (5) Remove all soil waste resulting from actions taken to comply with the above compliance requirements from the land.
- The period for compliance with the requirements is: 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c), (d), (f), (g) of the Act. 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.
- Appeal B is proceeding on the grounds set out in section 174(2)(c), (d), (f), (g) of the Act.

Summary of Decisions: The appeals succeed in part and the enforcement notice is upheld with a correction and variation in the terms set out below in the Formal Decisions.

Appeals A and B – the appeals on ground (c)

1. An appeal on this ground may succeed if it can be demonstrated, on the balance of probabilities, that a matter is not development or is development but does not require an express grant of planning permission. The appellants' case is limited to the engineering operations that resulted in the raising of land levels.
2. The appellants contend that the operations to create the landform on which the timber building is erected are of a minor nature, within the scope of landscaping that may be undertaken as a gardening activity. They state that the fill material arose from digging foundations for a rear extension approved in 2012¹ and begun in 2013 but also that the excavated material had been placed "around the back garden."
3. The definition of development in section 55(1) of the Act includes the operational development of "the carrying out of building, engineering, mining or other

¹ 12/00387/F granted 25 May 2012.

operations in, on, over or under land.” The raised ground includes materials that would not have been excavated to construct the extension approved in 2012, including blockwork, steel trusses and stone filled gabions.

4. While I note the appellants’ statement that significant heavy equipment was not utilised, it is the nature of the work, not how it was executed, that counts. Considering all the evidence, I consider that raising land levels by more than 1 m, in which the construction of blockwork and placing steel trusses and stone-filled gabions are integral, is beyond the ordinary meaning of gardening activity. The fact that the work was carried out to provide a platform for a building further indicates that it was not a gardening activity. I find that it is operational development, for which there is no evidence of any permission having been granted, and an express grant of planning permission is therefore required.
5. For these reasons, the appeals on ground (c) must fail.

Appeals A and B – the appeals on ground (d)

6. The appellants accept that the timber building was not immune from enforcement action when the notice was issued. Their case on this ground is therefore also limited to the operational development involved in the raising of land levels.
7. Section 171B(1) of the Act and associated Regulations² provide that this operational development would be immune from enforcement action if it was substantially completed not less than 4 years before the date on which the notice was issued. The appellants therefore need to demonstrate, on the balance of probabilities, that this occurred on or before 15 August 2019 (“the Relevant Date”).
8. The appellants contend that substantial completion occurred in April 2018. Their principal evidence to that end is in 2 statutory declarations (SDs) made by people who attended a garden party at Fairview Cottage in May 2018. Both describe what they saw then as follows:

...the building of a retaining wall by the outbuilding at 90 degrees to Gulliver’s Cottage and installing gabions along the gully’s rear section parallel to Gulliver’s Cottage. The gabions had been covered with soil and were only visible from the sides. The land along the complete section from Fairview Cottage to the retaining wall by the outbuilding was completely level and had clearly been raised.

9. While the SDs cannot confirm that no further operational development took place, the description is consistent with what I saw beneath the timber building. The appellants also produce an invoice dated 26 March 2018 for goods including 4 gabions with Fairview Cottage given as the delivery address.
10. A different version of events is set out in evidence produced by the Council and the occupiers of Gulliver’s Cottage. This includes a letter from a building contractor who was granted access to the appellants’ garden in April 2019, some 4 months before the Relevant Date, to repair a gutter at Gulliver’s Cottage. He wrote that there were no gabions in place at that time.

² The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024.

11. The occupiers of Gulliver's Cottage provided a photograph they state was also taken in April 2019, showing a section of the gully and its retaining wall consistent with the contractor's description. No gabions can be seen, although the photograph only shows a small part of the land. They also provided photographs they state were taken in May 2021 that show gabions in place and filled and which, they consider, show work still in progress. However, it is not clear what work it is claimed was yet to be carried out and I note that the appellants concede that the timber building was not substantially complete at that time.
12. A letter from a friend of the family at Gulliver's Cottage has been produced. In the letter, the writer describes opening a window in May 2019, some 3 months before the relevant date, and not seeing any gabions or any garden structures behind the house.
13. The Council also refers to a March 2019 letter from one of the appellants to the neighbours at Gulliver's Cottage. While the letter identifies that action might be taken in future to prevent the neighbours' windows opening over the appellants' land, that is not part of the matters alleged in the notice.
14. The appellants' evidence is precise and unambiguous in stating that the gabions were in place, filled and covered with soil in May 2018. The building contractor's letter is equally precise and unambiguous in stating that the gabions were not in place in April 2019. However, the appellants' evidence also shows they were purchased in March 2018, and it seems unlikely - though not impossible - that over a year would pass before they were put to use.
15. When considering the weight to be afforded to the conflicting evidence before me, it is important to bear in mind that the SDs were made under the provisions of the Statutory Declarations Act 1835. As such they should be treated as sworn first-hand evidence. Consequently, I must afford them greater weight than the opposing evidence. Furthermore, even if the opposing evidence did show that work had not begun in April or May 2019, it cannot demonstrate that substantial completion was not achieved by the Relevant Date, some 3 to 4 months later.
16. Accordingly, and on the balance of probabilities, the appellants have demonstrated that the engineering operations, including the raising of land levels and the construction of a retaining wall, were substantially completed prior to 15 August 2019. The appeals on ground (d) should succeed in that respect only.

Appeal A – the appeal on ground (a)

17. Following my finding in the appeals on ground (d), the engineering operations, including the raising of land levels and the construction of a retaining wall are immune from enforcement action and do not require planning permission.
18. The occupiers of Gulliver's Cottage have taken private action in respect of their right to light. Planning policies do not duplicate the protection afforded by that course of action and my assessment is therefore concerned with outlook.
19. Outlook is not the same as a view. In many instances, windows are orientated or sited near other structures, such that they do not afford anything that would normally be described as a view. However, even in those circumstances windows serving a habitable room should afford the perception of a reasonable degree of openness and a feeling of not being unduly enclosed or overborne.

20. The main issue in this ground of appeal is therefore the effect of the construction of the timber outbuilding, which is not immune from enforcement action, on the living conditions of the occupiers of Gulliver's Cottage in terms of outlook.

Reasons

21. The timber building is erected close to the rear wall of Gulliver's Cottage, which contains 4 north-facing windows. The first of these, at ground floor level, is the smallest of 3 windows serving the living room. Its sill used to be roughly level with the ground in the adjacent part of Fairview Cottage's garden and photographs provided by the Council indicate that it now faces the gabions, with little or no light reaching it. Much of that is due to the raising of land levels, which I have found to be immune from enforcement action, but the erection of the timber building above will have had an additional adverse effect on outlook. The effect on outlook from the living room is, however, limited due to the larger windows in the opposite wall.
22. At first floor level, the timber building stands in front of 2 windows serving bedrooms and partly in front of a 3rd window serving a landing and hallway. The bedroom windows are obscured by internal panels, and roof lights have been installed above each. The internal panels were installed before the timber building was erected and why it was done is not material to this appeal. However, the panels could be removed at any point, making the full effect of the timber building apparent, and it is reasonable to take account of that in this assessment.
23. Even allowing for the removal of the panels, the effect on one of the bedrooms is reduced because it also has 2 windows in the opposite wall. However, the other bedroom has no other window, only the roof light above. Accordingly, the timber building, being in front of and close to that window (annotated GF-3 on a plan produced by the Council³) has a significant, dominant and adverse effect on the outlook that might otherwise be enjoyed. Its erection therefore fails to consider the amenity of both existing and future development, including matters of outlook, and does not achieve a high standard of amenity for existing and future users.

Other Matters

24. The appellants state that the timber building affords them privacy by obscuring views of their garden from the facing windows in Gulliver's Cottage. While I acknowledge that benefit, they identify 2 other ways in which they could have achieved a similar outcome without carrying out development requiring planning permission. These other approaches are presented as fallback positions.
25. The first fallback is the erection of a solid 2m fence which, following my finding in the appeals on ground (d), could be erected on the raised land. While this fallback would also impinge on the outlook from window GF-3, I do not consider it would be as harmful as the effect of the timber building. That is because the timber building exceeds 2m in height and projects closer to the window by reason of the overhang of its roof, thereby creating a greater sense of enclosure than a 2m fence would. The described fallback is therefore preferable in terms of its effect on outlook, which is sufficient for me to afford only limited weight to it.

³ Appendix 2 to the Council's statement of case on ground (a).

26. While the parties do not appear to have considered this, it may also be open to question whether the gully wall, the gabions, and a fence erected above the gabions would amount to a composite structure. If that were so, the erection of the fence would result in a means of enclosure exceeding 2m in height, a matter requiring planning permission and thus not a fallback.
27. The second fallback is to plant shrubs and trees where the timber building is now. Setting aside whether the gabions and other features of the raised land would allow sufficient root growth, the likely effect of this fallback has not been identified because a planting scheme does not exist. Consequently, it is hard to be certain of the effect of this fallback on window GF-3. However, it is to be expected that shrubs and trees would be more permeable than the solid form of the timber building, affording greater perception of openness and a lesser feeling of being enclosed or overborne. Accordingly, and despite the absence of a clear illustration, this fallback is also preferable in terms of outlook and should not be afforded significant weight.
28. Neither party has suggested any conditions that might mitigate the harm I have identified, such that planning permission could be granted, and I note the Council's view that mitigation could not be achieved to a meaningful extent. Given that the harm arises from the building's scale, form and siting in relation to the affected window I cannot imagine any way that the imposition of conditions could make it acceptable.

Conclusion on ground (a)

29. For these reasons, the erection of the timber building is unacceptable by reason of its effect on outlook from window GF-3, the only window of a habitable room, contrary to policy ESD 15 of the Cherwell Local Plan 2011 – 2031 Part 1 and Part 12 of the National Planning Policy Framework. No reason why the deemed planning application should be determined other than in accordance with the development plan has been identified, so the appeal on ground (a) must fail.

Appeals A and B – the appeals on ground (f)

30. It follows from my finding in the appeals on ground (d) that the removal of the engineering operations, including the raising of land levels and the construction of a retaining wall cannot be required. Consequently, there is success on ground (f) insofar as the requirements relating to those engineering works are concerned and the notice will be varied accordingly.
31. The notice requires all matters comprising the breach of planning control to be removed from the land, so its purpose is not limited to remedying any injury to amenity arising from the breach but to remedy the breach itself. However, the appellants' case that the requirements are excessive is phrased in terms of amenity, citing the fallback positions found preferable in the appeal on ground (a).
32. Lesser steps that would remedy the breach of planning control comprising the construction of a timber outbuilding have therefore not been identified.
33. It is also argued that removal of materials from the land is excessive because the Council had suggested that a better location for the construction of the timber building could have been found elsewhere within the curtilage. However, a precise location has not been identified, so it has not been demonstrated that this

would not require an express grant of planning permission. In view of that uncertainty, I shall not vary the notice in this respect.

34. The appeals on ground (f) should therefore succeed in part.

Appeals A and B – the appeals on ground (g)

35. The appellants seek an alternative period of 12 months, citing difficulty with access for machinery, the fact that any material would have to pass through the house, and the need to organise parking and any necessary licences.

36. The amount of work involved and the need for machinery are now diminished because the raised land will not need to be removed, and I see no reason why the timber building could not be dismantled using hand tools. An appropriate route for removal of the dismantled fabric exists through the garage. While that would entail use of a short flight of steps, it would afford an opportunity to gather materials and load them onto a vehicle on the driveway. Even if on-street parking were required and licences were needed, 6 months is not an unreasonable period to arrange them and to dismantle and remove the timber building.

37. The appeals on ground (g) must therefore fail.

Appeal A – Conclusion

38. For the reasons given above, there is success on ground (d) in respect of the engineering operations, including the raising of land levels and the construction of a retaining wall but not in respect of the construction of the timber outbuilding. There is corresponding success on ground (f) in respect of the requirements that relate to the engineering operations, including the raising of land levels and the construction of a retaining wall but in no other respect. For the reasons also given above, the appeals on grounds (a), (c) and (g) must fail. I shall uphold the notice with a correction and variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Appeal B – Conclusion

39. For the reasons given above, there is success on ground (d) in respect of the engineering operations, including the raising of land levels and the construction of a retaining wall but not in respect of the construction of the timber outbuilding. There is corresponding success on ground (f) in respect of the requirements that relate to the engineering operations, including the raising of land levels and the construction of a retaining wall but in no other respect. For the reasons also given above, the appeals on grounds (c) and (g) must fail. I shall uphold the notice with a correction and variation.

Appeal A – Formal Decision

40. It is directed that the notice is corrected in section 3 by the deletion of the words “and associated engineering operations, including the raising of land levels and the construction of a retaining wall.”

41. It is further directed that the notice is varied in section 5 by the deletion of the words “2. Remove the gabion baskets forming part of the retaining wall adjacent to Gulliver’s Cottage from the land. 3. Remove the additional brickwork constructed above the original retaining wall parallel to the gully adjacent to

Gulliver's Cottage, restoring the wall to its original height before the breach took place, as shown in the photograph in Annex 2, and remove all resultant waste from the land. 4. Lower ground levels adjacent to Gulliver's Cottage to match the height of the original retaining wall, as shown in the photograph in Annex 2."

42. Subject to the correction and variation, the appeal is dismissed, the notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B – Formal Decision

43. It is directed that the notice is corrected in section 3 by the deletion of the words "and associated engineering operations, including the raising of land levels and the construction of a retaining wall."
44. It is further directed that the notice is varied in section 5 by the deletion of the words "2. Remove the gabion baskets forming part of the retaining wall adjacent to Gulliver's Cottage from the land. 3. Remove the additional brickwork constructed above the original retaining wall parallel to the gully adjacent to Gulliver's Cottage, restoring the wall to its original height before the breach took place, as shown in the photograph in Annex 2, and remove all resultant waste from the land. 4. Lower ground levels adjacent to Gulliver's Cottage to match the height of the original retaining wall, as shown in the photograph in Annex 2."
45. Subject to the correction and variation, the appeal is dismissed, and the notice is upheld.

Mark Harbottle

INSPECTOR