

Appeal Decision

No site visit made

by Paul Freer BA (Hons) LLM PhD MRTPI

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

Decision date: 6 March 2026

Appeal Ref: APP/J9497/C/24/3350729

Land known as Waycotts Orchard, Merrifield Road, Buckfastleigh, in the county of Devon

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Tobias Goulden against an enforcement notice issued by the Dartmoor National Park Authority.
 - The enforcement notice was issued on 23 July 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the change of use of a building to a single dwellinghouse.
 - The requirements of the notice are to permanently cease the residential use of the Land.
 - The period for compliance with the requirements is 12 (twelve) months:
 - The appeal is proceeding on the grounds set out in section 174(2) (d) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: the appeal is dismissed and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision

Procedural Matters

1. I have taken the address of the appeal site in the header above from the Enforcement Notice (the notice). The plan attached to the notice shows the wider site to which the appeal relates edged in red but also identifies the building to which the alleged change of use has occurred with blue hatching. On the Appeal Form, the appellant describes the address of the site as 'The cabin'. There is no dispute that the building shown with blue hatching on the plan attached to the notice is 'The cabin' referred to on the Appeal Form. For convenience, I shall hereafter refer to this building as 'The cabin'.
2. The appeal is proceeding only on ground (d) as set out in section 174(2) of the Town and Country Planning Act 1990 (the 1990 Act) namely that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. The matters of fact in this case are mostly not in dispute: the main issues are whether the building known as 'The cabin' constitutes a single dwelling house and, if so, when the change of use occurred. Those are questions that turn on the facts of the case together with my interpretation of the evidence and relevant case law. For that reason, there is no benefit to be gained from undertaking a site visit in this case and I have not done so.

The Enforcement Notice

3. The breach of planning control as alleged in paragraph 3 of the notice is, without planning permission, the change of use of a building to a single dwellinghouse.
4. The meaning of development for the purposes of the 1990 Act is defined at Section 55(1) of that Act as meaning:

...the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any building or other land (emphasis added).
5. It follows that a 'change of use' of the land is not, in itself, development requiring planning permission for the purposes of section 55(1) of the 1990 Act. It is apparent that the appellant has nonetheless understood the breach of planning control that is purportedly alleged in the notice. I shall therefore correct the notice to refer to a material change of use as defined in section 55(1) of that Act.
6. The requirement at paragraph 5 of the notice is to permanently cease the residential use of the Land. Two points arise.
7. Firstly, having regard to the provisions of Section 181(1) of the 1990 Act, which states that compliance with an enforcement notice shall not discharge that notice, the word 'permanently' is unnecessary. I shall therefore delete it.
8. Secondly, the requirement at paragraph 5 of the notice is to cease the residential use of the Land. The breach of planning control as alleged in paragraph 3 of the notice is, without planning permission, the change of use of a building to a single dwellinghouse. Furthermore, the notice is clear insofar as the alleged breach of planning control only relates to the building shown with blue hatching on the plan attached to the notice and not the remainder of the site edged in red on that plan. It follows that the requirement at paragraph 5 of the notice goes further than is necessary to achieve the purpose of the notice.
9. Consequently, there is a slight mismatch between the breach of planning control that is alleged in the notice and the requirement to comply with the notice. It is essential that the breach of planning control that is alleged in a notice and the requirement(s) to comply with the notice match as closely as possible. I shall therefore vary the notice to achieve that.
10. Section 176(1) of the 1990 Act provides that an Inspector may correct and/or vary the terms of the enforcement notice under s176(1)(b), where the Inspector is satisfied that doing so will cause no injustice to the appellant or the local planning authority. I am satisfied that correcting and varying the notice as set out above will not cause any injustice.

The appeal on ground (d)

11. The time limits for taking enforcement action are set out in section 171B of the 1990 Act, as amended by The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). In respect of the change of use of any building to use as a single dwelling house that commenced before 25 April

2024, section 171B (2) of the 1990 Act provides that no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.

12. There is no dispute in this case that the building operations to form a single dwellinghouse were substantially complete/the use as a dwelling house commenced before 25 April 2024. However, in order to succeed on this ground, the appellant must show that the development was substantially complete on the date four years before the notice was issued and that the building has been continuously occupied as a single dwelling house for a period of four years beginning with the date of the breach. The test in this regard is the balance of probability, and the burden of proof is on the appellant.
13. It is convenient to start by looking at when the single dwellinghouse was substantially completed. It is settled case law that the phrase 'substantially completed' must be taken to mean 'a fully detailed building of a certain character'. In this case, that can only mean the character of a single dwelling house.
14. There is no definition of a 'dwellinghouse' in statute, but it was held in *Gravesham BC v SSE & O'Brien* [1983] JPL that a dwelling could be defined as affording to those who use it the facilities required for day-to-day private domestic existence. In that context, Dartmoor National Park Authority (the Authority) maintain that the building known as 'The cabin' has existed in two forms over the four years preceding the issuing of the notice.
15. According to the Authority, between February 2018 and August 2020 it consisted of a one room timber building that included the provision of a chemical toilet. At that time, there was a basic kitchen in an open veranda.
16. In or around August 2020 (a point to which I return below), it is the evidence of the Authority that the veranda was taken down and replaced within a further timber structure to create an additional space/room. This effectively enclosed the previous basic kitchen with a new building. There was no drainage or sewerage, albeit a sink was added at some point after November 2021.
17. The situation appears to have moved on by the time of the appeal against the refusal of a certificate of lawful use or development for the "creation of residential dwelling known as the Cabin" (APP/J9497/X/23/3320068). The appeal was submitted by the same appellant as for this appeal. The Inspector visited the site on 27 February 2024. The Inspector recorded that the building consisted of three parts on that date.
18. The first part, which the Inspector referred to as 'the store', included a bed-sitting area with 2 bunkbeds, a single bed, a sofa, a solid fuel-burning stove and a cubicle containing a porta-loo. The middle section, linked internally by a doorway, accommodated a kitchenette with a cooking hob and a sink. The northern part of the building featured a covered veranda with a shower area.
19. In paragraph 8 of his Decision, the Inspector records that in August 2020 the appellant, in his own words, "upgraded" the building further with the addition of the middle section, replacing the previous open-fronted veranda with the new veranda. The Inspector went on to conclude that prior to the changes made in August 2020 the facilities were lacking from what might expected within a building used as a dwelling. The corollary is that, on the evidence

before the Inspector in that case, the 'dwelling' was not substantially complete until August 2020 insofar as, as a matter of fact and degree, it was not a fully detailed building having the character of a dwelling prior to that date.

20. The appellant strongly disagrees with the view expressed by the Inspector, citing in support the views of numerous local people stating (as reasonable people) that the facilities provided by the cabin, whilst basic, constituted a dwelling house. However, the Inspector relied on settled case law when arriving at his conclusions¹. Those conclusions were not challenged in the High Court as being irrational or unreasonable, and/or as being based on an error in law. Consequently, I must afford his conclusions substantial weight.
21. This brings me neatly to the question as to the precise date when the 'upgrades' undertaken in 2020 were actually carried out. The previous Inspector took the date of August 2020 from the appellant's own evidence then before him. That date is confirmed in the Statutory Declaration made by the appellant in August 2022 in relation to the application for certificate of lawful use or development, of which a copy was provided to me as part the evidence submitted by the Authority. In that Statutory Declaration, the date of the 'upgrades' of August 2020 is clear and unambiguous, as is the description of the works to which that date relates. The Statutory Declaration is properly formatted, signed, dated and witnessed, and includes the wording set out in the Statutory Declarations Act 1835 to the effect that the signatory believes and solemnly declares the contents to be true. I must therefore afford it due weight.
22. On the Appeal Form, the appellant seeks to provide clarification around that date, explaining that he put the completion date of the upgrade as August 2020 but that the building was to all intents and purposes substantially complete by 23 July 2020. The appellant provides further detail in his Final Comments, explaining that he started the upgrade in June 2020 and by 23 July 2020 the space was in use in its current state. The appellant goes on to explain that he simply put August as that date when the finishing touches were done.
23. That last sentence begs the obvious question as to what the appellant means by "finishing touches". The courts have adopted a holistic approach to the question as to when a building is substantially complete, holding that a building could not be regarded as being substantially complete even if the outstanding works affected only the interior. The appellant has provided no details as to what those "finishing touches" comprised but, even if they affected only the interior of the building, it could well be that as matter of fact and degree the building was not substantially complete until August 2020. The appellant's evidence is not sufficiently precise and unambiguous in that respect to enable me to reach an informed conclusion.
24. Looking at the evidence in the round, on the one hand there is a properly made Statutory Declaration in which the date for substantial completion of August 2020 is clearly and unambiguously stated. The previous Inspector relied on that on that date on the basis of evidence provided to him by the appellant. The salient point, to my mind, is that the date of 23 July 2024 (i.e the date on which the notice was subsequently issued) cannot possibly have had any

¹ Not only the well-known *Gravesham* case, but also the later judgment of the High Court in *Grendon v FSS & Cotswold DC* [2016] EWHC 1711 (Admin)

meaning or relevance to the appellant at that time. The date of August 2020 is therefore more likely than not to have been the date on which the appellant genuinely believed the works to be substantially complete.

25. On the other hand, the date for substantial completion on the Appeal Form and the Final comments submitted in relation to this appeal is now given as July 2020. The appellant has provided no evidence to corroborate that assertion. It is difficult to escape the conclusion that the appellant has only now alighted on the date of July 2020 in an attempt to retrofit the date of substantial completion to a date four years prior to the date on which the notice was issued, and by a date which was previously of no relevance to him.
26. The test in relation to section 171B (2) of the 1990 Act is that, where there has been a breach of planning control consisting in the change of use of any building to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach². The previous Inspector found that The cabin was not a fully detailed building having the character of a dwelling until August 2020. There is no meaningful evidence now before me to show otherwise.
27. I fully recognise that the appellant has lived permanently at the property since February 2018. Nonetheless, for the purposes of section 171B (2) of the 1990 Act, as a matter of fact and degree the building known as The cabin only became a single dwelling house once the 'upgrades' had been made in August 2020. The breach of planning control alleged in the notice is the (material) change of use of a building to a single dwelling house. That material change of use only took place when the building known as The cabin became a dwelling house less than four years prior to the enforcement notice being issued. Consequently, on the balance of probability, the use of The cabin as a single dwelling was not immune from enforcement action on the date on which the notice was issued.
28. I conclude on the balance of probability that, at the date on which the notice was issued, the Authority was in a position to take enforcement action in respect of the breach of planning control constituted by the matters stated in the notice. Accordingly, the appeal on ground (d) fails.

Conclusion

29. For the reasons given above I conclude that the appeal should not succeed. I will uphold the notice with corrections and variations.

Formal Decision

30. It is directed that the enforcement notice is corrected by:
- in paragraph 3 of the notice, inserting the word 'material' before the words 'change of use'
31. It is directed that the enforcement notice is varied by:
- deleting paragraph 5 of the notice in its entirety and substituting there the words 'Cease the use of the building as a single dwelling house'

² In this case, as at the date on which the enforcement notice issued.

32. Subject to the corrections and variations, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer
INSPECTOR