

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: 9 March 2026

Appeal Ref: APP/B9506/C/25/3358413

Land at Dale Farm, Manor Road, Dibden, Southampton SO45 5TJ

- 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 Jeffrey Townsend-Berridge against an enforcement notice issued by the New Forest National Park Authority.
 - The enforcement notice, numbered QU/21/0053, was issued on 26 November 2024.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of an incomplete building.
 - The requirements of the notice are:
 - i. Demolish and remove from the Land the building.
 - ii. Remove all material and debris resulting from compliance with step (i) above from the Land.
 - iii. Restore the land to the level of the immediately adjacent ground levels and finish with topsoil.
 - The period for compliance with the requirements is four 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 with a correction in the terms set out below in the Formal Decision

Procedural Matters

1. 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. In addition, the appellant considers that the notice is a nullity. These are both matters 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

2. The appellant maintains that the notice is a nullity on the grounds that the 'incomplete' building alleged in paragraph 3 of the notice does not appear to be identified on the plan attached to the notice. The appellant explains that the plan attached to the notice shows a building, outlined in red, that has been erected ancillary to the lawful equestrian use of the appeal site. The appellant goes on to explain that the footprint of the building shown on the plan attached to the notice is different to the 'L' shape that exists on the ground.

3. The plan attached to the notice is referred to in paragraph 2 of the notice as identifying “the Land” to which the notice relates, which is identified there as being edged in red. It is specifically “the Land” to which the notice relates that is shown in the plan attached to notice and not the ‘incomplete’ building that constitutes the breach of planning control alleged in paragraph 3 of the notice. It therefore matters not that the plan attached to the notice does not show the ‘L’ shaped footprint of the ‘incomplete’ building alleged in paragraph 3 of the notice: the purpose of the plan attached to the notice is purely to identify “the land” to which the notice relates.
4. The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 (the 2002 Regulations) state that an enforcement notice must specify the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise. I am satisfied that the plan attached to the notice in this case fulfils that purpose. I therefore consider that the notice is not a nullity.
5. The breach of planning control alleged in paragraph 3 of the notice is, without planning permission, the erection of an incomplete building. The definition of development at section 55(1) of the 1990 Act makes no distinction between ‘complete’ and ‘incomplete’ building operations albeit that does, of course, become highly relevant in relation to when development becomes immune from enforcement action. The description of ‘incomplete’ in paragraph 3 of the notice is therefore superfluous and I shall delete it.
6. Section 176 of the 1990 Act provides that an enforcement notice may be corrected and/or varied if there is no injustice to the appellant or Local Planning Authority. I am satisfied that no injustice would be caused by varying the notice as described above.

The appeal on ground (d)

7. In order to succeed on this ground, the appellants must show that the development was substantially complete on the relevant date before the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellant.
8. 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). These provide that no enforcement action may be taken under s171B(1)(a) of the 1990 Act where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land, no enforcement action may be taken after the end of the period of ten years beginning on the date on which the operations were substantially completed, where that took place on or after 25 April 2024. Where the operations were substantially completed before 25 April 2024, the relevant period is four years.
9. The first step is therefore to determine, as a matter of fact and degree, whether the building alleged in paragraph 3 of the notice has been substantially completed and, if so, when that was.

10. The phrase 'substantially completed' must be taken as having the meaning established by Lord Hobhouse in *Sage v SSETR & Maidstone BC* [2003] UKHL 22: in the case of building operations, what is required is 'a fully detailed building of a certain character'. The House of Lords held in *Sage* that the exception to development at Section 55(2)(a) of the 1990 Act applied only to a completed building. In so doing, the House of Lords rejected the findings of the lower courts that operations and other works which do not amount to development are not to be taken into account in deciding whether there has been a substantial completion for the purposes of Section 171B (1) of the 1990 Act. Instead, the House of Lords preferred a holistic approach in which, where planning consent is made for permission (deemed or otherwise) for a single operation, it is made in respect of the whole of the building operation.
11. An aerial photograph taken in April 2020 attached as an Appendix to the Appeal Statement produced by New Forest National Park Authority (the Authority) shows that the building subject to the notice did not exist at that time. The building does, however, appear in an aerial photograph taken just over a year later in July 2021.
12. Officers from the Authority first inspected the building in November 2021. Photographs taken during that site visit show that the building was little more than a shell at that time. The external walls for the main part of the building were in situ but not skinned internally, with the framework still clearly visible. Internal partitioning walls were in place but in skeletal form. The roof was fitted but the internal ceiling not finished, with the structure and insulating material clearly visible. A floor was laid but appears to be unfinished, being made of exposed chipboard or similar material: no carpet, tiles or laminate flooring is evident. The windows were fitted with glazing. There was some furniture present (a sofa and some 'office' chairs) but these appear to be merely stored there with no functional use of the building being evident in that photograph.
13. A projecting annexe to the main building was at an even less advanced stage of construction. This part of the building had no doors or windows, no roof or ceiling, and the internal partitions were merely skeletal at that time.
14. As a matter of fact and degree, having regard to the principles set out in *Sage*, I find that the building was not substantially complete on that date (November 2021).
15. Little had changed by the time Officers from the Authority visited the site again in November 2024. Photographs taken during that site visit show the inside of the main part of the building still as a shell with little or no progress made during the preceding three years. This includes the projecting annex which still had no doors or windows, no roof or ceiling, and with the internal partitions still merely skeletal at that time. The building appears to being used for storage at that time, albeit only to a limited extent.
16. Again, as a matter of fact and degree, I find that the building was not substantially complete on that date (November 2024). The enforcement notice was issued some three weeks after that site visit was undertaken.
17. The appellant maintains that the building was substantially complete in August 2019. In support of that, the appellant provides a photograph of the interior of the building. The photograph is not dated but depicts the condition of the

building as being essentially identical to that shown in the photograph taken by officers of the Authority during their site visits in November 2021 and November 2024. In that photograph, the internal layout appears to be more organized than is apparent in the photograph provided by the Authority and includes a sofa and some filing cabinets, with what appears to be a pot plant on top of one of them. It is therefore entirely possible that the building was being used for some purpose at the time that photograph was taken.

18. The salient point, however, is that the Authority provides an aerial photograph showing that the building did not exist in any form in April 2020. The appellant questions the accuracy of that date, pointing out that the aerial photograph does not have the original date embedded within it. That is true, but neither does the appellant provide any supporting documentary evidence to show that his photograph showing the interior of the building was taken in August 2019 (the photograph itself similarly not having the date on which was taken embedded with it).
19. Moreover, the Authority explains that the building was first inspected by enforcement officers in November 2021. That is entirely consistent with the building first appearing on aerial images in July of that year. It is unlikely, in my extensive experience of enforcement investigations generally, that the Authority would only have first inspected the building in November 2021 if it had existed in August 2019 in the condition shown in the photograph provided by the appellant. Looking at the evidence in the round, on the balance of probability the evidence provided by the Authority is to be preferred.
20. In that case, it is therefore not possible for the building to have been substantially complete in August 2019 as the appellant contends: on the balance of probability, it simply did not exist on that date. In any event, that is of no consequence. The building as shown in the photograph submitted by the appellant was not, as a matter of fact and degree, substantially complete. It therefore matters not when that photograph was taken. The key point is that the building was still not substantially complete by November 2024.
21. Having regard to my findings above, it is entirely academic whether the 'four-year' or the 'ten-year' rules apply in this case: the building was not substantially complete only a matter of a three weeks before enforcement notice was issued and therefore could not have gained immunity from enforcement action, irrespective of whether the relevant immunity period is four years or ten years. Nonetheless, for the record, the building was not substantially complete before 25 April 2024. Consequently, the ten-year rule applies in this case. It follows that I do not need to correct the notice in that respect.
22. 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

23. For the reasons given above I conclude that the appeal should not succeed. I will uphold the notice with a correction.

Formal Decision

24. It is directed that the enforcement notice is corrected by:

- in paragraph 3 of the notice, deleting the words 'an incomplete building' and substituting there the words 'a building'

25. Subject to the correction, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR