



Appeal Decision

Site visit made on 5 February 2026

by Paul Dignan MSc PhD

an Inspector appointed by the Secretary of State

Decision date: 30 March 2026

Appeal Ref: APP/T3725/C/18/3212295

Land at Meadow Cottage, Hill Wootton Road, Hill Wootton, Warwick CV32 6QN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) by Dr Martin Rooke against an enforcement notice issued by Warwick District Council.
 - The notice was issued on 14 August 2018.
 - The breach of planning control as alleged in the notice is Without planning permission, the erection of a two storey building on the Land as identified on Plan B annexed to this Notice.
 - The requirements of the notice are: [i] Demolish the building; and [ii] Permanently remove all resulting waste and materials from the Land.
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 (as amended).
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Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Costs application

2. The Council made an application for partial costs against the appellant. This application is the subject of a separate decision.

Preliminary matters

Expediency

3. The appeal concerns a building which the appellant maintains benefits from planning permission granted by The Town and Country Planning (General Permitted Development) Order 1995 (GDPO). He claims that it meets the requirements of Part 1 Class E of Schedule 2 to the GDPO and accordingly is permitted development. Subject to certain limitations, Class E permits the erection of a building within the curtilage of a dwellinghouse if it is required for purposes incidental to the enjoyment of the dwellinghouse as such.
4. Section 172(1) of the 1990 Act provides that a local planning authority may issue an enforcement notice where it appears to them: (a) that there has been a breach of planning control; and (b) that it is expedient to issue the notice, having regard to the provisions of the development plan and to any other material considerations. The Council in this case considered that the building did not in fact meet the requirements of Class E because it was not within the curtilage of Meadow Cottage, the host dwellinghouse, and because it considered that it was not required for purposes incidental to the enjoyment of the dwellinghouse as such. Having come to the view that the erection of the building was a breach of planning control, it evidently concluded that it was expedient to issue the enforcement notice.

5. The Appellant argues that the Council is either estopped by convention or precluded by the doctrine of legitimate expectation from issuing the enforcement notice and from arguing that the appeal building is not within the curtilage of Meadow Cottage. On the latter point, the Council now consider that the building is in fact within the Meadow Cottage curtilage, so it is not a matter that I need to address specifically, albeit it would have contributed to the expediency considerations. The contention that the Council is precluded from taking enforcement action, either by estoppel or legitimate expectation, arises from emails to the Parish Council¹ (PC) and to the appellant's then agent. The first was from the Council's Enforcement Manager, dated 8 October 2013, updating the PC on longstanding enforcement investigations at Meadow Cottage. It stated that "...we have also sought legal advice with regard to the domestic residential outbuildings which have been constructed close to the existing dwelling at the site. The advice that we have received is that it would not be expedient to take any further action in respect of those buildings because they are very close to comprising permitted development in respect of which planning permission would not be required. Whilst we have considered this aspect very carefully, it is our intention to follow that advice."
6. On the same day the Enforcement Manager replied to an enquiry from the appellant's then agent stating that: "3. The Council is not intending to pursue action in respect of the demolition in their entirety of the unauthorised structures/buildings; the removal of foundations and materials from the site and the reinstatement of the former ground level." The appellant's agent then sought clarification, asking whether the Council agreed that the works were permitted development, noting that the Enforcement Manager had verbally assured him that it was not expedient to take enforcement action. The Enforcement Manager responded, on 12 November 2013, that: "Our current position in respect of the main buildings is that it is not expedient to pursue enforcement proceedings in relation to them. However, on the information available to us, we have been unable to conclude that they constitute permitted development i.e. by virtue of being situated within the curtilage of the dwelling house. Again, a site visit would help to clarify matters in this respect."
7. The legal advice referred to has not been provided, but for context, I consider it relevant that an email from the Consultant Planning Enforcement Officer to the appellant's then agent dated 4 May 2012 concerning enforcement investigations at the property referred to discussions with legal officers regarding the "Proposed Swimming Pool, Changing Room, Boat Store, Garaging, Workshop And Car Port – Submitted as PD application under the Provisions of Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 1995 (MDG letter dated 26/09/08)". It is clear also from the Council's site visit notes of November 2008 that it understood that the pre-October 2008 works of commencement were for the proposed pool etc building, and even as late as 18 December 2012 the Council Planning Committee understood that they were dealing with the building the subject of the 2008 permitted development enquiry rather than what was actually built.
8. Case law has established that it is rarely if ever appropriate to introduce private law concepts such as estoppel into planning law where public authorities are fulfilling statutory duties or exercising statutory discretions. But in any case I do not accept the appellant's submissions that the Council communicated its clear position to him

¹ Leek Wootton & Guys Cliffe Parish Council

on the expediency of enforcing against the appeal building. The reference to the proposed pool etc. building in May 2012 suggests that the Council thought that what was being built at that time was the building the subject of the permitted development enquiry, which turned out not to be the case, while the email of 12 November 2013 also indicates that the Council at that point was not entirely sure what had been erected. That the appellant's agent in November 2013 was still seeking reassurance that the Council would not be taking enforcement action against the erection of the building indicates that no unequivocal undertaking had been understood to have been given.

9. For legitimate expectation to arise in a planning context a clear and unambiguous promise must have been made, it must have been made to the particular individual who relied on it, there should be no overriding public interest to justify any change to the promise, and that to depart from the promise would be so unfair as to prevent the Council from issuing the notice. None of these requirements are met in this case. I do not understand any of the Council's communications directly to the appellant to amount to an unambiguous undertaking that it would not take enforcement action against the finished building, and the building had already been substantially completed by the appellant's account when the agent was seeking reassurance, so it could not be said that the appellant had relied upon the Council's statements before he erected the building. Indeed he was advised in May 2011 that continuing any work at the site without the required planning permission would be at risk of enforcement action. The site is in the Green Belt and the development has been the subject of complaints, so there are clearly public interest considerations, and of course that the building that was erected was not that which had been the subject of the permitted development enquiry is a significant change in circumstances.
10. In short, circumstances which might lead to a conclusion that the Council is precluded from taking enforcement action by its past actions do not exist.

Ground d

11. An appeal was originally made on ground (d), that it was too late to take enforcement action.
12. The Council issued an enforcement notice on 31 October 2016 alleging a breach of planning control described as "Without planning permission, the erection of a two storey building...". That notice was withdrawn owing to an administrative error concerning the attachment of the plans, and another notice, in the same terms, was issued on 4 November 2016. That notice was also withdrawn on 6 December 2016 owing to an issue with service of the notice. The notice the subject of this appeal was issued on 14 August 2018.
13. Section 171B sets out the time limits for taking enforcement action where there has been a breach of planning control. The relevant period in this case is 4 years. However, section 171B(4)(b) of the 1990 Act provides that further enforcement action in respect of any breach of planning control may be taken if, during the period of four years ending with that action being taken, the local planning authority have taken or purported to take enforcement action in respect of that breach. This means that if enforcement action is taken against a breach of planning control but that action is subsequently discontinued, typically in the case of a technical fault with the notice or service, the time limit is taken from the date of the first notice if a

subsequent notice in the same terms is issued within 4 years. The subsequent notice is commonly referred to as a '2nd bite notice'.

14. The appellant maintains that the building was completed in January 2013. If the notice the subject of this appeal is a 2nd bite notice the effective date for the application of the 4-year time limit development would be 31 October 2016, less than four years after the claimed substantial completion, and immunity from enforcement could not be claimed under ground (d). The appellant claimed however that the notice was not a 2nd bite notice, essentially on the basis that section 171B(4)(b) only allows a single 'bite', which would have been exhausted by the November 2016 notice. However, the term '2nd bite' is no more than an idiomatic expression. Section 171B(4)(b) enables the taking of **further** enforcement action, which suggests to me that there is no statutory limit on the number of times enforcement action can be taken, the only limitation being that that it must be taken within 4 years of taking or purporting to take prior enforcement action.
15. Although not at issue here, the 4-year period does not appear to be confined to the period following the initial enforcement action. In the case of *Lambrou*² the Judge endorsed an Inspector's conclusion that an enforcement notice concerned with the conversion of a dwelling into self-contained flats issued in 2011 had the benefit of section 171B(4)(b) from a series of enforcement notices, the first issued in 2006 and 3 further notices issued in 2008. Clearly both the Judge and the Inspector in that case viewed the provision as robust. I am aware also of an appeal decision³ which dealt specifically with a 'third bite' issue and found that it was permissible. That appeal, which was not challenged, was dealt with at a public Inquiry and had the benefit of submissions by Counsel.
16. The origin of the section 171B(4)(b) provision was to ensure that enforcement action against unauthorised development was not frustrated by technical deficiencies. Given the scope and frequency of challenges to notices, confining the s171B(4)(b) provision to a single opportunity to take 'further' enforcement action would not, in my view, be consistent with its purpose. So far as the suggestion that there should be such a limit read into section 171B(4)(b) because of the overall purpose of section 171B, it seems to me that the specific provision exists to assist enforcement action in the public interest, not to protect the accruing of private rights by the effluxion of time. In this case the notice deficiencies appear clearly to have been more technical than substantive, the breach enforced against and the purpose of the notices having been consistent throughout.
17. The initial enforcement action was taken on 31 October 2016. Although *Lambrou* suggests that it is not necessary to specify which particular enforcement action or purported action is relied upon, I consider it appropriate to use that as the point where the clock stopped for the purposes of section 171B(1), hence the building would have had to have been substantially completed by 31 October 2012. The appellant's own evidence is that it was not.
18. The appeal was originally to follow the Public Inquiry procedure because it was considered that the appeal on ground (d) would necessitate hearing evidence on oath. However, that would only have been necessary if the notice could not rely on section 171B(4)(b). Following submissions from the parties on that issue I found that it did, for the reasons above, and I formally advised the parties that the appeal

² R. (on the application of *Lambrou*) v Secretary of State for Communities and Local Government [2013] EWHC 325 (Admin)

³ Appeal Ref. APP/C/96/F5540/644440

would follow the written representations procedure, which I considered to be appropriate in the circumstances. The appellant subsequently formally confirmed that he would not be proceeding with the appeal on ground (d).

Ground (c)

19. An appeal on ground (c) is that the matters stated do not constitute a breach of planning control.
20. Meadow Cottage is a small 2-bedroom cottage with accommodation on the ground floor and within the roof space. Set within a large block of land to the west of the River Avon, it is relatively isolated. There is an extant planning permission⁴, granted in 2004, for a significant enlargement of the cottage, but beyond commencement works this has not been implemented. As it stands, the footprint of Meadow Cottage is estimated by the Council to be about 70m².
21. The appeal concerns an L-shaped building erected close to Meadow Cottage. It is described as 2-storey, though the upper floor is contained within the roof-space. The appellant considers it to be within its curtilage and to be incidental to the enjoyment of Meadow Cottage as a dwellinghouse. As noted above, he considers that it benefits from the provisions of Part 1 Class E of Schedule 2 to the GDPO, and accordingly is permitted development. It is not disputed that the erection of the outbuilding commenced before 1 October 2008, so that it is not subject to the limitation introduced on that date which limits Class E buildings to a single storey. It appears to satisfy the relevant Class E limitations. In terms of overall size, no plans or dimensions have been provided in evidence, but the Council have estimated its footprint at about 367m².
22. To benefit from Class E the building must be within the curtilage of the dwellinghouse. When the notice was issued the Council argued that the building was not wholly within the curtilage of Meadow Cottage, but upon review of its case the Council now accepts that the building in question has been erected within the curtilage of Meadow Cottage. It remains of the view, however, that the building does not satisfy the primary purpose of Class E in that it was not required for purposes incidental to the enjoyment of the dwellinghouse as such, having regard to the intended uses, their extent and the size of the building.
23. When it was begun the appellant has indicated that it was to be used for a gym, garaging and workshop on the ground floor and storage on the upper floor. Although much of the ground floor is currently used for storage, there are 10 large garage door sized openings suggesting an intention to accommodate up to 10 cars. Dormer windows and roof lights have subsequently been added to the roof and the longer wing of the upper floor is currently laid out as offices.
24. There is no dispute that the indicated purposes for which the building was erected are all purposes which are capable of being considered as incidental to the enjoyment of a dwellinghouse as such. While it has been adapted for other uses since its erection, including considerable office space, it is the building as substantially completed and its purpose at that time that stands to be assessed for Class E purposes.

⁴ Council ref. W20040211

25. The building in this case is many times larger than the dwellinghouse, and in fact is by far the dominant building on the land, although case law⁵ has established that, for the purposes of GDPO Class E, the size of the building, including in comparison to the host dwelling, is an important consideration, but building size alone is not conclusive. It is also well established that for Class E purposes the term 'required' is to be interpreted as meaning 'reasonably required', and that whether such a building is reasonably required for a purpose associated with the enjoyment of the dwellinghouse could not rest solely on the 'unrestrained whim' of the owners or occupiers. While incidental in this context connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. That is a matter of fact and degree based on the particular circumstances, applying an element of objective reasonableness.
26. At substantial completion the extent of storage space provided by the building's upper floor was far in excess of what might reasonably be expected to be required for domestic storage for the host dwelling, even if it had been extended in accordance with the extant planning permission. The building footprint however is likely to have been mainly dictated by the extent of garaging provided. The appellant claims that the garaging is for his collection of classic cars, though only one car is currently garaged in the building and no evidence whatsoever of a classic car collection has been provided.
27. I am aware of the appellant's personal circumstances which may have disrupted car collecting activities or aspirations, but in an appeal on this ground the burden of proof is firmly on the appellant. Very substantial buildings have been found to fall within Class E on the basis of a need for garaging for car collections, but in the example brought to my attention it is clear that the Inspector was satisfied that a relevant 18-car collection existed, and it was also the case that the building, which was smaller than the appeal building, was subordinate to the host dwellinghouse. In the complete absence of evidence of an actual need of that kind, despite the burden of proof, and the apparent lack of any such use in all the time the building, or at least a substantial part of it, has been available for that use, I cannot be satisfied that the erection of a building of this very considerable scale can be justified on the basis that it was reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.
28. Even if I was to focus on the use of the building since it was substantially completed, I consider that the current use of the building does not support the assertion that it was or is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. Potential garage/workshop space aside, the extent of storage and offices goes well beyond what might be considered reasonable and proportional, even having regard to the appellant's specific requirement for separate office spaces for his and his partner's employment related needs.
29. I note also that prior to the commencement of the appeal development separate Class E permitted development enquiries were made to the Council regarding the erection of a double garage, the erection of a swimming pool, changing room, boat store, garaging, workshop and car port, and the erection of a grounds maintenance

⁵ Emin v SSE & Mid Sussex DC [1989] JPL 909

store. The latter 2 enquiries were made on 26 September 2008, about the time that the works of commencement relied upon in order to benefit from the pre-October 2008 GDPO took place, and in fact it is clear that the Council was under the impression that it was these buildings that were being erected. These enquiries also cast considerable doubt on whether such a large garage dominated building with extensive storage could be said to have been genuinely required for purposes incidental to Meadow Cottage at the point at which the GDPO planning permission crystallised.

30. I find accordingly, as a matter of fact and degree, that it has not been demonstrated that the building the subject of the appeal was required for purposes incidental to the enjoyment of Meadow Cottage as a dwellinghouse. As such it does not satisfy the requirements of Class E and is not therefore development granted planning permission by the GDPO. In the absence therefore of express planning permission the appeal on this ground cannot succeed.

Paul Dignan

INSPECTOR