Planning Inspectorate

Appeal Decision

Site visit made on 2 June 2026

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 November 2026

Appeal Ref: APP/Q3115/C/24/3344614
Chiselhampton Hill Cottage, Chiselhampton Hill, Chiselhampton OX44 7XQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Miss Katharine Surman against an enforcement notice issued by South Oxfordshire District Council.
- The notice was issued on 25 April 2024.
- The breach of planning control as alleged in the notice is on the Land, without planning permission, the construction of a new dwelling (shown for indicative purposes only, in the area coloured green on the attached plan).
- The requirements of the notice are to:
  - (i) Permanently remove from the Land the building, that is sited within that part of the Land shown coloured green on the attached plan, used as a self-contained dwelling.
  - (ii) Dig up and remove from the Land all hardstanding and hardcore or other materials that have been laid to enable the erection of the unauthorised building used as a self-contained dwelling within that part of the Land shown coloured green on the attached plan.
  - (iii) Remove from the Lan all of the resultant debris and materials associated with undertaking steps (ii) and (ii) above and;
  - (iv) Return the Land affected to grass by laying topsoil commensurate with surrounding land levels and seed with grass.
- The period for compliance with the requirements is:
  6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c) and, (f) of the Town and Country Planning Act 1990 (as amended). 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.

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.

Formal Decision

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

   i) At section **5. What You Are Required To Do:-**

   the deletion of the words:

   (iii) Remove from the Land all of the resultant debris and materials associated with undertaking steps (ii) and (ii) above and;'

   and their substitution with the words:

   (iii) Remove from the Land all of the resultant debris and materials associated with undertaking steps (i) and (ii) above and;'

2. Subject to the correction, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Notice

3. At Section 5(iii) of the notice the requirement is to '*remove from the land all resultant debris and materials from the land associated with undertaking steps (ii) and (ii) above*'. It seems to me that this should instead refer to steps (i) and (ii) in

order for the requirements to make sense. Whilst the notice's requirements as published were sufficiently clear on their face, I shall nevertheless correct the notice accordingly in the interests of clarity. In so doing I am satisfied that neither party would be disadvantaged by this correction.

Preliminary Matters

4. A new National Planning Policy Framework (the Framework) was published on 17 August 2026. The views of both main parties have been sought as to the relevance of the new Framework to their respective cases. I have taken any responses into account in my consideration of the appeal.

5. In the reasons for issuing the notice, the Council refers to paragraph numbers from a previous version of the Framework. Whilst not explicitly stated, it is clear that the paragraph references relate to the version of the Framework published in September 2023. This version was superseded by an updated version in December 2023, prior to the current iteration's publication in August 2026. Unless otherwise stated, any references to the Framework in relation to the appeal on ground (a) relate to the August 2026 version of the Framework.

The appeal on grounds (b) and (c)

6. An appeal on ground (b) may be brought where it is argued that those matters stated in the notice have not occurred as a matter of fact, whereas an appeal on ground (c) is that those matters (if they occurred) do not constitute a breach of planning control. To succeed on grounds (b) and (c), the appellant must demonstrate on the balance of probabilities that those matters have not occurred.

7. As the ground set out at section 174(2)(b) of the Act is worded in the past tense, the matter is not whether the alleged breach continues at the time of my visit to the site or the determination of the appeal, but whether or not the breach had occurred by the date of issue of the notice. In this instance, the appellant has appeal on both grounds (b) and (c). However, the argument for the latter essentially rehearses that of the former. I shall therefore consider the two matters together.

8. The appeal building is located to the side of Chiselhampton Hill Cottage within a large garden plot. The building is accessed from within the garden plot and shares an access from the road to the site's frontage and on-site manoeuvring and parking space between the appeal building and the existing main house. An application for planning permission[1] was refused retrospectively in 2023 for the retention of the appeal building, described as 'erection of ancillary dwelling in garden'. The plans submitted with that application are annotated in part and show rooms as 'office / sleeping area', 'store room' and 'gym / living' areas.

9. At the time of my visit to the site the room shown as the 'gym / living area' had a variety of items within it and was furnished in a manner that suggested it could be occupied, and was capable of occupation as, a dwelling capable of day-to-day occupation. Thus, whilst there was a rowing machine in the middle of the room, there were also two large sofas (covered) and a range of wall and floor kitchen units including a fridge, range cooker and sink within an otherwise large open-plan living area.

[1] LPA Ref No: P23/S2239/HH

10. Other suggestions of a domestic residential use included a large wall clock, a wood-burning stove with fuel, and other personal domestic belongings, all within a room kept in good decorative order. Elsewhere, beds were present within the rooms marked 'store room' and 'office / sleeping area', whilst an en-suite bathroom located off the 'office / sleeping area' was fitted out with quality fittings with other personal domestic accoutrements present including a linen basket.

11. It was accepted in *Gravesham*[2] that the distinctive characteristic of a dwellinghouse was its ability to afford those who use it the facilities required for day-to-day private domestic existence. My observations from the site visit are broadly consistent with the photographic evidence that accompanied the Council's appeal submission and indicates that the building can be, and has been, occupied for dwelling purposes on the basis established by *Gravesham*.

12. The appellant's response to the Planning Contravention Notice suggests that the building was erected as an 'ancillary' building, seeking to benefit from the permitted development provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Oder 2015 (as amended) (hereafter, the Order). However, such buildings can only be permitted development if they are constructed for purposes incidental to the enjoyment of the dwellinghouse. Where such a building is used for the provision of additional living space it will not be in incidental use. Rather, it will be in the same primary residential use as the house and not a use incidental to residential use. Uses which may be incidental to the enjoyment of a dwellinghouse include the parking of vehicles, the storage of garden maintenance tools or domestic residential paraphernalia or for the use of fitness equipment.

13. However, in this instance given the level of independence the layout, fixtures and fittings indicate and the size of the building and the rooms within it, it is capable of separate residential occupation to that of the main house. The appellant has confirmed that it has been used as primary residential accommodation, whilst I saw that, other than the shared access point and turning area, it is capable of access independently of the main house with sufficient parking space and garden space around it to provide separate outdoor space directly associated with the building.

14. The planning merits regarding the building are not for consideration in appeals on grounds (b) or (c). Thus, the suggested presence of other outbuildings at nearby properties does not provide support for appeals on grounds (b) or (c). Nor do the examples cited necessarily demonstrate a use akin to that stated by the appellant at the appeal building, or akin to how it is capable of occupation from my observations of the building and its layout during my visit to the site. Whilst the appellant states that the building is not a separate dwelling but is rather an ancillary dwelling ancillary to the occupation of the existing cottage necessitated by personal circumstances and specific needs, the details of such have not been expanded upon, are not before me and are not therefore determinative in considering the legal matters posed by appeals on grounds (b) and (c).

15. It is indicated in the appellant's response to the Planning Contravention Notice (PCN) that the building enjoys shared services with the main house in terms of water and electricity billing. However, I am not persuaded that the absence of

[2] *Gravesham BC v SSE & O'Brien [1983] JPL306*

'separate utilities' is sufficiently indicative of it not being used, or not capable of being used, as a separate residential unit, and which, in any event, the appellant has not substantiated beyond a very broad statement. Thus, for an outbuilding that contains sufficient facilities and accommodation so as to be capable of use separately, capable of access separately to that of the main house, the appellant has not satisfactorily demonstrated to the required evidential standard in relation to the ground (b) appeal, the balance of probabilities, that the matters alleged in the notice have not occurred. Furthermore, insufficiently compelling evidence has been produced to demonstrate that the matters alleged do not constitute a breach of planning control in respect of the appeal on ground (c). Thus, the appeals on grounds (b) and (c) fail.

The appeal on ground (a)

Main Issues

16. Having regard to the stated reasons for issuing the notice, the main issues are:

- Whether the appeal scheme is inappropriate development in the Green Belt;
- The effect of the appeal scheme on the character and appearance of the appeal property and the surrounding area;
- Location; and
- Whether any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the appeal scheme.

Reasons

Whether inappropriate

17. Policies STRAT1 and STRAT6 of the South Oxfordshire Local Plan[3] 2011-2035 (SOLP) sets out the Council's approach to development within the borough, and the Green Belt, respectively. The latter reaffirms the provisions of the (then extant version) of the Framework. The Green Belt provisions of the current Framework in terms of decision making are set out at Framework Policy GB6, stating that development in the Green Belt is inappropriate[4] unless if falls within one of the categories in Framework Policy GB7 (1(a) to (h)).

18. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Such circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposed development, is clearly outweighed by other considerations. In making this assessment, substantial weight should be given to the harm to the Green Belt which would be caused, including harm to its openness[5]. These provisions are broadly similar to those set out in the Framework's previous iteration.

19. The breach of planning control alleged in the notice is the construction of a new dwelling. New dwellings are not included within the exceptions set out at

[3] Adopted December 2020
[4] Policy GB6(1)
[5] Policy GB6(2)

Framework Policy GB7(1(a) to (h)). The building in question did not replace, reuse, extend or alter an existing building and its construction does not amount to limited infilling within a Green Belt village.

20. Whilst residential gardens are excluded from the Framework's definition of previously developed land if they lie within built up areas, no such exclusion applies where not located in a built-up area. However, even if it were the case that the construction of the building amounted to the redevelopment of previously developed land, the exemption provided by Framework Policy GB7(1(f)) is still contingent upon there not being substantial harm to the openness of the Green Belt.

21. The appeal building is located some distance from the side elevation of the existing dwelling at Chiselhampton Hill Cottage, with a substantial area of lawn, patio, driveway and parking space separating the two. Although not particularly visible from the roadside due to the intervening, dense roadside hedge that does not mean that the building has no effect on openness. Green Belt openness has both a visual aspect and a spatial aspect. In this instance, the building is a large structure and is located some distance from the main house. The development has therefore introduced a substantial built form visually and spatially distanced from the existing house and, as such, has a moderately harmful effect on the openness of the Green Belt. The exemption provided by Framework Policy GB7(1(f)) does not therefore apply.

Character and appearance

22. It is the Council's contention that the design and appearance of the building fails to accord with the rural character and appearance of the existing dwelling and the surrounding area. What is the essential character of the area is not explained in the reasons for issuing the notice, other than that the site is described as 'open' and 'exposed to the east'. Whilst both are accurate, this does not so much describe the area's underlying character as the spatial layout of the appeal site.

23. The appeal site lies in an undulating, and broadly expansive and open rural, agricultural setting. The appeal property and the adjoining half of the semi-detached building, occupy plots with a wide road 'frontage' but which are relatively shallow. The garden plots extend sidewards across the width of both plots, where the adjoining property also has a detached outbuilding located some distance from the house.

24. A detached outbuilding need not be fundamentally harmful to character or appearance. Nor is the presence of one necessarily at odds with the character or appearance of a domestic residential property in a rural, open countryside setting. That the appeal building is located some distance from the existing dwelling is not, of itself, harmful to the character or appearance of the appeal property or the wider surrounding area.

25. However, the building is large and presents its widest elevation towards the site's road frontage. Combined with its flat roof and low-slung profile its width is elongated and it appears disproportionately large as a consequence. Furthermore, its vertically-hung timber panel cladding and vertically proportioned narrow slit-windows give it an incongruously contemporary appearance that underpins its residential nature and lacks a functional appearance that would be more suggestive of a use incidental to that of the enjoyment of the main house, such as

a garage or storage shed. For these reasons, the building has a visual primacy derived in part from its use as, and being capable of occupation as, a standalone residential dwelling that is at odds with the rural character of the appeal property and the surrounding area.

26. SOLP Policy DES1 seeks to secure high quality in all new development and Policies DES2 and ENV1 set out the Council's approach to ensuring that positive contributing factors to local character can be enhanced. A number of factors are set out to achieve this aim in respect of each of these policies. However, for the reasons set out, the appeal scheme does not secure the high-quality form of development sought by the SOLP, or one that respects and enhances the character and appearance of the appeal site and surrounding area.

Location

27. The building's location in the countryside is not specifically cited in the reasons for issuing the notice, other than in relation to the prevailing rural character of the surrounding open countryside, and its Green Belt location. The recently published Framework sets out an updated approach to sustainable development and for development within[6], and outwith[7], settlements.

28. To this end, Framework Policy S5 states that only certain forms of development should be approved outside settlement boundaries. Forms of development set out within this policy's list should be approved, unless the benefits of so doing would be substantially outweighed by any adverse effects when assessed against national decision-making policies set out in the Framework.

29. Thus, whilst residential garden plots in locations outside settlements may not be excluded from the definition of previously developed land and therefore retain support in principle of Framework Policy S5(d), the policy requires a balance between benefits and adverse effects of the development in question. In this instance, the matter enforced against creates an additional building capable of independent occupation as a dwelling. In the alternative, it provides the appellant with additional primary living accommodation. Whilst both amount to benefits, albeit limited in their scope, the adverse effects of such development in the open countryside, in a Green Belt location where harm to openness arises, and where the building's form, appearance and location all come together to cause harm to the prevailing character and appearance substantially outweigh those limited benefits.

Other Considerations

30. The appeal building is capable of independent residential use and provides additional primary living accommodation for the appellant suitable to their personal circumstances. However, no further explanation is provided regarding the building's provisions for these personal circumstances and they are not therefore a material consideration to which I give any significant weight.

31. The notice's requirements to remove the building amounts to interference with the building resident's convention rights under Article 8 of the European Convention on Human Rights[8]. However, given the harm identified in the reasons for issuing

[6] Framework Policy S4
[7] Framework Policy S5
[8] As set out within the Human Rights Act 1998

the notice and my conclusions in respect of the appeal under ground (a), I am satisfied that the requirement set out pursues the legitimate aim of regulating the use of land in the public interest. The action is both necessary and proportionate. I am also satisfied that, in the absence of a specific (or hidden) appeal under ground (g) that the period of 6 months within which to comply with the notice is both reasonable and proportionate to the situation.

Green Belt Balance and Conclusion on the ground (a) appeal

32. The building the subject of the appeal scheme is inappropriate development in the Green Belt and results in a moderate loss of Green Belt openness. Framework Policy GB6(2) states that substantial weight should be given to the harm to the Green Belt, including harm to its openness. Very special circumstances will not exist unless the harm to the Green Belt, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

33. The appeal building's scale, form, design and appearance and position relative to the existing house give it a visual primacy at odds with, and out of character with, the appeal site's modest domestic residential character, and the rural, open countryside and appearance of the appeal site's surroundings. This causes harm to the character and appearance thereof in the terms set out above. The benefits arising from the creation of a building capable of being occupied as an independent dwelling are limited, and those arising from the additional residential floorspace for the appellant only private benefits. As such, the adverse effects arising from the harm to character and appearance, and the inappropriateness of the appeal scheme, clearly and substantially outweigh those limited benefits. The appeal scheme is therefore contrary to the provisions of SOLP Policies STRAT1 and STRAT6, DES1, DES2 and ENV1 and Framework Policies GB6 and S5.

34. For the reasons set out therefore, and having considered all other material considerations raised, I conclude that the appeal on ground (a) should fail.

The appeal on ground (f)

35. An appeal under ground (f) may be brought if it is felt that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach.

36. The notice's requirement to remove the building, which I have concluded is capable of day-to-day occupation as a separate and self-contained dwelling, is consistent with the purpose of notice, which is to remedy the breach of planning control that has occurred. The appellant's appeal on ground (f) largely rehearses arguments that are better suited to appeals under ground (b) and (c) and which I have considered above, and are not therefore matters for me to consider in the context of a ground (f) appeal.

37. The appellant has also referred to earlier correspondence with the Council, prior to the service of the notice, whereby it was recommended that the use was to cease and that works be carried out to revert the building's use to one of being incidental

to the enjoyment of the dwellinghouse. The notice's allegation, and the matter for which the deemed planning application under the ground (a) appeal refers, is the erection of a new dwelling. It is not open to me to grant a planning permission for an outbuilding on the basis it is used for incidental purposes, as this does not form part of the alleged breach or the matter for which the deemed planning application seeks. Thus, the appeal on ground (f) cannot succeed and the appeal fails in this respect.

Conclusion

38. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

G Robbie

INSPECTOR