



Appeal Decision

Site visit made on 5 May 2026

by **Simon Hand MA**

an Inspector appointed by the Secretary of State

Decision date: 11th May 2026

Appeal Ref: APP/B9506/C/25/3359912

Nestledown, Lodge Drove , Woodfalls Salisbury , SP5 2NH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Martyn Westwell against an enforcement notice issued by New Forest National Park Authority.
 - The notice was issued on 19 December 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a dwellinghouse (shown in the approximate location shaded blue on the plan attached to this Notice) (the “Dwellinghouse”) and three (3) associated outbuildings (shown in the approximate location shaded purple on the plan attached to this Notice) (the “Outbuildings”).
 - The requirements of the notice are i. Demolish the Dwellinghouse shown in the approximate location shaded blue on the plan attached to this Notice. ii. Demolish the three Outbuildings shown in the approximate location shaded purple on the plan attached to this Notice. iii. Remove all material and debris resulting from compliance with steps (i) to (ii) above from the Land. iv. Restore the Land to the level of the immediately adjacent ground levels and finish with topsoil.
 - 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), (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.
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Decision

1. 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.

Background to the Appeal

2. Originally the structure on the site was a timber cabin with a detached garage. It was built with a temporary planning permission back in 1952, granted by Salisbury DC, which was then the planning authority for the area. This was renewed with another temporary planning permission in 1954 and then again in 1962. In 1982 the same Council accepted the cabin had been occupied as a dwelling for more than 4 years in breach of planning control, and so it was now immune from enforcement.
3. Much more recently the property was acquired by the appellant who applied and was granted an LDC¹ in 2023 for an extension and two outbuildings. The cabin had already been extended on its shorter eastern side by a small lean-to. The plans submitted with the LDC showed the extension ran the full length of the longer southern side of the cabin, including half of the length of the lean-to. The two outbuildings were shown as a single garage to the east and a square room to

¹ 23/00317LDCP

the west, containing gym equipment. Both were about 1m away from the walls of the extension.

4. Once construction started on the extension it became clear the original cabin was no longer structurally sound and so it has been completely rebuilt, with new walls and roof. The rebuild has also replaced the lean-to so, with the extension there is now one much larger and apparently homogenous house. The two outbuildings were also begun and a large, detached garage has been built further away from the main dwelling that is too tall to be permitted development. Only the detached garage would appear to have been completed. The others have the main walls and roofs finished but no windows, doors or internal partitions.

The Appeal on Ground (b)

5. This ground refers only to the two outbuildings. The appellant argues the Authority accepted that they were permitted development and so their construction is lawful. They were begun before the extension and before the cabin was rebuilt, so whatever the status of the new dwelling (which is in dispute – see below), they are and remain lawful. The Council argue they were not substantially complete before the cabin was rebuilt, and as that was tantamount to a new dwelling, which required planning permission, they could not benefit from any permitted development rights.
6. I agree with the appellant that when construction began, the two outbuildings could have benefitted from permitted development rights. Once work begins the permission granted by the GPDO is crystallised² and I find it hard to believe it can then be taken away by subsequent changes to the main dwelling. However, what was lawful was defined by the LDC. This linked the certificate to the plans provided which showed two buildings with incidental uses. The eastern outbuilding was a garage and the western a gym. However, what has been built is not like the buildings shown on the plans, in particular the western building is considerably larger. In addition the appellant has not been able to explain what use will be made of the buildings other than that there are a number of incidental uses possible. That may be so, but to be permitted development using Class E, the buildings have to have an incidental use. If they don't then they are not lawful. In my view the outbuildings as constructed are not those that were considered to be lawful when the LDC was granted. The appeal on ground (b) fails.

The Appeal on Ground (c)

7. The arguments for the two outbuildings as permitted development are similar to that described above. In my view they do not benefit from permitted development and so ground (c) must also fail.

The Appeal on Ground (a)

8. This appeal turns on the question of whether this is a replacement dwelling or not. The appellant argues that once works on the extension began it became obvious the old cabin was no longer structurally sound and so eventually the remaining three walls (the fourth wall had to be removed to accommodate the extension) were replaced along with the roof. This was essentially a repair and refurbishment exercise. At no time was the cabin demolished in its entirety. I cannot agree with

² R (oao) Orange Personal Communications Services Ltd v Islington LBC [2006] EWCA 157 refers.

this. All that is left of the cabin is the concrete floor slab. In no way could the resulting complete rebuild (which also subsumes the lean-to into the main dwelling) be considered to be repair or refurbishment. Regardless of the intention of the appellant to simply extend the cabin, that is not what happened. Disregarding the extension, the old cabin has been entirely replaced with a new one – it is clearly a new dwelling.

9. Given my finding above the appeal turns on the interpretation of policy DP35 which deals with replacement dwellings. The policy says, “*the replacement of existing dwellings will be permitted except where the existing dwelling: a) is the result of a temporary or series of temporary permissions or the result of an unauthorised use; or...*”. The second leg of the policy is not relevant here. The Council argue the dwelling was the result of a series of temporary permissions and then a period of unauthorised use and so falls squarely within the policy. The appellant argues that once the dwelling was made lawful in the 1980s it had moved on from the temporary and unlawful phase and so is not caught by the policy.
10. The Council have provided two decision letters that purport to support their position. The Passford Farm Cottage appeal³ concerned extensions to a dwelling that benefitted from an LDC. Policy DP36 did not allow extensions where the existing dwelling was as a result of an unauthorised use. Although this is a different policy the wording and the intention are the same. The Inspector agreed that regardless of the existence of the LDC, the “*dwelling that now exists as a result of said LDC became so as the result of unauthorised use*”. Therefore it was contrary to DP36. The Inspector also raised the issue that the granting of an LDC does not necessarily make a dwelling lawful, it denotes that at that time, it is immune from enforcement action which is a different thing. However, he did not pursue that and neither shall I, as it is not necessary for the purposes of this decision.
11. The second appeal concerned Oak Tree Cottage⁴ where it was proposed to demolish two existing dwellings and replace them with a single new dwelling. Then the replacement dwelling policy was DP10, but it had the same wording as the current DP35. Again, as the two dwellings, which currently benefitted from an LDC, had originally been established as a result of an unauthorised use they fell foul of the policy.
12. I think that can be the only sensible way to interpret DP35, otherwise why would the policy mention an “*unauthorised use*” at all. Obviously if a dwelling was currently unauthorised then it could not possibly benefit from a replacement dwelling policy. That policy would only apply once the unauthorised use had become established by an LDC. It would then have come about “*as a result of an unauthorised use*”, hence the wording of the policy which is designed so that there is no ‘reward’ for unauthorised dwellings that become established through the passage of time. The same is true for a dwelling that came about *as a result of* a series of temporary planning permissions.
13. I accept that in this case the cabin became established as a result of both temporary planning permissions and a period when the building was unauthorised. I agree with the appellant that the residential use was never unauthorised but the building itself was and the breach, once the last temporary planning permission

³ APP/B9506/D/22 issued August 2023

⁴ APP/B9506/W/17/3170844 issued July 2017

extended beyond its time limit, was a breach of condition. But that does not help the appellant as DP35 has two legs, either establishment as a result of a series of temporary planning permissions or as a result of an unauthorised use. In this case the dwelling was established *as a result of* a series of temporary planning permissions. I also note that the policy explanation includes a section on former dwellings that have either been demolished or allowed to deteriorate to the extent that re-use would be tantamount to rebuilding. That is also what has happened in this case. Either way the new dwelling is caught by the exceptions in DP35(a).

14. The appellant argues this would lead to a perverse outcome, that a poorly built cabin would remain but not a sustainable modern home. However, that seems to be the point of the policy. Those homes caught by the two exceptions are almost certainly to be found in areas where new housing would not usually be allowed, as in the case of this appeal. Their loss is thus a positive gain for the National Park, where the location of housing is strictly controlled. I also note the policy does not result in the loss of any existing rights, the original cabin could have remained, and had it been repaired and refurbished on a regular basis could have lasted indefinitely.
15. The replacement of the original dwelling is contrary to policy DP35. That is not necessarily the end of the matter as I still have to undertake a balancing exercise, but there is little to add to the positive side of the scales. The appellant argues the new house would be energy efficient and is no bigger than the original dwelling plus the extension and the outbuildings are lawful and so would remain. I shall deal with the latter argument under ground (f). On the negative side the new dwelling and the two outbuildings (excluding the garage for the moment) cumulatively appear to be a single large dwelling. I noted that both outbuildings were only about 1m away from the dwelling and both had side doors directly opposite side doors in the dwelling. They could easily become a part of the main dwelling physically, as well as visually.
16. The development of the site for a new dwelling would be contrary to a raft of restrictive housing policies, but also SP7 which seeks to protect landscape character. The site is on the edge of open fields above a valley with long views across beautiful countryside and the insertion of a large new house would erode the open landscape between settlements and detracts from the natural beauty of the NP, contrary to SP7. The serious harm caused by the dwelling is not outweighed by any positive factors and planning permission should not be granted.

The Appeal on Ground (f)

17. The appellant's argument here is predicated on the lawfulness of the outbuildings and the original cabin. I have found that the original cabin has been lost and replaced by a new dwelling that does not have planning permission. Consequently there can be no lawful extensions or outbuildings. However, if I am wrong in this, and somehow the two outbuildings and the extension retain their lawfulness despite the unlawfulness of the main dwelling (the ex-cabin), then their removal is acceptable as they facilitate the breach, which is the erection of a dwellinghouse without planning permission.
18. This leaves the detached garage which is too large to be considered permitted development. As it is unlawful and there would be no dwelling for it to serve (as the dwelling is required to be demolished) then it makes no sense to grant

planning permission for the garage. However, in its own right it is harmful as it is too tall and is overbearing. Policy DP37 deals with outbuildings and requires them to be proportionate and subservient to the main dwelling. Even when compared to the extended state of the new dwelling the garage is contrary to DP37 so there is no reason why it should not be demolished as required by the notice.

19. None of the requirements are excessive and the appeal on ground (f) fails.

Conclusion

20. I shall uphold the notice and dismiss the appeals.

Simon Hand

INSPECTOR

