PINS Ref: 6010874
LPA Ref: H23-0143-26

TOWN AND COUNTRY PLANNING ACT 1990

WRITTEN REPRESENTATIONS PROCEDURE

APPEAL BY

P & S Williams

Against

The refusal to grant a lawful development Certificate for the Siting of a Caravan

STATEMENT OF CASE FOR THE LOCAL PLANNING AUTHORITY

Enclosures:

- Delegated officer report for H23-0143-26
- Decision notice dated 20th May 2026
- Sentinel Estates Ltd v Secretary of State for Housing, Communities and Local Government and another [2026] EWHC 1122 (Admin)
- Appeal decision APP/H0738/W/24/3337958 Middle Fields, Calf Fallow Lane, Norton

South Holland District Council
Council Offices
Priory Road
Spalding
Lincs
PE11 2XE

Statement of Case for the Local Planning Authority

Council position

1. The Council asks the Inspector to dismiss the appeal. The appellant has shown that a caravan was present and used for residential purposes from approximately June or July 2020. The Council accepted that factual position when it determined the application. It does not, however, establish that the development was immune from enforcement action on the application date.

2. The relevant breach is the material change of use of land to the stationing and residential occupation of a caravan, together with associated domestic curtilage. It is not a change of use of a building to use as a single dwellinghouse. The former four-year period in section 171B(2) of the Town and Country Planning Act 1990 therefore does not apply. The breach falls within section 171B(3) and requires ten years of continuous use.

3. On the appellant's own case, the use began in July 2020. Fewer than six years had elapsed when the application was made and determined. The development was therefore not lawful under section 191 of the 1990 Act.

Site and planning history

4. The appeal site forms part of a former horticultural premises accessed from Millgate by an unadopted road. The land identified on drawing 4368-24 01 contains a static caravan and a fenced area used as domestic curtilage.

5. The relevant planning history is as follows:

   H23-0662-22 - permission granted on 18th October 2022 for the siting of a static caravan within a defined application site. The caravan now in issue is outside that approved red-line boundary and does not benefit from that permission.

   H23-0230-25 - retrospective application for the siting of a residential caravan refused.

   H23-1058-25 - retrospective application for the siting of a residential caravan refused on 26 January 2026. The subsequent planning appeal was dismissed in April 2026.

6. Those planning decisions provide background only. The planning merits of the use are not at issue in this section 195 appeal.

The certificate application

7. The application was made under section 191 of the 1990 Act. The application form described the existing use as the 'Sitting of caravan on site' and gave July 2020 as the date on which the use or activity began. It also identified a material change of use of the land to a 'Domestic Caravan' and recorded a net gain of one residential unit.

8. Under the section of the application form dealing with the grounds for a certificate, the applicant did not select the option stating that a change of use to a single dwellinghouse had begun more than four years earlier. The applicant selected 'Other' and again stated 'Sitting of Caravan on site'. Although the selection made

on the form cannot determine the legal outcome, it is consistent with the physical and land-use description advanced throughout the application.

9. The agent subsequently confirmed that the application sought to establish immunity for the residential occupation of the caravan, together with the fenced domestic garden. The submitted evidence comprised Google Earth images, council-tax information and the site plan.

The Council decision

10. The Council refused the certificate on 20 May 2026 for the following reason:

> ***The Local Planning Authority is not satisfied, on the balance of probability, that the unauthorised residential occupation of the static caravan constitutes a change of use to a single dwellinghouse for the purposes of Section 171B of the Town and Country Planning Act 1990 (as amended).***
>
> The Authority therefore considers that the development is subject to the ten-year immunity period applicable to other material changes of use. As insufficient evidence has been provided to demonstrate that the development has subsisted continuously for a period exceeding ten years, the Local Planning Authority is not satisfied that the development is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

The appellant case

11. The Grounds of Appeal comprise one substantive paragraph. They state that the Google images prove that the caravan has been present since June 2020 and that Mr and Mrs Williams have paid council tax since the 2021/22 tax year.

12. The appeal does not identify an error in the Council's interpretation of section 171B, explain why the caravan should be treated as a building, or provide evidence that the use has continued for ten years. The appeal evidence addresses the duration of the use only.

Legal framework

13. Section 191 of the 1990 Act provides, so far as relevant, that an existing use is lawful if no enforcement action may be taken in respect of it and no enforcement notice is in force. The question is one of fact and law. Planning merits do not arise.

14. For a breach beginning before 25th April 2024, the transitional provisions preserve the former time limits where the breach is one described in section 171B(1) or section 171B(2). Before amendment, section 171B provided:

- four years for operational development under section 171B(1);
- four years where the breach consisted of the change of use of any building to use as a single dwellinghouse under section 171B(2); and
- ten years for any other breach of planning control under section 171B(3).

15. The transitional provisions do not expand the type of development within former section 171B(2). The four-year period remains available only where the breach consists of a change of use of a building to use as a single dwellinghouse.

16. The National Planning Practice Guidance states that an applicant must provide sufficient factual information and evidence to support a section 191 application.

    The evidence must be sufficiently precise and unambiguous to justify a certificate on the balance of probability. The authority must determine whether the particular matter is lawful on the facts and the relevant planning law.

17. In Sentinel Estates Ltd v Secretary of State for Housing, Communities and Local Government and another [2026] EWHC 1122 (Admin), the High Court considered the former section 171B(2). At paragraph 93 the Court emphasised that the provision does not concern residential occupation in general; it concerns the change of use of a building 'to use as a single dwellinghouse'. The statutory words define the scope of the shorter period.

Council assessment

The breach concerns the use of land

18. The development described by the appellant is a caravan stationed on land and occupied for residential purposes, with part of the surrounding land fenced and used as a domestic garden. The planning unit and the breach therefore include land beyond the physical caravan.

19. The appellant has consistently described the unit as a caravan. The application seeks a certificate for the siting of that caravan and the submitted plan identifies its position on the land. No case has been advanced, and no technical evidence has been submitted, to establish that the unit has lost its character as a caravan and has become a building for planning purposes.

20. A caravan may provide all the facilities needed for day-to-day domestic life and may be a person's permanent home. That does not convert the material change of use of land into a change of use of a building. The Act itself and national enforcement guidance distinguish between the use of a building as a dwellinghouse and the use of land as a site for a residential caravan.

The former four year period does not apply

21. Section 171B(2) requires both elements of the statutory description: there must be a building, and that building must have changed to use as a single dwellinghouse. The appellant has not demonstrated the first element. Residential occupation alone cannot bring the development within the provision.

22. The officer report referred to appeal decision APP/H0738/W/24/3337958 at Middle Fields, Calf Fallow Lane, Norton. The Council recognises that the decision concerned the meaning of 'dwelling' in a development-plan policy about replacement dwellings and is not binding authority on section 171B. The Council does not rely on it as the legal foundation for this appeal. The conclusion follows from the statutory wording, the appellant's description of the development and the absence of evidence that the caravan is a building.

The ten year period has not elapsed

23. The material change of use is an 'other breach of planning control' within former section 171B(3). It can become immune only after ten years of continuous breach.

24. The application form gives July 2020 as the commencement date. The Grounds of Appeal refer to June 2020. On either date, the use had continued for less than six years by the date of the application and decision. It could not have acquired immunity under section 171B(3).

The appeal evidence does not answer the reason for refusal

25. The Council does not need to dispute the evidence of occupation from 2020 to maintain its decision. The Google imagery is evidence of the caravan's physical presence, while the council-tax material supports residential occupation. That evidence cannot alter the statutory category of the breach or reduce the applicable period from ten years to four years.

26. The appellant has therefore not shown, on the balance of probability, that no enforcement action could be taken on the application date. The legal test in section 191 is not met.

Alternative position

27. If, contrary to the Council's primary case, the Inspector finds that the caravan is a building and that the breach falls within former section 171B(2), the Council does not dispute that the residential use has continued for more than four years. On that alternative legal finding, the duration accepted in the officer report would be sufficient. The Council's case is that the statutory premise for applying that period has not been established.

Other considerations

28. The personal circumstances of the occupants, the planning merits of the caravan and the outcome of the earlier planning appeal do not affect the section 191 test. A lawful development certificate is determined by reference to the facts and planning law at the application date. The Council has no discretion to grant a certificate on planning-balance, equality or hardship grounds where the development is not lawful.

Conclusion

29. The appellant's evidence establishes, at most, the stationing and residential occupation of a caravan from June or July 2020. The development is a material change of use of land and is subject to the ten-year period in section 171B(3). That period had not elapsed when the application was made or determined.

30. The Council respectfully requests that the appeal be dismissed and that the refusal to issue a Certificate of Lawfulness for an Existing Use be upheld.

DECISION DELEGATED TO HEAD OF PLANNING

Application No:	**H23-0143-26**	**Applicant:**	**P & S Williams**
Proposal:	Siting of caravan		
Location:	Irby House Millgate Whaplode		
Terminal Date:	26th May 2026		

Planning Policies

South East Lincolnshire Local Plan - Adopted: March 2019

National Guidance

National Planning Policy Framework December 2024

Town and Country Planning Act 1990

- Section 171b (transitional arraignments appl)
- Section 191

Representations:

	Object	Support	No Obj.	Comments
RESIDENTS	2	0	0	0

CASE OFFICER ASSESSMENT

Proposal

This application seeks a Lawful Development Certificate for an existing use under Section 191 of the Town and Country Planning Act 1990 (as amended).

The application form, under Section 9 ('Grounds for an application for a lawful development certificate'), describes the development as the "siting of a caravan on site".

Further clarification has been provided by the agent, stating:

"The application is for the siting of a domestic static caravan that has been on the land since June/July 2020 (evidence provided by Google), the clients have also paid Council Tax since then. The land was not domestic; however, along with the caravan a part has been fenced off and used as a domestic garden."

The application therefore seeks to demonstrate that the residential occupation of the caravan has

continued for a sufficient period of time to be immune from enforcement action. This interpretation has been confirmed in writing by the agent on 21 April 2026.

Site Description

The application site forms part of a former horticultural premises located to the south of a group of buildings fronting Little Lane, which are currently in commercial use.

A single residential property, Westgate House (a Grade II listed building), is located to the north-west of the site. Sporadic linear residential development is located to the east, fronting Mill Gate.

Access to the site is taken from Mill Gate via an unadopted road which runs past the existing commercial premises.
The application site itself comprises a defined area of land accommodating a static caravan together with a fenced area of domestic curtilage.

History

H23-1058-25 - Siting of Residential Caravan - Retrospective. Refused 26 January 2026 - Appeal dismissed 8th April 2026
H23-0230-25 - Siting of a residential caravan (retrospective). Refused.
H23-0662-22 - Siting of static caravan. Approved 18th October 2022.

Consultation Responses

No consultations were undertaken as part of this application.

Representations

The application has been advertised in accordance with the Development Management Procedure Order 2015 (as amended).

Three representations have been received from the same address. The points raised are summarised as follows:

·Objection to unlawful and unplanned development where alternative accommodation is available;
·Reference to the dismissal of a recent appeal and the requirement for the occupants to vacate;
·Concern that the development has not been present for a sufficient period to qualify for a lawful development certificate, particularly in light of previous retrospective applications and refusals.

These matters have been noted. However, applications for Lawful Development Certificates must be determined solely on the basis of factual and legal considerations, rather than the planning merits of the development.

Planning Considerations

The application falls to be considered under Section 191 of the Town and Country Planning Act 1990 (as amended), which requires the Local Planning Authority to determine whether, on the balance of probability, the use described in the application is lawful at the date of the application.

In this case, the principal considerations are:

· The nature of the breach of planning control;
· Whether the breach has been continuous; and
· Whether the relevant immunity period under Section 171B has been met.

Relevant Legislation

Section 191 - Lawful Development Certificates

Section 191 of the Act provides that a use is lawful if:
·No enforcement action may then be taken in respect of it; and
·It does not contravene any enforcement notice then in force.

Where the Local Planning Authority is provided with information satisfying it that the use is lawful at the date of the application, a certificate must be granted.

Section 171B - Time Limits for Enforcement

Section 171B of the Town and Country Planning Act 1990 sets out the statutory time limits for taking enforcement action.

Under the transitional provisions applicable to breaches commencing prior to 25 April 2024:

· A breach consisting of a change of use of any building or land to use as a single dwellinghouse becomes immune from enforcement action after four years beginning with the date of the breach; and

· Other material changes of use become immune from enforcement action after ten years.

The correct characterisation of the breach is therefore fundamental to determining the applicable immunity period.

Assessment

Nature of the Breach

The development comprises the siting and residential occupation of a static caravan, together with associated domestic curtilage. The applicant contends that the development constitutes use as a single dwellinghouse and therefore benefits from the four-year immunity period under Section 171B of the Act.

However, the Local Planning Authority is not satisfied, on the balance of probability, that the breach should properly be characterised as a change of use to a single dwellinghouse for the purposes of Section 171B.

The application has been submitted with the following description of development within the application form, as written by the applicant's agent: "Sitting of caravan on site". Whilst details have not been provided within the submission to explicitly detail that the proposal comprises a caravan, as per the definition of a caravan as set out in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968, it would appear reasonable, in the absence of evidence to suggest otherwise, and given the applicants clear description of development, that the proposal comprises the the siting of a 'caravan'.

In Appeal Decision APP/H0738/W/24/3337958 (Middle Fields, Calf Fallow Lane, Norton), the Inspector concluded that whilst a caravan may provide facilities required for day-to-day domestic existence, the physical form of a caravan means that it is not a dwellinghouse, even where it functions as a person's home. The Inspector further distinguished between the lawful residential occupation of a caravan and the existence of a permanent dwellinghouse.

The Local Planning Authority acknowledges that appeal decisions are fact specific and do not establish binding precedent. However, the reasoning within the above appeal is considered material and relevant to the present assessment.

In this instance, the development relates to the stationing and occupation of a caravan on land, rather than the use of a building as a single dwellinghouse. This is further considered given the clear description of development offered by the applicant within the submitted application form.

The Authority is therefore not satisfied that the four-year immunity period applies and instead consider that the 'ten-year rule' is relevant.

Continuity of the Use

The applicant asserts that the caravan has been occupied since June/July 2020. The evidence submitted, including aerial imagery and Council Tax records, indicates that the caravan has been present and occupied for a significant period of time.

The Local Planning Authority has no substantive evidence to indicate that the residential occupation

has ceased or materially changed during this period.

It would be reasonable to conclude that the caravan has been occupied for the period suggested, from June/July 2020.

Effect of Planning Permission H23-0662-22

Planning permission H23-0662-22 granted consent for the siting of a static caravan within a defined red line application site.

The evidence available to the Local Planning Authority indicates that the caravan has at all times been stationed outside the red line boundary associated with that permission. Accordingly, the development undertaken does not fall within the scope of planning permission H23-0662-22.

The Local Planning Authority therefore accepts that the development has remained unauthorised throughout the relevant period.

Relevant Immunity Period

Whilst the Local Planning Authority accepts that the development has existed in continuous breach of planning control since approximately 2020, the Authority is not satisfied that the breach constitutes a change of use to a single dwellinghouse for the purposes of Section 171B.

Accordingly, the Authority considers that the breach falls within the category of "any other breach of planning control" and is therefore subject to the ten-year enforcement period. To the contrary, the applicant's submission itself states that the caravan has been occupied from a period of June/July 2020 only; equating to a period of less than six years.

As the evidence submitted does not demonstrate that the unauthorised development has subsisted for a period exceeding ten years, the Local Planning Authority is not satisfied that the development is lawful.

Additional Considerations

Public Sector Equality Duty

In making this decision the Authority must have regard to the public sector equality duty (PSED) under s.149 of the Equalities Act. This means that the Council must have due regard to the need (in discharging its functions) to:
A. Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act
B. Advance equality of opportunity between people who share a protected characteristic and those who do not. This may include removing or minimising disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic; taking steps to meet the special needs of those with a protected characteristic; encouraging participation in public life (or other areas where they are underrepresented) of people with a protected characteristic(s).
C. Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.

The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The PSED must be considered as a relevant factor in making this decision but does not impose a duty to achieve the outcomes in s.149. It is only one factor that needs to be considered, and may be balanced against other relevant factors.

It is not considered that the recommendation in this case will have a disproportionately adverse impact on a protected characteristic.

Human Rights

In making a decision, the Authority should be aware of and take into account any implications that may arise from the Human Rights Act 1998. Under the Act, it is unlawful for a public authority such as South Holland District Council to act in a manner that is incompatible with the European

Convention on Human Rights. The Authority is referred specifically to Article 8 (right to respect for private and family life) and Article 1 of the First Protocol (protection of property).

It is not considered that the recommendation in this case interferes with local residents' right to respect for their private and family life, home and correspondence, except insofar as it is necessary to protect the rights and freedoms of others (in this case, the rights of the applicant). The Council is also permitted to control the use of property in accordance with the general public interest and the recommendation is considered to be a proportionate response to the submitted application based on the considerations set out in this report.

Conclusion

The Local Planning Authority is not satisfied, on the balance of probability, that the unauthorised residential occupation of the caravan constitutes a change of use to a single dwellinghouse for the purposes of Section 171B of the Town and Country Planning Act 1990.

The Authority therefore considers that the development is subject to the ten-year immunity period applicable to other material changes of use.

As insufficient evidence has been provided to demonstrate that the development has existed continuously for a period exceeding ten years, with the submission being clear in that the caravan has been occupied since June/July 2020 only, the Local Planning Authority is not satisfied that the development is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

Accordingly, it is recommended that the application is deemed unlawful.

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Admin 01775 764725
DC Officers 01775 764703

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TOWN AND COUNTRY PLANNING ACT 1990
LAWFUL USE CERTIFICATE

Reference: H23-0143-26 **Date of Decision:** 20th May 2026

Applicant: P & S Williams
Irby House
Millgate
Whaplode
Spalding
PE12 6RT

Location: Irby House Millgate Whaplode Spalding

Description: Siting of caravan

South Holland District Council hereby give notice that the use, operations or matter as specified in the application, is NOT LAWFUL within the meaning the Town and Country Planning Act 1990 (as amended), for the following reason(s):-

1 The Local Planning Authority is not satisfied, on the balance of probability, that the unauthorised residential occupation of the static caravan constitutes a change of use to a single dwellinghouse for the purposes of Section 171B of the Town and Country Planning Act 1990 (as amended).

The Authority therefore considers that the development is subject to the ten-year immunity period applicable to other material changes of use. As insufficient evidence has been provided to demonstrate that the development has subsisted continuously for a period exceeding ten years, the Local Planning Authority is not satisfied that the development is lawful within the meaning of Section 191 of the Town and Country Planning Act 1990 (as amended).

Notes:

The determined plans are:

4368-24 01 - Site & Location Plan
Council Tax Bills
Application Form
Google Earth Images
Email from Agent



Phil Norman
Assistant Director - Planning and Strategic Infrastructure
South Holland District Council

RIGHTS OF APPEAL

Appeals to the Secretary of State

If you are aggrieved by the decision of your Local Planning Authority to refuse permission for the proposed development or grant consent subject to conditions, then you can appeal to the Secretary of State under Section 78 of the Town and Country Planning Act 1990 or Section 20 of the Planning (Listed Building and Conservation Areas) Act 1990.

Timescales for appealing

The deadlines for appeals are calculated from the **date of decision** and are as follows for the types of applications below:

12 Weeks	6 Months	8 Weeks
Householder Applications	Planning Permission	Consent to Display Adverts
Minor Commercial Development	Listed Building Consent	
Agricultural Determinations	Other Prior Approval Applications	
Householder Prior Approval Applications		

https://www.gov.uk/appeal-householder-planning-decision

https://www.gov.uk/appeal-planning-decision

If you intend to submit an appeal that you would like examined by inquiry then you must notify the Local Planning Authority and Planning Inspectorate (inquiryappeals@planning inspectorate.gov.uk) at least 10 days before submitting the appeal. Further details are on GOV.UK.

Enforcement Notices

If an enforcement notice was served prior to the planning application being determined then the deadline for appealing is 28 days from the date of the **planning refusal**.

If an enforcement notice is served after the planning application is determined then the deadline for appealing is 28 days from the date of the **enforcement notice** OR **the timescales stated above for each application type** from the date of the planning refusal - whichever is sooner.

Appeals can be made online at: **https://appeal-planning-decision.service.gov.uk/before-you-start**. If you are unable to access the online appeal form, please contact the Planning Inspectorate to obtain a paper copy of the appeal form on tel: 0303 444 5000.

The Secretary of State can allow a longer period for giving notice of an appeal but will not normally be prepared to use this power unless there are special circumstances which excuse the delay in

giving notice of appeal.

The Secretary of State need not consider an appeal if it seems to the Secretary of State that the Local Planning Authority could not have granted planning permission for the proposed development or could not have granted it without the conditions they imposed, having regard to the statutory requirements, to the provisions of any development order and to any directions given under the order.

Purchase Notices

If either the Local Planning Authority or the Secretary of State refuses permission to develop land or grant it subject to conditions the owner may claim that he can neither put the land to a reasonably beneficial use in its existing state nor can he render the land capable of a reasonably beneficial use by the carrying out of any development which has been or would be permitted.

In these circumstances the owner may serve a purchase notice on the Council in whose area the land is situated. This notice will require the Council to purchase his interest in the land in accordance with the provisions of the Part VI of the Town and Country Planning Act 1990 or Section 32 of the Planning (Listed Building and Conservation Areas) Act 1990.

Compensation

In certain circumstances compensation may be claimed from the Local Planning Authority if permission is refused or granted subject to conditions by the Secretary of State on appeal or on reference of the application to him.

These circumstances are set out in Section 114 and related provisions of the Town and Country Planning Act 1990 and Section 27 of the Planning (Listed Building and Conservation Areas) Act 1990.

Neutral Citation Number: [2026] EWHC 1122 (Admin)

Case No: AC-2025-LON-002145

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 12 May 2026

Before :

Neil Cameron KC
sitting as a Deputy High Court Judge

Between :

SENTINEL ESTATES LIMITED

Appellant

and –

(1) SECRETARY OF STATE FOR HOUSING, COMMUNITIES AND LOCAL GOVERNMENT

(2) LONDON BOROUGH OF BRENT **Respondents**

- -

Charles Streeten and **Jonathan Welch** (direct public access) for the **Appellant**

Ben Fullbrook and **Louise McCormack** (instructed by the Government Legal Department) for the **First Respondent**
The **Second Respondent** did not appear and were not represented

Hearing date: 26th March 2026

- -

JUDGMENT

This judgment was handed down remotely at 10.30am on 12 May 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MR NEIL CAMERON KC

The Deputy Judge (Neil Cameron KC):

Introduction

1. In this case Sentinel Estates Limited ("the Appellant") appeals against a decision by an Inspector appointed by the Secretary of State for Housing, Communities and Local Government ("the First Respondent") to vary the time for compliance but otherwise uphold an enforcement notice issued by the London Borough of Brent ("the Second Respondent").

2. By an order dated 5th December 2025 Dan Kolinsky KC (sitting as a Deputy High Court Judge) granted leave to bring this appeal (pursuant to section 289(6) of the Town and Country Planning Act 1990 ("TCPA 1990")).

The Background Facts

3. On 23rd January 2020 the Second Respondent issued an enforcement notice ("the 2020 EN"). The enforcement notice related to land at 27, Pembroke Road, Wembley, HA9 7PD ("the Site"). The breach of planning control alleged in the notice was "Without planning permission, the material change of use of the premises to a House in Multiple Occupation (HMO) and flats". The reasons for issuing the 2020 EN included the following:

> "It appears to the Council that the unauthorised change of use took place within the last 10 years.
>
> …
>
> The unauthorised change of use results in the loss of a purpose-built, family dwelling within the borough, and fails to re-provide family sized accommodation within the conversion scheme. …"

4. The Appellant appealed against the 2020 EN on grounds (a), (b), (c) and (f) as set out in section 174(2) of the TCPA 1990. By a decision letter dated 11th April 2022 an Inspector appointed by the First Respondent allowed the appeal on ground (b) and quashed the enforcement notice. The Inspector found, as a matter of fact, that the allegation of a mixed use of house in multiple occupation ("HMO") and flats set out in the enforcement notice was incorrect as the house was being used as an HMO.

5. On the 31st March 2023 the Second Respondent issued a further enforcement notice ("the 2023 EN"). The 2023 EN related to the Site. The breach of planning control alleged was: "Without planning permission, the material change of use of the premises from TWO flats to a House in Multiple Occupation (HMO)."

6. The reasons stated for issuing the 2023 EN were:

> "It appears to the Council that the unauthorised change of use took place within the last 10 years.
>
> The unauthorised change of use causes material harm to residential amenities of the occupiers and neighbouring premises, by virtue of increased comings and goings and levels of noise and disturbance.

> Furthermore, the unauthorised change of use results in the loss of two family dwellings within the Borough.
>
> The unauthorised change of use amounts to substandard development and not the high quality residential development that Brent's policies envisage. This is to the detriment of the occupiers of the premises and the Borough in general. It is, therefore, contrary to the objectives of National Planning Policy Framework, 2021, policies DMP1, BH7, BH10, BH11 and BH13 of Brent's Local Plan, 2022, and paragraphs 5.20, 5.22 and 5.30 of the Houses in Multiple Occupation Supplementary Planning Document, 2022."

7. The Appellant appealed against the 2023 EN on grounds (a), (c), (d), (f) and (g). The Appellant's Grounds of Appeal (which were produced on its behalf by the planning consultants it had instructed, UPP) included a section headed 'Legal Background'. In that section the Appellant cited section 171B(2) of the TCPA 1990, and at paragraph 2.5 stated: "Therefore, if it can be shown on the balance of probabilities that the development has subsisted for a four-year period, no enforcement action may be taken."

8. The Appellant submitted a Statement of Case (produced by UPP) in connection with its appeal against the 2023 EN. The Legal Background section, as set out in the Grounds of Appeal, was repeated (including paragraph 2.5).

9. The Appellant contended that the Site had been in use as an HMO since 2016/2017.

10. The Second Respondent served a Statement of Case which included the following:

> "1.3 There is an error in the reasons for issuing the notice, which refers to "the loss of two family dwellings". This should refer to the loss of a single family-sized dwelling.
>
> …
>
> **Ground d that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters**;
>
> 4.7 The appellant's reasoning appears to relate to ground (c). The Council accepts that the change of use to HMO occurred in June 2016, before the Article 4 direction came into force, and there is no suggestion the Article 4 is retrospective, but use as a HMO is subject to the 10 year rule (s171B(3)).
>
> 4.8 The appellant produces no evidence that the breach of planning control occurred before 31 March 2013 or 23 January 2010 if s171B(4)(b) applies.
>
> …"

11. The Appellant submitted a response to the Second Respondent's Statement of Case (produced by UPP) which included the following:

> "The LPA is confusing two different elements in paragraph 4.7. A property could be lawfully changed from C3 to C4 prior to the Article 4 direction being implemented but in order to obtain a Certificate of Lawfulness for Existing Use or Development there needs to be 10 years of evidence. The appellant is claiming the former and therefore the change of use from C3 to C4 constituted permitted development at the time it was implemented. The appellant is aware that if they wanted to obtain a CLEUD they would require continuous and uninterrupted evidence for a period of 10 years."

12. The Second Respondent produced 'Final Comments' in response to the Appellant's Statement of Case. The Final Comments included the following:

> "The appellant does not address the "second bite" provision arising from the enforcement notice issued 23 January 2020 and quashed 11 April 2022 (LPA Appendix 7)."

13. By a decision letter dated 27th May 2025 ("the DL") the Inspector appointed by the First Respondent varied the period for compliance from three to six months, and upheld the enforcement notice. The inspector considered the ground (d) appeal at paragraph 9 of the DL:

> "9. On the appellant company's own evidence, this ground of challenge is doomed to fail. Both appeal parties accept that the alleged HMO use commenced in 2016, which is confirmed by a survey of the property done in January 2020. Moreover, evidence submitted with the previous appeal by existing residents confirms the property has always been in use as an HMO since 2016. Thus, the 10-year period required to achieve immunity cannot be satisfied. This is because the evidence does not clearly and unambiguously show that the HMO use commenced on or before 31 March 2013, which is the relevant date. The position is worse if the second bite provisions[4] apply to the notice before me as the relevant date would then be 23 January 2010. The evidence presented does not show, on the balance of probabilities, that the alleged use is immune from enforcement action by reason of immunity. Ground (d) must fail."

Guidance Documents

14. The First Respondent argues that a withdrawn Government Circular, in particular paragraph 2.81 of Annex 2 to Circular 10/97 should be afforded significant persuasive weight. Paragraph 2.81 states:

> **"Interpretation of "use as a single dwelling house"**
>
> 2.81 It is important to distinguish the term "use as a single dwellinghouse", in section 171 B(2), from what might normally be regarded as being a single dwellinghouse.

> …
>
> It is considered that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act. This interpretation would exclude such uses as bed-sitting room accommodation, where the occupants share some communal facilities within a building, such as a bathroom or lavatory, and the "planning unit" is likely to be the whole building, in use for the purposes of multiple residential occupation, rather than each individual unit of accommodation."

15. The First Respondent also draws attention to the Planning Inspectorate's Training Manual ("the Manual"). The Manual is not made available to the public, however from time to time versions of the Manual have been released in response to freedom of information requests. Paragraph 608 of the Manual states:

> "608. However, s171B(2) does not apply in cases where there has been a change of use to an HMO or some other residential use where units are not self-contained[314]. Even if there has been a MCU to a use within class C4, that is, 'use of a dwellinghouse ... as a' HMO, there will not have been a change of use to a single dwellinghouse."…
>
> 314 See [1997] JPL 371, where a bed-sitting room which did not have exclusive use of a WC was held not to be a flat and therefore not used as a dwellinghouse."

The Ground of Challenge

16. The Appellant challenges the First Respondent's decision on the following ground:

> "Ground 1: the Inspector erred by applying the wrong immunity period, applying a 10-year period, rather than the 4-year period under section 171B(2) (before it was amended by the Levelling Up and Regeneration Act 2023) which should have applied, and which would have led to the appeal being allowed on ground (d)."

The Legal Framework

The Statutory Framework

17. Section 55 of the TCPA 1990 defines the term "development". Section 55(3)(a) provides:

> "(3) For the avoidance of doubt it is hereby declared that for the purposes of this section—
>
> (a) the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change in the use of the building and of each part of it which is so used;"

18. Section 55(3)(a) is concerned with changes from use as a single dwellinghouse.

19. The breach of planning control alleged in this case occurred before the amendments made by section 115 of the Levelling-up and Regeneration Act 2023 ("LURA 2023") to Section 171B of the TCPA 1990 took effect (Regulation 5 of The Planning Act 2008 (Commencement No. 8) and Levelling-up and Regeneration Act 2023 (Commencement No. 4 and Transitional Provisions) Regulations 2024). The amendments made by LURA 2023 change the period after which no enforcement action may be taken (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 in England) from four years to ten years.

20. Section 171B of the TCPA 1990 as applicable in this case and so far as is relevant, provides:

> "**171B Time limits.**
>
> (1) …
>
> (2) Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach.
>
> …
>
> (4) The preceding subsections do not prevent—
>
> (a) …; or
>
> (b) taking further enforcement action in respect of any breach of planning control 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."

21. Section 174 TCPA 1990 provides:

> "**174.— Appeal against enforcement notice.**
>
> (1) A person having an interest in the land to which an enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice, whether or not a copy of it has been served on him.
>
> (2) An appeal may be brought on any of the following grounds—

> (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
>
> (b) that those matters have not occurred;
>
> (c) that those matters (if they occurred) do not constitute a breach of planning control;
>
> (d) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters;
>
> (e) that copies of the enforcement notice were not served as required by section 172;
>
> (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, 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;
>
> (g) that any period specified in the notice in accordance with section 173(9) falls short of what should reasonably be allowed.
> …"

22. Section 289(1) of the TCPA 1990 provides:

> "**289.— Appeals to High Court relating to enforcement notices and notices under sections 207 and 215**
>
> (1) Where the Secretary of State gives a decision in proceedings on an appeal under Part VII against an enforcement notice the appellant or the local planning authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court."

23. The classes specified in the Schedule to the Town and Country Planning (Use Classes) Order 1987 ("the UCO") include:

> "**Class C3. Dwellinghouses**
>
> Use as a dwellinghouse (whether or not as a sole or main residence) by —
>
> (a) a single person or by people to be regarded as forming a single household;

(b) not more than six residents living together as a single household where care is provided for residents; or

(c) not more than six residents living together as a single household where no care is provided to residents (other than a use within Class C4).

Interpretation of Class C3

For the purposes of Class C3(a) "single household" shall be construed in accordance with section 258 of the Housing Act 2004."

Class C4. Houses in multiple occupation

Use of a dwellinghouse by not more than six residents as a "house in multiple occupation".

Interpretation of Class C4

For the purposes of Class C4 a "house in multiple occupation" does not include a converted block of flats to which section 257 of the Housing Act 2004 applies but otherwise has the same meaning as in section 254 of the Housing Act 2004."

24. Class L of Part 3 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO") provides:

"*Class L – small HMOs to dwellinghouses and vice versa*

Permitted development

L. Development consisting of a change of use of a building—

(a) from a use falling within Class C4 (houses in multiple occupation) of the Schedule to the Use Classes Order, to a use falling within Class C3 (dwellinghouses) of that Schedule;

(b) from a use falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order, to a use falling within Class C4 (houses in multiple occupation) of that Schedule.

Development not permitted

L.1 Development is not permitted by Class L if it would result in the use—

(a) as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order of any building previously used as a single dwellinghouse falling within Class C4 (houses in multiple occupation) of that Schedule; or

> (b) as two or more separate dwellinghouses falling within Class C4 (houses in multiple occupation) of that Schedule of any building previously used as a single dwellinghouse falling within Class C3 (dwellinghouses) of that Schedule.

Statutory Interpretation

25. In ***R v. Secretary of State for the Environment ex parte Spath Holme Ltd*** [2001] 2 AC 349 at page 396 Lord Nicholls described the approach to be taken when interpreting the words used in a statute:

> "Statutory interpretation is an exercise which requires the court to identify the meaning borne by the words in question in the particular context. The task of the court is often said to be to ascertain the intention of Parliament expressed in the language under consideration. This is correct and may be helpful, so long as it is remembered that the "intention of Parliament" is an objective concept, not subjective. The phrase is a shorthand reference to the intention which the court reasonably imputes to Parliament in respect of the language used."

26. At page 399 in ***Spath Holme*** Lord Nicholls considered the role that government statements can play as an aid to interpretation:

> "If, however, the statements are clear, and were made by a minister or other promoter of the Bill, they qualify as an external aid. In such a case the statements are a factor the court will take into account in construing legislation which is ambiguous or obscure or productive of absurdity. They are then as much part of the background to the legislation as, say, Government white papers. They are part of the legislative background, but they are no more than this. This cannot be emphasised too strongly. Government statements, however they are made and however explicit they may be, cannot control the meaning of an Act of Parliament. As with other extraneous material, it is for the court, when determining what was the intention of Parliament in using the words in question, to decide how much importance, or weight, if any, should be attached to a Government statement. The weight will depend on all the circumstances. For instance, the statement might conflict with the principle of interpretation that penal legislation is to be construed strictly."

27. In ***R (PACCAR Inc and Others) v. Competition Appeal Tribunal*** [2023] 1 WLR 2594 Lord Sales identified the relevant interpretative principles at paragraphs 40-48. At paragraph 41 Lord Sales referred to the fact that there are numerous authoritative statements in modern case law which emphasise the central importance in interpreting any legislation of identifying its purpose.

Section 171B(2) TCPA 1990

28. The point at issue in the Court of Appeal in the case of ***Doncaster BC and Van Dyck v. Secretary of State for the Environment*** [1993] 66 P & CR 61 ("***Van Dyck***") was identified by Simon Brown LJ at page 63:

> "Does the immunity from enforcement notice proceedings after four years provided by section 172(4)(c) (hereafter called the four year rule) apply equally to a breach of planning control consisting of the change of use without planning permission of a single dwellinghouse into two (or more) separate dwelling-houses (hereafter called subdivision) as to the unpermitted use of a building as a single dwelling-house? The appellants (including the Secretary of State in the Doncaster appeal) submit that it does; Doncaster Borough Council submit not."

29. Section 172(4)(c) as considered in ***Van Dyck*** provided:

> "(4) An enforcement notice which relates to a breach of planning control consisting in—
>
> (a) …
>
> ; or
>
> (c) the making without planning permission of a change of use of any building to use as a single dwellinghouse; or
>
> (d) …
>
> may be issued only within the period of four years from the date of the breach."

30. Simon Brown LJ (with whom the other members of the court agreed) divided his judgment into two chapters. Chapter I was written before the House of Lords made their decision in ***Pepper v. Hart*** [1992] 3 WLR 1032. The conclusion reached at the end of Chapter I (at page 73) was:

> "Although I do not pretend to have found this an easy problem to resolve, I have finally come to accept the appellants' central argument. Section 172(4)(c) is, I believe, capable of being construed and applied so as to benefit all new separate residences after four years. That being so, having regard to the broad policy which I conceive to underlie this provision, in my judgment it should be thus construed and applied."

31. The broad policy to which Simon Brown LJ referred was Parliament's desire to protect long established residential occupation.

32. In Chapter II Simon Brown LJ considered the Hansard Report of a debate held in Parliament on 22nd May 1968 when the Minister of Housing and Local Government promoted an amendment to the Town and Country Planning Bill. That amendment eventually became section 172(4)(c) of the TCPA 1990 (as considered in ***Van Dyck***). Simon Brown LJ quoted extensively from the Parliamentary debate, including a passage in which the Minister made a reference to the provisions of what is now section 55(3)(a) of the TCPA 1990, and then said: "It already is a breach of planning control to convert from a single dwelling-house to a multiple dwelling-house, and for the social reasons I have outlined I suggest that it would be wise not to subject such a breach to the constraint of the four-year rule." Simon Brown LJ came to the following conclusion (at page 74):

> "I certainly do not find in this crucial passage the clarity for which *Pepper v. Hart* requires us to search, still less a clear statement directed to the very matter in issue; the application or otherwise of the four year rule not merely to multi-occupation generally but to subdivision into separate flats in particular."

33. The issue under consideration in the Court of Appeal in the case of ***Arun District Council v. First Secretary of State*** [2007] 1 WLR 523 was identified by Auld LJ at paragraph 1, namely:

> "… a narrow but important point of construction as to the applicable time limit in the Town and Country Planning Act 1990 governing enforcement action for breach of planning control in the form of failure to comply with a condition of planning permission restricting change of use to use as a single dwelling house, namely whether it is four years from the date of the breach, pursuant to section 171B(2), or ten years, pursuant to section 171B(3), of the Act."

34. The policy that lay behind the provision was identified by Auld LJ at paragraph 5:

> "5 The rationale for the different periods of limitation according to the nature of the breach of planning control was to impose a shorter period, four years, where it was considered that a longer period could cause serious loss and/or hardship in the event of enforcement proceedings long after the event, including in the case of homeowners loss of their homes, and ten years for any other breach of planning control."

35. Auld LJ came to the following conclusion (at paragraph 33):

> "33 In my view, the breach of planning control by Mrs Brown falls squarely within the words of section 171B(2), and is, therefore, enforceable for a period of four years only after the breach. Prior to 1996 the extension was used for a purpose ancillary to the house. From 1996 its use changed to independent use as student accommodation. By virtue of section 55(3)(a) of the 1990 Act (see para 2 above) that change constituted a material change of use, and was therefore development without planning permission within the meaning of section 171A(1)(a) and/or it was a breach of condition of the permission within the meaning of section 171A(1)(b). Either way, it was clearly a "breach of planning control" consisting in "the change of the use" of the extension from a residential use which was ancillary to and part of the main dwelling, to use as a separate single dwelling house within the meaning of section 171B(2)."

36. Carnwath LJ (as he then was) agreed with Auld LJ that the appeal should be allowed. At paragraph 49 Carnwath LJ said that the reference in section 171B(2) to a "breach of planning control" is naturally read as including carrying out development without the required planning permission or failing to comply with a condition.

Dwellinghouse

37. In considering the question of whether a building is a 'dwellinghouse' when considering planning legislation the principles derived from ***Gravesham BC v. Secretary of State for the Environment*** (1984) 47 P&CR 142 at page 146 apply, namely that the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence.

38. In ***London Borough of Brent v. Secretary of State for Levelling-up Housing and Communities*** [2022] EWHC 2051 Robert Palmer QC (sitting as a Deputy High Court Judge) identified the point at issue at paragraph 4:

> "The main issue between the parties concerns whether the Inspector was right to proceed on the basis that a dwellinghouse in use as a "house in multiple occupation" ("HMO") within the meaning of Use Class C4 of the Town and Country Planning (Use Classes) Order 1987 (SI 1986/764) ("the Use Classes Order") is necessarily also a "dwellinghouse" within the meaning of the GPDO."

39. At paragraph 58 in ***Brent*** the judge, having referred to ***Blackpool Borough Council v Secretary of State for the Environment*** (1980) 40 P&CR 104, said:

> "This conclusion did not entail any finding that a dwellinghouse must be occupied by one family or household if it is to retain its status as a "dwellinghouse" (for the purposes of the GPDO or otherwise) as a matter of law: the Court was merely considering whether the Inspector had reached a factual finding to which he was entitled to come, concerning the nature of the use to which the dwellinghouse was being put, and whether it materially differed from its permitted use."

40. At paragraph 70 the judge held that for a building to fall within either use class C3 or C4 it must be both a dwellinghouse and be used in one of the ways specified in each class.

The 'Second Bite' provision

41. In ***Jarmain v. Secretary of State for the Environment*** [2000] JPL 1063 the Court of Appeal upheld the first instance judgment of Nigel Macleod QC (sitting as a Deputy High Court Judge) in which he had said (as cited at page 1069):

> "It is the subject matter of the enforcement notice, the actual development which is being referred to by the words that breach, rather than the words which have been used to characterise the development which itself constitutes the breach of planning control. The description of a breach cannot in itself be a breach of planning control. What this proper interpretation means is that the sub-section cannot be used to cover two different physical developments or two different changes of use, but it can be used to cover the same actual breach of development control which is described in different ways."

Raising a new point on appeal

42. The principles to be applied where a party seeks to raise a new point on appeal which was not raised below were summarised by Haddon-Cave LJ (with whom the other members of the Court of Appeal agreed) in ***Singh v. Dass*** [2019] EWCA Civ 360:

> "16. First, an appellate court will be cautious about allowing a new point to be raised on appeal that was not raised before the first instance court.
>
> 17. Second, an appellate court will not, generally, permit a new point to be raised on appeal if that point is such that either (a) it would necessitate new evidence or (b), had it been run below, it would have resulted in the trial being conducted differently with regards to the evidence at the trial (*Mullarkey v Broad* [2009] EWCA Civ 2 at [30] and [49]).
>
> 18. Third, even where the point might be considered a 'pure point of law', the appellate court will only allow it to be raised if three criteria are satisfied: (a) the other party has had adequate time to deal with the point; (b) the other party has not acted to his detriment on the faith of the earlier omission to raise it; and (c) the other party can be adequately protected in costs. (*R (on the application of Humphreys) v Parking and Traffic Appeals Service* [2017] EWCA Civ 24; [2017] R.T.R. 22 at [29])."

The Ground of Challenge

43. Mr Streeten and Mr Welch, for the Appellant, submitted:

i) The question for the court is one of statutory interpretation.

ii) There is no binding authority on the point of statutory interpretation in issue in this case.

iii) There are two questions to be considered:

a) Is use as an HMO use as a dwellinghouse?

b) If use as an HMO is use as a dwellinghouse, is it in use as a <u>single</u> dwellinghouse?

iv) Dwellinghouse has the same meaning across all planning legislation (***Brent*** at paragraph 51).

v) In relation to question (a) ***Brent*** is authority for the proposition that use as a dwellinghouse includes an HMO.

vi) ***Van Dyck*** (at the bottom of page 76) is binding authority for the proposition that the relevant passage in the 1968 Parliamentary debate does not meet the test of clarity which ***Pepper v. Hart*** requires.

vii) Although Class L of Part 3 of Schedule 2 to the GPDO was not made contemporaneously with the enactment of Section 171B(2) TCPA 1990 it is

consistent with the interpretation of section 171B(2) for which the Appellant contends, and therefore confirms that interpretation (***Hanlon v. Law Society*** [1981] AC 124 at page 194 (proposition (3)).

viii) The Appellant's approach is consistent with the Planning Inspectorate's Guidance Note as referred to in paragraphs 22 and 71 in ***Brent***.

ix) The court should not interpret section 171B(2) by relying on Circular 10/97.

x) Even if the Inspectors' Training Manual (as referred to by Mr Fullbrook) sets out an established practice it does not provide an authoritative interpretation of the meaning of the statute.

xi) The argument that the four year rule applies is not a new point as it is referred to in the Grounds of Appeal and Statement of Case before the Inspector. To the extent that the argument is new, proceedings under section 289 TCPA 1990 are appeals to the High Court governed by Part 52 of the Civil Procedure Rules (CPR 52.28) and therefore the decision on whether to allow a new point to be taken is to be governed by the law relating to appeals. Whether the four year rule in section 171B(2) applies is a question of law, and no further facts need to be found. All three criteria set out at paragraph 18 in ***Singh v. Dass*** are satisfied.

44. In his reply, Mr Streeten submitted:

i) The interpretation of section 171B(2) TCPA 1990 advanced on behalf of the First Respondent is not consistent with the statutory purpose identified in ***Van Dyck*** (Parliament's desire to protect long established residential occupation), ***Arun*** (paragraph 5 loss of homes), and ***Jarmain*** (page 1070 protecting a home).

ii) Single (in section 171B(2)) does not mean use by a single household. The word 'single' qualifies the word 'dwellinghouse' not its use. If Parliament had meant single household it would have said so, that being the approach taken in other legislation such as Class C3 in the UCO. The use of the word 'single' excludes a mixed use.

45. Mr Fullbrook and Ms McCormack, for the First Respondent, submitted:

i) Applying the principles set out in ***Trustees of the Barker Mills Estates v. Test Valley BC*** [2017] PTSR 408 at paragraph 77, and ***Mead Realisations v. Secretary of State for Levelling-up, Housing and Communities*** [2024] PTSR 1093 at paragraph 182, the Appellant should not be permitted to raise an argument requiring findings of fact which was not raised before the Inspector. The Appellant did not only fail to raise an argument that the four year rule applied but conceded that the ten year rule applied. If the point had been raised the Inspector would have had to consider whether the 'second bite' provision applied and would have had to make findings of fact in order to do so.

ii) Use as an HMO does not constitute use as a single dwellinghouse for the purposes of section 171B(2) TCPA 1990. There is a distinction to be drawn

between a building being a dwellinghouse and a building being used as a single dwellinghouse. The word 'single' serves a purpose.

iii) Secondary legislation, such as paragraph L.1(a) of Class L of Part 3 of Schedule 2 to the GPDO is capable of being persuasive authority for the construction of primary legislation, but only when roughly contemporaneous with the primary legislation. Class L dates from 2015 and is not roughly contemporaneous.

iv) The matter in issue in this case is clearly addressed in the Hansard Report of the debate on 22nd May 1968 on the Town and Country Planning Bill. This case can be distinguished from ***Van Dyck*** as the Parliamentary material meets all three criteria set out in ***Pepper v. Hart***. The material provides clarity on two points:

a) Was section 171B(2) intended to protect all residential occupation;

b) Was section 171B(2) intended to exclude HMOs.

v) The guidance given at paragraph 2.81 of Annex 2 to Circular 10/97 should be afforded significant persuasive weight.

vi) The Manual forms part of the factual matrix.

46. The following arguments were advanced in relation to relief:

i) Mr Fullbrook argued that:

a) Even if the four year immunity period applied, the Inspector would inevitably have dismissed the appeal as a result of the 'second bite' provision. The judgment on whether the 2020 EN and the 2023 EN described the same actual breach of development control could only have been exercised in one way.

b) If the court finds against him on the interpretation of section 171B(2) TCPA 1990 it should refuse to remit the case to the First Respondent so as to discourage appellants from taking new points.

ii) Mr Streeten argued that:

a) The First Respondent has failed to discharge the burden on him to establish that the outcome would not have been different.

b) It would be for an Inspector to determine, as a matter of judgment, whether the 2020 EN and the 2023 EN described the same actual breach of development control.

Discussion

47. The following issues fall to be considered:

i) Should the Appellant be permitted to pursue the argument that the four year time limit for taking enforcement action applied in this case (the new point issue)?

ii) How is the task of construing section 171B(2) to be approached, and in particular:

a) Can account be taken of the Parliamentary material relating to the introduction of the predecessor provision in 1968?

b) Can account be taken of paragraph L.1(a) of Class L of Part 3 of Schedule 2 to the GPDO?

c) Can account be taken of the advice given by the Secretary of State in Circular 10/97?

d) Can account be taken of the Inspectors' Training Manual?

iii) Is use as an HMO use as a dwellinghouse?

iv) If use as an HMO is use as a dwellinghouse, is it use as a single dwellinghouse?

Can the point be taken

48. The question of whether a new point can be taken is fact sensitive. As Holgate J said (at paragraph 77) in ***Barker Mill*** it is necessary to examine the nature of the new point sought to be raised in the context of the process which was followed up to the decision under challenge.

49. The first issue to determine is whether the argument now raised (that the four year rule set out in section 171B(2) applies) is a new point.

i) Mr Streeten argues that it is not a new point, as it was averred (at paragraph 2.5 of the Appellant's Grounds of Appeal, and paragraph 2.5 in the Statement of Case in the section 174 TCPA 1990 appeal from the Second Respondent to the First Respondent) that if it could be shown that the use subsisted for a four year period no enforcement action could be taken. Those statements were both made under the heading 'Legal Background'.

ii) In the Second Respondent's Statement of Case, they responded to the Appellant's Grounds of Appeal. In the response in relation to the ground (d) appeal, the Second Respondent averred (at paragraph 4.7) that "use as a HMO is subject to the 10 year rule (s171B(3))".

iii) The Appellant's final position in the section 174 TCPA 1990 appeal was that set out in the Response to the Council's Statement of Case in which it was acknowledged that if they "…. wanted to obtain a CLEUD they would require continuous and uninterrupted evidence for a period of 10 years".

iv) The acknowledgement that the ten year rule applied was made in the final written submission made on behalf of the Appellant, and was made not as a

general point, but in relation to the specific facts of the case, and in response to the Second Respondent's argument, in their Statement of Case, that the ten year rule applied.

50. In my judgment given the Appellant's final position in the written documents submitted on its behalf was that the ten year rule applied to the specific facts of this case, advancing an argument in the appeal before this court that the four year period applies, is a new point.

51. As this case is an appeal to the High Court, the principles set out at paragraphs 16 to 18 in ***Singh v. Dass*** are to be applied in considering this issue.

52. This court should be cautious in allowing the new point to be raised.

53. The point in contention is whether change of use of a building to an HMO is to 'use as a single dwellinghouse' as referred to in section 171B(2) TCPA 1990. That is a point of statutory construction. If the point had been before the Inspector it would not have resulted in the appeal being conducted differently in relation to the evidence, as the evidence relating to when the Appellant acquired the Site, and the actions it took following acquisition (as referred to at paragraph 7 of the DL) was before the Inspector.

54. At paragraph 9 of the DL the Inspector said "The position is worse if the second bite provisions apply to the notice before me …". The Inspector referred to but did not apply, the second bite provisions. If the Appellant had advanced an argument before the Inspector that the four year rule applied, it is likely that the Inspector would have had to consider and apply the 'second bite' provisions (in section 171B(4) TCPA 1990). Consideration of the second bite provisions would have required the parties to make submissions and for the Inspector to make a judgment on whether the 2020 EN and the 2023 EN covered the same actual breach of development control described in different ways (***Jarmain*** at page 1069).

55. In my judgment it can be said that that point of statutory construction (as to the meaning and effect of section 171B(2) TCPA 1990) falls into the category of a 'pure point of law'.

56. Although the statutory construction point is a pure point of law, the consequence of not advancing the argument that the four year rule applied in this case, raises questions of law and a judgment based upon facts. Consideration of the 'second bite' provisions would not fall into the category of a 'pure point of law'. Consideration and application of the 'second bite' provisions would have required the Inspector to make a judgment based upon the evidence before him, in particular the 2020 EN and the 2023 EN. In that sense the proceedings before the Inspector would have been conducted differently as competing arguments on the application of the second bite provisions would have been advanced and considered. At paragraph 17 in ***Singh v. Dass*** Haddon-Cave LJ said that an appellate court will not, generally, permit a new point to be raised on appeal if "…or (b), had it been run below, it would have resulted in the trial being conducted differently with regards to the evidence at trial".

57. When advancing arguments in relation to relief Mr Streeten contended that it would be for an Inspector to determine, as a matter of judgment, whether the 2020 EN and

the 2023 EN described the same actual breach of development control. I agree that consideration of the 'second bite' provisions would have required the Inspector to consider, as a matter of judgment, whether the 2020 EN and the 2023 EN were directed at the same actual breach of development control. As a consequence, if the point now in issue had been raised before the inspector, the determination of the section 174 TCPA 1990 enforcement notice appeal would have been conducted differently, and it would have been necessary for an additional judgment to be made by the Inspector.

58. The fact that an additional judgment would have to have been made by the Inspector weighs strongly against allowing the point to be argued (***Barker Mill*** at paragraph 77). There is a strong public interest in the finality of civil proceedings, including planning proceedings (***Mead Realisations v. Secretary of State for Levelling-up Housing and Communities*** [2024] PTSR 1093 at paragraph 182). That additional judgment (which the Inspector would have been required to make) raises mixed questions of law and fact, and therefore would have resulted in the 'trial' (in this case a planning appeal) being conducted differently with regards to the evidence as the parties would have had to make submissions on fact and law to be considered by the Inspector. In that sense, and taking account of the characteristics of the enforcement notice appeal process, the circumstances fall within the category referred to at paragraph 17(b) in ***Singh v. Dass***. Alternatively the circumstances fall into the category referred to at paragraph 77 in ***Barker Mill***, namely where an additional judgment would have to be made by the inspector.

59. I have found that the argument raised in this court (that the four year rule created by section 171B(2) TCPA 1990 applies) is a new point which was not taken before the Inspector. I have found that if that point had been raised before the Inspector, the Second Respondent would have been able to raise the 'second bite' point, and the Inspector would have been required to reach an additional judgment in order to resolve that point. In my judgment, on the basis of those findings, the Appellant should not be allowed to raise the new point (that the four year rule created by section 171B(2) TCPA 1990 applies) in this appeal. On that basis, the appeal should be dismissed.

60. As the parties have argued the other points in issue, I have gone on to consider them, notwithstanding the fact that my decision on the 'new point' is sufficient to dispose of the appeal.

Parliamentary Material

61. There is a dispute as to whether reference can be made to the Hansard Report of the debate on Clause 13 of the Town and Country Planning Bill which took place on 22nd May 1968 in the House of Commons.

62. The principles to be applied are those set out by Lord Browne-Wilkinson at page 1061 E-F in ***Pepper v. Hart*** [1992] 3 WLR 1032:

> "I therefore reach the conclusion, subject to any question of Parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to Parliamentary materials where (a) legislation is ambiguous or obscure, or leads to an absurdity; (b) the material

> relied upon consists of one or more statements by a minister or other promoter of the Bill together if necessary with such other Parliamentary material as is necessary to understand such statements and their effect; (c) the statements relied upon are clear."

63. The amendment moved by the Minister of Housing and Local Government ("the Minister") included the following:

> "(3) Where an enforcement notice relates to a breach of planning control consisting in-
>
> ….
>
> (c) the making without planning permission of a change of use of any building to use as a single dwellinghouse,
>
> it may be served only within the period of four years from the date of the breach."

64. The statements made by the Minister included the following:

At column 665

> "The Amendment is to meet an undertaking given in Committee to confine the abolition of the four-year rule on enforcement notices to those cases in which the mischief is established. I undertook to restore the four-year rule in the case of enforcement notices relating to any breach of planning control consisting in the carrying out of building or any other operations on land for a change to residential use.
>
> One slight qualification has been introduced to which attention is called in the first of the Opposition Amendments, and that is paragraph (c) refers to change of use to use as a single dwelling house. The reason for this is that changes of use to multi-occupation can have undesirable social as well as planning consequences. They come within the general mischief in that they are often difficult for the planning authority to detect and I understand that there have in practice, been cases of this kind of development in which the four-year rule has been a barrier, preventing the planning authorities from exercising the control which is patently desirable on social as well as planning grounds. This is the sort of abuse which can lead to an area's deterioration into a slum or near slum and I hope that the House will agree that this is a proper limitation. …"

At column 675

> "… It already is a breach of planning control to convert from a single dwelling-house to a multiple dwelling-house, and for the social reasons I have outlined I suggest that it would be wise not to subject such a breach to the constraint of the four-year rule…."

65. In ***Van Dyck*** the Court of Appeal were considering the meaning and effect of section 171B(2) TCPA 1990. Chapter II of Simon Brown LJ's judgment considered whether reference could be made to the statement made by the Minister in the debate on the 22nd May 1968. At page 75 Simon Brown LJ held that conditions (a) and (b) as set out in the speech of Lord Browne-Wilkinson in ***Pepper v. Hart*** were satisfied. Simon Brown LJ went on to consider whether condition (c) was satisfied. Simon Brown LJ set out his conclusions at page 76. He concluded (at points 1 and 2) that the Minister was not addressing breaches of planning control consisting of subdivision or even changes of use of part of a building. At his point 3, Simon Brown LJ reached the following conclusion:

> "3. The Minister's final remarks were necessarily extempore responses to various points raised by Mr. Rossi during the debate. Although I reject Mr. Newcombe's suggestion as unacceptably far-fetched-the suggestion that the Minister was invoking section 12(3) simply to justify his proposed use of the term "single dwelling-house" and, when referring to conversion "from a single dwelling-house to a multiple dwelling-house", was then intending to describe some quite different breach of planning control- I certainly do not find in this crucial passage the clarity for which *Pepper v. Hart* requires us to search, still less a clear statement directed to the very matter in issue."

66. The passages to which Simon Brown LJ was referring included the Minister's final remarks, being the statement at column 675.

67. The passages on which Mr Fullbrook seeks to rely includes the same passages as those considered in ***Van Dyck***. Mr Fullbrook places particular reliance on the passage in column 665, and argues that the Minister's statements were not directed to the matter in issue in ***Van Dyck*** (being subdivision) but that they were directed at the point in issue in this case, namely whether the words in paragraph (c) of the proposed amendment included a change of use to 'multi-occupation'. I accept those submissions.

68. In my judgment it is clear from the passage at column 665 that by using the words "change of use of any building to use as a single dwellinghouse" as opposed to "residential use" (the wording put forward in the opposition amendment), the intention and purpose of the legislation was to exclude changes of use to multi-occupation from the benefit of the four year rule. The Minister identified change of use to use as a single dwelling house as benefiting from the four year rule. The Minister then explained the reasons for that provision, namely that changes of use to multi-occupation can have undesirable social as well as planning consequences. The Minister then said that he understood that there had been cases of this kind of development in which the four year rule had been a barrier, preventing planning authorities from exercising control.

69. For those reasons I conclude that, in relation to the point at issue in this case, the Ministerial statement is sufficiently clear to meet the ***Pepper v. Hart*** criterion, and is directed to the very matter at issue in this case. Therefore, in this case, it is permissible to refer to the Parliamentary material as a guide to the construction of section 171B(2) TCPA 1990.

The GPDO

70. Mr Streeten seeks to rely upon Paragraph L.1(a) of Class L of Part 3 of Schedule 2 to the GPDO as an aid to construing section 171B(2) TCPA 1990. Paragraph L.1(a) states:

> "**L.1** Development is not permitted by Class L if it would result in the use—
>
> (a) as two or more separate dwellinghouses falling within Class C3 (dwellinghouses) of the Schedule to the Use Classes Order of any building previously used as a single dwellinghouse falling within Class C4 (houses in multiple occupation) of that Schedule; or"

71. Paragraph L.1 is found in a statutory instrument made in 2015.

72. Section 171B(2) TCPA 1990 was inserted into the TCPA 1990 by section 4(1) of the Planning and Compensation Act 1991. A provision having the same effect had been in force since the coming into effect of section 15(3)(c) of the Town and Country Planning Act 1968.

73. Delegated legislation, such as the GPDO, is made by the executive, whereas primary legislation is made by the legislature. It is for the courts to interpret legislation. By exercising its power to make delegated legislation the executive cannot alter the intention behind the enabling Act.

74. The editors of *Bennion, Bailey and Norbury on Statutory Interpretation* consider the use of delegated legislation as an aid to construing primary legislation in Chapter 24.18 and state that "…the courts have frequently stressed the need for delegated legislation to be roughly contemporaneous to be persuasive". An example of the approach to be taken when the delegated legislation is not contemporaneous is provided by ***Dimond v. Lovell*** [2000] 1 QB 216 at paragraph 48, where Sir Richard Scott V-C said:

> "But the Regulations of 1983 postdated the Act by some nine years and I do not think the content of the Regulations can be taken to be a guide to what Parliament intended by the language used in the Act."

75. In this case the GPDO was made approximately 47 years after the enactment of section 15(3)(c) of the Town and Country Planning Act 1968. Given that Class L of Part 3 of Schedule 2 to the GPDO was not made contemporaneously with the enactment of Section 15(3)(c) of the 1968 Act or with the enactment of section 171B(2) of the TCPA 1990, but a considerable time after both those enactments I do not consider that it can be taken to be a guide as to what Parliament intended when it enacted section 171B(2) of the TCPA 1990.

Circular 10/97

76. Annex 2 to Circular 10/97 set out the Secretary of State's advice on enforcement notices and appeals. Circular 10/97 was withdrawn following the introduction of the National Planning Policy Framework and associated Planning Practice Guidance.

77. At paragraph 2.81 of Annex 2 to Circular 10/97:

i) It is said that a distinction can be drawn between "use as a single dwellinghouse" as referred to in section 171B(2) TCPA 1990, and whether a building is a dwellinghouse as such for the purposes of considering permitted development rights.

ii) The last three sentences state:

> "It is considered that the criteria for determining use as a single dwellinghouse include both the physical condition of the premises and the manner of the use. Where a single, self-contained set of premises comprises a unit of occupation, which can be regarded as a separate "planning unit" from any other part of a building containing them; are designed or adapted for residential purposes, containing the normal facilities for cooking, eating and sleeping associated with use as a dwellinghouse; and are used as a dwelling, whether permanently or temporarily, by a single person or more than one person living together as, or like, a single family, those premises can properly be regarded as being in use as a single dwellinghouse for the purposes of the Act. This interpretation would exclude such uses as bed-sitting room accommodation, where the occupants share some communal facilities within a building, such as a bathroom or lavatory, and the "planning unit" is likely to be the whole building, in use for the purposes of multiple residential occupation, rather than each individual unit of accommodation."
>
> (my underlining)

78. Guidance given by the Government, such as a code of practice, or circular is capable of providing some assistance as to the intended meaning of legislation. However such guidance should be treated with caution. (***Ellis v. Bristol City Council*** [2007] EWCA Civ 685 at paragraph 33).

79. Good practice guidance does not cease to be that just because the document in which it is found is withdrawn (***R (oao Rickards) v. East Hertfordshire DC*** [2025] EWHC 2278 (Admin) at paragraph 101).

80. In my judgment reference can be made to Annex 2 to Circular 10/97 as giving an indication of the Government's view. However that guidance is persuasive at best and provides no definitive assistance in interpreting the legislation, or ascertaining its purpose.

The Inspectors' Training Manual

81. The Manual is not a public document; it is provided for use by planning inspectors. The Manual sets out the views of the Planning Inspectorate.

82. In my judgment the Manual falls into the category of guidance given by the Government, such as a code of practice, and is therefore capable of providing some

assistance as to the intended meaning of legislation. However such guidance should be treated with caution.

83. Paragraph 608 of the Manual, as set out at paragraph 15 above should be treated with great caution. The footnote to the first sentence refers to a ministerial decision on an appeal against a refusal to grant a certificate of lawfulness of existing use or development (reported at [1997] JPL 371). The basis of the appeal in that case was that a front ground floor room had been used as a self-contained flat for a period of four years prior to the application. It was held that the appellant had failed to establish that the room had all the facilities necessary to sustain day to day domestic existence, in particular a WC. The ministerial decision does not appear to support the proposition set out in the first sentence of paragraph 608 in the Manual.

84. Given those facts no assistance can be derived from the guidance given in paragraph 608 of the Manual when interpreting section 171B(2) TCPA 1990.

Is use as an HMO use as a dwellinghouse?

85. The 2023 EN alleged a material change of use from two flats to a house in multiple occupation.

86. At paragraph 54 in ***Brent***, Robert Palmer QC considered the first issue in that case, namely whether a building is a 'dwellinghouse' for the purposes of planning law, and summarised the relevant principles derived from ***Gravesham*** and reaffirmed in subsequent cases. Having considered ***Blackpool Borough Council v Secretary of State for the Environment*** (1980) 40 P&CR 104, Robert Palmer QC said (at paragraph 58):

> "This conclusion did not entail any finding that a dwellinghouse must be occupied by one family or household if it is to retain its status as a "dwellinghouse" (for the purposes of the GPDO or otherwise) as a matter of law: the Court was merely considering whether the Inspector had reached a factual finding to which he was entitled to come, concerning the nature of the use to which the dwellinghouse was being put, and whether it materially differed from its permitted use."

87. At paragraph 70, Robert Palmer QC rejected the argument that people are to be regarded as forming a single household or who are living together as such can be imported into the definition of "dwellinghouse". At paragraph 71 the judge said that his conclusion was consistent with the Planning Inspectorate's guidance note, and that the guidance note reflects the fact that an HMO may be a dwellinghouse even if it is not in C4 use, and that it confirms that the ***Gravesham*** test must be applied to any HMO to determine whether it is in fact a dwellinghouse.

88. At paragraph 73 Robert Palmer QC came to the following conclusion:

> "The Inspector made no error of law in concluding that, whether the Property fell within Use Class C3 or C4 at the time of construction of the extension, the HMO enjoyed permitted development rights as a "dwellinghouse" under the GPDO."

89. Applying the reasoning in ***Brent*** it is clear that, so long as the ***Gravesham*** test is met, an HMO, whether falling in Class C4 or not, is a dwellinghouse. That is not a surprising conclusion given that the use described in Class C4 is "Use of a dwellinghouse by not more than six residents as a 'house in multiple occupation' ".

If use as an HMO is use as a dwellinghouse, is it in use as a single dwellinghouse?

90. The issue of the meaning and effect of the word 'single' as it appears in section 171B(2) TCPA 1990 is at the heart of the dispute between the parties.

91. In interpreting legislation it is important to identify its purpose (***PACCAR*** at paragraph 41).

92. The broad policy which underlies the four year rule was identified in ***Van Dyck*** as being based upon Parliament's desire to protect long established residential occupation. Similarly in ***Arun*** it was said that the rationale for the imposition of the four year rule was that a longer period would cause serious loss and/or hardship including the loss of homes by homeowners (paragraph 5).

93. Mr Streeten argues that the purpose of protecting long established residential occupation applies to those living in HMOs. I agree that a policy of protecting residential occupation can apply to different forms of residential occupation and would include HMOs. However section 171B(2) does not refer to changes of use to dwellinghouses or residential occupation in general, but to change of use of any building "to use as a single dwellinghouse". It is therefore necessary to construe that term in the context of Part VII of the TCPA 1990 and the statute as a whole.

94. The only other relevant reference in the TCPA 1990 to a single dwellinghouse is to be found in section 55(3)(a). Section 55 defines 'development'. Section 55(3)(a) makes express provision (for the avoidance of doubt) that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use. That provision appears to be aimed at what Simon Brown LJ (at page 63 in ***Van Dyck***) described as subdivision. In section 55(3)(a) the words 'used as a single dwellinghouse' are used in contrast to 'use as two or more separate dwellinghouses'. In section 55(3)(a) the word 'single' qualifies the number of dwellinghouses not the number of occupants or the type of occupancy. The words used in section 171B(2) are different, namely 'to use as a single dwellinghouse'. The use of the words 'single dwellinghouse' in section 55(3) is used in contrast to the uses as two or more separate dwellinghouses, whereas in section 171B(2) 'use as a single dwellinghouse' is descriptive of the nature of the use.

95. At page 72 in ***Van Dyck*** Simon Brown LJ recorded the argument advanced by the appellants:

> "The appellants, however, contend that the self-same considerations underlying the undisputed application of the four year rule to the creation of a single dwelling-house-namely Parliament's desire to protect long established residential occupation-apply equally to the creation of more than one new residential unit. There is, they submit, neither sense nor logic in making a distinction between these categories; the rule should apply to the creation of all new separate

> dwellings-although not, of course, to conversions giving rise to multiple occupation with shared facilities, a different class of case altogether."

96. At page 73 in ***Van Dyck*** Simon Brown LJ said that he had come to accept the appellants' central argument, and as a consequence held that four year rule applied to all new separate residences. It should be noted, that in accepting the appellants' central argument Simon Brown LJ did not comment on the fact that the appellants, in their argument, excluded conversions giving rise to multiple occupation with shared facilities.

97. The conclusion reached in ***Van Dyck*** was that each unit created following sub-division constituted a single dwellinghouse, and that therefore all new separate residences benefited from the four year rule. A number of flats are each single dwellinghouses. In referring to separate residences Simon Brown LJ did not restrict the residences which benefited from the four year rule to those in a particular form of occupation. Simon Brown LJ's reasoning was not directed to (and did not address) conversions to multi-occupation.

98. In ***Brent*** (at paragraph 70) the judge held that the requirement (found in Class C3 of Schedule 1 to the UCO) that use be by people who are to be regarded as forming a single household, or who are living together as such, cannot be imported into the definition of dwellinghouse itself. If section 171B(2) had referred to use of a building as a dwellinghouse there would be no doubt that an HMO (being a dwellinghouse) would fall within its ambit. However Parliament included the word 'single' in the phrase 'use as a single dwellinghouse'. The meaning of those words has to be considered in relation to each dwellinghouse that is created following a change of use of any building.

99. The wording of section 171B(2) does not follow the approach taken in the description of the use set out in Class C3 of Schedule 1 to the UCO, in that it does not refer to use by a single household.

100. It is necessary to consider the purpose of including the words 'use as a single' before the word 'dwellinghouse'. It is clear from ***Van Dyck*** that those words do not restrict the number of dwellings which can benefit from the four year rule following subdivision. The provision is to be applied so as to benefit all new separate residences after four years.

101. At paragraph 39 in ***Arun*** Carnwath LJ said: " It is interesting to note that, from the parliamentary debates at the time (referred to in *Van Dyck v Secretary of State for the Environment* [1993] JPL 565, 575), it appears that the reference to "a single dwellinghouse" was deliberately restrictive. …". Carnwath LJ went on to say that notwithstanding those references, in ***Van Dyck*** the Court of Appeal held that the words were apt to cover a change of use from a single house to two or more separate dwellings.

102. Given that the statement made by the Minister in the debate in Parliament on 22nd May 1968 addressed the purpose which lay behind the introduction of what became section 15(3) of the Town and Country Planning Act 1968 (and is now section 171B(2) TCPA 1990) and explained that the reference to "use as a single

dwellinghouse" was intended to exclude premises in multi-occupation, I am of the view that the statement can be taken into account when seeking to ascertain the purpose of the legislation.

103. In his submissions Mr Fullbrook drew a distinction between 'being a dwellinghouse' and being 'used as a single dwellinghouse', and he submits that use as an HMO does not equate to 'use as a single dwellinghouse'.

104. I note that Parliament did not say "one dwellinghouse" or "a dwellinghouse" it said "use as a single dwellinghouse".

105. As was made plain in ***Van Dyck*** the words 'use as a single' in this context do not refer to the number of dwellinghouses. The word 'single' in this context does not qualify the noun 'dwellinghouse' in the numerical sense (as it does in section 55(3) TCPA 1990); it qualifies the use of the dwellinghouse. As Carnwath LJ said in ***Arun*** it appears that the reference to "a single dwellinghouse" was deliberately restrictive (although the immediately following reference to ***Van Dyck*** indicates that there are limitations on the restrictions). It is necessary to consider the nature and extent of that restriction. The word 'single' qualifies the use of the dwellinghouse. When considering use, the word "single" can be contrasted with the word "multiple". As the word 'single' qualifies use, it excludes uses other than "use as a single dwellinghouse" such as use as a dwellinghouse in multiple occupation.

106. That construction is consistent with the purpose of the legislation which can be ascertained from the Ministerial Statement at column 665 of the Hansard Report namely to limit the ambit of the four year rule by excluding multi-occupation.

107. My interpretation is also consistent with the guidance given in paragraph 2.81 of Annex 2 of (no longer extant) Circular 10/97 that the criteria for determining use as a single dwellinghouse includes the manner of the use, and that uses such as bed-sitting room accommodation where the occupants share some communal facilities are excluded from use as a single dwellinghouse.

108. For those reasons the words "use as a single dwellinghouse" as they appear in section 171B(2) TCPA 1990 do not include an HMO, and therefore the Inspector did not err by referring to the "… 10-year period required to achieve immunity …".

Conclusion

109. I have decided that the Appellant should not be permitted to pursue the new point that the four year rule applied when considering the breach of planning control alleged in the 2023 EN. On that basis, I dismiss the appeal.

110. As the points relating to statutory construction were argued, I have considered them. If I am wrong, and the argument that the four year rule applied was either not a new point, or was a new point which the Appellant should have been permitted to take, I would also dismiss the appeal for the reasons I have given.

111. On the basis of my conclusions the disputed issues relating to relief do not arise.

The Planning Inspectorate

Appeal Decision

Site visit made on 17 April 2024

by H Jones BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 May 2024

Appeal Ref: APP/H0738/W/24/3337958
Middle Fields, Calf Fallow Lane, Norton, Stockton-on-Tees TS20 1PF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs Paul and Kerry Derbyshire against the decision of Stockton-on-Tees Borough Council.
- The application Ref is 23/1722/FUL.
- The development proposed is described as "Erection of a single replacement dwelling".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In December 2023, a revised version of the National Planning Policy Framework (the Framework) was published. As a part of the Framework's revisions, some paragraph numbering changed from that contained within the previous version. In my decision, I have had regard to the most up to date version of the Framework.

Main Issues

3. The main issues are:

    - Whether the appeal site provides a suitable location for the dwelling proposed having regard to relevant policies within the development plan and the National Planning Policy Framework; and
    - The effects of the proposal upon the character and appearance of the area.

Reasons

Location

4. Located beyond the defined limits to development established within the Stockton-on-Tees Borough Council Local Plan (LP), the site lies within the countryside. The site is accessed via a country lane – Calf Fallow Lane, and fields separate it from the nearest settlements. The part of the countryside the site is within is characterised by groups of buildings separated by fields and paddocks. Given its setting, I find the appeal site to be isolated within the countryside.

5. LP policy SD3 establishes that new dwellings within the countryside are unacceptable unless they would be for certain exceptional purposes set out within the policy's criteria. Amongst other matters, policy SD3 further sets out

that support will be given to the replacement of a dwelling in the countryside provided that the replacement would not be materially larger than the existing dwelling and it would be located on the same site or in close proximity. On the basis of the evidence before me, no definitions of "replacement dwelling" or "dwelling", as referenced within policy SD3, are provided within the LP.

6. The site contains a caravan which the proposed dwelling would replace. The caravan is a twin unit, it is made up of two separate chassis joined together. The use of the caravan for residential purposes is lawful but, given it is a caravan, it is not a building. The replacement would be a brick bungalow with tiled roof.

7. In comparison to bricks and mortar houses, caravans are constructed of shorter-life materials and have greater mobility characteristics. The caravan on site would not have the same degree of permanency as the replacement bungalow would. Therefore, whilst the site may be used for the siting of a caravan permanently, the accommodation itself is not permanent.

8. The caravan will be affording its occupants the facilities required for day-to-day private domestic existence. However, those facilities are not contained within a building. The physical form of the caravan means that it is not a dwellinghouse even if, in function, it is serving as one.

9. In my view, the support offered to replacement dwellings by policy SD3 will be in those circumstances where one permanent dwellinghouse would be replaced by another. For the reasons I have set out, this would not be the case in the proposal. Consequently, the proposal does not constitute a replacement dwelling as referenced by policy SD3. In turn, I find that a new isolated dwelling in the countryside is proposed, and it would not be for any of the exceptional purposes set out at criteria 4 (a) – 4 (d) of policy SD3.

10. Even if I were to adopt the position that the proposal should rightly be considered as a replacement dwelling, the floor area and volume of the proposed dwelling would be considerably greater than that of the caravan. Therefore, even though the proposed dwelling may be of a comparable scale to some nearby dwellings, and smaller than some others, it would be materially larger than that which exists. Consequently, the proposal conflicts with the replacement dwelling criteria within policy SD3 in this respect.

11. I appreciate that these findings diverge from some of those expressed by the Inspector in the Follyfoot Banks appeal decision. I also note that elsewhere in the area planning permissions for dwellings have been granted following the grant of certificates of lawfulness including for caravans. However, appeal decisions are heavily dependent on the case-specific evidence and circumstances. I have come to my own views on this appeal having regard to the evidence before me now, my own experience and the particular circumstances of the case.

12. For the above reasons, the appeal site does not provide a suitable location for the dwelling proposed. The proposal conflicts with policy SD3 read as a whole. The proposal also conflicts with advice within the Framework which seeks to ensure isolated homes in the countryside are avoided unless it meets certain exceptional circumstances.

Character and appearance

13. The fields, paddocks, country lanes and the sporadic development groups surrounding the appeal site provide for a rural character. The groups of buildings include dwellings but also buildings which exude an agricultural and equestrian appearance. The agricultural and equestrian type buildings exhibit varied designs but many, given their function, are quite utilitarian in appearance. Next to the existing caravan is a corrugated metal building and a stable block. Therefore, the setting of the caravan also includes utilitarian buildings.

14. The caravan is itself of simple design, and it is quite modestly scaled. It is not particularly attractive, but its scale and appearance means that it is congruent with the buildings next to it, and it is reflective of the varied and utilitarian development in the area.

15. The proposed dwelling would be considerably larger than the caravan and, it would introduce into this part of the countryside a scale of development which exceeds what is presently there. From certain vantage points, including in the east along Calf Fallow Lane, the proposed dwelling would be quite effectively screened by landscaping. There are other views, such as from the tracks to the north, where the site is much more open, and the dwelling's size would be readily appreciable. The result of the caravan's replacement with the dwelling would be that this particular part of the countryside would become more built-up, and its present degree of openness reduced.

16. Furthermore, as the existing caravan's appearance is reflective of the utilitarian buildings beside it and in the area, no enhancement to the character or appearance of the area would result. Instead, the proposal would introduce a permanent and larger residence into this part of the countryside. In turn, it would erode the rural character.

17. I have no objection to the design detailing or material finish proposed to the dwelling, and I appreciate that a bungalow is proposed in order to reflect the scale of the nearest existing dwellings. Despite this, in the round, the building's scale and erosion of the prevailing character means that the development would be harmful.

18. Consequently, I find that the proposal would harm the character and appearance of the area. The proposal conflicts with policies SD5 and SD8 of the LP which seek to ensure that development is of an appropriate scale, would not harm the character and appearance of the countryside and is designed to the highest possible standard, taking into consideration the context of the area. The proposal would also conflict with those policies within the Framework which seek to ensure that development is sympathetic to local character and contributes to and enhances the natural and local environment, including through its recognition of the intrinsic character of the countryside.

Other Matters

19. As a small development, the proposal would also be likely to contribute quickly to the supply of permanent dwellinghouses. However, in providing only a single dwelling, this contribution would be very modest. Some economic benefits would arise from the proposal's construction and occupation. The development would provide for a biodiversity net gain. Though these are benefits of the

proposal, they are insufficient to outweigh the harm I have identified in the main issues.

20. The accommodation proposed may be of a better standard for the appellants, but I find that this is essentially a personal matter. Planning is principally concerned with land use in the public interest. Moreover, it has not been shown to me that there are not alternative means for the appellant to be better accommodated.

21. The site has access to a bridleway, providing a recreational route for the dwelling's occupants. The site would not be at risk of flooding nor is it the subject of any site specific environmental designation. The proposal would not harm the living conditions of neighbouring occupiers, it would not result in any effects prejudicial to highway safety and it would make appropriate provision for parking and property servicing. However, these are neutral factors which do not weigh in the proposal's favour and do not outweigh the harm which would arise from the development.

22. Both appeal parties submit that, as the proposed dwelling would replace a caravan, no additional nutrient loading effects upon nearby Habitats sites would result. If I were minded to allow the appeal I would need to be satisfied that the proposal would have no adverse effects on the integrity of such sites. Given I am dismissing the appeal, there is no requirement for me to undertake this assessment.

23. The appellant refers to paragraph 11 (d) of the Framework, but the reasons for this are not clear to me. Relevant development plan policies apply and, on the basis of all that is before me, I have no reason to conclude the most important policies should be treated as being out of date.

Conclusion

24. The appeal site does not provide a suitable location for the dwelling proposed, and the proposal would harm the character and appearance of the area. This, and the resulting conflict with the aforementioned development plan policies, leads me to conclude that whilst the proposal would comply with some development plan policies, it conflicts with the development plan as a whole. The material considerations do not indicate that the appeal should be decided other than in accordance with the development plan. Therefore, I conclude that the appeal should be dismissed.

H Jones

INSPECTOR