Town and Country Planning Act 1990
Appeals Under Section 174

Fry's Bottom Wood, Chelwood, Bristol

Appeal References
APP/F0114/C/25/3364346, APP/F0114/C/25/3364347,
APP/F0114/C/25/3364348, APP/F0114/C/25/3364349

Appellant's Closing Submissions

Introduction

1. These Closing Submissions are made on behalf of Mr. Stephen Willcox, the Appellant in these four Appeals against Enforcement Notices issued by Bath and North East Somerset Council ("the LPA") on 21st March 2025, in respect of the use of a site by the Appellant at Fry's Bottom Wood, Chelwood, Bristol ("the Appeal Site").

Appeal A

2. I have to acknowledge here a typographical error in my Opening Submissions in respect of this appeal. No Appeal under Ground c) has been brought in respect of Appeal A.

Ground (b) and (d)

3. There is an overlap in the issues in this Appeal, and so for the purpose of these Closing Submissions, I address both grounds together. Ground (d) really only applies if the Inspector is satisfied that the structure is a dwelling house.

4. The Appellant's case in respect of this Appeal has always been first and foremost that he has not constructed a dwelling house on the site (partially completed or otherwise).

However, he has to address the issue of what is alleged on the basis the Inspector may determine that a dwelling house has been constructed. The Respondent's case has shifted from the allegation in the Notice asserting that a complete dwelling house has been completed.

5. The Inspector has sought views from the parties concerning the amendment of the Notice to allege the construction of an incomplete building. The Appellant's position is that the building is substantially complete in respect of its use as an office, forestry storage building, tack and dry feed store. If it is to be considered as a dwelling house, not withstanding his evidence, then it is clearly incomplete – a point accepted by both the LPA and Mr. Downing.

6. Given the Appellant's case, as outlined above, the Appellant cannot assert an injustice if the EN is amended as per the LPA's closing submissions.

7. In law, there is no definition of a "dwellinghouse", albeit that the Court in *Gravesham*[1] accepted that the distinctive characteristic is its ability to afford access to the facilities required for day-to-day existence. The test in *Gravesham* was considered, and affirmed, in *London Borough Brent v SSLHC [2022] EWHC 2051 (Admin)* in which Robert Palmer QC (sitting as a Deputy Judge of the High Court) summarised the relevant principles to be considered in respect of whether a building is a "dwellinghouse" for the purposes of planning law. At [54] of his judgment[2], the Judge's summary is as follows:

> *i) A dwellinghouse is a unit of residential accommodation which provides the facilities needed for day-to-day private domestic existence (see further Innovia at [27]-[28]; Rectory Homes Ltd v Secretary of State for Communities and Local Government [2020] EWHC 2098 at [53], per Holgate J);*

[1] *Gravesham BC v SSE et O Brien [1983] JPL 306*
[2] https:// https://www.bailii.org/ew/cases/EWHC/Admin/2022/2051.pdf

ii) whether any particular building is or is not a dwellinghouse is a question of fact; and

iii)a factual assessment of whether or not something is a "dwellinghouse" may require consideration not only of whether it provides the facilities needed for day-to-day private domestic existence, but also consideration of the actual use to which it is being put. Thus a building which, although possessing all those facilities, was in mixed use by an occupier who lived in the upper part of the house while operating an estate agent's in two rooms on the ground floor, was held on the facts not to be a dwellinghouse in Scurlock v Secretary of State for Wales (1976) 33 P&CR 202. Equally, a dwellinghouse converted for use as (for example) a hostel or a hotel would no longer be a dwellinghouse, as it would no longer allow for "private domestic" existence.

8. Both the LPA and the Appellant provided evidence as to why they considered the structure not to be a dwelling – by virtue of it having been fitted out with a toilet and shower did not (as seemed to be Mr. Grant's case) make it a dwelling. The Appellant gave evidence as to how he had used the building in the past and what it was currently being used for – none of which involved it being used as a dwelling. It is, to be fair, a somewhat ramshackle development, added to over time, but without any intention of, or use as, a dwelling. Rather, it has been used as an office, forestry storage, a tack room and dry horse feed store (which, as the Appellant accepted, had not been completed prior to the expiry of the 4-year immunity period).

9. Mr. Grant, in response to the Inspector's question as to what was meant by him at 7.15 of his PoE explained that the building was not fit for habitation. It was not substantially completed, no internal fittings and no gable end. How this squares with the idea that what stands on site is a dwelling under the *Gravesham* test will be a matter for the Inspector to consider.

10. In defending against the claim he has built a dwelling, the Appellant relied on the position that if the Inquiry accepted that what has been built constitutes a dwelling, then the Inspector should accept that it has been substantially completed (ground (d)) and is to be considered immune from enforcement under the 4-year immunity period.

11. In response to this, the LPA's case is that the building is not substantially completed. Mr. Downing expressed reservations as to whether that was the case – concluding that in order to be substantially completed as either a dwelling or for office use, it needed to be water tight, which he considered it was not.

12. This raises an interesting turn in this Appeal. Following Lord Hope's reasoning in *Sage* at [6] then when dealing with an incomplete building *"...regard should be had to the totality of the operations which the person originally contemplated and intended to carry out".*

13. In the subsequent paragraphs in *Sage,* Lord Hope's reasoning continues to discuss the approach to considering contemplation and intention in respect of claimed unlawful development. Evidence as to what is intended in these circumstances may have to be gathered from different sources. This, on the Appellant's case is where his evidence as to his past use of the building comes to be considered. It was on this basis, that Mr. Grant was questioned as to whether or not intent could, or should, be taken into account. His answer was in the affirmative.

14. It is correct that Lord Hope's reasoning (and Lord Hobhouse's judgment) sets out that that regard has to had especially to the buildings physical features and design – and both Mr. Downing and Mr. Grant accepted in oral evidence that circumstances existed where one could see a building in use as something other than a dwelling could have a toilet and, indeed, shower facilities.

15. At [7] of *Sage* Lord Hope considered an example of a folly having been constructed that looks like a complete building, but one that had been intended to be left in a state

of incompleteness. That is not the case here, the Appellant has given evidence as to his development of the building, it has not been suggested by him that there was an intention to leave it as incomplete (if the Inspector considers it not to be substantially complete).

16. At [8] of *Sage* Lord Hope was clear that it is not for an Inspector to substitute their own view as to what a building was intended to be for in the place of the developer's intention. There has to be an evaluation of the evidence in respect of what the developer's intention was.

17. In that regard, the LPA seeks to use the PIP Application as evidence that the Appellant has built a dwelling. The Appellant provided evidence as to why that application was made, and indeed why it was withdrawn. This was, in effect, a speculative approach to evaluate whether or not the principle of a dwelling was acceptable at the site. It is not to be taken to show acceptance.

18. The Appellant's position remains that he has not constructed a dwelling

Ground f)

19. The Appellant explained in evidence as to why he considered that demolition went too far in respect of what was needed to remedy the breach alleged. The Appellant has, through his evidence, clearly advanced a passionate case about his interest in the history and context of the site. To now require demolition of the structure in its entirety will result in the loss of some of the features that were considered of interest under the Bath and NE Somerset Historic Environment Record (referred to by the LPA as the HER). A lesser step could achieve the same aim of remedying the breach by requiring the development to be restored to the position it was at the point of time

at which the Appellant took over the site. There are photographs provided in evidence as part of this Appeal could be used to assist that.

20. It is correct that the Appellant in evidence explained that it would be cheaper and easier to demolish the whole structure. Mr. Grant explained that in his view, he could not see how restoration could be achieved but accepted he had not taken advice from any surveyor or conservation officer.

21. The Inspector is invited to consider this issue still.

Ground g)

22. The Inspector is invited to consider whether 4 months is sufficient time to undertake the complete demolition of the building. Whilst the Appellant considered in his evidence that it could be done quickly, if the other EN's are upheld, he will be having to undertake a volume of work within a short space of time. There is a risk that he will be set up to fail, particularly if his claim about bats roosting in the building transpires to be correct. The LPA accepts that it will consider further time for him to undertake the work if he can evidence that it is needed, however, this is not the correct approach to adopt in considering a ground g) appeal – the Inspector needs to consider what period of time should be reasonably allowed. What is reasonable is a matter of judgment, to be exercised at the Inspector's discretion.

Appeal B

Ground b) -d)

23. The Appellant has set out his case in respect of the use of the partially complete building permitted under 22/03198/FUL. He has, candidly, accepted that it has been used for storage of items other than those used for forestry purposes and explained that he did so whilst he raised funds to complete what transpired to be an expensive

development. He is now in the position to complete the development, albeit he was unable to say when that would be, but was clear that he could not complete the building if it could not be used for B8 purposes, as per the advice that Mr. Grant accepted, he had given the Appellant.

24. In respect of the hard standing, the Appellant's position remains that he has not expanded it, and it has been in place prior to the expiry of the four-year immunity period. There have been repairs and improvements, through resurfacing. The LPA cannot say, with any degree of certainty, that the hard standing has been expanded and much appears to be an assumption made by Mr. Grant. However, the Appellant has explained (in some detail) the works carried out on the hard standing

25. These are issues for fact to be assessed by the Inspector, based on the evidence put before this Inquiry. In respect of the building, the Appellant has an extant permission, that his considers he has implemented, and which he can now complete. In so doing, the Appellant accepts that his ground d) appeal fails.

Ground f)

26. As a pragmatic approach, and one that demonstrates that demolition is unnecessary in respect of the building in order to remedy the breach of planning control, the Appellant seeks that the Inspector considers that the cessation of the unlawful uses and a return to the lawful use of the permitted building is sufficient and reasonable to remedy the breach.

Ground g)

27. As with Appeal Ground g), if the Inspector accepts that the hard standing is not immune from enforcement, then given the circumstances at the site and as set out in this Appeal, he is invited to consider, as an exercise of judgment, whether the time afforded under the Notice is reasonable.

Appeal C

Ground d)

28. Again, the Appellant's case is that the Tracks and Dams were substantially completed prior to the expiry of the four-year immunity period. In respect of all the tracks on the Site, he has given his explanation as to when they were installed and, with the exception of one track, all were constructed shortly after his took ownership of the site and following the issue of felling licenses from 1995 until 1998. The one track that was not completed within the requisite immunity period, he explained was the track linking the site for access and storage of trees at the western loop.

29. The Inquiry will appreciate the level of detail, including names, dates (albeit by reference to years and events) given by the Appellant in explaining his forestry works. He has been candid, given evidence on oath and has not been accused by the LPA of being incredible (by which I mean "not credible"). He clearly knows the history of the site since before, and after, his ownership and provided a compelling account of when works were carried out.

30. By contrast (and understandably) the LPA has not been able to provide anything near the level of detail provided orally by the Appellant. That is no criticism (as explained to Mr. Grant in cross-examination) but the LPA relies of assumptions from what it has seen on occasional visits to the site. In respect of the tracks, the LPA could not, at the point at which the ENs were prepared, be clear as to where the majority of the tracks are located that it now seeks to enforce against. It relies on the Appellant to understand which tracks it means. He has been candid in that regard, but, of course, an issue arises if the Appellant fails to comply with the EN here due to no longer being in ownership or responsible for the land. Any subsequent site owner has no way of being able to understand the EN in respect of which tracks it applies. The level of precision in the EN fails if the Appellant is not the owner.

31. In respect of the need for prior approval, on the Appellant's case whilst he did not seek (or maintain an application for prior approval) the construction of all the tracks (bar one) is now immune from enforcement. The issue of a lack of prior approval here is an irrelevance.

32. In respect of the resurfacing of the tracks, that Mr. Grant seems to have mistaken for wholly new tracks (the Appellant's case being that he has resurfaced the tracks but not altered their routes or widened them), Mr. Grant fairly agreed that works to repair or improve could amount to permitted development in respect of the tracks. This is clear from Part 6 of the GPDO in respect of Class E, which provides:

Permitted Development

E. The carrying out on land used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes consisting of—

(a)works for the erection, extension or alteration of a building.

(b)the formation, alteration or maintenance of private ways.

(c)operations on that land, or on land held or occupied with that land, to obtain the materials required for the formation, alteration or maintenance of such ways.

(d)other operations (not including engineering or mining operations

33. In respect of the Dams, again, this is an issue that has to be assessed from the evidence provided and the date upon which the Dams are said to be immune. The LPA relies on a visit, for which no photographs were provided, in October 2022 and seeks to place an emphasis on "new trees and vegetation" as well as resurfacing. The Appellant remains clear, on his evidence, that the Dams were completed in winter 2020-2021. He is also clear that he has, throughout his ownership of the site, restocked trees, including 450 trees planted around the western side of the conservation ponds created by the Dams. It is unclear as to whether these could be the "trees in tubes" that Mr. Grant referred to in cross-examination.

Ground a)

34. This is the Appellant's fallback position in respect of the Tracks and Dams if the Inspector does not accept that they are immune from enforcement. The Inquiry has received evidence from the Appellant, Mr. Grant and Mr. Downing in respect of the acceptability of these developments when assessed against local and national policy. The Appellant appreciates that the Inspector will have to assess this ground against that evidence.

Ground f)

35. If the Inspector concludes that the Tracks and Dams (or any of them) are not immune from enforcement, the Appellant's position is that requiring their removal is problematic in respect of the impacts of the wildlife. In particular, he has explained that the lakes created by the Dams are a habitat for newts.

36. Given the LPA accept that the lawful forestry use could continue at any point (SoCG CD 9.1 at [4.1]), on a pragmatic basis, it should be noted that the Appellant could seek to exercise the PDR under Part 6 of the GPDO at any time, once the tracks are removed.

Ground g)

37. As with Appeals A & B, the Appellant seeks that the Inspector considers, and if appropriate, exercises his discretion to allow more time for compliance if the EN is upheld.

Appeal D

Ground b)

38. This again is an evidential assessment exercise in respect of the mixed use.

39. The LPA now accepts that the equestrian use is lawful. Whilst the Inspector has sought submissions on the approach to take in respect of a mixed-use site, with respect, this is an issue that can be dealt with through an amendment to the EN to remove the references to equestrian use in the EN and the accompanying plan. The Appellant agrees with the submissions made by the LPA in closing in this regard.

40. The Appellant was candid in his evidence as to the overlap on the site. Mr. Downing was equally candid in his assessment of how, as per *Burdle*, the site should not be considered to be one of mixed use, but distinct planning units for each of the uses complained of by the LPA. The LPA maintains its position that the site is a mixed-use one, and the Appellant invites the Inspector to consider all of the evidence the Inquiry has received and reach a determination as to whether the mixed use site is beyond the reach of enforcement due to the passage of time. In the alternative, the Appellant has brought a ground a) appeal, which is discussed below.

Ground c)

41. Again, this is a factual matter for the Inspector to determine. The Appellant was candid in respect of his firewood production. He accepted that he had imported

conifer onto the site when others had not wanted it. That had been used in his firewood production using his own trees. In respect of more substantial logs imported onto the site, the Appellant explained that he intended to mill those logs to clad the forestry building.

42. In respect of waste transfer, The Appellant accepted that this was a use that has arisen, albeit it he did not understand that to be the case.

43. Storage – again, the Appellant accepted that storage of items other than those connected to forestry had arisen.

Ground d)

44. This is an alternative to the Appellant's position that the mixed use has not arisen due to the separation of the planning units present at the site. It is, again, a matter that he considers the Inspector is able to assess based on the evidence received by this Inquiry.

Ground a)

45. The Inspector has sought submissions from the parties in respect of his ability to grant permission for individual uses alleged within the LPA's allegation made in respect of this Appeal concerning the mixed use of the site.

46. The allegation in this EN is one of a material change of use from forestry to a mixed use of forestry, storage, firewood production, motorbike trials practice, equestrian, a waste transfer site and associated structure.

47. Section 177(1)(a) provides the Inspector with a power to:

"grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relate."

48. As such, permission may be sought by an Appellant[3] and granted under the ground a) appeal for an individual use, should the Inspector consider permission should be granted. The Inspector is aware that the ground a) appeal brought by the Appellant is an alternative to his ground b) appeal.

49. As with the Appeal C ground a) appeal, if the Inspector is not satisfied that the Appellant's appeals under ground b), c) and d) succeed, the Appellant considers that the Inspector has enough evidence from Mr. Downing, Mr. Grant and himself to determine this appeal. It should be noted that the agreement reached in respect of the Equestrian use and the suggested approach to amending the EN.

50. Should the Inspector be minded to grant permission for any of the uses alleged as part of the mixed use allegation

Ground f)

51. Again, this is an alternative ground. The Appellant is content for the Inspector, now the Inquiry has concluded, to consider what lesser steps may be appropriate.

Ground g)

52. If the Inspector upholds this EN, there is a vast amount of work for the Appellant to complete within 6 months, bearing in mind the other ENs if they are also upheld. The Appellant again invites the Inspector to consider the exercise of his discretion in considering the issue as to what is reasonable.

---

[3] See *Bhandal & Ors v SSHCLG et Ors [2020[EWHC 2724 (Admin) [2021] JPL 5 – in particular §611-621*

Conditions

53. The Appellant's position is that if permission is granted for any of the alleged breaches for which he has sought permission under ground a), he will accept any conditions provided they meet the statutory tests. In particular, whether they are necessary. The Inspector has the revised schedule of conditions that resulted from yesterday's round table session.

Conclusion

54. As set out in the Appellant's Opening Submissions, these Appeals will largely succeed or fail after a determination of the facts by the Inspector. The bulk of the evidence as to the historic and current-day-to-day use and operation of the Appeal Site has now come from the Appellant and it should be assessed, alongside that of Mr. Downing and the LPA. In so doing, the Appellant invites the Inspector to accept and prefer his evidence, given credibly, candidly and in detail under oath.

55. The Inspector is invited to allow these appeals.

Simon Bell
Counsel

The Barrister Group

18th September 2025

Amended 21st September 2025