Appeal Decisions

Inquiry held on 23, 24 & 25 April 2013
Site visit made on 25 April 2013

by R O Evans BA(Hons) Solicitor MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 20 June 2013

Appeal Ref: APP/H3510/C/12/2190062 & 2190063
Small Fen Farm, Small Fen Lane, Brandon, Suffolk, IP27 0SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Usher & Mrs A Usher against an enforcement notice issued by Forest Heath District Council on 30 November 2012.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a dwelling in the approximate position marked with a 'Y' on the attached plan at Small Fen Farm, Small Fen Lane, Brandon, Suffolk.
- The requirements of the notice are: within six months from the date of this notice taking effect to demolish the dwelling in the approximate position marked with a 'Y' on the attached plan and remove all resultant materials from the site.
- The period for compliance with the requirements is as above
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered under the first above reference number.

Appeal Ref: APP/H3510/C/12/2190065 & 2190066
Small Fen Farm, Small Fen Lane, Brandon, Suffolk, IP27 0SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Usher & Mrs A Usher against an enforcement notice issued by Forest Heath District Council on 30 November 2011.
- The breach of planning control as alleged in the notice is without planning permission, change of use of the building marked with an 'X' on the attached plan from agricultural use to a residential dwelling.
- The requirements of the notice are to cease the use of the building as a dwelling house within 6 months of the date this notice takes effect.
- The period for compliance with the requirements is as above.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), and (d) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered under the first above reference number.

Decisions

APP/H3510/C/12/2190062 & 2190063

1. The appeals are allowed on ground [g], and the enforcement notice is varied by substituting a period of 12 months as the period for compliance instead of 6 months. Subject to that variation, the appeals are otherwise dismissed and the

enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

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2. The appeals are allowed and the enforcement notice is quashed.

Preliminary Matters

3. The parties made applications for costs against each other at the inquiry. These are the subject of a separate Decision. Apart from written statements, the second Appellant took no part in the inquiry. For convenience therefore, I shall refer to Mr David Usher in the singular as 'the Appellant'. I shall also follow the use of X and Y to denote the buildings as in the enforcement notices. The Appellant confirmed at the start of the inquiry that appeals under grounds (c) and (e) were withdrawn in both cases, and that no appeal was to be pursued under grounds (f) and (g) in relation to building X.

4. It became clear during the course of the inquiry that the Appellant did not enjoy good relations with some of those giving evidence. Indeed, he accused one person of having silently mouthed certain words at him while giving his own evidence. I had not seen any such action, nor had either advocate, but I warned all present that I would require anyone behaving in that way to leave the inquiry. Further, at one point I began to feel I would need to hear more of the background to that aspect but on reflection, decided that it would not assist me in reaching my decisions. Any personal disputes there may have been were not matters on which I could in some way adjudicate and I considered, with a substantial amount of other evidence available, hearing about them would only serve to distract from the matters in hand. I therefore declined to hear any evidence of that kind.

5. **The appeal site** is a roughly rectangular but narrowing plot of land of some 0.4ha to the east of the unmade track known as Small Fen Lane. The principal access is to the south western corner via a driveway which also serves a dwelling now known as West End House. The latter lies between the site and the lane. There is no dispute that West End House and its curtilage previously formed part of a single holding with the appeal site, but were separated from it in 1981. Building X is a long single storey structure in the north eastern corner of the site, running alongside the northern boundary. Building Y stands roughly in the centre of the site, with principal elevations to east and west. Whatever its history, it has a pitched roof with a ridge height of some 6.4m and is in use as a dwelling. References to it in its original or present state should not be taken as indicative of it being the same building throughout.

6. At the time of my visit to the site, much of it was given over to the storage of building materials, kitchen and catering equipment, vehicles, trailers and lorry bodies and a variety of other items. I asked the parties at the outset whether they wished me to visit the site before closing the inquiry. Both were content that I need not do so. The Council can be assumed from their evidence to be aware of the condition of the site as a whole. Both these notices are concerned specifically and only with the 2 buildings however, not the use of the land beyond them (though the appeals may have implications for it if successful). I thus make no further comment on that aspect.

7. For all that it is said that this is not a case regarding the history of the site "into the dim and distant past[1]", considerable evidence was given of that past. Further, part of the Appellant's case is based on the works he carried out to building Y being merely of refurbishment not replacement and/or on establishing a lawful residential use of it. Rather than examining every aspect of the history in detail however, I shall consider the evidence as necessary to the determination of each ground of appeal as I come to it.

8. That said, some further points can be usefully recorded at this point. First, it is common ground that the original plot was acquired by a Polish gentleman, Mr J Mojsiejonek ("JM1"), and his wife Janet ("JM2") in about 1957[2]. Outline and detailed planning permissions were granted in 1958 for "erection of bungalow in connection with poultry and egg farming" and similarly for a "bungalow on smallholding." One former local resident[3] believed there to have been a condition limiting the permission to one dwelling but in the absence of any documentary records, I cannot be certain of this and attach no weight to it.

9. There is then a conflict in the evidence, to which I may have to return later, over the chronology of construction of the various buildings and the purposes for which building Y (in its original form) was used. As above, the plot was divided in 1981. JM1 retained ownership of the appeal site until 1995, when it was sold to a Mr J White. Again, the evidence is disputed as to the use he made of building Y (as it then was) and of the Appellant's alleged occupation of it from 1997/8. There is no dispute however that the Appellant became the owner, albeit under a different name, in 2003.

Both Appeals – Grounds (b) & (d)

10. As Circular 10/97 advises, the burden of proof under these 'legal' grounds of appeal lies with the Appellant, the relevant test of the evidence being on the balance of probability. An appellant's evidence does not need to be corroborated by independent evidence in order to be accepted. If there is no evidence to contradict or otherwise make an appellant's version of events less than probable, there will be no good reason to dismiss the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to meet the test of 'probability'.

11. As well as his own and his consultant's evidence, the Appellant's case was supported by documentary material, photographs and a number of statements, some in the form of statutory declarations. The Council similarly presented a range of documents but also called a number of local residents as witnesses, while others gave evidence on their own behalf.

12. **BUILDING Y.** The allegation under this notice is of operational development, namely the construction of a dwelling, not one of a change of use (as with building X) to a dwelling. There is no dispute that building Y in its present form and use is a dwelling. Whatever its lawful use before building works began, the first issue under this ground is thus whether, as a question of fact and degree, those works amounted to the construction of a new building or the refurbishment of an existing one. If simply the latter, then whatever the lawful use, the Appellant would be entitled to succeed against the notice as drawn (leaving aside for the present the question of its possible correction).

[1] Appellant's Opening
[2] Whether in joint or a single name is not material
[3] Mrs J F Hale

13. The Appellant's evidence is that he lived in the building from 1997/8 to 2003, but that he did not begin any substantial works until he had bought the site. No plans exist of the building in its original form but both parties provided some aerial and other photographs. Though some of the dates given for the site views differ, that of the western elevation in 2003, including a tractor, van and car, was not disputed[4]. The photograph shows a verandah running the full length of the building. On a visual estimate only, but taking the vehicles and central doorway as visual clues, the eaves height of the verandah would be between 2-3m, but more likely closer to the former. The photograph also shows a now removed telegraph pole running through the verandah roof. The latter is pitched but narrow, meeting what appears to be an upstand or wall from the top of which the main roof then slopes away to the east.

14. The Appellant was able to provide an older but undated photograph said to be of JM1 standing outside the building before the verandah was erected. I accept that partly because it shows a telegraph pole in a position consistent with that in the 2003 view. Further, the wall is coloured green, as also shown in later views, though it is partly clad in corrugated plastic and I am unable to make out the finish. In passing, the part of the building that is visible in this view has an entirely utilitarian appearance with nothing to suggest a domestic purpose. It is not possible to see the roof form in the older view but if JM1 is taken as being 1.8m tall, the wall next to him would be roughly twice that. Similarly, if the doorway shown is taken as 2.5m high, the height of the wall would be about 4m. While acknowledging the dangers in making such estimates, the height of the wall appears also consistent with that of the 'upstand' in the later view. That equally is consistent with the verandah having been added later.

15. The southern end elevation is far from clearly shown in the 2003 photograph. As said in evidence however, it may have had a lean to greenhouse attached at that time or some other structure next to it. Something of the kind is visible in the clearest 'pre-works' aerial view, the Council's of 1999, as well as in the Appellant's of that year, if separated from it by a green strip. The eaves height on the eastern side of the building was estimated by the Appellant's agent at 1.7m but the 2003 view is obscured and does not show this elevation. There is nothing to confirm this however and I have other reservations about the accuracy of the sketch plan, below.

16. It is possible to make out a shadow, probably of the telegraph pole, in the Council's 1999 view and at the southern end, the narrow projection of the verandah roof. That end of the building, as opposed to the roof, is also shown at a width consistent with another older photograph, said to be from the 1970s, showing 3 ladies preparing vegetables outside the building. That it is building Y is clear from the view across to what is now West End House, as I was able to see on site. It is very clear also from the spacing of the windows that the present building is considerably wider, at least at this southern end. Both 1999 views show a line along the roof consistent either with another overhanging roof or change in ridge line on that side of the building, though with only a 2 dimensional image, it is impossible to be certain. Consistent with the older photograph however, there is clear space below it at the south eastern corner, the roof itself appearing to be staggered at this point.

[4] DU Appx 16 & SoC Appx 14

17. The later aerial photographs, including the Appellant's, from 2004-2007, all show the building without a roof. It is not possible from them to gauge the height of the walls. All however show what by then (if not before) was an internal wall consistent with the line of the outer eastern wall visible at the south eastern corner in 1999 and in the earlier photograph. They also show an outer eastern wall consistent in line with the roof at that time but running the full length of the building and thus widening it, at least at the southern end. What has become a full width southern patio area is also visible, as is a significant extension, again at full width, into the gap between the building and building X that is seen in the 1999 view. There may once have been some link between the two but there is little real evidence of its nature, extent or purpose and none is visible in 1999.

18. The Appellant described the works he carried out as including the removal of the roof and replacement of parts of the walls, particularly to the rear (i.e. on the eastern side) where the "structure was timber which was rotting and did not provide adequate headroom." He estimated wall retention at 50% however and he installed a 'second skin' on the inside of them. The eaves height was raised and later, from 2009, the new roof was installed with tiles and insulation, windows were installed and the walls rendered. Flooring insulation, central heating and new wiring were also installed. He had not produced any plans as he regarded it as a renovation and had received advice from his father and uncle, both of them builders. In answering questions, he acknowledged the use of some new blockwork at the southern end of the building as well as the re-use and retention of other parts.

19. The Appellant's evidence on this aspect was supported by a number of declarations or statements[5]. Each however refers only in general terms to, for example, a "substantial part" of the original structure being retained, to there being a similar internal layout and to the similarity in the appearance of the building. Further, three of them refer to the roof being no higher, one to it being similar and one to it being "slightly" higher than the original building. None of the makers of these or other statements appeared as witnesses so the extent of their knowledge could not be explored. Their statements may have been made in good faith, but combined with their imprecision and in some cases, factual inaccuracies, I can attach only little weight to them.

20. Additional evidence was given on his own account by Mr M Usher, the Appellant's nephew. He had assisted his grandfather in the building works in 2004 "to dig and form foundations around the outside of the barns to form the outline of the new chalet building being conversion from the two open sided sheds in the centre of the plot." That included new foundations "around the outside of the barns to form a new foundation under the existing overhanging barn roofs" and other details suggesting a significantly more extensive operation than the Appellant's evidence. New foundations were installed in particular at the northern end and along the eastern side, and blockwork was taken down and re-used, not simply repointed. I bear in mind the now apparently difficult relationship between the Appellant and his nephew, but much of the latter's evidence is consistent with what is visible in the photographs described above. Further, the Council's site photographs from 2010 show extensive areas of apparently new blockwork, both internally and externally. Even the western wall appears mostly either newly built or relaid.

[5] Statement of case Appx 13 & Proof Appx 6-9

21. Although I am not at this point determining the use of the building, even the Appellant concedes that before his period of ownership it was used for a variety of purposes. That is borne out by JM2's original statement of December 2012, as well as many others. Where non-residential, those uses were predominantly agricultural, consistent in particular with the partly timber construction and low eaves on the eastern side. I take JM2's descriptions of the 'main building' to be referring to building Y because she stated that she "viewed the new dwelling and in my opinion it does stand on the original site of the main building."

22. The Appellant's evidence taken as a whole was thus in some important respects vague and uncorroborated and in others contradicted, not least by what is visible in the photographs, his nephew's references to the former building being more consistent with them. Collectively indeed, the site and aerial photographs almost speak for themselves. The Appellant's agent, who only became involved in the case in December 2012, had not seen the main western elevation photograph before preparing the sketch plan mentioned above. He acknowledged that the ridge of the roof matched the 'upstand'. The verandah roof I find was thus narrower than shown on the plan and did not rise to a ridge, but to what I conclude was the original front wall. Further, even allowing for the risks inherent in making height estimates from visual clues in the photographs, there are enough of them for me to find that the front wall was only about 4m in height, not the 5.6m estimated in the sketch plan. The latter is simply not plausible on the photographic evidence.

23. I do not doubt that the present building is in a similar position to the original structure, with use made of the foundations where possible and some at least of the walls. It also echoes some design features, including the roof angles and verandah, and in some respects it may well follow the previous internal layout. It occupies a significantly larger footprint however, with extended foundations and new flooring, and even on the Appellant's evidence, a considerable amount of new building work was carried out. While I cannot put a proportion on 'old and new', the photographs show extensive areas of newly built or replaced walls, even if some were re-skinned internally. The eaves are higher, certainly at the back of the building and probably at the front, and everything above them has been replaced. The roof form is different and it is substantially higher, longer and possibly wider than before.

24. Even the Appellant, in his proof of evidence, stated that "At worst, what I have done is a replacement of the green house with a dwelling of very similar proportions, style and in the same place[6]." I have discussed the differences above, but even if the second part of that sentence were a correct assessment, a replacement would still be a new building. As a question of fact and degree, for the reasons given, I conclude that this was not simply a renovation or even a reconstruction substantially "as before" but amounted to the erection of an all but entirely new and materially larger building. The appeal on ground (b) therefore fails, in that as a question of fact, the operations carried out were of the construction of a dwelling, not merely a refurbishment of an existing building. Since the building was only substantially completed with the installation of the new roof and other features from 2009 onwards, it necessarily follows that the appeal on ground (d) also fails.

25. **BUILDING X**. The aerial photographs also show that building X has increased in size since 2003, all but doubling in width for most of its length. The

[6] Para 23

Appellant's case, in brief summary, is that he lived in part of it while the works were being carried on in building Y, and was joined there by his wife and stepson in February 2010 before they moved into building Y in August 2011. On his own evidence, believing that building Y had a lawful residential use, it was not his intention to create a second dwelling, but rather that he made use of building X in similar fashion to say, someone using a mobile home temporarily while building or refurbishing a house. Neither building was registered for Council Tax (though the site is now so registered). Apart from making part of the building habitable, he only carried out other work to it in 2010 at the request of a Building Control Officer following a visit by Council officers.

26. The issue is not whether any preceding use was actually or lawfully for agriculture or some other non-residential purpose but whether there was a material change of the use of the building to that of a dwelling. The Council challenged the Appellant's evidence of his continuous occupation of the site. Their case was based on his part ownership and registration for Council Tax purposes at another property in Ash Close, Brandon. His evidence was of his initial occupation of that property in 1996 but that he began living in building Y in 1998 to assist the then owner. He met his wife in 1999 and they married in 2001, she then moving from Scotland but living initially for some years in the property in Ash Close. In answer to my questions, the Appellant told me he had spent probably 70% of his time at the site in the early years, rising to about 90% after he had bought it.

27. I heard and have read a considerable amount of evidence about the condition of the site over the years, whether anyone was or might have been living there and about the Appellant's circumstances. Even accepting his evidence of the time he spent there, only a small proportion of building X was occupied as temporary living accommodation, especially when the Appellant was there by himself. That part of the building may have been sufficiently if basically equipped to enable habitation but it was not separated in any functional way from the rest of the site, with common electricity and water supplies and common occupation. Neither in fact nor in intent was any new planning unit created, nor any separate residential curtilage, but rather the building was occupied as temporary accommodation for purposes ancillary to what the Appellant believed (if that is accepted) was the lawful residential use of building Y.

28. Whatever conclusions I might reach about the rest of the Appellant's evidence, there is no reason to doubt that he and his wife moved into building Y as both said they did. On the evidence before me therefore, if there had been a material change of use of building X to a dwelling, that use ceased some 15 months before this enforcement notice was issued. While there is no firm evidence of what use it was put to immediately afterwards, it clearly has been and continues to be used for storage, whether lawful or otherwise. If the Council's submission is correct that the "only dispute" under this ground is whether the breach was continuing at the time of service of the notice, I am satisfied on the balance of probability that it was not[7]. I do not need therefore to determine whether there had previously been a material change of use. For the record, as a question of fact and degree, and for the reasons outlined

[7] For the sake of clarity, that is a different position to one where an unauthorised use ceases after service of a notice.

above, I consider that unlikely. The appeal on ground (b) therefore succeeds, the notice will be quashed and I do not need to consider the other grounds of appeal against this notice. For the sake of clarity, the quashing of this notice does not mean that a resumption of any residential occupation of the building or part of it would not require planning permission.

Building Y – Ground (a) and the Deemed Application

29. ***Planning Policy.*** It is common ground that the appeal site lies outside the 'development boundaries' of Brandon for the purposes of the District's 2010 Core Strategy ("the CS") and the saved policies of its 1995 Local Plan ("the FHLP"). Part at least of Policy CS1 in relation to housing provision at Brandon I understand to have been quashed by the High Court. It is further agreed between the parties that there is not a 5 year supply of housing land in the District. Policy CS5 requires all new development to be designed to a high quality and to reinforce local distinctiveness. It will not be acceptable if it fails to have regard to local context or fails to enhance the character, appearance or environmental quality of an area.

30. Saved Policy 9.1 of the FHLP sets out a series of criteria for any new development in the rural area outside defined settlements. These include that there be justification for the development to be in the rural area, particularly where it is not related to existing buildings; that it will facilitate economic activity (to provide employment); and that there will be no significant detrimental impact on the visual amenity of the landscape. Policy 9.2 is concerned with the layout and design of development in rural areas. New buildings should be related where possible to an existing building or group of them. Particular attention is to be paid to matters such as scale, siting and form to ensure an appropriate rural character and appearance. Designs that are predominantly urban or suburban will not normally be permitted.

31. Saved Policy 4.24 sets out criteria for replacement or extension of an existing dwelling in the countryside. Where a proposal involves substantial change however it will be treated as a new dwelling. I have already addressed that question under the ground (b) appeal, so that even if the original building Y was a dwelling, its replacement would on the face of it fall outside this policy. In addition, the first criterion is that the scale and appearance of the resultant building is not detrimental to the amenities of the countryside.

32. The National Planning Policy Framework ("the NPPF") was published in March 2012. it sets out the presumption in favour of sustainable development. Its core principles include that account should be taken of the different roles and character of different areas, among them the recognition of the intrinsic character and beauty of the countryside. Paragraph 49 is concerned with housing applications and the supply of housing. Saved Policies 9.1 and 9.2 of the FHLP are criteria based policies applicable to all forms of development, including housing. I do not therefore consider them "policies for the supply of housing" for this purpose, though that is not to say, especially given their age, that their application should not be examined against relevant passages elsewhere in the NPPF. The most obvious of such passages is at paragraph 55 concerning housing in rural areas. As well as wider objectives, the paragraph advises that isolated new homes in the countryside should be avoided unless there are special circumstances such as where the development would re-use redundant or disused buildings and lead to an enhancement to the immediate setting.

33. As above, saved Policy 4.2.4 of the FHLP on the face of it requires a building involving 'substantial change' to be treated as a new dwelling. That to my mind gives rise to some inconsistency within the plan, since a new dwelling would require some locational justification under Policy 9.1 where (it is assumed) a residential use already exists. Further, paragraph 55 of the NPPF refers specifically to the avoidance of "isolated *new* homes" (my emphasis) so that, again assuming a prior lawful residential use, greater attention should then be paid to the design and other criteria outlined above (and at NPPF paragraph 59) rather than the principle of the erection of a dwelling.

34. ***As a preliminary issue*** therefore I need to determine whether there was such a lawful use of the original building Y when the re-building works began, that being the point at which the need for planning permission arose. While there was no submission to this effect, to argue that the 7 or so years over which the works were completed should come into play where the building itself was not inhabited and indeed, for the most part, uninhabitable would not be tenable.

35. As indicated above, there is a conflict over the building chronology. JM2 in her declaration puts the erection of the original building Y in 1958/9. She says the family lived in that building until what became West End House was constructed in the early-mid 1970s. She is supported in that by Mr A Wojtasz. Her daughter also refers to it as her father's "former residence". She described it in greater detail in an earlier letter but made no mention anywhere of what is now West End House.

36. A number of written statements however do not support this account. The only person who gave significant evidence about it at the inquiry was a local resident who had lived on Manor Road to the south for over 50 years. Her evidence was that her father in law was also Polish and had been a bricklayer. He had built The Bungalow (as West End House was then known) in stages from 1958 and had helped with the original building Y only after that. She had known the site from childhood and in summary, believed there to have been only outbuildings on the present appeal site. She was a frank and forthright witness but part of her evidence relied on what she had been told by father in law.

37. I am seriously hampered on this point by the lack of contemporaneous documentary or other conclusive evidence. Given the grant of the 1958 planning permissions however, it would be more credible that the bungalow was built first or perhaps even simultaneously with building Y in its original form. That is not to say that the latter, or part of it, was not or could not have been used as living accommodation. There are several accounts of it being so, but only, on JM2's account, until the 1980s despite her earlier statement that she lived and worked on the farm until 1990. At least one caravan was also stationed on the land for residential purposes however. Further, as above, it is equally clear from JM2's earlier statement that building Y was put to a number of agricultural uses which at best, do not sit easily with its continuous use over an identifiable period as a dwelling. The probability rather is that the nature of its occupation and use, indeed of its form, changed over time.

38. Further doubts arise from the references made in some statements to Mr and Mrs Mojsiezonek having divorced at about the time of or following the division of the property. Whatever the personal circumstances of the family at that time, JM1 applied for planning permission for 2 residential caravans in 1982, which was refused. His letter of 15 February 1982 refers to the sale of "my

bungalow" and to 2 caravans stationed on the land which he wished to retain for himself and his daughter. It makes no mention of any residential use of building Y, which would have been the obvious choice if it was or had been a dwelling.

39. Meetings took place between JM1 and Council officers in February and October 1983 with his daughter in attendance at least on the first of them. JM1 is then recorded as saying that he had "sold the dwelling that went with the land unit." The question of a house on the land was raised, but again, no mention is recorded of any residential use of building Y. An officer recorded from the later meeting that "because no dwelling was on the remaining land" it had been necessary to make the application for the caravans. JM1 is also recorded as having asked whether anyone else would be likely to get (permission for) a dwelling if he disposed of the land. Neither he nor his daughter could be expected to have been expert in planning law but given his previous involvement in 5 recorded applications I find it unlikely at best that an existing residential use of the building would not have been put forward in 1982/3 if such a use had been carried on before that.

40. The evidence as to when JM1 left the site differed and was inconclusive. There is however no substantial evidence of any residential occupation of the appeal site between 1983 and the sale to Mr White in 1995, despite JM2's earlier statement above. The Appellant believed Mr White to have lived in building Y but no-one else made a firm statement to that effect. Mr White's son in law referred to 'the dwelling' but nowhere in his 2 statements did he say that Mr White lived there. If he had (lived there), he would have been less likely to suffer from the security problems Mr Walker mentioned. The son of the first purchaser of West End House expressed the (written) belief that no-one had lived at the appeal site throughout the period of his mother's occupation (1981-1996), though clearly JM1 was still there till 1983 at least. Others described the very poor condition of the buildings at this time and some referred to or gave evidence of their belief that Mr White lived nearby but not at the site. I am unable to find, on the available evidence, that he did so.

41. On the balance of probability on these matters, and taking the evidence collectively:

- In the absence of conclusive independent or testable verbal evidence, I am unable to resolve the conflict over the construction of the 2 buildings, but even if the original building Y was built first, as question of fact, the bungalow (now West End House) became the family dwelling house from about 1970 or soon after that.

- There is no reliable evidence of the original building Y being in use as a dwelling even in the 1970s. The contemporaneous evidence from 1982-83 leads me to conclude that it was not then in use as a dwelling nor was regarded as such by anyone concerned, even if at times it or part of it had been used as living accommodation. Before addressing the Appellant's involvement, there is no reliable evidence of anyone living in the building after that.

42. That leaves the Appellant himself. Throughout the period 1 April 1997- 22 January 2009, he at least was registered as the Council Tax payer for 24 Ash Close, though according to a Council officer's email, so was his wife. Both were also said to have claimed housing benefits from 1999-2001. It hardly needs saying that the actual records might have been useful on this aspect, in

addition to the officer's email. Be that as it may, there is nothing to contradict (both) the Appellants' evidence that they only met in 1999 and married in August 2001. As above, Mr Usher claimed to have spent some 70% of his time during this period at Small Fen Farm. As he told me however, he kept valuable possessions at Ash Close and his wife and stepson moved into that property because of the poor condition of the building and at that time, not least the "extra inhabitants (rodents)" his wife mentioned in her first statement. A number of people wrote in general terms of Mr Usher having lived at the site. Others wrote or spoke of the poor condition of the buildings, their belief of a lack of facilities, that no-one was living there and/or that the Appellant continued to live at Ash Close.

43. The earliest utility and telephone accounts the Appellant was able to produce were from 2008 and 2009. Even if there was an on-site water supply and cesspit, I was not advised of any attempt to obtain evidence from the electricity suppliers. Other than the Appellant's evidence and the untestable general accounts, there is nothing to confirm that there was an electricity supply connected nor that the building provided more than a basic shelter. The Appellant may have spent many nights there during this period but that alone does not amount to use of the building as a dwelling. In the face of conflicting and contradictory evidence, albeit mostly written and/or circumstantial, it was not in my judgment being used as a dwelling in the commonly accepted sense of that term, so much as a secondary base while the Appellant maintained his real or principal home at Ash Close. As a question of fact and degree therefore, his occupation of it had not resulted in the accrual of a lawful residential use by the time he purchased the land and began building works in 2003.

44. It follows that what has occurred is the erection not only of a new building but of a new dwelling, whatever the Appellant may have believed at the time. It did not involve the re-use of a redundant building but as above, the erection of a substantially bigger building in a location where no other rural justification has been put forward for a dwelling. On the face of it, the officer's assessment of the building expressed in his letter of 26 July 2012 is at odds with the view taken on the issue of this notice. The assessment then however was based on a pre-existing dwelling. It is not for me in any event to speak for the officer but to make my own assessment on the facts as I have found them and on the planning merits.

45. ***The main issue*** is thus the impact of the new dwelling on the character and appearance of the area, taking account of the policy context outlined above.

46. The lack of a 5 year housing supply within the District does not mean that every proposal for a new dwelling outside established settlement limits has to be granted. Each proposal still falls to be treated on its merits. This may not be an isolated site in the sense of being in the middle of Dartmoor but it lies outside the settlement boundaries where a general policy of restraint exists to protect the character and appearance of the countryside. The proximity of bus routes, shops and other services could be prayed in aid of any amount of land just beyond such policy boundaries. So could the argument that a particular plot is near or next to other sporadic or scattered residential development. By themselves, such arguments therefore carry little weight in relation to a new dwelling.

47. The site contained a series of former largely agricultural buildings which may have been disused but if still serviceable, might have been put to some use of more benefit to the rural economy than a residential one. As it is, the present building Y may be well constructed but the Appellant's activities can hardly be said to have led to an enhancement to the immediate setting where he has surrounded the site on 3 sides with a 2m high fence and the rest of it, putting it bluntly, looks more like a scrap yard than a residential curtilage.

48. The existence of that fence, and the fact that building Y is set a little below it on the southern side, make it unsurprising that the Council only received a complaint about the building when the roof began to be erected in 2009. The quality of the surrounding landscape may be agreed as modest but it remains essentially rural when seen from Manor Road to the south and as part of the rural setting of Brandon when seen from the north, if with other forms of scattered development that might be expected close to such a settlement. Screening by trees and other vegetation could be improved, perhaps eventually to become as effective as that of West End House, but this again could be said of any number of such sites.

49. I have already acknowledged that the building reflects some of the design features of its predecessor. Further, I do not regard it as suburban, a term which is hard to apply to an individual isolated site such as this. It at least implies an element of uniformity, be it Victorian terrace, inter-war mock Tudor or 1960s estate, where this is an individual if unremarkable design. I do not rely on photographs for a 'before and after' comparison because of the obvious risks of doing so without having all the technical details. Rather, it is clear as above that the present building is significantly larger, higher and bulkier than the one it replaced and is visible over a wide public area. As importantly if not more so, it is a dwelling, not an agricultural building. It is thus an obtrusive and uncharacteristic form of development in this setting. For those reasons, I find it in conflict with both the development policies and in particular paragraph 55 of the NPPF.

50. ***Other Matters.*** The Appellant made much of visits said to have been made to the site annually or even biennially by Council officers from 2003 onwards. While there was no submission that anything then said should or could prevent the present enforcement action, the Appellant's complaint was, in short, that officer(s) had been aware of the works being carried out but that they had been seen as refurbishment not only of a building but of a dwelling, yet no mention had been made before 2009 of any need for planning permission.

51. The Council's present system for recording of complaints and investigations was only introduced in 2003. I address matters relevant to the costs applications in that decision. If there was clear evidence of the Appellant being misled on the lawfulness of his position, to the extent that he could be said reasonably to have relied upon it, that might be a consideration material to my decision. Even before that however, the primary responsibility for ensuring the lawfulness of any works rests with the developer. Whatever the state of the buildings, and even if local house prices were then lower than national averages, the Appellant paid a price for the site which hardly reflected a lawful residential use. Whether that use was lawful could have been properly ascertained at the time of purchase, the fact that there was no registration for Council Tax purposes at least being a clue that it might not be.

52. As to the alleged visits, some may indeed have been made as confirmed in other written statements. The principal (former) officer concerned was not called or sought to be called as a witness by either party. His email to the Council of 13 July 2012 confirmed only visiting the site "on at least occasion" between 1986 and 1998 when employed by the RSPCA. He recalled there being a number of animals on the site, indicating that the visit was some time before the Appellant's involvement with it. The officer was "aware of the site being occupied" but that is too vague a statement to attach any weight at all to it. He made no reference to any later visits when employed by the Council, though a number are recorded from March 2009 onwards.

53. While it may well be that some conversations took place, I am not able to make any firm findings, on the evidence available, of any misleading statements being made. It is equally possible, before 2009, that a visitor may have had a very different impression of the intended outcome of the works being undertaken than what actually resulted from them. While the Appellant might - and I put it no higher than that – have grounds for a complaint, the evidence is far from sufficient for it in some way to absolve him of his responsibilities as land owner and developer. Even if his belief in the lawfulness of what he embarked upon was entirely genuine, on which I make no finding, he could and should have made certain of his position beforehand. However regrettable, he is to that extent the author of his own misfortune.

54. I have taken account of all other matters raised, but can find no material considerations to indicate that a decision other than in accordance with the development plan would be justified. The appeal on ground (a) therefore fails and permission will be refused.

Building Y - Ground (f)

55. The refusal of planning permission is not based solely on the size of the building. A requirement simply to reduce its size would not therefore address its residential purpose. Further, as above, this is a new building not simply an enlargement of a pre-existing one. The requirement to demolish it is thus not excessive to remedy either the breach of planning control or the harm to amenity. It is not for me to prescribe what the Appellant may lawfully do, if anything, once the notice has been complied with. The Council equally have their own powers of variation of the notice under section 173A if appropriate.

Building Y – Ground (g)

56. That last comment applies equally to the time given for compliance. In the present case, a period of 6 months might be considered sufficient, even allowing for the fact the Appellant has made the site his family home. In considering this ground however, he was entitled to await the outcome of the appeal before taking steps to remedy the matter or find alternative accommodation. More importantly, both the site and land around it were intended to be allocated for housing and/or employment land under the Council's previous, but now quashed development plan proposals. While there may be no immediate expectation of similar proposals coming forward, the Appellant might be justifiably aggrieved if something of the kind were to be pursued soon after the building had been demolished.

57. The harm caused by the dwelling in its present context is real and continuing. It is not however a harm which impacts seriously upon, for example,

neighbouring residents' living conditions (save perhaps for an outside light which the Appellant could easily address if still necessary). That lessens the urgency of it being remedied though not its degree. Despite my comments at paragraph 53 above, natural justice requires that I take some account not just of the Appellant's family circumstances but also of the obvious financial loss he would suffer through demolition and the effective cessation of the residential use. In these somewhat exceptional circumstances, I shall therefore extend the compliance period to one year, leaving it for the Council to review the position (if the Appellant asks them to do so) then or before in the light of any progress with the development plan or indeed of any other relevant changes in circumstances. That does not give the Appellant the certainty he seeks but is as far as the matter can be taken at present.

R O Evans

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mr T S Newcombe	Solicitor, Birketts LLP
He called:	
Mr D Usher	The Appellant
Mr R High BA MA MRTPI	Planning Consultant, High Associates

FOR THE LOCAL PLANNING AUTHORITY:

Ms C Parry	of Counsel, instructed by solicitor to the Council
She called:	
Mr D Beighton BA(Hons) DipTP MRTPI	Principal Planning Officer
Mr C Snare	Local resident
Mrs K Bartman	Local resident
Mr R J Ashley	Local resident

INTERESTED PERSONS:

Councillor W J Bishop	Brandon East Ward Councillor
Mr E Hunns	Local resident
Mr M Usher	Appellant's nephew
Mrs G Ormrod	Local resident

DOCUMENTS PRESENTED AT THE INQUIRY

1 Statement of Common Ground
2 Council's complaint records ENF/2009/0056