

Case Name: *Devine v Secretary of State for Levelling Up Housing and Communities* [2022] EWHC 2031 (Admin) (29 July 2022)

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Commentary: This was an appeal under section 289(1) of the Town and Country Planning Act 1990 against an Inspector's decision to dismiss an appeal of an enforcement notice issued by Cheshire Council on 18 March 2019 (the "**Enforcement Notice**"). The alleged breach of planning control in the Enforcement Notice was the erection of a new building and the erection of a boundary wall and fence without planning permission at a site in greenbelt land.

The appellant sought permission to appeal on three grounds, including that planning permission ought in any event to be granted and that operations carried out at the site since it was purchased as a disused barn did not involve any "new building". Permission was only granted on one ground, invoking section 171B(1) of the Town and Country Planning Act 1990 – whether the Inspector made a legally erroneous decision in concluding that the relevant building operations had not been "substantially completed" by the date 4 years before the Enforcement Notice (18 March 2015, the "**Relevant Date**").

One of the authorities cited in this case is *Sage v Secretary of State for the Environment Transport and the Regions* [2003] UKHL 22, which concerned another appeal invoking section 171B(1). The House of Lords concluded that the approach taken by the High Court and the Court of Appeal in considering whether relevant building operations were to be regarded as "substantially completed" by asking whether "the work needed to complete the structure as a dwelling house was such as of itself to require planning permission" was legally erroneous. The House of Lords confirmed that the legally correct approach to considering whether relevant building operations were to be regarded as "substantially completed" was a "holistic" one which looked at the whole operation and asked whether that operation had been "substantially completed". In *Sage* it had not been "substantially completed" because the construction of the dwelling-house was unfinished and further building operations were needed to complete it. The "character and purpose" of a structure fall to be assessed by examining its "physical and design feature" objectively and not through investigation of subjective intentions.

The Inspector gave reasons why in this case it had not been demonstrated that the new building was substantially completed on or before the Relevant Date, including that the appellant documented "building operations that were undertaken after the Relevant Date, the most significant being the entire roof over the northern and western wings..." and that these significant building operations "were part of the erection of the new building". The Inspector found that the roof replacement was one of the significant building operations on the land constituting the new building and it follows, the court said, that the new building was not therefore "substantially completed" until the roof

replacement had taken place. In other words, the new building could not have been “substantially completed” before the Relevant Date as the roof works (2016-17) had not yet taken place. The Inspector rejected the appellant's submission that the roof replacement was an act of “repair” and the court held that there was nothing unreasonable or legally inadequate in the Inspector’s decision in this regard.

The court also found that there was nothing flawed in public law terms in the Inspector’s analysis of the “unfinished dwelling” and that the Inspector had faithfully considered the character and purpose of the structure through an examination of physical and design features – structural and elevational changes “necessary for residential use” had been carried out since the Relevant Date, the building operations carried out from 2015-17 were consistent with an objective of creating a building suitable for residential use and the changes to the structure necessary for residential accommodation which were part of the erection of the new building were achieved with forethought. It was also material that the building lacked heating and sanitation, electrical work was incomplete and doors and windows had yet to be inserted at the Relevant Date.

The appeal was dismissed.

Case summary prepared by Nikita Sellers & Charlotte Gaylard