

**Case Name:** *Devine v Secretary of State for Levelling Up, Housing and Communities* [2023] EWCA Civ 601 (25 May 2023)

**Full case:** [Click Here](#)

**Commentary:**

The Appellant, Mr Devine, unsuccessfully challenged an enforcement notice appeal decision of the Secretary of State for Levelling Up, Housing and Communities. Cheshire West and Chester Council was an interested party in the case as the relevant local planning authority.

The Appellant purchased a site, including a barn, in the Green Belt. The Appellant proceeded to complete various works to the barn, including the creation of a new wing of the building and replacement of the entire roof. The Council alleged that the works amounted to construction of a new building whilst the Appellant maintained the works were for repair and improvement. The Council took enforcement action and the Appellant appealed against the enforcement notice to the Planning Inspectorate.

At appeal, the Inspector found in favour of the Council, that the works constituted construction of a new building and the works were not complete more than four years (the relevant limitation period) prior to the date of the enforcement notice.

In this case, the Court faced one key question: whether the Inspector had erred in law by reaching such decision.

The Appellant submitted that the Inspector had made two significant errors. Firstly, the Inspector had taken into account an immaterial consideration by considering Mr Devine's subjective intention in carrying out the works instead of only considering the purpose of the building itself. Secondly, the Inspector (i) considered the building to be a single dwelling house, when it was a barn which did not have permission to be used as a dwelling, and (ii) erroneously asked himself whether its construction as a "single dwelling" rather than a "new building" had been substantially completed. Substantial completion as a dwelling was an inappropriate consideration as the enforcement notice only referred to a "new building". Any construction of a new building was completed such that the time limit for enforcement action had lapsed and further works, such as the complete replacement of the roof, were for repair.

The Court agreed with the Inspector's conclusions that a new building had been constructed. The Court concluded that the new building was unmistakably a dwelling and the building operations were not substantially complete at a date which would result in enforcement action having been taken too late. The Court agreed that the Appellant's intentions when carrying out the works were reflected in the design of the building, which was plainly a dwelling.

The Court considered that the intentions of a developer can be a material consideration, as long as that intention reflects the objective nature of the works and structures erected. However, the Court went on to state that “evidence of a developer’s intention which contradicts the objective reality of what he has in fact built will not, generally at least negate that objective reality.” Such conclusion is in line with the Sage case (Sage v Secretary of State for the Environment, Transport and the Regions [2003] 1 W.L.R. 983).

Finally, the Court held that it was incorrect to suggest that the Inspector mistakenly assumed that the new building had been a dwelling house in the course of construction, in contradiction of the wording of the enforcement notice. The Inspector consistently referred to the words “new building” and only to dwelling house when considering the repurposing of the building.

In determining when the works were substantially completed, the lack of heating, ongoing electric work and subsequent replacement of the entire roof (and further works) were evidence that the building was not substantially complete at the time claimed by the Appellant.

The appeal was therefore dismissed.

*Case summary prepared by Matt Speed*