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*(subject to editorial corrections)**

**2010/16122/01**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**Taggart's (Michael) Application [2011] NIQB 82**

**IN THE MATTER OF AN APPLICATION BY MICHAEL TAGGART FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION OF THE PLANNING APPEALS COMMISSION FOR NORTHERN IRELAND**

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**TREACY J**

**Introduction**

[1] The applicant appealed against an enforcement notice dated 9 December 2009 in respect of the unauthorised erection of a building at 198 Legavallen Road Dungiven. By this judicial review the applicant challenges the decision of the PAC dated 22 September 2010 dismissing the appeal and upholding the enforcement notice.

[2] The Planning Service issued two notices against the applicant relating to the following breaches of planning control:

(a) Construction of the building without planning permission. The notice required removal of the building, verandas, steps and railings which had been constructed ("the operational development notice");

(b) Use of the building as a dwelling house, without planning permission. It required the cessation of its use as a separate dwelling house ("the material change of use notice").

[3] The applicant appealed against both enforcement notices. The PAC dismissed the appeal against the operational development notice, which is the subject of the present challenge, but allowed the appeal against the material change of use notice.

[4] The applicant appealed against the enforcement notice under Art 69 of the Planning (NI) Order 1991 ("the 1991 Order"). The appeal was brought on the grounds set out in Art 69(3)(a), (d) and (f). Art69 (3) provides as follows:

> **"Appeal against enforcement notice**
> **69.—...**
>
> **(3) 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, that the condition or limitation concerned in the enforcement ought to be discharged;**
> **…**
> **(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;**
> **…**
> **(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 ;.**
> **..."**

[5] Ground (a) relates to planning merits; Ground (d) relates to whether or not a building is immune from enforcement; Ground (f) relates to the proportionality of the requirement to demolish and remove the building.

[6] The Commissioner dismissed the appeal against the operational development notice on all grounds and the reasoning for her decision is set out in her written decision dated 22 September 2010. She has also sworn an affidavit in this judicial review dated 28 February 2011.

[7] The grounds of challenge in these proceedings raise a number of complaints which fall into four broad categories:

(i) Whether the building was immune from planning enforcement;
(ii) Alleged inconsistency between the decisions on the operational development appeal and the material change of use appeal;
(iii) Alleged misapplication of planning policy; and
(iv) A proportionality argument that enforcement did not require complete removal of the building.

**Immunity from Planning Enforcement**

[8] This ground of challenge arises out of the applicant's appeal under Art 69(3)(d). The enforcement notice was served on 9 December 2009. The applicant claimed that the building was immune from enforcement since the relevant building operations were "substantially completed" by the end of November 2005 in excess of the four year period prescribed by Art 67B(1) of the 1991 Order for commencing enforcement action. It was common case that if the building was substantially complete on 9 December 2005 it would be immune from enforcement action. Art 67B (1) provides:

> **"Where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land,** ***no enforcement action may be taken after the end of the period of 4 years beginning with the date the operations were substantially completed.*****"**

[9] The PAC hearing took place on 15 July 2010 at Limavady Council Offices. On the morning of the hearing the Commissioner paid a visit to the development site and carried out an inspection. She carried out a second site visit on the afternoon of the same day following the hearing of the appeal.

[10] The statement of case submitted by the department indicated that the applicant's home had been visited by planning officials on 7 November 2005 for the purposes of a site inspection for an unrelated planning application and that it was during this visit the construction of the building had first been noticed. A photograph taken on that occasion was included within the department's statement. That photograph revealed that the shell of the building had been constructed and roof joists were in place. It is clear from that photograph, as the Commissioner has averred, that the building was incomplete at this stage. A subsequent photograph dated 28 February 2006 was also included in the department's case giving an insight into the amount of work carried out after the first photograph. The Commissioner has stated the work would have included completion of the roof covering, construction of a chimney, fixing of external wooden cladding, attachment of doors and windows, external veranda and railings.

[11] There had been debate during the hearing before the Commissioner about the date on which the first photograph was taken by the department. This finding was

challenged by the applicant in these proceedings but I consider that it is legally unassailable. As set out in her decision, and repeated in her affidavit, the Commissioner accepted that the photograph was an accurate representation of how the building appeared on 7 November 2005 and that this was based upon the evidence provided by the department and the inconclusive evidence of the applicant to the contrary.

[12] The Commissioner has averred that as a result of her visit she had been able to see for herself the extent of the structural finishing within the building on the day of the hearing. She has averred at para 12 that there were mains water and electrical supply fittings. The building was glazed. The downstairs consisted of living/playroom area with a fireplace, a kitchen and a storage area. The upper level had a vacant room which she took to be a bedroom. She said that the building was plainly habitable and had been both designed and finished to be used as living accommodation. She formed the impression about the amount of work which would have been required to complete the building in light of the extent of its construction on 7 November 2005. She asked the applicant how long it would have taken to complete construction from that condition as shown in the photograph of 7 November 2005. He apparently replied that with four or five men working fast it could happen within two weeks. However, as the Commissioner has noted, he did not say that this is what had actually happened nor did he provide evidence of how many men worked on the building or during what period.

[13] In her written decision and in her affidavit the Commissioner sets out and deals with the evidence relied upon by the applicant – see, for example, paras13-17 of her affidavit. At para18 she states as follows:

> **"Ultimately, I was faced with the question of whether this building was substantially completed by the 9th December 2005. There was no question that the construction of the building represented a breach of planning control, since no planning permission had been obtained and the appellant bore the burden of proof to establish that it was immune from enforcement. Contrary to the averments made by [the applicant] ... I considered fully all of the evidence which he presented during the appeal. However, taken cumulatively in conjunction with the evidence produced by the department, I was not satisfied on the balance of probabilities that the building was substantially complete by the date asserted by [the applicant]. The department's photographic evidence gave a clear and objective depiction of the building's condition on 7 November. I had a good idea from my own visit how much work remained outstanding and I was not satisfied by the totality**

> **of evidence adduced by [the applicant] that it had been substantially completed by the date he asserted (late November 2005) or the relevant date of 9th December 2005."**

[14] At the heart of each of the applicant's grounds of challenge on the immunity issue is the contention that the Commissioner did not give proper consideration to or misunderstood individual items of evidence which were adduced by the applicant in support of his case. As the respondent points out the applicant does not assert that the Commissioner left any of these issues out of account. Rather it is asserted that incorrect weight was attached to them. Therefore, unless it is established that the respondent strayed into irrationality or perversity in its assessment of the evidence, this aspect of the challenge is bound to fail.

[15] The consideration which the Commissioner gave to the various items of evidence is set out in her decision and in her affidavit and I have already set out her general conclusion above. The onus of proof was on the applicant to make good his claim on the balance of probabilities that the building operations were substantially complete on the relevant date. In my view it was plainly rational for the Commissioner to have concluded, as she did, that she was not satisfied by the totality of the evidence that the building was substantially completed.

[16] In respect of the Commissioner's consideration of the "snagging list" numerous criticisms were mounted. This was of course but one item of evidence in the overall picture. Whilst the authenticity of the document may not have been directly challenged it is clear that the nature and manner of its introduction might affect the weight to be attributed to it. As the Commissioner points out at para 15 of her affidavit:

> (a) the document was only produced on the morning of the appeal;
>
> (b) had not formed part of the applicant's statement of case; and
>
> (c) there was no evidence from the man who apparently prepared the list.
>
> [I interpose that given the importance that the applicant attaches to the document it is somewhat surprising that it did not feature in his statement of case]. In any event, the Commissioner stated at para15 as follows:
>
> > **"Based upon my inspection, it was clear that this building was indeed intended to be habitable living accommodation. Its completion involved much more than the construction of the shell and a roof. It was my view that the snag list referred to aspects of the building which were necessary for use as a habitable building and that these were unfinished by January [2006] since the contractor**

> **clearly still had work to do. While the snag list added to the overall evidential picture, again I found that it was not conclusive that the building was substantially completed on the relevant date ... On the contrary it suggested that work was still to be completed in January."**

[17] In my view this was an approach and an assessment which the Commissioner was plainly entitled to come to and I see no basis for impugning this aspect of her determination. Little weight would ordinarily attach to a document produced in such a manner. [Indeed if resource implications allowed the provenance and authenticity of such a document might require very careful scrutiny]. The Commissioner cannot, in my view, en route to an overall assessment of the totality of the evidence relied upon, be faulted for saying that the document was "not conclusive". Her judgment that the document was "not conclusive" was a finding that she was perfectly entitled to make in the circumstances. Her observation in the final sentence of para 15 that there was still work to be completed in January 2006 was undoubtedly correct.

[18] In reliance on para 15 the applicant contended that the Commissioner had applied two different tests, namely whether the building was "habitable" and whether "the contractor clearly still has work to do" and neither of these alleged tests represented the correct approach in law or on the facts of the case. The attempt to extrapolate from para 15 the contention that the respondent applied two incorrect tests is contrived. In reality what the applicant is seeking to do is to disguise an attack on the respondent's factual assessment by claiming misconstruction. It is plain from, inter alia, para5 of her decision and para18 of her affidavit that she addressed her mind to the correct question namely whether the applicant had persuaded her on the balance of probabilities on the evidence that the building was substantially complete by the relevant date (9 December 2005). I see no warrant for the contention that she did anything other than reach a factual assessment on the evidence, which she was plainly entitled to do, as to whether the building operations were substantially completed by the relevant date.

[19] Nor do I accept, as the applicant has submitted, that the Commissioner misconstrued the phrase "substantially completed". The leading authority on the meaning of "substantially completed" is ***Sage v Secretary of State for the Environment*** **[2003] 2 All ER 689.** A copy of this judgment was referred to during the appeal hearing and contained within the applicant's statement of case.

[20] In ***Sage*** the local authority, as the relevant planning authority, issued and served on the claimant an enforcement notice under the relevant legislation informing him that the authority considered that he was in breach of planning control in partially erecting a dwelling house and they required its removal. Besides applying for a planning permission *ex post facto* the claimant appealed on the ground that the notice had been served outside the four year time limit permitted by the

equivalent provision of the English legislation. He contended that the date on which the operations were substantially completed meant the date after which the building work remaining to be done would no longer itself involve a breach of planning control, because, if taken on its own, it would not require planning permission. The authority argued for a holistic instruction, asking: had the building been substantially completed and, if so, when? The inspector decided in favour of the authority and upheld the notice. The Judge in the Court of Appeal decided in favour of the claimant and held that the building operations were complete when those activities which required planning permission were complete. The local authority appealed.

[21] The House of Lords found that when determining whether a development was "substantially completed" it was necessary to adopt a "holistic approach". This involved identifying in the first instance the nature of the development and the use to which the developer intended to put it. Lord Hope stated:

> **"(6) ... What this means, in short, is that regard should be had to the totality of the operations which the person originally contemplated and intended to carry out. That would be an easy task if the developer has applied for and obtained planning permission. It would be less easy where, as here, planning permission was not applied for at all. In such a case evidence to what was intended may have to be gathered from various sources, having regard especially to the building's physical features and its design.**
>
> **(7) If it is shown that all the developer intended to do was to erect a folly, such as a building which looks from a distance like a complete building – a mock temple or a make believe fort, for example – what was always meant to be incomplete, then one must take the building when he has finished with it as it stands. It would be wrong to treat it as having a character which the person who erected it never intended it to have. But if it is shown that he has stopped short of what he contemplated and intended when he began the development, the building as it stands can properly be treated as an uncompleted building against which the four year period has not yet begun to run.**
>
> **(8) It must be emphasised that it is not for the inspector to substitute his own view as to what a building is intended to be for that which was intended by the developer. But that was not what**

> **the inspector did in this case. It was not just that the building looked to him like a dwelling house that was in course of construction. His conclusion was supported, in his view, by an application which Mr Sage had made in 1994 to use the building for tourist accommodation and by his finding that that remained Mr Sage's stated intention. These matters were relevant to the question which he had to decide, and in my opinion he was entitled on the facts which he found to reach the conclusion which he did."**

[22] The purpose for which the applicant constructed the disputed building was explained by him in his appeal form and in his statement of case. In his appeal form he stated:

> **"It is the opinion of the applicant that the summer house [as he then designated it] being an extension to his own domestic dwelling (albeit a separate structure) should have been granted planning ... The summer house is used by the applicant and family particularly in summer, as <u>overflow accommodation</u>. This is not a separate residential dwelling."** [My underlining]

[23] In his statement of case at para5.2 the applicant stated:

> **"This building is not ancillary accommodation as set out in para 2.10 of the addendum to PPS 7. It is only very occasionally used as sleeping accommodation for visitors to the main house (circa 3-4 times per year)."**

[24] Whether or not building operations are substantially complete is a matter of fact and degree. The onus of proof of establishing immunity lay upon the applicant. It was incumbent on him to present material of sufficient weight as to persuade the decision maker that at the relevant date building operations were substantially complete. There was, in fact, ample material not least the telling photograph of 7 November to underscore her perfectly rational conclusion that the applicant did not discharge this burden.

[25] The applicant's contention that the Commissioner misconstrued the phrase "substantially completed" is, I fear, an impermissible attempt to disguise what is in substance an irrationality challenge by claiming illegal misconstruction.

[26] The applicant had submitted that the Commissioner had applied two different tests, namely whether the building was "habitable" and whether "the contractor clearly still has work to do". Neither of these tests it was said represented a correct approach in law. For the reasons given above I have already rejected as contrived the attempt to extrapolate the impugned "tests".

[27] In any event the holistic approach to "substantial completion" mandated by ***Sage*** requires regard to be had to the totality of the operations which the applicant originally contemplated and intended to carry out. The Commissioner, far from applying different and incorrect tests [to what is an evidenced based assessment of fact and degree as to whether building operations were "substantially completed"], took the holistic approach mandated by ***Sage***.

**Inconsistency between the operational development and the material change of use appeal decisions**

[28] The applicant contended that the respondent's decisions on these two appeals were inconsistent. This contention may stem from a confusion on the part of the applicant as to the use of land for ancillary purposes and the substance of the planning policy which is applicable in the event that the use also involves operational development such as a new building.

[29] The material change of use notice identified the relevant breach of planning control to be an unauthorised use of the building as a dwelling. The notice required the cessation of its use "as a separate dwelling unit". In the course of the appeal hearing the department withdrew from this assertion and accepted that it was not in fact used as a separate dwelling, albeit it was capable of such use. This issue was not the subject of further dispute at the hearing and it was also agreed that if the deemed planning application succeeded for retention of the building that it would be appropriate to attach a condition requiring that any use of the building as accommodation must be ancillary to use of the main house.

[30] The Commissioner pointed out that it was clear to her from the information presented during the appeal and her own inspection that the building had been constructed within the garden of the existing dwelling house. She formed the view that while the building was clearly habitable and capable of being used as a separate dwelling it was not in fact used as a separate dwelling and that its use as additional accommodation and living space was ancillary to the use of the main house as a dwelling. Accordingly, it constituted a use which was ancillary to the permitted use within the same residential curtilage and did not constitute a material change of use. It was for that reason that she allowed the appeal.

[31] The acceptance by the department in the material change of use appeal that the building was not in fact used as a dwelling was not therefore, as the respondent correctly concluded, determinative of the applicable planning policy. I therefore

reject the contention that there was any inconsistency in the Commissioner's approach.

**Planning Merits**

[32] The rejection of the application on planning merits is challenged on a number of grounds set out in the Order 53 Statement at para 3 (f)(i)-(vi). In its decision the PAC ruled against the applicant on planning merits in the following terms:

> **"(6) In respect of the planning merits the planning service presented four draft reasons for refusal relating to the creation of a separate unit of accommodation, the design of the building, its effect on the rural character and the prejudice to the safety and convenience of road users. From the evidence submitted and the discussions at the hearing a further issue to be considered is the acceptability of ancillary accommodation of the scale and location as presented by the development.**
>
> **(7) At the appeal site it was *agreed* that the development did not relate to a separate unit of accommodation from the dwelling at 198 Legavallen Road. It was accepted with a condition stating that the building will only be used for ancillary residential purposes in connection with the main dwelling would be reasonable and necessary to prevent the creation of a *separate dwelling* on the site. On the basis of this condition the department withdrew their first and fourth draft reasons for refusal in respect of the creation of a separate unit of accommodation.**
>
> **(8) The building was located in the countryside. Policy CTY1 of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) states that planning permission will be granted in the countryside for an extension to a dwelling house where it is in accordance with the addendum to Planning Policy Statement 7 – Residential Extensions and Alterations (aPPS7). Policy EXT1 sets out criteria for residential extensions and alterations and states that the guidance set out in Annex A will be taken into account when assessing proposals against this criteria.**

**(9) The appellant stated the purpose of the building is a summer house/pavilion and is used as family play room providing extra accommodation incidental to the enjoyment of the main dwelling. The building in its form constitutes more than a garden room or gazebo as the building has its own kitchen, bathroom, playroom and bedrooms areas, and could be used as self contained accommodation. Para2.8-2.11 Annex A of aPPS7 must be taken into account in the assessment of this proposal.**

**(10) The building is subordinate to the main dwelling and its function is supplementary to the use of the existing residence ... The guidance indicates that additional accommodation should normally be attached to the existing property and be internally accessible. In this case the appeal building is physically separate from the main dwelling. Planning permission ... has been granted for an extension to the main dwelling. There is no reason why an extension to the main dwelling is not practicable. The guidance further states that the "construction of a separate building, as self contained accommodation within the curtilage of an existing dwelling will not be acceptable, unless a separate dwelling would be granted permission in its own right". The department confirmed that the development would not be permitted as a dwelling it its own right, *this was not disputed by the applicant*. All in all as the building does not sit favourably within the guidance specified as to what constitutes ancillary accommodation for additional living space in respect of a residential extension or alteration.**

**(11) The scale, massing of the building is sympathetic to the main dwelling. Notwithstanding, that the suburban design of the dwelling as 198 ..., the design of the building and external materials depicting the appearance of a log cabin is not in keeping with the built form of the main property. The removal of the veranda would not be sufficient to address the inappropriate appearance of the building at this location. The building when viewed from the surrounding area along the lane would further detract from the rural**

> **character of this area. The development fails to meet criterion (a) of Policy EXT1 and the guidance set out in Annex A in relation to ancillary accommodation. The failure of the proposal to meet Policy EXT1 of APPS7 means that the development does not sit favourably with Policy CTY1 of PPS21. The department's objections in terms of design and impact on rural character are therefore sustained. The appeal on ground (a) fails and the deemed application is refused."**

[33] The building is located within the open countryside and therefore falls to be considered under PPS21. Policy CTY1 of PPS21 sets out the types of development which are considered to be acceptable in the countryside. These include an "extension" to a dwelling house where it is in accordance with the Addendum to PPS7. Policy EXT1 of the Addendum relates to "residential extensions and alterations" and sets down four criteria which must all be met before planning permission will be granted. The "justification and amplification" section of the policy (paras 2.8-2.11) makes clear that it is also of application to proposals for the development of "ancillary accommodation" which is both attached to or separate from the existing property.

[34] As the Commissioner has explained it was her view that the applicant's development proposal fell to be considered as ancillary accommodation and within Policy EXT1. Normally the accommodation should be physically attached to the existing property with internal access. It also however recognises that permission can be granted for detached ancillary accommodation. The policy makes clear that a number of issues are material to the planning decision in those circumstances, including whether an extension of the existing building is "practicable", whether the proposal involves the conversion of an existing outbuilding and also the scale of the proposed accommodation. The Commissioner took these matters into account in arriving at her decision and expressed the view that extension of the existing house was practicable since planning permission had been granted for such an extension.

[35] Furthermore, 2.10 of the amplification and justification section also contains the following paragraph:

> **"... The construction of a separate building, as self contained accommodation, within the curtilage of an existing dwelling house will not be acceptable, <u>unless</u> a separate dwelling would be granted permission in its own right. Other proposals for ancillary residential use which are clearly incidental to the enjoyment of the property, such as a garden room or a gazebo will be treated on their merits within the terms of the policy (i.e. EXT1)."**

As para 10 of her decision stated the fact that the development would not be permitted as a dwelling in its own right was *not* disputed by the appellant.

[36] The building/log cabin was constructed and the appeal was presented on the basis that it was a detached building, providing self contained accommodation, which was ancillary to the main dwelling. The Commissioner was therefore correct (indeed obliged) to take account of the requirements of Policy EXT1 when determining the deemed planning application. Accordingly I reject the contention that the respondent applied an inept planning policy.

[37] The Commissioner formed the view that although the applicant's building was described as a "summer pavilion" it was more than simply a garden room or gazebo. It was a substantial and fully fitted two storey building and was capable of use as a separate dwelling unit and therefore for planning purposes fell to be treated as self contained accommodation. It was not disputed by the applicant that the building would not qualify for planning permission as a separate dwelling and for this reason she did not consider that the proposal satisfied the policy. She also correctly rejected any alleged inconsistency between her approach to this issue and her determination of the material change of use appeal. The guidance on Policy EXT1 makes clear that the planning permission for detached but self contained accommodation should be determined by reference to the same policy considerations as are applicable to a proposal for a separate dwelling, even if it is intended to be used as accommodation ancillary to the main property.

[38] Even if the building had been acceptable in principle as ancillary accommodation it would still have to satisfy the identified criteria in Policy EXT1 including criterion (a),which, in her judgment, it did not.[1]. Although the scale and massing were held to be sympathetic to the main dwelling the respondent considered that the design and external materials were not in keeping with a house nor were they sympathetic to the surrounding rural character of the area. She also considered that they were not consistent with the design guidance set out in Annex A of the policy. At para 26 of her affidavit she states that contrary to the assertion made by the applicant she did have regard to the design guidance set out in Annex A. She states that although she had not made specific reference to parasA11-A13 she was aware of and considered their content in reaching her decision. She took into account the view of the building from the laneway which is private in the sense that it does not form part of the public road network and is shared by more than one other dwelling and is not exclusive to the applicant's house. The applicant's contention that she failed to consider the design guidance in Annex A is confounded by the fact that she plainly refers to it in her decision at paras 9 and 11 and, as already noted, expressly avers that she took it into account. In these circumstances the contention that the guidance was left out of account is not sustainable.

[1] "(a) The scale, massing, design and external materials of the proposal are sympathetic with the built form and appearance of the existing property and will not detract from the appearance and character of the surrounding area."

[39] Criterion (a) of policy EXT1 calls for the exercise of planning judgment which may only be challenged on *Wednesbury* grounds. The Commissioner visited the site, inspected both dwellings and formed a judgment. She also observed the house from different vantage points on the laneways and access routes surrounding the house. Her judgment that the log cabin was not sympathetic was not irrational. The photographs of the completed development and surrounding environment are certainly not discordant with the judgment which the Commissioner formed.

[40] The Court has also been informed that since the appeal decision issued the PAC dismissed an appeal by the applicant against the refusal of retrospective planning permission for the log cabin, that the applicant made a further application for retrospective permission for the same structure which was also refused and that the decision makers on each occasion concluded that this policy was relevant and reached the same judgment that criterion (a) of EXT1 was not satisfied.

[41] As a development in the countryside the overarching policy framework is PPS21. Policy CTY13 and CTY14 relate to the integration of the development into the surrounding countryside and impact on rural character. Paras 5.60 and 5.81 of PPS21 states that the assessment of integration and the impact of a new building on rural character will be judged from critical views along stretches of the public road network, shared privately in ways serving existing or approved dwellings, public rights of way and other areas of general public access or assembly. It is immaterial whether the farm complex and dwelling the end of the lane are in the ownership of the applicant's family. The lane is a shared private laneway and, I accept, a legitimate place from which to judge the visual impact of the building and its impact on rural character.

**Proportionality**

[42] The statutory purpose of an enforcement action is prescribed by Art 68(a)(3) and (4)[2] of the 1991 Order. The enforcement notice must specify the steps required to

[2] "Enforcement notices
68.—...
(3) There is a breach of planning control—
(a)if development has been carried out without the grant of the planning permission required in that behalf in accordance with Part IV; or
(b)if any conditions or limitations subject to which planning permission was granted have not been complied with.
(4) Where an enforcement notice relates to a breach of planning control consisting in—
(a)the carrying out without planning permission of building, engineering, mining or other operations in, on, over, or under land; or
(b)the failure to comply with any condition or limitation which relates to the carrying out of such operations and subject to which planning permission was granted for the development of that land; or
(c)the making without planning permission of a change of use of any building to use as a single dwelling-house; or
(d)the failure to comply with a condition which prohibits or has the effect of preventing a change of use of a building to use as a single dwelling-house;

remedy the breach of planning control by restoring the land to the condition it was in beforehand or remedy any injury to amenity caused by the breach.

[43] In the present case the Commissioner found an objection in principle to the building at para 10 of her decision. At para 11 she also found injury to amenity by reason of the inappropriate appearance of the building and found that this could not be addressed by the removal of the veranda. I accept the respondent's contention that the only means by which to remedy the breach, restore the land to the condition it was in beforehand and remedy the injury to amenity was to require the removal of the structure.

[44] In a similar vein moving the structure to another location would not remedy the breach. In any event as the respondent has pointed out it would not be possible to move the cabin since this would still require planning permission in the new location. Accordingly I reject the submission of the applicant that the Commissioner's decision was, in any respect, unlawful and accordingly the application for judicial review is dismissed.

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it may be issued—
(i)in the case of a failure to comply with any condition or limitation which relates to the carrying out of mining operations, only within the period of four years from the date on which that failure came to the knowledge of the Department;
(ii) in any other case, only within the period of four years from the date of the breach.
..."