

Case Name: *Wiltshire Council, R (on the application of) v Secretary of State for Housing, Communities and Local Government & Anor* [2020] EWHC 954 (Admin) (23 April 2020)

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Commentary: This case involved an application for statutory review under s.288 of the Town and Country Planning Act 1990 of an appeal decided on written representation by an Inspector appointed by the Secretary of State for Communities, Housing and Local Government ("the Inspector"), dated 22 November 2019 (the "Appeal Decision"), concerning a proposed new dwelling at Providence Cottage, Braydonside, Brinkworth, Wiltshire (the "Site"). The Court found that the Appeal Decision must be quashed and the appeal redetermined.

A planning application sought permission to change the use of annexed accommodation from ancillary use to independent residential accommodation. The red line on the application plan was around the annex building and a small surrounding area. The larger plot included the principal building (Providence Cottage) and a fairly large area of land behind. Providence Cottage is some 19 metres from the annex with a driveway running between the two.

The Site is approximately 2km from the settlement boundary of the village and the Inspector concluded that the Site could appropriately be described as being isolated. Paragraph 79 of the National Planning Policy Framework ("NPPF") states that isolated homes in the countryside should be avoided save for five exceptions. One such exception is where the development would involve the "subdivision of an existing residential dwelling" (paragraph 79(d)).

The Inspector identified Providence Cottage and the annex as one planning unit. The Inspector concluded that the proposal would sub-divide the existing planning unit into two dwellings and it would, therefore, fall within the scope of the exception set out in paragraph 79(d) of the NPPF.

In the Court, Mrs Justice Lieven stated that the meaning of "dwelling" must be determined by looking at the words themselves; the context in which they appear; and the overarching policy objective. Mrs Justice Lieven also highlighted the potential extent of the exception to the policy that would be created if the Inspector's interpretation was correct - that any residential property with a suitable outbuilding into which a residential use could be inserted would then have policy support to become a separate dwelling.

The Court held that the Inspector had erred in law in her interpretation of the word "dwelling" – in the context of paragraph 79(d) of the NPPF the subdivision must be of one physical residential building rather than a wider residential unit encompassing other buildings to be allowable. The Court found that the Appeal Decision must be quashed and the appeal redetermined.

Case summary prepared by Nikita Sellers