

Winchester City Council

The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009

Appeal by Mr Christopher Collins against the issue of an enforcement notice dated 6th May 2022 which requires 1.Cessation of the use of the building shown hatched in green on the plan attached to the notice for residential occupation; 2.Removal of the fixtures, fittings and alterations that have been installed to facilitate the unauthorised use; 3. Removal of the fence shown on the plan; 4. Permanent removal from the land of all materials and debris arising from the works at:

The Red House, Botley Road, Shedfield, Southampton, Hampshire, SO32 2HN

Appeal Statement

PINS reference: APP/L1765/C/22/3300180

LPA reference: 22/00037/COU

Statement on behalf of Winchester City Council produced by Kate Longley



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3. Appeal reference: APP/G1250/C/17/3177109

1. Introduction

1.1 This appeal follows the Council's issuing of an enforcement notice ("the Notice") dated 6th May 2022. The alleged breach of planning control is:

"Without planning permission the material change of use of the building shown hatched green on the attached plan B to use as a single dwelling house".

1.2 The notice requires the following;

- (i) Cease the use of the building shown hatched green on the attached plan ("Plan B") for residential occupation;
- (ii) Remove from the building all fixtures, fittings and alterations that have been installed to facilitate the unauthorised use in (i);
- (iii) Remove the fence in the approximate location marked between A and B with a black line on the attached plan ("Plan B");
- (iv) Permanently remove from the land all materials, rubble, rubbish and debris from steps (i) to (iii).

1.3 The appellant appeal the notice on ground (f).

1.4 In this statement the Council sets out its case in relation to ground (f) and responds to the points raised by the Appellant in his statement.

1.5 The evidence that I have prepared and provide in this written statement is true and has been prepared and given in accordance with the Royal Town Planning Institute guidance. I confirm that opinions expressed are my true and professional opinions.

2. Ground (F); the steps required to comply with the requirements of the notice are excessive, and lesser steps would overcome the objections

2.1 The appellant has stated in section 2 of their statement that the conversion of the building occurred for the 'white house cottage' to be let as an extension to the occupation of Red house. There has been no evidence provided to support this, the information obtained by the Council suggests that the building was altered with the intention to advertise for it to be let separately. The EPC South team confirmed they were requested to inspect the building. They did so on the 23rd April 2021 during the inspection the property was uninhabited and in the process of works being undertaken. EPC ratings are required when a property is due to be let, they are not required for ancillary accommodation.

2.2 The timeline provided by the Appellant also seems to differ from the timeline put together by the Council. The conversion of the building was brought to the Councils attention in 2020, Google streetview shows this is roughly the time the fence separating the Red house from the building was erected. By June 2021 the conversion is complete and the building has been listed on Right move for let wholly independently of Red house.

2.3 The appellants statement also advises that the breach only occurred for a short period of time as at the time of the statement being written the Red house had been re let to include White house cottage as ancillary accommodation. The statement advises the tenancy agreement will be provided as soon as it is available. As of this date the Council has not seen this tenancy agreement.

2.4 The Council is aware that contrary to the Appellants statement the building was advertised to let again as a wholly independent dwelling. This advertisement was listed as 'available now' on the 13th of July 2022². Described as;
*"3 bedrooms 2 Bathrooms! * Beautiful unique Cottage in Shedfield coming available this week! The property has 3 bedrooms, consisting of a main bedroom, mezzanine style open plan bedroom, third single bedroom and ample office space. Downstairs there is an open plan kitchen lounge, dining room, office/entrance lobby and family bathroom. Full of beams and original features! Parking for numerous cars and lovely enclosed rear garden. Please get in touch if you would like to know the monthly rent and preview before it comes on the open market!"*

2.5 On the 18th of July 2022 the property is updated to 'let agreed'². This indicates the Appellant has no intention of including the accommodation within Red house as ancillary, and contrary to their own submitted statement the intention appears clearly to be to let this as a wholly independent dwelling. It is important to consider these points, as it would appear the Appellant is misleading the Council as to their intention. If the building were to be allowed to remain in its current state, even with a requirement relating to the use, it would be difficult for the Council to ensure that the occupation of the unit generated the required degree of dependency upon the host dwelling so as to render it ancillary. Particularly with the inconsistencies in the information the Appellant has provided to the Council.

2.6 In response to the Appellants point at section 3 of their statement relating to step (i) whereby they argue that the requirement should not be to cease all residential occupation of the building as the building should be able to be used in connection with the main dwelling house. The use for primary residential use would not be acceptable, it is considered that the use of the building incidentally to the main house would not be prohibited by the notice and the Council consider that the requirement to cease the use of the building for residential occupation is reasonable³. Should the inspectorate disagree the Council see no prejudice to an amendment to the wording of step (i) to ensure it relates to the occupation of the building wholly independently to the main property Red house.

2.7 The Appellants points at section 3 regarding step (ii) and step (iii) the Council disagrees that the amendments regarding the residential fixtures, fittings and alterations were undertaken as a refurbishment. It is considered that these works were conducted to ensure the building was habitable to be let as a wholly independent unit of accommodation. The fence subdivides the building from the main dwelling. Meaning the works form part and parcel of the unauthorised use of the building as a single dwellinghouse and creation of a new planning unit.

2.8 It is important to note that the building appears historically to have been in a use connected to the main dwelling Red house. It would appear that the use prior to the current owner purchasing the property was as a garage/residential storage. There was no hot water or drainage so it could not have been habitable, in any case there was no kitchen/bathroom. The downstairs area was used as a garage and upstairs level was used for storage of residential items in association with the main dwelling Red house. This indicates the building was converted in a manner to establish it as wholly independent to the Red house by the current owners. There is no evidence to indicate the intention was to use it as ancillary accommodation. All the works undertaken suggest they were intended to ensure the building was habitable as a separate unit of accommodation to be rented in this manner.

2.9 The term “incidental to the dwellinghouse” implies the intended use should be subordinate to the main residential use of the property. It is clear that prior to the current owners purchase the building was used incidentally to the main dwelling Red house as a garage and storage area. The current owners amended the building, created a new planning unit and undertook works that have led to the building being a single dwellinghouse separate to the host dwelling.

2.10 There are two purposes which the requirements of an enforcement notice can seek to achieve. Firstly, to remedy any breach of planning control that has occurred, secondly to remedy any injury to amenity caused by the breach. The notice requirements including steps (ii) and (iii) are considered to remedy the breach of planning control. Nothing short of removal of the internal alterations and other aspects that facilitates the unauthorised use as a separate dwellinghouse would satisfy the purpose of the notice.

2.11 The Council considers that the cessation of the unauthorised use and removal of the unauthorised development facilitating the use in line with the required steps is necessary in order to remedy the breach and associated harm to amenity, in accordance with S173(4) sections (a) and (b) and no lesser steps would be sensible to impose.

2.11 For the above reasons the Council believe this ground f) appeal must fail.

3. Conclusion

3.1 In all the circumstances of this appeal the inspector is respectfully requested to dismiss the appeal and uphold the terms of the enforcement notice.

Appendix 1 – Site visit photos 14.2.2022



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Links Property

16 hrs · 🌐

PRE-VIEW!!!! NEW RENTAL !!!! 🏡 AVAILABLE NOW !!

*3 bedrooms 2 Bathrooms! * Beautiful unique Cottage in Shedfield coming available this week! The property has 3 bedrooms, consisting of a main bedroom, mezzanine style open plan bedroom, third single bedroom and ample office space. Downstairs there is an open plan kitchen lounge, dining room, office/entrance lobby and family bathroom. Full of beams and original features! Parking for numerous cars and lovely enclosed rear garden. Please get in touch if you would like to know the monthly rent and preview before it comes on the open market!





Links Property

18 July at 13:58 · 🌐

LET AGREED!!!!!!!!!!

As promised- here are the full details for the cottage in Shedfield- available now!! Pets Welcome. Click on the Zoopla link below:

<https://www.zoopla.co.uk/to-rent/details/61960686/...>

The size of the property is very deceptive from the outside-it has multiple versatile rooms and great living space. Available Now!

Landlord is open to individual circumstances so please get in touch for further information. info@linkspropertymanagement.co.uk

Whatsapp Message: 07488260551

<https://www.zoopla.co.uk/to-rent/details/61960686/...>



ZOOPLA.CO.UK

**3 bed detached house to rent in Botley Road, Shedfield
SO32 - Zoopla**



Appeal Decision

Hearing held on 9 January 2018 and 25 January 2018

Site visit made on 9 January 2018

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 5 March 2018

Appeal Ref: APP/G1250/C/17/3177109

1075 Christchurch Road, Bournemouth BH7 6BE

- 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 Clemdell Limited against an enforcement notice issued by Bournemouth Borough Council.
 - The enforcement notice was issued on 3 May 2017.
 - The breach of planning control as alleged in the notice is alterations and conversion of building to a dwellinghouse.
 - The requirements of the notice are to cease the use of the building as living accommodation.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(b)(c) & (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed.

Procedural Matters

Application for costs

2. At the hearing an application for costs was made by Clemdell Limited against Bournemouth Borough Council. The application is the subject of a separate decision.

Ground (c)

3. The appellant acknowledged at the hearing that if ground (c) is considered on the basis that it relates to the allegation in the notice, planning permission would be necessary, and therefore the ground (c) appeal was not considered in relation to that.

Reasons

Ground (b)

4. A building regulation application was made for a garage in 2007 and the building was commenced around that time by digging foundations, but little else was completed. Work recommenced around 2015, but the structure was not built in accordance with the original scheme as identified by the building regulation drawing. Garage doors were omitted and the internal layout was also changed to what is seen today, with 4 rooms, a central heating system

and independent electric and gas supply. The appellant applied for planning permission for conversion and use as a dwellinghouse and the application was refused.

5. There is limited evidence presented in relation to the use of the building. The tenant was not at the hearing to explain how it is used. There is a statutory declaration confirming that she is the tenant, occupying the property since February 2016. The tenancy agreement requires the tenant to occupy the property as the tenant's only or principal home. However, this does not explain how the building is actually being used at the moment.
6. The appellant indicated at the hearing that he has little personal knowledge of how the building is used, but if it was found to be used as alleged then the tenant would be in conflict with the terms of the agreement and the tenancy could be terminated. That may be the case, but again it does not explain if the use indicated by the Council has or has not occurred, just what should occur. The appellant indicated at the hearing that the tenant now lived in the house with her partner and new baby and her older son had some accommodation in the outbuilding. Inspection showed the outbuilding to have what was set out as a sitting room with two sofas and a single armchair and television. There is a bathroom and two other rooms. One room appears to be used for general storage and the other has a double bed, television and other bedroom furniture. From the way it was set out with clothes etc. it was most probably currently in use.
7. The Council notes at the time of its initial inspection where the 'sitting' room was viewed through the door, there was a kitchenette visible on the opposite wall. That is not there now, but I note on this wall there are a significant number of sockets that are at a normal height to go behind kitchen units and not the usual lower height for use in non-kitchen areas.
8. The Court has held in relation to lawful development certificates, and similar considerations apply to enforcement appeals, that the appellant's own evidence does not need to be corroborated by "independent" evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to refuse the application, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the grant of a certificate "on the balance of probability".
9. To my mind the building was probably constructed as a dwellinghouse with the 'hope' that planning permission would be granted for the application made. For this reason alone the probability is that the building was not built with the intention of being 'incidental' to the main dwelling and would not be permitted development. However, the Council has reasonably not directed the notice at the operational development, as the structure itself could be used incidentally to the main dwelling and if so would be permitted development and there would be little merit in requiring demolition.
10. The Council has visited the site and seen the building with a kitchenette and there are living areas as well as bathrooms and the building is in use, although currently there is no kitchenette. In terms of whether it is a dwellinghouse I consider that with a kitchenette, bathroom, living area and bedrooms the building would have been a dwellinghouse when enforcement action commenced.

11. I accept that the Council also has limited information about the way that the tenant is using the building, but the Council has seen the structure as a dwellinghouse and it is known to have been in use and it took enforcement action on that basis. The appellant says it has always been used associated with the main house, but it is for the appellant to demonstrate the case on the balance of probability. The Council has identified that at the time of its inspection the building was fitted out as a dwellinghouse. There is very limited evidence from the appellant or tenant on the actual use and I conclude that the appellant's evidence alone is not sufficiently precise to justify his ground (b) challenge on the balance of probability. I conclude, notwithstanding that the kitchenette has been subsequently removed, that this was most probably used as an independent dwelling house at the time of the enforcement notice being issued.
12. I have taken into consideration the principles of Burdle and acknowledge that the property is in one ownership and one tenancy from that owner, but the evidence of the actual use of the building is lacking. The building, while in the grounds of the main house, is physically separate from the main house with its own services. In my view, it is not reasonable to consider this separate unit as being part of the main property when in separate use and should be considered as a separate planning unit to the main dwelling. The appeal on ground (b) fails.
13. At the hearing the Council also noted that even if found not to be a separate planning unit it was still a primary ancillary use. Even if accepting the appellant's argument that the building is used in conjunction with or ancillary to the main dwelling and the whole is a single planning unit, the construction of the building for a primary ancillary use such as bedrooms and a sitting room would also not be permitted development, as primary accommodation is not incidental to the main dwellinghouse.
14. I acknowledge that outbuildings can after a reasonable period of use incidentally to the main dwelling, be changed to a primary ancillary use. However, the buildings cannot be constructed for that purpose and be permitted development, as it is not an incidental use, which is necessary for it to be classed as permitted development. While I have accepted that the building was started as a garage, which would be an incidental use, it was clearly completed for residential occupation, because of the way that it has been finished and laid out internally. The occupation that the appellant describes by the tenant's son would clearly be a primary ancillary use even without a kitchenette. So whether or not the appeal is considered on the basis of the use being a separate dwellinghouse or ancillary residential it would fail.
15. I have also noted that the premises has been put into two different Council Tax bands, but I give little weight to this as information explaining the basis of this change has not been provided. The change has been dealt with by the tenant, who is responsible for Council Tax payments.

Ground (f)

16. The appellant argues that it is unreasonable to require all residential occupation of the building to cease on the basis that as the building is in the same planning unit as the house, it can be used for residential use by the occupants of the house. However, as noted above, use for a primary residential use would not be acceptable in terms of permitted development. The enforcement notice

does not prevent the continued use of the building incidentally to the main house. I therefore consider that the requirement to cease the use of the building as living accommodation is reasonable.

Graham Dudley

Inspector

