

Section 78 Appeal.

Appellant's Rebuttal Statement in response to the LPA's Appeal Statement & Third-Party Comments.

Appeal against Winchester City Council Enforcement Notice dated 6 May, 2022.

On behalf of Mr. Christopher Collins.

LPA: Winchester City Council.

Pegasus Ref: P22-1219 | PINS Ref: APP/L1765/C/22/3300180 | LPA Ref: 22/00037/COU.

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1. Introduction.

- 1.1. This statement has been prepared by Pegasus Group on behalf of the Appellant, Mr. Christopher Collins. It is written in response to the Local Planning Authority statement prepared and submitted by Winchester City Council (henceforth WCC) and comments submitted by other interested parties in relation to the appeal (ref. APP/L1765/C/22/3300180) made by Mr Collins against an Enforcement Notice served by WCC on 6th May, 2022.
- 1.2. It is acknowledged that, in your letter, you have asked us to comment solely on representations that you have enclosed in your letter, dated 11th August 2022. The appellant's response is therefore prepared on this basis.
- 1.3. A statement from Winchester City Council has been received. This statement is not dated, however for certainty, and to ensure that we are responding to the correct statement, on its covering page it states that it is a '*statement on behalf of Winchester City Council produced by Kate Longley*'.
- 1.4. In addition, 4no. comments have been received on the appeal from other interested (or 3rd) parties, one of which is from Shedfield Parish Council, signed T S Daniels.
- 1.5. Following review of the statement submitted by WCC and comments of other interested parties, the appellant maintains that the steps outlined within the enforcement notice exceed what is reasonably necessary to remedy the alleged breach of planning control. The appellant's case is set out in its Statement of Case (submitted 31st May 2022). However, Section 2.0 and 3.0 of this Rebuttal Statement comprise a response to issues raised by WCC in its appeal statement and 3rd Parties, in their representations.
- 1.6. The LPA's statement provides an account of its enforcement proceedings against the subject site. However, and as emphasised in the appellants' Statement of Case and the appeal forms, this appeal is made on ground (f). This is 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 to remedy any injury to amenity which has been caused by any such breach.



1.7. Indeed, the appeal is solely against the onerous and unnecessary requirements of the enforcement notice. These are:

"(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 arising from steps (i) to (iii)."

1.8. The appellant maintains that these steps exceed what is reasonably necessary to remedy the alleged breach of planning control.

2. Appellant Response to LPA Statement.

2.1. Specific issues raised by the LPA in its Statement are responded to as below.

2.2. In paragraph 2.1 of its Statement, the Council contests that there has been no evidence to support the appellant's statement that the conversion of the building occurred to be let as an extension to the occupation of Red house.

2.3. The paragraph continues: *'there has been no evidence provided to support this [that the conversion of building was for purposes ancillary to the Red House], the information obtained by the Council suggests that the building was altered with the intention to advertise for it to be let separately'.*

2.4. In its Statement, the Council argues that the building was altered with the sole intention of advertising it to be let separately. This is speculation. Ultimately, it is not possible for the Council to know intention of the appellant when making internal alterations to the building.

2.5. The initial reason for converting the building has been set out in section 2 of the appellants Statement of Case, at which time it did not constitute a breach. The statements provided by



Pegasus Group have been given in good faith, based on information provided by the appellant at the time, and we object strongly to the Council's suggestion that the Council has been intentionally misled. The works are internal and as such do not require planning permission. However, implicit in the appellant's appeal case, it is accepted that the alleged separate residential use of the building would breach planning control.

2.6. Paragraph 2.6 of the LPA's Statement says that *'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 reasonable.'*

2.7. The Appellant's view remains that the wording of step (i) of the notice to 'cease all residential occupation of the building' is too broad. The appellant welcomes the Council's suggestion that step (i) could be amended *"to ensure it relates to the occupation of the building wholly independently to the main property Red House"*. The Inspector is respectfully encouraged to accept this proposed amendment to the Notice from the Council.

2.8. In paragraph 2.7 and 2.8, the LPA statement contests that *'the Council disagrees that the amendments regarding the residential fixtures, fittings and alterations were undertaken as a refurbishment.'*

And...

'There is no evidence to indicate the intention was to use it [the building in question] 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. Paragraph 2.9 states that *'the term "incidental to the dwellinghouse" implies the intended use should be subordinate to the main residential use of the property.'*

2.10. The Appellant accepts that the ancillary building should remain as such – ancillary. However, the Appellant is keen to reiterate that this appeal is not made against the principle of the use of the property as a separate dwelling, but the onerous requirements of the enforcement notice (parts (ii) and (iii) of that notice) which require removal from the building of all fixtures, fittings and alterations and the fence. These works can be undertaken without planning



permission – it is the alleged use of the building independent of the use of the Red House, the primary dwelling, which has breached planning control.

- 2.11. The Council argues (in paragraph 2.10) that *'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.'* The Appellant maintains – as apparently accepted by the Council at paragraph 2.6 of its Statement – that the use of White Cottage as ancillary residential accommodation to the Red House would not breach planning control, so the requirement to remove all fixtures and fittings which facilitate such a lawful ancillary use is excessive.

3. Appellant Response to Third Party Representations.

- 3.1. The Appellant has reviewed the comments submitted by Shedfield Parish Council (SPC) in relation to the appeal scheme, which highlight concerns in relation to a previous planning enforcement case at The Red House and further wholly unrelated cases at Shedfield Equestrian Centre. Comments have also been received from three other interested third parties. The concerns raised relate to access to and from the driveway onto Botley Road, overlooking, noise and environmental impacts and the property being out of keeping with the character of the area.
- 3.2. These comments are duly noted and have been taken into consideration. However, the appeal is made on ground (f), with the only ground being that the steps to comply with the requirements of the enforcement notice are excessive and lesser steps to secure the cessation of the independent use of the White Cottage would overcome the alleged breach of planning control.

4. Conclusion.

- 4.1. This statement has been prepared by Pegasus Group on behalf of the Appellant, Mr. Christopher Collins, in response to a Statement prepared and submitted by Winchester City Council (WCC) and 3rd party comments by Shedfield Parish Council (SPC) and other interested parties in relation to an appeal under Ground (f) of Section 174 of the 1990 Act. The appeal is



made against the Enforcement Notice dated 6 May, 2022 served by Winchester City Council concerning 'The Red House also known as White House Cottage', Botley Road, Shedfield, Hampshire SO32 2HN.

- 4.2. For the reasons set out in this statement, as well as the other documentation submitted on behalf of the Appellant as part of the original appeal submission, it is considered that the steps required be taken by the enforcement notice 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.

- 4.3. We therefore respectfully request that the appeal be allowed, and that the steps required by the enforcement notice amended accordingly.

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