



Appeal Decision

Site visit made on 8 November 2022

by Thomas Shields MA DipURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/L1765/C/22/3300180

The White House Cottage, Botley Road, Shedfield, Hampshire, SO32 2HN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (hereafter "the Act").
 - The appeal is made by Mr Christopher Collins against an enforcement notice issued by the Winchester City Council.
 - The enforcement notice was issued on 6 May 2022.
 - The breach of planning control as alleged in the notice 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.
 - The requirements of the notice 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).
 - The period for compliance with the requirements is 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Act.
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Decision

1. It is directed that the notice be corrected by:
 - in Section 3 deleting the word "single" and substituting instead the word "separate".
2. It is directed that the notice be varied by:
 - in Section 5(i) deleting the words "for residential occupation" and substituting instead the words "as a separate dwellinghouse".
3. Subject to the correction and variation the appeal is dismissed and the enforcement notice is upheld.

Appeal site and background

4. The appeal building (Whitehouse Cottage) is a detached large outbuilding within the curtilage of the principal dwellinghouse the Red House.
5. Whitehouse Cottage contains bedrooms, bathroom/toilet facilities, kitchen and living/dining areas with driveway and rear garden. At the time of my visit to the appeal site it appeared to be physically separated from the Red House by

fencing running between the two buildings and division of the rear garden area. It also appeared to be in occupation as a separate dwellinghouse.

Ground (f)

6. Section 173 of the Act states there are two purposes the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred (s173(4)(a)). The second is to remedy any injury to amenity which has been caused by the breach (s173(4)(b)).
7. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any harm to amenity resulting from the breach. Since the notice requires the use to completely cease it is clear that the purpose of the notice falls within s173(4)(a); to remedy the breach of planning control.
8. The notice, as drafted by the Council, alleges a change of use to a single dwellinghouse. However, use of a dwellinghouse's existing outbuilding for primary living accommodation does not necessarily, by that fact alone, involve a material change of use. For example an existing outbuilding used as a granny annexe could have all the facilities necessary for day to day living such as cooking, washing, toilet and sleeping facilities, but still remain integrally used as part of the primary residential use of the dwellinghouse, such that there would be no material change of use¹ of the planning unit.
9. Following on from the above, it is clear from the notice overall, and from the Council's evidence, that it is the use of the outbuilding as a separate dwellinghouse, independently from the Red House, that is being enforced against. It is also clear from the appellant's submissions that is how he interpreted the notice. Consequently, for the sake of clarity, there would be no injustice to either party by my correcting the alleged breach to refer to a "separate" dwellinghouse using powers available to me under section 176(1) of the Act. I will therefore correct the notice accordingly.
10. The notice requirement 5(i) prohibits residential occupation. However, as I have set out earlier, the outbuilding (via s57(4) of the Act) could revert to its last lawful use, which could include residential use as part of the primary residential use of the Red House. As such, the requirement to cease all residential occupation is excessive since it goes further than preventing use as a separate dwellinghouse. Accordingly, I will vary requirement 5(i) so that it prohibits use as a separate dwellinghouse. That is a lesser requirement which would fully remedy the breach of planning control.
11. Requirement 5(ii) is to remove from the building all fixtures, fittings and alterations that have been installed to facilitate the unauthorised use. In this regard, it is argued for the appellant that at the time the works were carried out in 2021 they were to facilitate a lawful use; to provide extra accommodation for use by a tenant family occupying the Red House.
12. However, no precise start and end dates of occupation have been provided and the tenancy agreement the appellant refers to (which would be dated) has not been supplied. There is no other convincing evidence before me to support the appellant's assertion. Consequently, the lack of any supporting evidence fails to

¹ Note these circumstances are different to the erection of a Class E outbuilding as permitted development, which can only be for incidental use, and not for primary residential accommodation.

- persuade me that the works were carried out for a lawful purpose prior to the breach of planning control occurring.
13. The Council have not individually specified the internal works to be removed. Nonetheless, the appellant is best placed to know what they were and, as set out in long established case law, it is not unreasonable to impose such a requirement if those works contributed to and facilitated the breach of planning control.
 14. Additionally, works which might ordinarily be carried out as “permitted development” under the GPDO² can still be required to be removed if they were carried out integral to and facilitated the breach of planning control. There is no convincing evidence before me to suggest that the fence erected between the White House and the Red House was not integral to the breach.
 15. Consequently, requirements 5(ii) and 5(iii) are not excessive as they go no further than remedying the breach of planning control.
 16. To conclude, the appeal succeeds in part to the limited extent as set out above in respect of requirement 5(i) and I have therefore varied the notice accordingly. Otherwise, the appeal on ground (f) fails.

Thomas Shields

INSPECTOR

² Town and Country Planning (General Permitted Development) (England) Order 2015