
Appeal Decision

Inquiry held on 13 and 14 June 2017

Site visit made on 13 June 2017

by Simon N Hand MA

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

Decision date: 21 June 2017

Appeal Ref: APP/P1560/C/16/3156729

3 Lane Cottage, Mistley, Essex, CO11 1EX

- 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 Mr Peter Thompson Bates against an enforcement notice issued by Tendring District Council.
 - The enforcement notice, numbered 16/00060/CHGUS1, was issued on 3 August 2016.
 - The breach of planning control as alleged in the notice is the creation without planning permission as an unauthorised material change of use of the building shown edged blue on the Plan ("the Building") to a self-contained dwelling house.
 - The requirements of the notice are 1. Cease the unauthorised material change of use of 3 Lane Cottage as a dwelling and/or for residential purposes other than for purposes ancillary to the residential use of Constable Place, High Street, Mistley. 2. Remove from the Building all fixtures and fittings which would make it suitable for residential use /use as a self-contained dwelling. The fixtures and fittings to be removed including but not limited to all kitchens, WC's showers sinks and baths together with associated taps and fittings. 3. Remove from the Building, as marked A-B on the attached plan and as further shown edged red on photo TDC1 attached hereto, the unauthorised window (including any panel or surround) and doors added since 2014 which are associated with the unauthorised use. 4. Restore the face of the Building as marked A-B on the attached plan to its condition immediately preceding such unauthorised work. 5. Remove from the land all debris and waste resulting from steps 2-4 hereto
 - The period for compliance with the requirements is 6 months
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The enforcement notice is varied by deleting the words "*immediately preceding such unauthorised work*" from requirement 4 and replacing them with "*prior to the beginning of the works on the unauthorised extensions subject to the 2009 enforcement notice*". Subject to this variation the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Background to the Appeal

2. Mr Thompson Bates, the appellant purchased a building called Nutcrackers, sometime around 2002. This is a listed building Grade II, which lies in the heart of the Manningtree and Mistley conservation area. It was in use as a tea-room and dwelling at the time of the listing. There seems to be some doubt

- about its more recent use, but the parties agreed at the Inquiry it was a dwelling. Mr Thompson Bates changed its name to Constable Place and spent some years renovating it, as the previous owners had allowed it to fall into a state of disrepair and Essex County Council had served a repairs notice.
3. Constable Place is one of a terrace of listed dwellings and commercial units that front onto High Street in Mistley. They date from the Georgian period and have narrow back gardens that run down to The Lane, a gravelled track that provides access to the backs of these gardens and, on the other side of The Lane, the backs of the listed terrace of houses that front onto The Green. At the bottom of the garden of Constable Place lies a brick and wooden structure that was, at the time of purchase, in a poor state of repair. This is the appeal property, now known as 3 Lane Cottage and which I shall call the appeal structure.
 4. In 2003 listed building consent¹ was applied for to enable the repair works to Constable Place to go ahead. At the same time, 23 November 2003, Mr Thompson Bates applied to de-list Constable Place. It is unclear what happened to this application and there is no evidence other than a copy of the form, so it has no official application number. Mr Thompson Bates maintains that as it was on the same file as the listed building consent, which was granted, then it also must have been granted and Constable Place is no longer listed. In fact the Council cannot de-list a building, that power lies with the Secretary of State alone, but in any event it seems that application was not acted on and Constable Place remains a listed building.
 5. According to Mr Thompson Bates, in 2007 he began to construct a wall across the garden of Constable Place, splitting it into two, as a result of which a separate plot was created for the appeal structure. At some time around 2009 he also registered the separate plot in his sole name (Constable Place is in joint names with his wife).
 6. In 2007 Mr Thompson Bates applied for listed building consent² to demolish the appeal structure, he called it a "*building*", but the Council changed this to "*outbuilding*" on the grant of consent. The purpose of this was to enable a new dwelling to be built and an application³ was made for this which was refused and appealed. The appeal⁴ was dismissed and the Inspector's views on the development will be considered under ground (a).
 7. Although the timing is not clear but the exact dates are not important, it seems around this time, and presumably after the failure of the appeal, Mr Thompson Bates began works to extend the appeal structure. Work was completed in 2009 and an enforcement notice issued requiring the extensions to be demolished. This was appealed, the Inspector upheld the notice⁵ and Mr Thompson Bates was given 4 months to comply. Following a lengthy legal battle, the details of which are not relevant, Mr Thompson Bates finally demolished the extensions in 2014 and after a court injunction, dug up the concrete hardstanding that was associated with the extensions.

¹ 03/02274/LBC Works of repair – alteration to comply with repairs notice and alteration to ground rear elevation

² 07/00683/LBC

³ 07/00773/FUL

⁴ APP/P1560/A/07/2053501

⁵ APP/P1560/C/09/2104437 & 2105140

8. There is some dispute as to whether the appeal structure is still within the curtilage of a listed building. I do not need to decide this issue but for the sake of determining this appeal I have assumed it is not as this is the most favourable interpretation for the appellant.

The Notice

9. Mr Thompson Bates claimed the notice was flawed as the line A-B on the plan was in the wrong place. This line denotes the façade which contains the disputed doors and windows (more of which later). He also contended the description of the structure in the *"reasons for issuing the notice"* as a *"wooden structure"* was incorrect as it is clearly partly built of brick and other materials. At the Inquiry he accepted the notice was not flawed because of these matters, he was merely pointing them out as examples of how the Council have sought to use inaccurate language to twist the correct impression of the appeal.
10. A more serious claim was that the Council did not have the correct authority to issue the enforcement notice. Although the notice was signed by the head of planning, who is delegated to issue such notices by the Council, Mr Thompson Bates maintains that according to Schedule 1, article 14 of the Local Authorities (functions and responsibilities)(England) Regulations 2000, the issue of an enforcement notice is not a matter that can be delegated by the Council. In fact Schedule 1 is headed *"Functions not to be the Responsibility of an Authority's Executive"*. Article 14 refers to planning contravention notices and article 15 refers to enforcement notices. The authority's executive is defined in section 9C of the Local Government Act 2000 in various ways; essentially it is the Mayor or Executive Leader and at least 2 councillors. Sections 9D onwards allow for delegations to be made by the executive to officers. Thus my reading of the 2000 regulations is that the issuing of an enforcement notice should not be a function of the executive, but ought to be delegated to its officers, which is the case in Tendring, and so all would appear to be in order. Regardless of this, Mr Thompson Bates accepted the appeal should proceed as the alternative would simply be more delay while a new enforcement notice was issued.

The Appeal on Ground (b)

11. This ground is that the matters alleged haven't occurred. Mr Thompson Bates argues the appeal structure has always been a dwelling and therefore there is no material change of use. This matter was dealt with in the 2009 appeal decision when the Inspector found that when works for the extensions began the structure was not a dwelling. He did not consider the physical characteristics of the appeal structure suggested it was a dwelling and the historical evidence was incomplete and did not provide strong support for the past use of the building as a dwelling, while local residents were certain it had not been so used. Mr Thompson Bates pointed out this had only been a hearing and now he had been able to research the history more fully.
12. Mr Thompson Bates asserted there was a dwelling on the site in the 18th Century, apparently this was visible on an old map, but that map was not available for the Inquiry. Mr Thompson Bates also asserts the electoral role shows there were 5 cottages in the Lane, numbers 1-4 and Lane Cottage, again no hard evidence is produced. However, there is a photograph of the Lane from the 1940s which clearly shows two pairs of semi-detached houses, which are, according to Mr Thompson Bates Nos 1-2 and 3-4. They sit either side of the back garden to Constable Place, which consequently, is in deep shadow,

however a reverse angle photograph of the same scene clearly shows the roof of what looks like it might be what is now the appeal structure. There is also a blow-up of the first mentioned photograph which shows the outline of a building where the appeal structure stands, which might be the same building, but looks, if anything, like a garage. The northerly pair of semis were demolished in the 50's, and the southerly pair were amalgamated into a single dwelling that still stands and is now known as Lane Cottage.

13. Mr Thompson Bates provided a document dated September 1955 which was an undertaking not to use No 3 Lane Cottages as a dwelling as it was unfit for habitation. Mr Thompson Bates' theory is that the pairs of semis were Nos 1&2 and 3&4, with his cottage in between called Lane Cottage. When Nos 3&4 were demolished, Lane Cottage became No 3 Lane Cottages. This is the appeal structure and while it may well have been used since then for various other uses, it was definitely a dwelling in the 1950s. However, at the Inquiry he accepted that the undertaking actually referred to a building (No 3) that was partly on his site but straddled the boundary to the north. So it was not actually the appeal structure, but he did argue it still showed the land had been used residentially at that time. The fact that it is not the appeal structure ties in with evidence at the 2009 hearing of a planning application for a garage on the *site* of No 3 Lane Cottages, which referred to "*Cottages – (now demolished). Condemned in 1955*". Mr Thompson Bates' handwritten notes from the 'register of voters' shows people resident at Nos 1, 2 & 3 in 1955. If I have to reach a conclusion on this it would be that No 3 was either part of, or the entire, northern pair of semis that was later demolished, unsurprisingly as it was unfit for habitation, which leaves no evidence at all for a mysterious fifth cottage on the appeal site.
14. Various maps have been provided by third parties, one of which from 1844 shows what is now Constable Place, with a pair of structures at the bottom of the garden. Sale particulars from this period advertise Constable Place as having a washhouse and biscuit room and an oven, as it was used as a bakery at that time. There is no mention of a dwelling and the third party speculates the appeal structure was one of these ancillary structures. The Land Tax map from 1910 shows Constable Place and a building on the site of the appeal structure as one unit which suggests the latter is being used as store or shed of some sort and not as a separate dwelling. During the post-war years the third party evidence is of a variety of owners of Constable Place under different names and with different uses during which period the appeal structure was, according to them, used as a shed or store.
15. In addition the previous Inspector records the appeal structure, when Mr Thompson Bates purchased it had no active water supply and no gas or electricity. It was in poor repair and the roof leaked. There is also the 2007 listed building consent application to demolish the appeal structure. Described as a building in that application had it been a dwelling I am certain Mr Thompson Bates would have described it as such. That would have been an important consideration in the appeal to determine the application for the dwelling, but no mention was made of the planning history at that point. Mr Thompson Bates says this is because he did not think he would need to bother as he was bound to get planning permission for the dwelling. But he could not have continued thinking this after having the application refused by the Council, and no mention is made of the existence of a dwelling on the site at the appeal.

16. In my view therefore there is actually no evidence at all for a dwelling on the appeal site and certainly none that suggests the appeal structure was ever used as a dwelling before Mr Thompson Bates purchased it in 2002. There is a considerable amount of speculation and conjecture but the most compelling version supports the conclusion there was not a dwelling on the site. The material change of use has occurred as alleged and the appeal on ground (b) fails.

The Appeal on Ground (c)

17. This ground is that the matters alleged do not require planning permission as in this case, they already have it. There were two strands to Mr Thompson Bates' arguments. The first relied on the contention there was a dwelling on the site in 1948, but as I have concluded above there is little or no evidence for that assertion I do not need to deal with issue, other than to say it relies on a wilful misreading of schedule 3 the 1990 Act that was intended to enable war damaged dwellings to be rebuilt without the requirement for compensation under s114, which has in any case now been repealed.
18. The second strand refers to the operation of S173(11), which states "(11) *Where— (a) an enforcement notice in respect of any breach of planning control could have required any buildings or works to be removed or any activity to cease, but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A in respect of development consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities*". Case-law makes it clear that this refers to the matters alleged in the notice, not simply that if the Council knew about a breach but did not mention it in any subsequent enforcement notice it gained planning permission by virtue of this section.
19. Mr Thompson Bates argues that while that may be the case the passing of the Localism Act in 2011, which is new planning legislation, effectively wipes the slate clean and the old case-law is now out of date. Whether this would be true or not would be ultimately for the courts to determine. It is true that where new provisions are brought in by an Act of Parliament or by new regulations, the case law referring to the old provisions might be considered to be of less relevance, depending on the circumstances and what the judgements said. In this case however, there is no reference in the Localism Act to s173(11) and nothing in the Act would appear to bear on the issue of the grant of planning permission for matters not mentioned by the Council in an enforcement notice, so I can see no reason to set aside well-established case-law on this subject.
20. Mr Thompson Bates further argues it is not clear what is meant by "the notice", when it is argued the matters that fall within the purview of s173(11) have to be in the notice. The Council were put on notice there was a residential use at the site and that should suffice. I have to say it is only unclear to Mr Thompson Bates. There is absolutely no doubt in my mind, and indeed in the minds of everyone else who works in enforcement, that s173(11) only deals with cases of under-enforcement, where part of an allegation is not dealt with in the requirements, and so gains planning permission by virtue of the section.
21. There is no mention in the 2009 enforcement notice of the use of the building as a dwelling; it is solely directed against the unlawful building works that

comprise the wrap-around extensions. There is no locus for s173(11) to operate and the appeal on ground (c) fails.

The Appeal on Ground (d)

22. This ground is that the time limits for taking enforcement action have been exceeded. In this case that the appeal structure would need to have been used continually as a dwelling for 4 years prior to the issue of the enforcement notice. From the above we know the appeal structure was not a dwelling when the extension works began, so being generous to the appellant the 4 year period must fall between 2007 and 2016.
23. Mr Thompson Bates' arguments rely on a particular reading of the high court case of *Gravesham*⁶. This judgement deals with the definition of a dwellinghouse. The case involved the question of whether a holiday chalet was a dwellinghouse or not and resulted in the well known dictum "*whether a building was or was not a "dwelling-house" was a question of fact; that a distinctive characteristic of a dwelling-house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence*". It was the Secretary of State in his decision letter that was subject to the challenge who declared that a bathroom or indoor toilet were not necessarily required, the Court made no comment on what actual facilities are needed to meet the characteristics of a dwellinghouse. The *Swale*⁷ judgement is of more direct relevance, a judgement Mr Thompson Bates was aware of but did not comment on. *Swale* dealt with the making of a material change of use from a barn to a dwelling and so is directly relevant to this appeal, which under this ground deals with a material change of use from a store or shed to a dwelling.
24. The case turned on the view that the relevant time period could not be demonstrated if at any time during the 4 years the Council could not have issued an enforcement notice. The Court held that "*If a structure is not in established use as a dwelling-house at the start of the material period, such use has to be affirmatively established, not merely at the start but over the whole period. Here, logically, discontinuous residential use is not continuous residential use*". During periods when the building was not occupied as a residential use then no enforcement notice could be issued, so any empty period other than of a de-minimis duration, would be a break in the continuity of occupation and lead to the clock starting again.
25. Bearing this in mind I shall deal with the points Mr Thompson Bates raises. Firstly he says that as soon as he began work on the dividing wall the material change of use was established. This relies on a misreading of s56, which deals with time when development began and says "*for the purposes of this Act development of land shall be taken to be initiated— (c) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in paragraphs (a) and (b)*". The building of the wall and the making of a material change of use of the appeal structure were two separate acts of development. One may have led to the other but neither of them was a development consisting of both operations and a change of use. Therefore the material change of use to a dwelling only took place when the building was first occupied.

⁶ *Gravesham Borough Council v Secretary of State for the Environment and Another* (1984) 47 P. & C.R. 142

⁷ *Swale BC v First Secretary of State and Lee* [Court of Appeal] [2005] EWCA Civ 1568

26. Mr Thompson Bates relies on his reading of Gravesham to argue the material change of use took place in 2007. Because he does not require hot water, or a plumbed in toilet or a kitchen then the run-down shed was a dwelling almost as soon as he began work on it. In my view Gravesham means facilities one would *normally* associate with a dwelling, not that any particular individual can assert they need virtually no facilities to live and therefore where they live is a dwelling. However I shall assume for the sake of argument that Mr Thompson Bates is correct.
27. The evidence for the actual occupation of the appeal structure is patchy. Mr Thompson Bates' evidence is largely that the appeal structure itself was at all times a dwelling because of his unusual interpretation of Gravesham, but he does not argue it was occupied the whole time. At no point in his evidence does he suggest he or someone else lived there in the years between 2007 and 2009 when the extensions were completed. At best there might have been occasional camping out in the structure. The extensions were held to be unlawful by the Inspector in November 2009, but were not pulled down until 2014. During that time Mr Thompson Bates continued to let out the property.
28. Mr Thompson Bates relies on the Council Tax records which he argues show the appeal structure was a dwelling. However, the tax records make no judgement as to the lawfulness of a dwelling; that can only be determined through the planning system and by applying the tests of Gravesham and Swale. The Council may have allowed a case where they accepted Council Tax records as sufficient evidence, which would, in my experience, be quite unusual, but in any event that does not set a binding precedent.
29. The Council Tax records show that at various times between January 2010 and August 2013 there was a tenant in the building or Mr Thompson Bates was living there. The rest of time between those dates it was registered as empty and unfurnished. When it was empty and unfurnished it was not in use as a dwelling. In 2010 there were two periods when the building was empty, one of 14 days and one of 95 days. In 2011 there were two empty periods of 6 days and 35 days. In 2012 there were two periods, one of 162 days and one of 122 days and in 2013 there was one empty period of 194 days. Even if I accept that Mr Thompson Bates lived in the appeal structure from 14 August 2013 to the date of issue of the notice, continuously, there is no consecutive period of occupation of 4 years at any time from 2007 to 2016.
30. Mr Thompson Bates' own evidence is that in fact he does not stay in the country very much and spends about 10 months a year travelling in his campervan. The Council point out that s191(2)(b) makes it clear that lawfulness cannot be obtained if it constitutes "*a contravention of any of the requirements of any enforcement notice then in force.*" There was of course an enforcement notice in force from November 2009 until the final act of removing the hardstanding in 2014. I would also add I do not agree with Mr Thompson Bates' interpretation of Gravesham, and that in my view the appeal structure could only be said to be a dwelling during the period the extensions were in use. All of this reinforces the view that ground (d) has not been made out on the balance of probabilities, but setting it all aside, on the simple facts of the Council Tax records alone the appeal on ground (d) fails.

The Appeal on Ground (a)

31. The Council are concerned mostly about the lack of amenity space for Constable Place and the impact of the proposed dwelling on the setting of Constable Place, a listed building, and on the conservation area. They rely principally on policies from the saved local plan⁸. There is an emerging local plan which has just been published for final consultation but the relevant policies are similar to those in the old local plan and I shall therefore concentrate on the adopted policies. There was some discussion as to whether the Council can identify a 5 year supply of housing, but it seems they can. In any event, policies for the supply of housing are of little relevance to this appeal.
32. Policy QL9 requires development to make a positive contribution to the local environment and character. Criterion (ii) requires development to relate well to its site and surroundings and (iii) requires it to respect local street patterns. Policy HG9 requires 100sqm of private amenity space for houses with 3 bedrooms or more. Policy EN23 deals with the impact of development on listed buildings and EN17 on conservation areas, but the Council accept these are not fully in compliance with the emphasis in the NPPF on the significance of heritage assets and I shall rely on the NPPF for those matters. I am also obliged by the Listed Buildings and Conservation Areas Act (1990) to have special regard to the desirability of preserving the setting of the listed building and to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. The 2008 appeal decision is also important evidence, although that was for a new build 2 storey property, which was considerably larger than the appeal structure.
33. High Street and The Green form a rough square of dwellings, with a few shops on the High Street frontage, with The Lane running between them. The cottages fronting The Green look out, as the name suggests over a large open grassed area, but The Green is also the name of the side road that links High Street, the end of The Lane and the rear green. This has a large pub on the corner and a Georgian former Customs House, as well as other attractive buildings. The conservation area is much larger than this area, but the appeal structure has no impact beyond its immediate surroundings. The Lane is within a square of listed and other attractive buildings and provides a back alley which is lined on both sides by outbuildings and garages. The rear yards or gardens of the buildings that front the High Street are long and narrow, but those of the houses that front The Green are very modest. Although there were at one time a number of dwellings in The Lane, there is currently only one, which is Lane Cottage, a two storey dwelling, which while not unattractive itself, is, as the Inspector in 2008 described it, "undistinguished" and "uncomfortably marooned between the two terraces, visually dominating the streetscape". The appeal structure is right next to Lane Cottage, but set back from The Lane frontage.
34. The previous Inspector also described the single storey lean to outbuildings on The Green side of the Lane as a characteristic feature. I would go further and describe the character of The Lane as predominantly one of service buildings, sheds, garages, lean-tos etc, of different sizes. Some are modern, but many are old, possibly as old as the dwellings themselves, and the appeal structure could well be one such building. I have seen many such back lanes over the

⁸ Tendring District Local Plan 2007

years, many of which are nothing more than scruffy, utilitarian service areas, but The Lane is, as befits its position in the conservation area, attractive, and despite some large modern garage up-and-over doors, still gives a sense of its original condition and purpose. Although there have been dwellings here, and there still is one, they are, in my view, not a part of its original historic character, which was to serve the back gardens of the terraces of properties on either side, and this is its significance in terms of paragraph 132 of the NPPF. Although the conservation area statement describes The Lane as in need of enhancement, as I explain above, I consider it is not unattractive and retains sufficient of its historic character to be worthy of preservation.

35. The previous Inspector considered a new dwelling would “serve to consolidate a very unsatisfactory form of development behind and between the existing historic terraces”. She also considered Lane Cottage to be “an illustration of the harm such a proposal would have on the character and appearance of the conservation area”. While the use of the appeal structure as a dwelling would be much less intrusive than the proposal before the previous Inspector, the harm caused by the principle of allowing further residential development is not reduced. It would still consolidate residential development behind and between the historic terraces, where it would appear as an alien intrusion. In my view the residential use of buildings in The Lane harms its historic nature, whether those buildings are large or small.
36. Although the Council were relaxed about the issue of precedent, in my view to accept the principle of allowing the conversion of an outbuilding to a dwelling in The Lane, would make it harder to resist further such applications, and there are a number of outbuildings or garages that could easily house a one bed dwelling. The cumulative impact of such changes would be significantly harmful. In my view, the proposal harms the character and appearance of the conservation area and is contrary to policy QL9. This is sufficient on its own to warrant dismissing the ground (a) appeal.
37. Constable Place is the listed building most directly affected. The listing concentrates on its front façade and there is no mention of the rear garden, but this is still an important part of its setting and of its significance. The relationship of the listed building to its garden and outbuilding has a historic resonance, the loss of which would harm the setting. Mr Thompson Bates has already severed the appeal structure from Constable Place by the building of a wall and this action on its own has reduced by almost half the back garden of Constable Place, leaving it in a smaller cramped area filled with trees. If a dwelling were allowed in the now separate portion of the back garden this would consolidate the harm, introducing an alien use into the back of Constable Place. All links between the outbuilding and Constable Place would be lost and their combined historic value would be reduced.
38. Mr Thompson Bates argues the creation of the new planning unit is a matter of fact, and even if he were to sell one or other property (and I note that Constable Place is for sale) it would be with a covenant designed to prevent them from ever being reunited. In my view the threatened covenant is simply a method of trying to add weight to the severance of the planning unit and to create an artificial fallback position. The severance of the planning unit is entirely a creation of Mr Thompson Bates and lies within his means to reverse. But should a separate dwelling be established on the site then this would

become impossible. This adds further weight to the harm I have identified above.

39. Mr Thompson Bates also argues that restoring the appeal structure by giving it a beneficial use would be better than allowing it to fall into disrepair, but that is not necessarily the only option should the appeal fail. If the appeal is dismissed the appeal structure would have no lawful use and Mr Thompson Bates further argues he would have to apply for a new use such as B1 or something similar and a dwelling would be better than many other uses he could imagine on the site. Again, such uses would require planning permission and if they were harmful it would not be forthcoming, but in any event, the obvious solution would be to reunite the appeal structure with Constable Place and use it as garden building. Neither neglect nor a harmful change of use are necessary outcomes if the appeal is lost.
40. Finally, I accept the appeal structure is just about large enough to accommodate a 1 bed dwelling, and although the rear garden of Constable Place would be reduced to between 70 and 75sqm, which is contrary to policy HG9 it is not harmful. There are a number of smaller plots even on this side of The Lane and I accept Mr Thompson Bates' argument that the 100sqm is a figure designed for new build which would take into account future uses of the amenity space for sheds or extensions. Constable Place has already been extended and so the 'original' size of its now reduced garden would have been closer to the 100sqm required by the policy. Nevertheless, this does not change my view on the harm identified above. The only public benefit is the addition of 1 house to the housing supply, which in any event has sufficient supply identified for over 5 years. Mr Thompson Bates argued that modern housing developments would be unlikely to create a tiny detached 1 bed bungalow such as would be provided here, but there is a good reason for that. I should imagine the market value of such a property, if it were fully functioning, with its own garden, in the conservation area would take it out of the reach of most people looking for a 1 bed property. I give little weight to the provision of this single dwelling unit.
41. Consequently, I find the creation of a dwelling on the appeal site would harm the character and appearance of the conservation area and the setting of the listed Constable Place, as well as being contrary to policy QL9 as it does not respect the local street pattern nor relate well to its surroundings. This is cumulatively significantly harmful is not outweighed by the very small benefit of providing a single housing unit and the appeal on ground (a) fails.

The Appeal on Ground (f)

42. Mr Thompson Bates argues the internal fixture and fittings are not development and so should not be included in the notice. It is well known that where such items are integral to the material change of use alleged the notice can require them to be removed. Mr Thompson Bates argues that as an ancillary building it would be useful to have a shower to clean a muddy dog (if he owned one) or a toilet for use while gardening, etc. However, while this may be true in a theoretical sense, the appeal structure has been severed from Constable Place, but, if the notice is upheld will be left with no lawful use. Should it be linked back to Constable Place, then it could be used as an ancillary building, and I hope that it will be, but even if it were in such a use now, the internal fittings have been provided solely to create a dwelling. There

is no evidence they would actually be used in the way suggested by Mr Thompson Bates and so the requirement to remove them is not excessive.

43. Mr Thompson Bates commented that he could use the rubble that was left over, which may be true, but again there is no evidence what for or when he would do so, and it is not unreasonable to require it to be removed in order to protect the visual amenity of the area.
44. There was some dispute over the doors and windows on the main façade of the appeal structure facing into the plot. The original building had a door in that façade and a small square looking window close to it. It seems, and this was Mr Thompson Bates' explanation at the Inquiry, that when the extensions were built, the window was removed and a large opening created in the wall as well as a smaller opening in the rear lean-to to allow the appeal structure to be incorporated into the larger dwelling created by the extensions. When the extensions were removed, the large opening was filled with another door and a full length window, and the smaller opening in the lean-to was filled with a door. These were then covered with plywood in order to prevent damage while the extensions were removed and the hardstandings dug up. It is unclear to me why Mr Thompson Bates didn't simply cover the holes with the plywood and then add the doors and windows later, nor why the small dwelling created in the appeal structure needs three doors on its long façade, especially as there is a fourth on its street façade. However, the order the development took place in, and the design qualities of the new dwelling are of little relevance. It is clear the doors and window referred to in the notice have been installed solely to fulfil Mr Thompson Bates' ambition of turning the appeal structure into a dwelling and so the notice is correct in requiring them to be removed.
45. One problem is requirement 4 which requires the building to be restored to its condition immediately prior to the installation of the doors and windows. This would leave the building with two large holes in its side. A better option, which was discussed at the Inquiry, would be to require the building to be restored to the condition it was in prior to the erection of the unlawful extensions. There is clear photographic evidence of what the main façade of the appeal structure looked like and Mr Thompson Bates is in the best position to know what the original finish of the lean-to was. Subject to this alteration the appeal on ground (f) fails.

The Appeal on Ground (g)

46. At the Inquiry, Mr Thompson Bates accepted the works would take only a few months. His main concern was the need to find an alternative use for the building which could potentially involve years of planning applications and appeals. That may be the case but there is no requirement in the notice to find an alternative use. The last lawful use was as an ancillary building to Constable Place, and this could be resumed within a few days by simply removing the dividing wall. The appeal on ground (g) fails.

Simon Hand

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr Thompson Bates

FOR THE LOCAL PLANNING AUTHORITY:

Michael Harman

He called

Christopher Stathers

Gary Guiver

Enforcement

Planning

INTERESTED PERSONS:

David McKay

Miranda Bell

Richard Hartley

Local Resident (spoke on first day of Inquiry)

Local Resident (spoke on second day of Inquiry)

Local Resident (spoke on second day of Inquiry)

DOCUMENTS

- 1 Notification letter
- 2 Supplemental bundle from the Council
- 3 1955 Undertaking for 3 Lane Cottages
- 4 Council letter concerning 07/00683/LBC
- 5 Manuscript notes from the electoral register
- 6 1959 application to develop land partly on appeal site
- 7 Listed building application 03/02274/LBC, decision and undetermined application to remove listing from Constable Place
- 8 Summary of 07/00683/LBC from Council Website
- 9 Letter concerning water supply
- 10 Copy of shorthold tenancy
- 11 Plans that accompanied County Council repairs notice
- 12 Council's Closings
- 13 Mr Thompson Bates' closings