
Appeal Decisions

Inquiry Held on 30 & 31 October 2019

Site visit made on 31 October 2019

by B M Campbell BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 November 2019

Appeal Refs: APP/G2245/C/18/3203207 & 3203208

Land west of Ashenden, 20 Ashen Grove Road, Knatts Valley, Sevenoaks TN15 6YE

- 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 T Khan and Mrs G Khan against an enforcement notice issued by Sevenoaks District Council.
- The enforcement notice was issued on 25 April 2018.
- The breach of planning control as alleged in the notice is unauthorised operational development, being the erection of an unlawful building.
- The requirements of the notice are:
 - The removal of a building
 - The removal and disposal of the resultant materials and the return of the land to its former condition.
- The period for compliance with the requirements is 4 months.
- Appeal 3203207 was initially proceeding on the grounds set out in section 174(2) (a), (b), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.
- Appeal 3203208 was initially proceeding on the same grounds other than ground (a). Since the prescribed fees had not been paid within the specified period for 3203208, ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act for this appeal lapsed.

Summary of Decision: The appeals are allowed and the enforcement notice quashed following correction in the terms set out below in the Formal Decision

Preliminary matters

1. All oral evidence to the inquiry was given on oath.
2. At the inquiry, the way in which the notice had been framed was discussed. It was agreed that the plan which the Council said had been attached to the enforcement notice was not sufficiently clear. Although there was no doubt as to what building was being attacked, it was agreed that a clearer plan should be substituted which identifies both the extent of the land (excluding Ashenden and its garden) and the location of the building attacked. I attach the agreed plan and correct the description of "The Land Affected" and "The Breach of Planning Control Alleged" accordingly.
3. The Appellants asked that the description of "The Land Affected" include the words "now known as the White House" but this does not seem to me to be correct. My understanding is that it is only the building which is known as The

White House and not all of the land identified by grey shading to the west of Ashenden.

4. Ground (c) was withdrawn at the inquiry by the Appellants.

Ground (b)

5. The ground of appeal is that the matter alleged has not occurred.
6. It is the Appellants' case that a building already existed on the site and was of long standing. What has been carried out are internal and external alterations to the existing building, in effect to convert it to a dwellinghouse. The Council, on the other hand, says there was no pre-existing building on the site or, in the alternative, that the works undertaken to the pre-existing structure were so extensive that the result is the erection of a new building.

The evidence for the Appellants

7. Mr M Ayton is a near neighbour who grew up in the locality. He made a Statutory Declaration (although it does not appear to have been witnessed) indicating that he had known the building in the late 1970s and 1980s; that it was structurally complete then, known locally as the Scout Hut and that it contained a kitchen, bathroom and a number of beds. In his oral evidence to the inquiry, he described the building in more detail with its block walls, wooden window frames and mezzanine floor extending across about half the interior of the building and accessed by a ladder. There was a timber floor above the cement washed sloping base.
8. The building had sometimes been used by the scouts and there were tents, beds and pots and pans stored in it. It had also been used to accommodate workmen doing jobs in the area. Mr Ayton explained how he and his friends had played in the building and he had been able to ride his bike around inside it. He said the building was not new then and referred to a rumour that it had, in the past, been used to house prisoners of war although he did not set much store by that.
9. Attached to Mr Ayton's evidence is a further Statutory Declaration (properly witnessed) from Mr T Harris who, Mr Ayton said, grew up with his daughters. In it, Mr Harris says that between 2005 and 2009 he and his friends met in the building on numerous occasions (in excess of 100 times) to smoke and drink beer. He too describes the building and says it was unlocked but weatherproof.
10. Since the Appellants' purchase of the appeal building, Mr Ayton says he lent them a digger so that they could take out some trees and pull out their roots.
11. The Appellant, Mr Khan, submitted a statement and gave oral evidence to the inquiry. The land to the west of his house and garden, on which the appeal building stands, was purchased in February 2013. He and his friend Mr Singh (who is a builder) carried out the works to the building. They removed the pitched roof, raised the blockwork walls and put on a shallow mono-pitched roof so as to increase headroom within, to enable a first floor to be provided over the entire interior. The height of the building has not, however, exceeded the height of the former ridge. In addition, new window and door openings were inserted; concrete plinths or buttresses were constructed both internally and externally to stop walls moving as the site has a considerable slope; and a small first floor balcony to the front (east) elevation and a large canopy on the

rear (west) elevation were constructed. Inside, I saw that the building has been subdivided to provide a number of rooms on each floor. Walls have been plastered but no fixtures or fittings such as would be required, for example, for bathrooms or kitchens have been installed although some sanitary ware was present.

12. Mr Khan presented two photographs of the outside of the building after the roof had been altered and windows installed but prior to the render finish.
13. A signed and witnessed statement has been submitted from Mr J Singh who is a friend of the Appellants. In his statement he says the Appellants bought a broken property which needed full refurbishment. His statement describes how he helped with the work which involved raising the walls by one metre to replace the pitched roof with a flat/sloping one, installing new windows and doors, creating above ground foundations to support the existing walls, and erecting a balcony at the rear. More recently he says he has been helping from time to time with the internal works.
14. Mr I Adil has written to say that his friend, Mr Khan, let him and his wife stay in the appeal building for six weeks in 2014 when they were between properties. He says the accommodation was very basic but that they were grateful to have somewhere to stay. Mr M Qasim has also written to say that he remembers his friend Mr Khan buying a property next to his house at 20 Ashen Grove Road. His family was invited to stay in March 2013. He says they stayed a few nights, that the property was in a really tired condition and that they helped to clear the land as there were "massive bushes around"

The evidence for the Council

15. The Council draws attention to aerial photography. That dated 25 May 2012 is said to show a clearing within a wooded area with low level shrubbery and soil where the building should be. There is no evidence of any built form. The photograph dated 9 August 2015 has been lightened to reduce the prominence of overshadowing and, it is argued, still shows shrubbery in the clearing and no built form. The photograph dated 21 October 2018 by contrast, clearly shows the roof of the building now present on the site. It was therefore erected sometime after August 2015 and first came to the Council's attention when seen from a neighbouring site in March 2018.
16. In addition, the building does not appear on any historic plans despite applications having been made on the property in the 1960s and 1970s. The Appellants have produced no documentary evidence to indicate what if anything was on the appeal site when it was purchased in 2013.
17. The Council's primary case is that a new building has been erected on previously undeveloped woodland. However, if it is accepted that some form of building already existed on the appeal site, then it is submitted that the works carried out to it have resulted, as a matter of fact and degree, in the erection of a new building.

Assessment

18. During the inquiry, the planning history for the property was examined with the outcome that both parties accepted that there was no planning permission relating to the appeal building to assist. The absence of the building from historic OS sheets and other plans would suggest that the building was not

there in the 1960s and 1970s but Mr Ayton was very clear in his oral evidence that there were, in addition to the appeal building, other buildings at that time within the woodland to the rear of properties along Ashen Grove Road which also do not appear on the OS sheets.

19. In my view, Mr Ayton's recital of his antics as a child and how the building featured in his youth portrays a convincing and intimate knowledge of the area in general and of the building in particular. That evidence was given on oath and subject to cross-examination. It cannot be lightly dismissed. Given that he said the building was not new when he played in it as a child suggests that it is of long standing. His description of it inside and out corresponds with others who describe it: Mr Harris in a Statutory Declaration who knew the building from 2005 to 2009; and Mr Khan from when he purchased it in 2013; the latter again provided on oath and subject to cross-examination. In addition, three of Mr Khan's friends describe the poor condition of the building following its purchase, with one saying that he helped to refurbish it and another that he helped to clear vegetation around it.
20. The written statements would appear to be the personal recollections of those who signed them rather than (as is sometimes the case) a pre-prepared statement given to the person to sign. I have no reason to doubt their veracity.
21. The evidence of these six people seems very clear. In addition, the two photographs of the building submitted by Mr Khan show courses of blockwork to the top of the building of a different colour and finish to that below which would appear to corroborate the Appellants' account of the replacement roof. The photographs do not appear to show a brand-new building.
22. The Council's contrary stance relies on the absence of the building on historic plans, and the three aerial photographs where the building can only be made out in the most recent one. In my view, however, those photographs are far from clear. It is notable that vegetation is quite capable of obscuring the view of buildings when looked at from above. This is illustrated by the two buildings at the end of the access into the site which cannot be made out in any of the three photographs and at my visit I saw that one of those is substantial in size and height.
23. Looking from above, I do not accept that it can be determined with any certainty that the position of the building was in fact a clearing in 2012. Whilst the tree canopy to the south of the building's location was higher as a shadow is cast, that is not sufficient to indicate that any existing lower vegetation was not tall enough to spread over the building to obscure it. At my visit I saw the building is surrounded by mature woodland trees whose canopies tower well above the height of the building and it seems to me that trees of a lesser height that might have been allowed to grow up around the building could easily have obscured the building from view. In addition, I believe it is a considerable step to take to conclude that the lighter colour in the photograph must be soil within a clearing.
24. The 2015 photograph is of little assistance since the location of the building is simply a dark mass of shadow cast by the trees. It is insufficient from which to say for certain that no building was present. Finally, it does not surprise me that the roof of the building is visible in the 2018 aerial photograph. The evidence all points to a building neglected for very many years where it seems

highly likely that vegetation was allowed to grow up around it to obscure it from view. The evidence is that after purchase the Appellants cleared vegetation from around the building including taking out some trees and their roots. That would have exposed the building to view and, in my experience, new roof sheeting is likely to be more noticeable than old weathered sheeting on any pre-existing roof.

25. For the reasons given I find the aerial photographs and the absence of the building from historic plans to be insufficient to cast doubt on the Appellants' clear version of events. Other than that, the Council relies on what might have been provided in evidence, and has not been, such as receipts for materials used on the building. However, there is no requirement for such documentation and, in this instance, given that the Appellants live at No.20 Ashen Grove Road rather than the appeal building it seems highly likely that any receipt that might have been issued would bear that address rather than the appeal building. The lack of these or similar documents is not sufficient to cast doubt on the evidence I have been provided with. As a matter of fact and degree and on the balance of probability I conclude that a new building has not been erected.
26. Turning to the Council's argument in the alternative, the four walls of the existing building remain albeit that some have been reinforced at the base by cement plinths to either side to prevent movement, new openings have been formed in them, and the walls rendered. The provision of a new and different style of roof over those four walls is also not, in my view, sufficient to conclude that what is present is a new building. And with regard to the addition of a small balcony and large canopy, the erection of extensions to existing buildings are commonplace. In this instance the original building is still discernible albeit that it has been altered both internally and externally and extended.
27. This is not a case of the building being largely demolished with only elements of a previous structure being incorporated into the fabric of a new building. Rather it is, in my judgement, a case of alterations and extensions carried out to an existing building. Although I accept that what is intended is a dwellinghouse, such a change of use does not necessarily result in the erection of a new building albeit that extensive works such as installing a new drainage system might be required. As a matter of fact and degree I find that the works carried out, taken as a whole, have not been so extensive so as to amount to the creation of a new building. On the facts of this case I do not find that the original building has ceased to exist as in *Oates v SSCLG* [2018] EWCA Civ 2229.

Conclusion

28. From the evidence before me, I conclude that the alleged breach of planning control set out in the enforcement notice has not occurred as a matter of fact. The appeals succeed on ground (b). I have considered whether it would be within my power to correct the allegation to properly address the breach that may have occurred. However, in my view, this could not be done without prejudice to one or other of the parties because the issues to be addressed under any of the grounds brought under s174 of the Act would be likely to be substantially altered. A different case might have been brought by either party.

29. The notice will, therefore, be corrected in the terms identified at the outset of this decision and then quashed. In these circumstances, the appeals on the remaining grounds (a) (appeal 3203207), (d), (f) and (g) and the application for planning permission deemed to have been made under appeal 3203207 do not fall to be considered.

Formal Decision

30. It is directed that the enforcement notice be corrected by:

- the insertion in paragraph 2 of the words "*shaded grey on the attached plan*" after the word "*Ashenden*";
- the deletion from paragraph 3 of the word "*unlawful*" and the insertion of the words "*as hatched in black*" after the word "building";
- the substitution of the plan annexed to this decision for the plan attached to the enforcement notice

Subject to these corrections the appeal is allowed and the enforcement notice is quashed.

B M Campbell

Inspector

APPEARANCES

FOR THE APPELLANTS:

Dr R Wickham	Howard Sharp and Partners
He called	
Mr M Ayton	Local Resident
Mr T Khan	Appellant
Ms J Andrews	Howard Sharp and Partners

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Lewin	of Counsel, instructed by Sevenoaks DC
He called	
Ms C Shearing	Principal Planning Officer

DOCUMENTS submitted at the Inquiry

- 1 Opening submission for the Council
- 2 Substitute plan for enforcement notice
- 3 Plans from application SE/77/682
- 4 Closing submission and accompanying Authorities for the Council
- 5 Closing submission for the Appellants



Plan

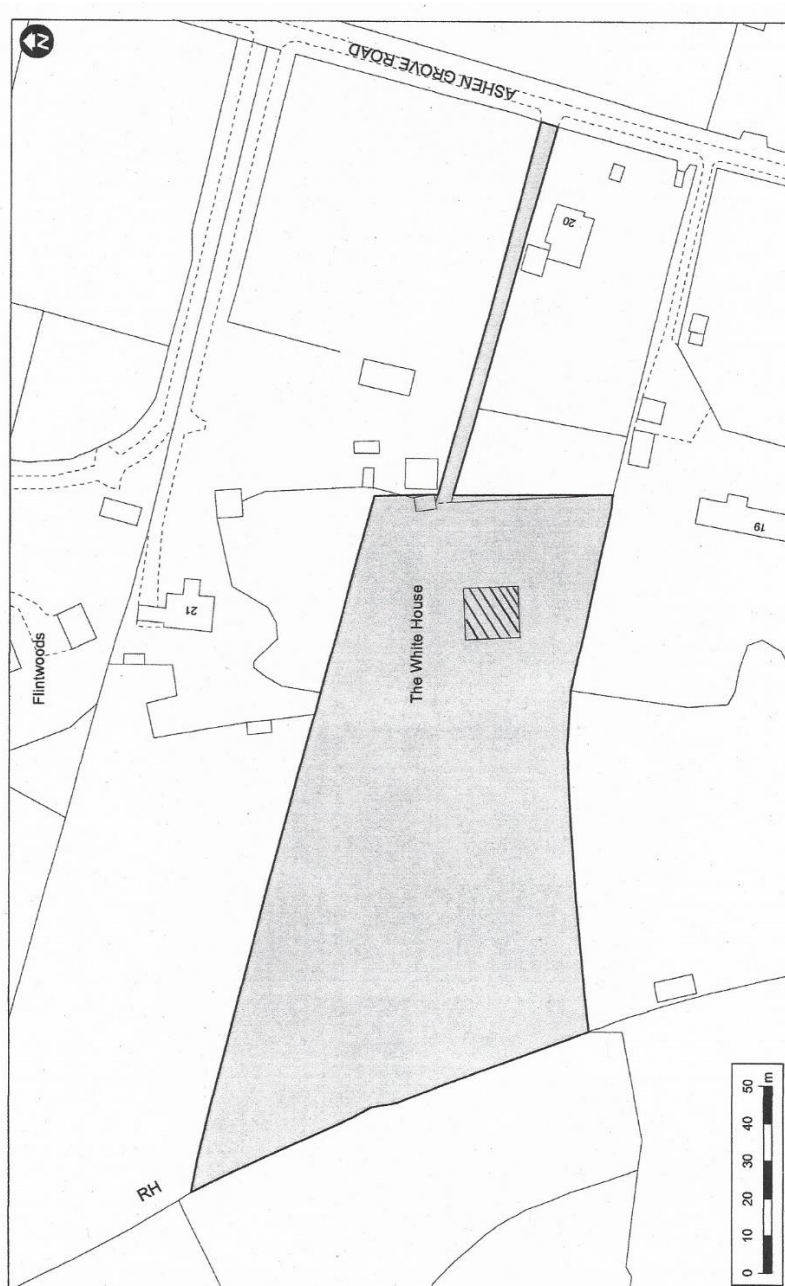
This is the plan referred to in my decision dated: 22 November 2019

by **B M Campbell BA(Hons) MRTPI**

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Not to scale



ENFORCEMENT NOTICE

18/00101/OPDEV

Scale: 1:1,250 @ A4
Date: October 2019

Ashenden, 20 Ashen Grove Road, Knatts Valley, Kent, TN15 6YE


Sevenoaks

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