



Appeal Decision

Site visit made on 6 December 2021

by Thomas Shields MA DipURP MRTPI

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

Decision date: 13 December 2021

Appeal Ref: APP/Z3825/C/21/3270905

Land rear of 33 Millthorpe Road, Horsham, RH12 4ER

- 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 Alan Russell against an enforcement notice issued by the Horsham District Council.
- The enforcement notice was issued on 10 February 2021.
- The breach of planning control as alleged in the notice is without planning permission, change of use of a detached building with nil use to use as a single dwelling.
- The requirements of the notice are:
 - (i) Permanently cease the use of the detached building coloured red on the attached plan as a single dwelling; and
 - (ii) Remove all domestic fixtures and fittings from the building which facilitate its use as a self-contained unit of residential accommodation such as the open plan kitchen and segregated bathroom with sink, shower and WC; and
 - (iii) Remove all the soft furnishings from the detached building; and
 - (iv) Permanently revert the detached building back to its former use.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (d) and (f) of the Act. Since the prescribed fee have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with corrections and variations in the terms set out below in the Formal Decision.

Background

1. The single storey detached building subject of the appeal is located within an enclosed garden area accessible only from Canberra Place, being a road which runs along the rear gardens of houses on Millthorpe Road. The garden and building at one time formed the rear section of garden to No. 33 Millthorpe Road, but is now occupied as a separate dwelling house.

Appeal on ground (d)

2. For this ground of appeal to succeed the appellant must show that the use of the building changed to use as a single dwellinghouse on or before 10 February 2017¹, and that the use then continued for at least 4 years without any substantial interruption. The onus of proof is firmly upon the appellant and the relevant test of the evidence is on the balance of probabilities. In *Gabbitas*² the Court held that the appellant's own evidence does not need to be corroborated

¹ 4 years - pursuant to s171B(2) of the Act

² *Gabbitas v Secretary of State for the Environment* [1985] JPL 630

- 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 dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
3. The appellant refers to the size of the internal living area, the external amenity area, and that there is no resulting loss of privacy to occupiers of neighbouring properties. Reference is also made to housing policy and the need for housing in the area. However, none of these matters are relevant to this ground (d) appeal. While asserting that the use has continued for 4 or more years, no other evidence to support this claim has been submitted.
 4. The Council refer to the appellant's earlier application³ for a lawful development certificate (LDC) which was refused. It also sought confirmation of separate use as a dwellinghouse. However, while there is some overlap, the relevant 4 year time period in the LDC application is a different period to the one in this appeal. No appeal in relation to that LDC is before me. Moreover, the Council's undisputed evidence⁴ is that they commenced an investigation in response to a complaint that the building was being used as a separate dwellinghouse in 2019. They found that it was so being used, but the use then ceased that same year, confirmed by a final check by officers in October 2019. This cessation of the use is significant because when the use later re-commenced, it re-started the 4 year period required to gain immunity from enforcement action.
 5. Since the re-commencement of the use as a dwellinghouse began after 10 February 2017, a continuous uninterrupted use for a 4 year period of time prior to the notice being issued is not achievable. The appellant has not submitted any other evidence to seek to show that immunity was acquired over a different 4 year period of time.
 6. Overall, the appellant's evidence in support of the appeal is not precise and unambiguous. Moreover, it is substantially contradicted by the Council's evidence. On the evidence before me, on the balance of probability, I conclude that the breach of planning control is not immune from enforcement action.
 7. The appeal on ground (d) therefore fails.

The appeal on ground (f)

8. 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. In this regard the notice requires the use of the building as a single dwelling to permanently cease and to remove domestic fixtures and fittings that have facilitated the use. It is clear therefore that the purpose of the notice is to fully *remedy the breach of planning control*.
9. The appellant suggests that the retention of the items listed in requirements 5(ii) and 5(iii) would allow for permission to be applied to keep the use of the building as a holiday let. However, that consideration is outside the scope of an appeal on ground (f) which is concerned solely with whether the requirements exceed the minimum necessary in order to *remedy the breach*.

³ Council Ref: DC/20/0460

⁴ Council's Statement of Case

10. That aside, in the correct context of ground (f) I do find requirements (ii) and (iii) are excessive. The wording "*such as*" in 5(ii) suggests the listed items are examples of an unspecified incomplete list, leaving the appellant not knowing with any certainty what else might be required to be removed. Hence, it lacks sufficient precision in specifying which particular items should be removed, as does the generality of "*all the soft furnishings*" in 5(iii).
11. Accordingly, I will correct and vary requirement 5(ii) by requiring removal only of food cooking facilities together with the bathroom sink, shower and WC. Together with requirement 5(i) these two requirements would be sufficient to remedy the breach of planning control. The variation would also reduce and limit the items to be removed and hence would diminish the obligations on the appellant to comply with the notice and so would not result in any injustice.
12. I will delete 5(iii) since it lacks sufficient precision. Moreover, the purpose of the notice would be satisfied by requirements 5(i) and (ii) alone.
13. Requirement 5(iv) is excessive because, as drafted, it requires the appellant to implement a specific use, whereas the appellant, if he wished, could implement *any* lawful use after complying with the requirements. I will correct the notice by deleting requirement 5(iv).
14. I am satisfied that exercising the powers available to me under section 176(1) of the Act the above corrections and variations can be made without resulting in injustice to any party.
15. To conclude, the purpose of the notice is to remedy the breach of planning control. The requirements (as corrected and varied) to cease the use of the building as a single dwelling, and to remove fixtures and fittings that facilitate that use, cannot be excessive because they go no further than remedying the breach. Any lesser requirements would not fully remedy the breach.
16. The appeal on ground (f) therefore fails.

Formal Decision

17. It is directed that the notice be corrected and varied by:
 - deleting all of Section 5(ii) and substituting instead the following words: "Permanently remove all food cooking facilities, the bathroom sink, shower and WC"; and
 - deleting all of Sections 5(iii) and (iv).
18. Subject to the corrections and variations the appeal is dismissed and the enforcement notice is upheld.

Thomas Shields

INSPECTOR