



Appeal Decision

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2024

Appeal Ref: APP/C1760/C/23/3318489

10 Harrison Way, Rownhams, Southampton SO16 8NG

- 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 Nicholas Lawrence against an enforcement notice issued by Test Valley Borough Council.
 - The enforcement notice was issued on 10 February 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the making of a material change in use of land by forming an additional separate unit of residential accommodation, for use as a dwellinghouse, within Class C3 of the Schedule to the Town and Country Planning (Use Classes) Order 1987.
 - The requirements of the notice are: 1. Permanently cease the residential use (Class C3) of the building. 2. Disconnect and permanently remove all separate utility connections such as gas, electric, water and waste connections to the building. 3. Permanently remove all facilities and associated units from the kitchen, bathroom, bedroom and living rooms of this building. 4. Permanently demolish the fence. 5. Permanently remove from the land all resulting materials, and waste, in association with compliance of steps 1-4.
 - The period for compliance with the requirements is 3 months for step 1 and 4 months for steps 2-5.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees 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 as amended have lapsed.
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Summary of Decision

1. The appeal is dismissed and the enforcement notice is upheld.

Preliminary Matter

2. Given the determination relates to only ground (f) and (g) appeals, which I shall describe below, a site visit would have no bearing on my assessment. The appellant also accepts in the appeal form that it is not essential for me to enter the site. Injustice to the parties therefore does not arise from determining the appeal on the basis of the written evidence before me.

The ground (f) appeal

3. The purpose of the enforcement notice is clearly to remedy the breach of planning control and it does not seek to under-enforce. Therefore, for an appeal on ground (f) to succeed it would be necessary for the appellant to explain why the steps required by the notice to be taken exceed what is

- necessary to remedy the breach of planning control and propose lesser alternatives steps.
4. The notice is concerned with the use of the building as a dwellinghouse. It does not require its demolition.
 5. The appellant contends that requirements 2 and 3 of the notice are excessive. These relate to the removal of separate utility and waste connections to the building and the removal of facilities and associated units from the kitchen, bathroom, bedroom and living rooms.
 6. The notice however only requires the disconnection and removal of any separate utility and waste connections to the building. Those that are entirely parasitic upon the main dwelling therefore do not need to be removed. This has since been confirmed by the Council¹. Such a requirement is therefore not excessive in order to remedy the breach of planning control.
 7. The evidence before me is that the building was intended to be constructed utilising permitted development rights and was to be used as a gym. There is however then very limited evidence, such as a sworn statement which then could be afforded considerable weight, to demonstrate on the balance of probabilities that the building was substantially completed and used as a gym with bathroom prior to its use as a dwellinghouse.
 8. The case law² advanced by the appellant is therefore of little assistance as it has not been demonstrated on the balance of probabilities that the internal facilities and associated units of the kitchen, bathroom, bedroom and living rooms were anything other than integral to or part and parcel of the dwellinghouse use.
 9. Based on the evidence before me, on the balance of probabilities the notice therefore does not require the removal of works that were undertaken for a different and lawful use. It is therefore not excessive to require the removal of the facilities and associated units from the building in order to remedy the breach of planning control, namely the use as a dwellinghouse. A requirement for cessation of the use alone would not properly achieve this because internal accommodation would remain which could further facilitate the breach.
 10. The building is then not left with a nil use as it forms part of the residential planning unit associated with the main dwelling and its curtilage. It is then not for me to specify or clarify how the building may be used in the future beyond this.
 11. As no other lesser steps are before me, the appeal on ground (f) fails.

The ground (g) appeal

12. The appellant contends that the time given to comply with the requirements of the enforcement notice are too short.
13. It is asserted that there was an on-going contract with a third-party letting company, but this will have ceased by 10 June 2023. That being so, the time to comply with the notice cannot be said to be too short.

¹ Final Comments, May 2023

² *Bowring v SSCLG & Waltham Forest BC [2013] EWHC 1115 (Admin)*

14. The appeal on ground (g) therefore fails.

Overall Conclusion

15. For the reasons given above I conclude that the appeal should not succeed and I shall uphold the enforcement notice.

Formal Decision

16. The appeal is dismissed and the enforcement notice is upheld.

Paul T Hocking

INSPECTOR