



Appeal Decision

Site visit made on 15 October 2024

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal Ref: APP/L1765/C/23/3320888

**Land at 12 Firgrove Lane (Land Adjacent to 7A The Old Piggery),
North Boarhunt, Fareham, Hampshire, PO17 6JU**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Joe Keet against an enforcement notice issued by Winchester City Council.
 - The notice was issued on 22 March 2023.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised material change of use of the land to residential; together with operational development that facilitates that change of use.
 - The requirements of the notice are to:
 - i. Cease the use of the land as residential.
 - ii. Disconnect all services (water, gas, electric, waste, internet etc) to the land shown edged red on the attached Plan.
 - iii. Permanently remove all buildings, caravans, vehicles, fencing and development associated with the unauthorised material change of use as described in paragraph 3 of this notice from the land shown edged red on the attached Plan.
 - iv. Remove any resultant waste from the Land.
 - v. Lay topsoil and seed with grass on the Land to reinstate the Land to its former level and condition.
 - The period for compliance with the requirements is: **one year** after the notice takes effect.
 - The appeal is proceeding only on the ground set out in section 174(2)(d) of the Town and Country Planning Act 1990 (the Act, as amended). No appeal has been brought on ground (a), an application for planning permission.
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Decision

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

Preliminary Matters

2. The appellant, in the appeal form, gives the address of the appeal site as 12 The Old Piggery rather than the above address. Regardless of what the correct postal address is, the land edged in red on the Plan attached to the notice accurately delineates the site.

Reasons

3. The appeal is solely on ground (d), that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.
4. The notice attacks the residential use of the land. S171B(3) of the Act is clear that no enforcement action may be taken after the end of the period of ten years beginning with the date of the use (the immunity period).

5. The appellant seems to rely on the wording of the former S171B(2), prior to 25 April 2024, where the breach of planning control consisting in the change of use of any building to use as a single dwelling house was 4 years, rather than 10 years as it is now. If I find that this did occur in respect of the occupation of the building on the site because it had some previous use prior to its use as a dwelling, I accept that this ground (d) appeal would be successful since the new 10-year immunity period only applies to changes of use to a single dwelling house that took place on or after 25 April 2024.
6. However, the appellant's case fails to demonstrate that the building had any previous use before it was a dwelling. The declarations by the appellant, workers constructing and fitting out the building, and the lady who lived next door and made them tea and coffee (all submitted in respect of the refused Lawful Development Certificate application¹), makes clear that the '*barn/home*' was built as a dwelling from the start.
7. Some of these declarations allege it was completed in February 2012 and others that it was completed in October 2014. Both sets of declarations cannot be accurate in terms of when the building was meaningfully completed. The declarations clearly indicate that although the external structure of the building may have been erected in 2012, the internal fit-out of the dwelling's rooms was not completed until 2014. The intervening period between February 2012 and October 2014, when it was incomplete, suggests it was incapable of being properly used as a dwelling house, rather than having some other intermediate use. No such intervening use has been described or even alleged.
8. The use of the land for residential purposes only meaningfully began in October 2014, when the building was completed. Ten years of continuing use of the appeal site for residential purposes prior to the service of the notice in March 2023 has not therefore occurred, as a matter of fact. There was no intervening primary use of the building, which in any case was not completed until October 2014. Completed in this sense means completed internally as well as externally. Consequently, the ground (d) appeal fails.

Conclusion

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

Nick Fagan

INSPECTOR

¹ LPA Ref 22/01611/LDC Refused 23 September 2022