



Appeal Decision

Site visit made on 21 November 2024

by Simon Hand MA

an Inspector appointed by the Secretary of State

Decision date: 26 November 2024

Appeal Ref: APP/Y9507/C/23/3323893

Belmore Cottage, Belmore Lane, Upham, SOUTHAMPTON, Hampshire, SO32 1NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Avon Cayzer against an enforcement notice issued by South Downs National Park Authority.
 - The notice was issued on 10 May 2023.
 - The breach of planning control as alleged in the notice is without planning permission the material change of use of the building to use as a separate dwelling-house.
 - The requirements of the notice are: (i) Cease the unauthorised use of the building shown in the approximate location marked with an X on the attached plan as a separate dwellinghouse. (ii) Remove from the building all fixtures, fittings and alterations that have been installed to facilitate the unauthorised use in (i). (iii) Remove the four rooflights installed within the South-west elevation shown circled in red on the attached photo (photo A). (iv) Permanently remove from the land all materials, rubble, rubbish and debris arising from steps (i) to (iii).
 - The period for compliance with the requirements is: 9 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d), (f) of the Town and Country Planning Act 1990 (as amended).
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Decision

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

The Appeal on Ground (d)

2. This ground is that the material change of use to a dwellinghouse took place more than 4 years before the issue of the enforcement notice. The relevant date is therefore 10 May 2019.
3. Originally planning permission¹ was granted for a garage/store that partly stood within the curtilage of the dwelling but mainly was in an adjacent field. Part of that application was to change the use of the relevant part of the field to residential, so the whole building falls within the single planning unit of the main dwelling. The appellant states it is a separate planning unit, but I do not agree. When planning permission was granted it was clearly intended to be a garage serving the main house and so was within the same planning unit. Since then nothing has been done to create a separate unit, there is no sense of it being separate. It stands opposite a large barn and beside the main dwelling. I have no reason to believe they do not all fall within the same planning unit.
4. The approved building was an open fronted, pitched roof barn-like structure with 5 bays for cars, machinery and storage. The building was completed in

¹ SDNP/17/05103/HOUS

July 2018 and the roof lights were later put in place by September 2018. Mr Cayzer stated they wanted to find somewhere for their full-time nanny to live. It seems he had already converted the roof space, at least partially, into an office and then he converted the whole of the upstairs into self-contained accommodation for the nanny.

5. There is no dispute about the dates provided, and it seems no dispute the accommodation was, from November 2018 capable of being self-contained accommodation. I confirmed on my site visit it was self-contained and there is no reason to disagree that it creates a building that passes the 'Gravesham'² test. However, that is only half the issue. In cases such as these the essential questions are what was the actual use of the building and whether a separate planning unit has been created? Simply creating a self-contained unit that passes the Gravesham test does not create a separate dwelling in planning terms.
6. It has long been understood that various annexes, such as a granny annex, staff accommodation etc can be in a self-contained building but still be ancillary to the main dwelling. That is because they were all in the same planning unit and there was a functional link between the use of the annex and the main dwelling. In this case the fact that the nanny lived independently is not decisive. I cannot see why there is any difference between a nanny and a housekeeper in planning terms. Both are employed by the house owners and both only live in their respective annexes because of that employment. Ms Goulding didn't rent the annex then start looking after the children, it was the other way around. There was a clear functional link therefore between the annex and the main dwelling. Also as no separate planning unit has been created it seems clear to me the annex was not occupied as an independent dwelling until at least July 2019 when Dr Donald moved in. That is within 4 years of the notice being issued so the ground (d) must fail.
7. However, there is also a significant gap when Dr Donald left in January 2021 and Annie Holmes rented the flat in March 2022. Ms Holmes statutory declaration says she rented it in March 2021, but this must be a typing error as Mr Cayzer said he and his family moved in after Dr Donald until Christmas 2021 after which they redecorated in January 2022. It was after that Ms Holmes moved in. Whether that was January or March 2022 doesn't matter as it was still a gap of over a year. During that time the flat was being used as temporary accommodation by the family while work was carried out on the main house. This period does not count towards the 4 years as it was clearly still ancillary to the main house. The appellant argues it cannot be ancillary as there was no main house, but the house still stood and was still lawfully a dwelling, even if it could not be lived in while building works took place. The flat was thus not being occupied as an independent dwelling but as ancillary accommodation. That gap too is fatal to the ground (d).

The Appeal on Ground (f)

8. This ground is that the requirements are excessive. In this case those in dispute are the requirements to remove the rooflights and the internal fixtures and fittings that facilitate the unauthorised use - that is mainly the bathroom and kitchen fittings.

² Gravesham BC v SSE & O'Brien [1982] 47 P&CR

9. Whether the rooflights have been in place for more than 4 years or not is irrelevant as it is well known that a notice can require the removal of certain structures or parts of a building that facilitate the unlawful use even if they have planning permission or do not need it as they are not, on their own, development. The rooflights would fall into the first category and the internal fixtures and fittings the second. There is no lawful use of the building except for storage on the ground floor therefore the only purpose of the rooflights and internal fixtures and fittings is to facilitate the unlawful use the subject of the notice. It is therefore entirely reasonable to require their removal so that the unlawful use is not recommenced.
10. The appellant also argues that he will apply for a tourism use so they are required for that purpose. The notice gives him 9 months to carry out the changes required so gives him plenty of time to find out if such a use is possible in which case planning permission would be required which could incorporate the retention of the items to be removed. Such a planning permission would override the effect of the notice.

Other Matters

11. In his final comments the appellant introduces an argument that the building as a whole does not have planning permission as it was not built in accordance with the plans. Firstly, the Council do not agree the building is unlawful. They argue the measurements of the building as built are within a reasonable approximation of the planned building. In particular, the main discrepancy pointed out by the appellant is the roof height, but the Council consider this is acceptable due to the sloping nature of the site. Secondly, if there are discrepancies, they are not relevant, as the notice is not directed against the building but the use (I have dealt with the rooflights argument above). Even if the building is now immune from enforcement, the use is not, so whether the building is unlawful or not does not affect the outcome of this appeal.
12. There is also an argument about curtilage, but this is a red herring. The converted building lies in the same planning unit as the main dwelling. Curtilage is a separate concept that would only be relevant if permitted development rights were at issue, but it seems to be agreed by both parties the converted building is not within the curtilage of the main dwelling so has no permitted development rights.

Conclusion

13. The appeal fails and I shall uphold the notice as drafted.

Simon Hand

INSPECTOR