



Appeal Decisions

Site visit made on 16 April 2025

by **Mark Harbottle BSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 May 2025

Appeal A Ref: APP/P3040/C/24/3356371

Appeal B Ref: APP/P3040/C/24/3356372

Christmas Cottage, Flawforth Lane, Ruddington, Nottinghamshire NG11 6NG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended) (“the Act”) against an enforcement notice issued by Rushcliffe Borough Council.
 - The appeals are made by Mr Steve Millett (Appeal A) and Mrs Kirsty Millett (Appeal B).
 - The notice was issued on 31 October 2024.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission the construction of a replacement dwelling following the substantial demolition of the dwelling previously standing on the site.
 - The requirement of the notice is to not proceed with any works towards the continuation of construction of the replacement dwelling.
 - The period for compliance with the requirement is: 28 days.
 - The appeals are proceeding on the grounds set out in section 174(2)(b), (c), (f) of the Act.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld.

The appeals on grounds (b) and (c)

2. An appeal on ground (b) is that any matter alleged in the notice has not occurred as a matter of fact. The onus is on an appellant to demonstrate this on the balance of probabilities. An appeal on ground (c) may succeed if an appellant can show, also on the balance of probabilities, that any matter alleged in the notice is not a breach of planning control. This could be because it is not development or does not require an express grant of planning permission.
3. The appellants dispute that substantial demolition of the original dwelling occurred. They state that a section of wall unexpectedly collapsed when the original internal walls and a front bay were removed and that another section of wall unexpectedly collapsed later. The great majority of the external walls I saw are new, although some facing bricks salvaged from the original walls have been re-used in them.
4. I do not accept the description of the collapses as ‘unintended alterations’ because the structural alteration of a building is a building operation, and thus development as defined by section 55 of the Act. Setting aside the facts of this appeal, it cannot have been Parliament’s intention that the spontaneous collapse of a building would amount to development, and so be subject to planning control.
5. Much of the appellants’ case is concerned with the definition of a building and the legal difference between its demolition and alteration. They cite the *Shimizu* case¹ but I do not place great reliance on that case because it was concerned with a

¹ *Shimizu (UK) Ltd v Westminster CC* [1997] 1 WLR 168, JPL 523.

listed building, which Christmas Cottage is not, and the court held that the Act's definition of a building does not apply to listed buildings.

6. Turning to the definition of a building in section 336(1) of the Act, this includes "any structure or erection, and any part of a building, as so defined." Accordingly, the small part of the original external walls that remained standing, estimated to be 13% of the original total, was a building. That may explain why the notice does not refer to 'demolition', which is complete unless qualified by words such as 'partial' or - as in this case - 'substantial.' It is therefore clear that the notice states the demolition was extensive but incomplete.
7. The appellants do not state that the collapses they describe account for all the removed external wall fabric. Examination of their evidence reveals a collapse of "a part of wall" when the front bay was removed followed by a further collapse "in that area" and, separately, the collapse of "the leaf of wall, to the side of the door." While the appellants do not state the length of these sections, or whether the collapses were to ground level, their descriptions do not demonstrate that more than limited parts of the original building's external walls were affected.
8. It is unclear exactly when the collapses described by the appellants occurred, but a site inspection record made on 23 June 2024 by Midlands Building Control confirms that 2 sections of the original walls had been "left in place for planning conditions" but that one of these had collapsed overnight. The extent of this overnight collapse is not recorded, but photographs taken by the Council the next day confirm it meant that only a small section of original external wall, some 5.5m in length, was left standing.
9. The meaning of "left in place for planning conditions" has not been explained. However, it does imply there had been a conscious decision to retain a certain amount of external walling, suggesting that some other sections may have been removed deliberately.
10. The site inspection record also confirms that "the majority of the footprint of a dwelling" had been excavated. This and the Council's photographs indicate that all but a small section of the building's external walls are completely rebuilt. When this is compared with the limited extent of the collapsed areas, as described by the appellants, I can only conclude, as a matter of fact and degree, that there had also been extensive demolition of original fabric. The re-use of original facing bricks in the outer skin of the new walls does not alter that finding.
11. It has therefore not been demonstrated, on the balance of probabilities, that substantial demolition, as alleged in the notice, has not occurred.
12. Christmas Cottage was a single storey dwellinghouse in its original form. Article 3(1) and Schedule 2, Part 1, Class AA(b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the Order") grant planning permission for the enlargement of such a dwellinghouse by the construction of one additional storey. This is subject to prior approval of certain matters, which the Council granted in October 2022.²
13. The appellants contend that all they have done is make the enlargement that the Council granted prior approval for. That would only be correct if the building for

² 22/01462/PAA, granted 4 October 2022.

which prior approval had been granted still existed and they had not, instead, constructed a replacement dwelling, as the notice alleges.

14. The courts have held that, in principle, the retention of fabric from an original building does not preclude it being found, as a matter of fact and degree, that a new building has been formed and that the original building has ceased to exist.³ Whether that has occurred is a matter to be determined according to the facts of each case.
15. As noted, excavations for most of the footprint of a dwelling were carried out and all internal walls are new. The great majority of the external walls are new, although some salvaged bricks are incorporated in the outer faces. Accordingly, and as a matter of fact and degree, only a small proportion of the original building's fabric has survived intact.
16. The surviving original fabric is primarily an 'L' shaped section of external wall approximately 5.5m long. This, and the corresponding far greater proportion of new fabric, mean that the original building no longer exists as a recognisable structure, even allowing for the reuse of bricks. Thus, while the degree of structural support the remaining proportion of original fabric may provide has not been specified, it must be limited. Critically, it has not been demonstrated that it provides anything more than modest support to the building that now exists.
17. It follows that the original building no longer exists sufficient to be enlarged by the construction of an additional storey. Consequently, the construction of a replacement dwelling, as alleged in the notice, has occurred as a matter of fact and degree and the building I saw is new. What fabric remains from the original building is fully incorporated in this new building. The appeals on ground (b) must therefore fail.
18. It follows that, as the construction of the replacement dwelling is development and no deemed or express planning permission has been granted for it, the appeals on ground (c) must also fail.

The appeals on ground (f)

19. An appeal on this ground is that the steps the notice requires to be taken, or the activities it requires to cease, exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity it causes. The notice has a single requirement; to not proceed with any works towards the continuation of construction of the replacement dwelling.
20. I appreciate that the appellants believe enforcement action was not expedient, that it did not align with the Council's enforcement policy and may have been initiated because they had made a complaint about something. However, those points do not focus on the requirement and whether it exceeds what is necessary to remedy the breach, or any injury to amenity it may cause.
21. If anything, the requirement falls short of a remedy, as nothing needs to be done in respect of the demolition and construction that had been undertaken before the notice was issued. It merely requires that no more work is carried out, which is the very least a notice could require in the circumstances.

³ *Oates v SSCLG & Canterbury CC* [2017] EWHC 2716 (Admin), [2018] EWCA Civ 2229; [2019] JPL 251.

22. I also appreciate that the appellants will have suffered adverse financial and personal effects because they have been unable to complete their new family home. However, only limited information has been provided on those matters, so I am unable to afford them appreciable weight. That is particularly so in view of the significant implications of success on this ground, which would emasculate the notice and allow the construction of an unauthorised building in the Green Belt to resume.
23. For these reasons, the requirement is not excessive and the appeals on ground (f) must fail.

Conclusions

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

Mark Harbottle

INSPECTOR