



Appeal Decision

No site visit made

by **A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 May 2025

Appeal Ref: APP/P1045/C/24/3340745

Land at Red House Stables, Old Road, Darley Dale, Derbyshire DE4 2ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act").
 - The appeal is made by Mr Nicholas Russell against an enforcement notice ("EN") issued by Derbyshire Dales District Council.
 - The notice was issued on 13 February 2024.
 - The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised use of an outbuilding (previously used as a working carriage museum) for use as a residential dwellinghouse (use class C3) and associated external alterations to the building, as shown in the position outlined in blue on the attached plan.
 - The requirements of the notice are to: Permanently cease the residential use of the building known as Red House Stables, Old Derby Road, Darley Dale, Derbyshire, DE4 2ER, as shown outlined in blue on the attached plan.
 - The period for compliance with the requirement is: 3 months from the date when this notice takes effect.
 - The appeal is proceeding on the ground set out in section 174(2)(g) of the 1990 Act.
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Decision

1. It is directed that the EN is corrected by:

- *the deletion of the words "Without planning permission, the unauthorised use of an outbuilding previously used as a working carriage museum for use as a residential dwellinghouse (use class C3) and associated external alterations to the building, as shown in the position outlined in blue on the attached plan" and their substitution with the words "Without planning permission, the unauthorised material change of use of an outbuilding for use as a residential dwellinghouse (Use Class C3)" in 3. THE BREACH OF PLANNING CONTROL ALLEGED of the EN; and*
- *the substitution of the plan annexed to this decision for the plan attached to the EN.*

2. And varied by:

- *the deletion of the words "Permanently cease the residential use of the building known as Red House Stables, Old Derby Road, Darley Dale, Derbyshire, DE4 2ER, as shown outlined in blue on the attached plan" and their substitution with the words "Permanently cease the use of the outbuilding as a dwellinghouse" in 5. WHAT ARE YOU REQUIRED TO DO of the EN.*

3. Subject to the corrections and variation, the appeal is dismissed, and the EN is upheld.

Matters Concerning the Notice

4. For a change of use to amount to development there must be a material change in the character of the use that the land is being put to. Therefore, the alleged breach of planning control is *“the unauthorised material change of use of an outbuilding”* rather than *“the unauthorised use of an outbuilding”* and therefore Section 3 of the EN should be corrected in this regard. The appellant’s and Council’s cases are based on the allegation amounting to development. No injustice would therefore arise from this correction.
5. It is not necessary to identify the building in which the alleged breach of planning control has taken place within Section 3 of the EN, as it is clear from Section 2 and the attached plan. As such, *“...as shown in the position outlined in blue on the attached plan”* are superfluous words and should be omitted.
6. There is a discrepancy between the alleged breach of planning control and the reasons for issuing the EN as the former refers to the outbuilding as *“(previously used as a working carriage museum)”* and the latter refers to the use being *“adjacent to a former carriage museum”*. The appellant has clarified that the outbuilding has never been used as part of the carriage museum. Furthermore, it is not necessary to include the previous use of the outbuilding in the allegation, and therefore, it should be omitted.
7. The alleged breach of planning control includes *“associated external alterations to the building”*. The reasons for issuing the EN suggest that the external alterations are harmful and would conflict with the development plan. The Council has not provided any substantive evidence regarding what these external alterations comprise, and the requirements of the EN do not contain any steps to remedy these external alterations.
8. Correcting the EN to extend the requirements to include the remediation of the external alterations would cause injustice to the appellant. However, if I were to uphold the EN without such correction, planning permission would be deemed to be granted for the external alterations under s173(11) of the 1990 Act. Consequently, the *“associated external alterations to the building”* should be deleted from the alleged breach of planning control.
9. There is a discrepancy between the alleged breach of planning control and the requirements of the EN as the former refers to an *“outbuilding”* and the latter refers to a *“building”*. Furthermore *“residential use”* within the requirements of the EN is imprecise. Therefore, the requirements of the EN should be varied to refer to *“the use of the outbuilding as a dwellinghouse”* to give precision.
10. The plan attached to the EN identifies the outbuilding in blue and the surrounding land/buildings outlined in red. The EN does not allege that an unauthorised material change of use to a mixed use has occurred to the land edged red on the plan accompanying the EN. Instead, it alleges an unauthorised material change of use of the outbuilding edged blue. I can correct the EN through the substitution of the plan so long as the matter has been canvassed with the parties, and where the correction would not cause injustice.
11. I invited views from both parties regarding whether the plan accompanying the EN should be corrected so that only the outbuilding was outlined in red. This was

agreed by both parties. Furthermore, the land to which the EN relates has reduced and the EN is clear that it relates only to the outbuilding in any event.

12. For the reasons given above, I am satisfied that the EN can be corrected and varied in the above respects without causing injustice.

Preliminary Matters

13. The appellant's appeal form and appeal statement referred to the outbuilding previously being used as bed and breakfast accommodation by a former owner; that the outbuilding is not a dwelling; that they are currently paying Council Tax on the outbuilding; and that it was their belief that they could occupy the outbuilding on a temporary basis without the need to seek planning permission while they obtained permission to construct a dwelling on the wider site.
14. Consequently, I believed there was a "hidden" ground (c) appeal within the evidence (*"that the matters alleged do not constitute a breach of planning control"*), and a possible "hidden" ground (b) appeal (*"that the matters alleged have not occurred"*). As such, I invited views from both parties on these matters.
15. The Council responded stating that: *"according to their records the building did not have the facilities or material changes to be occupied as [a] C3 dwellinghouse"; and "the previous use of the building had no lawful use as a dwellinghouse (C3)"*.
16. The appellant responded stating, amongst other things: *"we do not claim that occupation of the temporary apartment within Block J is not a breach of planning control – hidden ground (c). We do not claim that the matters alleged have not occurred – hidden ground (b)"; and "we do not believe or claim that the Bunk House/Apartment has ever constituted a Class 3 dwellinghouse"*.
17. Based on this evidence, I am satisfied there are no "hidden" grounds of appeal.
18. The appellant requests that planning permission be granted for a temporary period to allow them to live in the outbuilding until they have constructed a permanent dwelling on site. However, the appellant has not made or paid a fee for an appeal under ground (a). I cannot therefore consider this matter or any other planning merits of the development, such as a need to maintain a 7-day per week sales presence at the wider site on which the outbuilding is located while the appellant cares for their disabled partner.
19. I will determine the appeal as made under ground (g), which rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. A site visit was not therefore necessary as it would not help me reach a decision. I advised both parties of my intention to determine the appeal without a site visit. I did not receive any comments disagreeing with this approach from the Council.
20. The appellant deemed that it was necessary for me to undertake a site visit so I could witness and fully understand the interlinked issues including the dialogue the appellant had with the Council's enforcement department prior to the EN being issued; the appellant's planning application for a dwelling on the wider site; the health issues of both the appellant and his partner; and the other uses operating from the wider site. I considered the appellant's reasons, however, as they were not directly related to an appeal under ground (g), they did not alter my view that a site visit was unnecessary.

21. Concern has been raised regarding the Council's handling of the enforcement case, including a lack of communication with the appellant. The appellant also queries their payment of Council Tax over the previous 24 months. However, these matters are not before me for consideration and do not prevent me from forming a decision on the appeal under ground (g).

Appeal on Ground (g)

22. An appeal under ground (g) is that the period specified for compliance with the EN falls short of what should reasonably be allowed. The period for compliance specified in the EN is 3 months. The appellant requests a period of 18 months.
23. I have had due regard to the Public Sector Equality Duty ("PSED") contained in the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not. The appellant's submissions allude to their partner being disabled and therefore they could have a protected characteristic for the purposes of the PSED.
24. I am mindful of the appellant and their partner's health conditions and that compliance with ground (g) will lead to them having to vacate their home. However, there has been no challenge to the EN other than on ground (g). Therefore, the appellant is content to comply with the requirements of the EN, albeit that they seek for the compliance period to be extended. Consequently, the appellant is aware that they must cease occupying the outbuilding for residential purposes.
25. Outline planning permission¹ for the construction of a 5-bedroom dwelling on land forming part of the wider site on which the outbuilding is located has been submitted to the Council. However, there have been delays in the Council determining it. Therefore, the appellant considers a period of 18 months is necessary to obtain planning consent and construct the dwelling.
26. It is necessary for me to consider the time that has elapsed since the EN was issued in deciding what period of compliance is reasonable. Had the appeal not been lodged, the EN would have taken effect on 28 March 2024. As such, the appellant has already benefitted from over 13 months of their requested 18 months. As the residential use of the outbuilding was always going to have to cease, the appellant should have used this 13 months constructively to find alternative accommodation. To afford the appellant a further 18 months from the determination of this appeal would be akin to granting temporary planning permission, which would be unjustified.
27. Since lodging the appeal, the appellant asserts that they have subsequently obtained outline planning permission for the proposed dwelling. However, this has not been substantiated with evidence. Even if planning permission has been granted, it is unlikely that the remaining 4-5 months of the appellant's requested 18-month period would be sufficient to obtain planning approval for a reserved matters application, discharge any conditions, and construct the dwelling to a habitable standard to enable the appellant and their partner to move out of the outbuilding.
28. The appellant asserted in their appeal form that there is nowhere that they or their partner can move to within the next 6 months. However, over 13 months have

¹ Planning Ref: 23/01101/OUT

passed since that statement was made. Furthermore, the appeal site is in proximity to both Darley Dale and Matlock, and I have not been directed to a particular shortfall in rental or other types of living accommodation in the surrounding area that could not be occupied by the appellant and their partner.

29. Accordingly, I find that the 3-month compliance period afforded by the EN does not fall short of what is reasonable and would have no adverse implications for the appellant's partner in terms of equality or otherwise be inconsistent with the aims of the PSED set out above. However, it is open to the Council to use their power under s173A(1)(b) of the 1990 Act to relax the compliance period, if at any time they consider that the circumstances are appropriate to do so.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the EN with corrections and a variation.

A Berry

INSPECTOR



Planning Inspectorate

Amended Plan

This is the plan referred to in my decision dated:

by A Berry MTCP (Hons) MRTPI

Land at Red House Stables, Old Road, Darley Dale, Derbyshire DE4 2ER

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Scale: Not to Scale

