Appeal Decisions

Site visit made on 20 May 2025

by L Douglas BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd May 2025

Appeal A Ref: APP/Y9507/C/24/3344374
Land at Studio Cottage, 23 Pulens Lane, Petersfield, Hampshire GU31 4BZ

- The appeal is made by Mr David Graver under section 174 of the Town and Country Planning Act 1990 (as amended) (the Act) against an enforcement notice issued by East Hampshire District Council on behalf of South Downs National Park Authority.
- The notice was issued on 18 April 2024.
- The breach of planning control as alleged in the notice is Without planning permission and within the last 4 years, a material change of use of land to create a new planning unit consisting of an independent residential dwelling house comprising of a conversion of a vehicular garage.
- The requirements of the notice are: (i) Cease the use of the building on the Land (edged red) as an independent residential dwellinghouse. (ii) Permanently remove the hard surfaced car park area cross hatched black in the approximate position on the attached plan, and all resulting materials from the Land. (iii) Remove all internal fixtures and fittings including all white goods, washing machines, fridge freezers, internal walls, toilet, sinks, shower, that facilitate the use of the site as a residential dwellinghouse.
- The period for compliance with the requirements is nine months from the date the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Act.

Appeal B Ref: APP/Y9507/X/24/3340661
Studio Cottage, 23 Pulens Lane, Petersfield, Hampshire GU31 4BZ

- The appeal is made by Mr David Graver under section 195 of the Act against the decision of South Downs National Park Authority to refuse to grant a certificate of lawful use or development (LDC).
- The application ref SDNP/23/04609/LDE, dated 1 November 2023 was made under section 191(1)(a) of the Act, and was refused by notice dated 1 March 2024.
- The use for which a certificate of lawful use or development is sought is 'Use of Building as an independent dwelling house'.

Decisions

<u>Appeal A</u>

1. It is directed that the enforcement notice is corrected and varied by:

    - The substitution of the plan attached to this decision for the plan attached to the enforcement notice; and

    - The deletion of the text 'car park area cross hatched black in the approximate position' at Step (ii) of paragraph 5 of the enforcement notice, and the substitution of the text 'area in the approximate position edged blue'.

2. Subject to the correction and variation, the appeal is dismissed and the enforcement notice is upheld.

<u>Appeal B</u>

3. The appeal is dismissed.

Preliminary Matters

4. In Appeal A, the appellant's ground (c) submissions would be more appropriately dealt with as an appeal under ground (d). As an appeal under ground (d) would cover the issues relevant to those under consideration in Appeal B, I shall deal with them together, even though an appeal under ground (d) has not been explicitly made in Appeal A.

5. It has been claimed that the notice in Appeal A should not have been issued prior to the determination of Appeal B. I see no reasons why the notice should not have been issued prior to the determination of Appeal B when the Council considered it expedient to take formal enforcement action against an apparent breach of planning control. It was a matter for the appellant to consider whether to lodge an appeal under ground (a) in Appeal A, and he chose not to incur the costs associated with that ground. He was not forced to exclude that ground of appeal or caused any injustice.

6. In Appeal A, the red line surrounding the land described in the notice exceeds that which is the subject of the alleged breach of planning control. This does not make the notice a nullity as the land the subject of the alleged breach is within the land edged red. However, the notice is in need of correction through the deletion of the plan attached to the notice and the substitution of a new plan. I shall correct the notice accordingly, using the appellant's plan which I have amended with an appropriate red line, and a blue line to identify the hard surfaced area referred to by Step (ii). This correction does not cause injustice to any parties as it identifies a smaller area of land to which the notice relates, without including any new land, in the interests of clarity.

7. For reasons explained below in my reasoning relating to the appeal under ground (f) in Appeal A, the description of the alleged breach is not incorrect.

Appeal A, ground (c)

8. To succeed under this ground of appeal the appellant needs to show, on the balance of probabilities, that the material change of use (MCU) stated in the notice does not constitute a breach of planning control.

9. Section 57 of the Act sets out that planning permission is required for the carrying out of any development of land. Section 55 of the Act provides the relevant meaning of 'development', which includes the making of any material change in the use of any buildings or other land.

10. It is not disputed that the building the subject of the notice was initially erected as a garage with the benefit of planning permission[1] and that there has been a MCU to a dwellinghouse. No planning permission exists for that MCU, which constitutes development in breach of planning control.

11. The appeal under ground (c) must therefore fail.

Appeal A, ground (d); and Appeal B

12. For the appeal under ground (d) in Appeal A to succeed the appellant needs to show that, at the date when the notice was issued, no enforcement action could be

[1] The National Park Authority's ref: SDNP/12/03231/HOUS

taken in respect of the breach of planning control. For Appeal B to succeed the appellant needs to show that the decision of the National Park Authority (NPA) to refuse to issue an LDC was not well-founded. The appropriate test of the evidence is the balance of probabilities. Case law confirms that the appellant's evidence should be accepted if there is no evidence to contradict their version of events or make it less than probable, and their evidence is sufficiently precise and unambiguous.

13. On the date of the application for an LDC, and on the date the enforcement notice was issued, section 171B(2) of the Act stated:

    'Where there has been a breach of planning control consisting in the change of use of any building to use as a single dwellinghouse, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach'.

14. Condition 2 of the planning permission which authorised the garage restricts the use of the building to the parking of private motor vehicles and cycles and domestic storage incidental to the use of 19a Pulens Lane. The MCU was therefore a breach of condition, but this does not prevent the application of section 171B(2) of the Act. In this case, it would be wrong to ignore section 171B(2) of the Act and apply section 171B(3) instead, which refers to 'the ten year rule' where there has been any other breach of planning control not specified in section 171B(1) or (2).

15. Therefore, for Appeal A to succeed under ground (d) the appellant needs to show that the MCU took place on or before 18 April 2020; and for Appeal B to succeed the appellant needs to show the MCU took place on or before 1 November 2019.

16. The statutory declarations (SDs) of David Graver (the appellant, who is the owner of Studio Cottage), Brian Harris, and Megan Penaluna-Smart all clearly state that Ms Penaluna-Smart had been living in Studio Cottage as her home for more than four years preceding 18 October 2023. The Perjury Act 1911 sets out serious implications where any person makes a false statement in a SD, and I therefore assign these claims significant weight.

17. The other evidence in support of the appellant's case includes: a signed tenancy agreement between the appellant and Ms Penaluna-Smart dated 28 November 2018; two photographs dated November 2022 showing parcels addressed to Ms Penaluna-Smart at Studio Cottage; and various emails dated 8 July 2020 to 5 October 2023 exchanged between Ms Penaluna-Smart and unidentified people named Esther and Debbie using an email account beginning 'davidgraverlettings@...'. Aside from the SDs and the tenancy agreement, no other evidence supports claims the MCU took place before July 2020.

18. The tenancy agreement refers to the Tenants Bill 2019. There is no dispute that this did not exist in November 2018. The appellant has subsequently explained in limited detail that the original tenancy agreement could not be found, so a new tenancy agreement was subsequently drawn up at an unspecified date, which includes reference to the Tenants Bill 2019. There is no explanation as to why Ms Penaluna-Smart and a D Saines (acting as the appellant's agent) dated their signatures in that document 28 November 2018, when the submissions indicate the tenancy agreement comprises a single complete document. Nor is it clear why the appellant did not mention this in advance of the Council raising the issue. It would

have been a very straightforward matter for the appellant and Ms Penaluna-Smart to have mentioned this in their SDs to clarify matters in advance.

19. The two photographs show packages were addressed to Ms Penaluna-Smart at Studio Cottage in November 2022. This is consistent with the email chains presented showing a tenant and landlord relationship between Ms Penaluna-Smart and David Graver Lettings Limited, as the company mentioned in the tenancy agreement.

20. These support claims that Ms Penaluna-Smart has lived in Studio Cottage since at least 8 July 2020, when David Graver Lettings emailed Ms Penaluna-Smart about a meeting at the site to agree a broadband/telephone cabling route. In a responding email dated 31 July 2020, Ms Penaluna-Smart states that a NICEIC certificate of compliance for an electrical installation had been received ‘a few weeks back’.

21. It is not disputed that Deborah Saines of David Graver Lettings contacted the Council’s Revenues and Benefits (Council Tax) Section on 27 July 2022 to advise that Ms Penaluna-Smart had moved into Studio Cottage as a new tenant on 28 May 2020. The appellant has since claimed that Ms Penaluna-Smart was a student when she moved into Studio Cottage in November 2018 and that the term ‘moving in’ was used to cover her change in status on 28 May 2020, as she was not previously liable to pay Council Tax.

22. There are no details of the exact period Ms Penaluna-Smart was a student, where or what she was studying for her to qualify as exempt from paying Council Tax, and there is no explanation of why Studio Cottage was not registered for Council Tax with a student exemption applied. With the appellant’s explanations in mind, it is unclear why the tenancy agreement also refers to the rent being inclusive of Council Tax, unless if the whole document was updated in preparation for the LDC application. Again, these would have all been very straightforward matters for the appellant and Ms Penaluna-Smart to have clarified in their SDs with supporting evidence in advance of the Council raising them.

23. There is nothing unusual in the tenancy agreement referring to an initial tenancy term of 6 months and then stating that at the end of the initial fixed term, the term shall continue on a month-by-month rolling basis. It is also not necessary for an internet or telephone connection to be provided to a building before it constitutes a dwellinghouse.

24. However, the appellant has failed to provide a reasonable explanation for Ms Penaluna-Smart’s email dated 31 July 2020 referring to receipt of a certificate of compliance for an electrical installation. The Council suggests the certificate related to the first installation of electricity to the building around that time, in 2020, which the appellant disputes without explaining what it does relate to. No copies of electrical certificates have been provided to clarify this point.

25. Overall, I find the evidence is not sufficiently precise or unambiguous to show, on the balance of probabilities, that the MCU took place at least four years before the date the notice was issued. Although I assign significant weight to the SDs on account of the implications where false statements are made, they are very limited in detail and directly contradict the information Ms Saines provided the Council in July 2022.

26. On the evidence provided, the appellant's explanation with regard to the Council Tax communication lacks credibility. The same applies to the explanation as to why the tenancy agreement signed and dated 28 November 2018 by two people refers to the Tenants Bill 2019, when it was initially presented as an original tenancy agreement to support the LDC application. In light of these issues, it becomes even more questionable as to why the SDs lack detail and do not present further records which should be easily accessible to an appellant conducting a letting business. For example, the electrical certificate(s) referred to, copies of any bills, receipts, invoices, bank statements, correspondence, or photographs prior to July 2020 are all notably absent without explanations as to why.

27. For the above reasons, I have significant doubt that the undetailed contents of the SDs are reliable. The available evidence is not sufficiently precise and unambiguous to show, on the balance of probabilities, that the MCU took place on or before 18 April 2020.

28. The appeal under ground (d) in Appeal A therefore fails.

29. The NPA's decision to refuse to issue an LDC was well-founded and Appeal B also fails.

Appeal A, ground (f)

30. To succeed under this ground of appeal the appellant needs to show that the steps required to be taken by the notice, or the activities required by the notice to cease, exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity which has been caused.

31. The notice requires the use of Studio Cottage as a dwellinghouse to cease, the removal of all internal fixtures and fittings that facilitate its use as such, and the removal of a hard surfaced car park area. The purpose of the notice is therefore to remedy the breach, rather than any injury to amenity.

32. The hard surfaced area appears to be for the purpose of parking a vehicle, but I note the appellant's claims to the contrary. It does not meet the minimum size standards for a parking space, but this does not stop it being a sub-standard parking space. It was laid out as a seating area during my visit, enclosed within the garden of Studio Cottage. Considering its relationship with Studio Cottage, the driveway leading to it, and hinged fence panels at its access, it would be reasonable to construe it as a parking or other outside/access space closely associated with the use of Studio Cottage as a dwellinghouse. Indeed, the appellant refers to it as making access to the garden area easier for removal of garden waste and refuse bins. No other explanations have been provided, other than unsubstantiated claims there was a raised and levelled off area in its place when the building was originally constructed in around 2012, and that this has recently been re-surfaced.

33. The hard surfaced area cannot be considered as 'permitted development' under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) associated with Studio Cottage, because the use of the building as a dwellinghouse has been in breach of planning control. There is no convincing evidence that it was constructed as permitted development in association with No. 19a Pulens Lane either. In any case, the provisions of the GPDO cannot be applied retrospectively.

34. As a matter of fact and degree I find that the hard surfaced area was constructed to facilitate the unauthorised use of Studio Cottage as a dwellinghouse, and that it is ancillary to that dwellinghouse and part and parcel of the breach. The *Murfitt* principle[2] therefore applies and it is not excessive for the notice to require the removal of the hard standing to achieve the purpose of the notice and restore the land to its condition before the breach took place in accordance with section 173(4)(a) of the Act. As such, there is no need for the description of the breach to include reference to the hard surfacing, and it is not incorrect.

35. I do not find any obvious alternatives or lesser steps which could achieve the purpose of the notice with less cost and disruption. I do, however, find that it would be in the interests of all parties for the phrase 'car park' to be deleted from Step (ii) of the notice, as the area could have been used for various purposes associated with Studio Cottage.

36. The appeal under ground (f) therefore succeeds, but only insofar as the phrase 'car park' will be deleted from Step (ii) of the notice.

Conclusions

Appeal A

37. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation.

Appeal B

38. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of 'Use of Building as an independent dwelling house' was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

L Douglas

INSPECTOR

[2] *Murfitt v SSE & East Cambridgeshire DC* [1980] JPL 598

Planning Inspectorate

Plan

This is the plan referred to in the decision dated: 22nd May 2025

by L Douglas BSc (Hons) MSc MRTPI

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Reference: APP/Y9507/C/24/3344374

Scale: Not to Scale