
Appeal Decision

Site visit made on 22 September 2025

by **A Walker MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 16 October 2025

Appeal Ref: APP/R0660/C/24/3345810

1A Russet Close, Crewe CW1 4FR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Nick Reynolds (NAW Reynolds Building (Marshall) Ltd) against an enforcement notice issued by Cheshire East Council.
- The notice was issued on 2 May 2024.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised material change of use of a building into three self-contained flats and associated operational development comprising the addition of a single storey extension of the eastern elevation and a single storey extension on the western elevation of the building in the approximate positions hatched green on Plan B attached to this notice.
- The requirements of the notice are to:
 - a) Cease the unauthorised residential use of the building.
 - b) Demolish in their entirety the two unauthorised single storey extensions as shown hatched green on Plan B attached to this notice.
 - c) Remove all internal fixtures and fitting and partition walls from the interior of the building.
 - d) Remove all materials resulting from compliance with requirements b) and c) from the land.
- The periods for compliance with the requirements are:
 - a) 6 months after this notice takes effect.
 - b) 8 months after this notice takes effect.
 - c) 9 months after this notice takes effect.
 - d) 10 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(c), (d) and (f) of the Town and Country Planning Act 1990 (as amended).

Summary of Decision: The appeal is dismissed and, subject to correction and variations, the notice is upheld.

The Notice

1. Regardless of the outcome of the appeal, I have a duty to get the enforcement notice (the notice) in order. The heading of the notice states 'ENFORCEMENT NOTICE (Material Change of use)'. However, the alleged breach of planning control set out in section 3 of the notice includes a material change of use (to three flats) and operational development (single-storey extensions on the east and west elevations). Accordingly, the breach is operational development as well as a material change of use as referred to in the heading. Therefore, the notice is defective in this regard.
2. However, the appellant clearly understands the allegation includes both the material change of use and the operational development. Therefore, I am satisfied that I can correct the notice by deleting the reference to 'Material Change of use' from the heading without causing injustice to any party.
3. The appeal was made on grounds (d) and (f). However, the arguments raised in appeal on ground (d) also include a ground (c) appeal, that is the matters alleged in the notice do not constitute a breach of planning control. The parties have had

the opportunity to make comments on the hidden ground (c) appeal. Accordingly, I am satisfied that no injustice would be caused to any party by my determination of the ground (c) appeal.

Preliminary Matter

4. I note the objections received to the development from interested parties. However, these relate to the planning merits of the development. As no appeal under ground (a) has been made, these have had no bearing on my consideration of the appeal.

The ground (c) appeal

5. An appeal on ground (c) is whether, on the balance of probabilities, the matters alleged in the notice do not constitute a breach of planning control. The burden of proof is upon the appellant.
6. There is no dispute the material change of use of the building to three self-contained flats is a breach of planning control. The ground (c) appeal therefore focuses on the two single-storey extensions.

Eastern elevation extension

7. Planning permission was granted in 1997 for the use of the appeal building as elderly relative's accommodation¹. Planning permission was then granted in 2011 for the conversion of the appeal building to a dwelling². A subsequent planning permission was granted for changes to the design of the approved residential conversion of an outbuilding and a single-storey extension (Re-submission of 12/0388N)³. A further planning permission was granted in 2020 for a single-storey extension on the western elevation⁴. There is no dispute that prior to the use of the building for three self-contained flats the building was never in use as a dwelling.
8. The Council contends that planning permission 12/4401N was for an extension and not a material change of use. However, the description of the development refers to 'Changes to the design of the approved residential conversion of an outbuilding and a single-storey extension (Re-submission of 12/0388N)'. In addition, condition 3 attached to the decision notice for 12/4401N states 'the dwelling hereby permitted' and condition 5 states 'The hours of construction (and associated deliveries to the site) on the dwelling'. Moreover, condition 4 refers to 'The first floor window in the front elevation (east)'. The first-floor window is in the original building, not the extension. This clearly indicates the permission was for the conversion of the building to a dwelling, not just for an extension to it.
9. Therefore, whilst the changes may have related to the extension, the application included the residential conversion of the building too. In effect, the result was that there were two planning permissions granted for the material change of use of the building to a dwelling with an extension to it - 11/3094N and 12/4401N.
10. Although the extension that has been constructed varies slightly to that approved under 12/4401N this only appears to be very minor; notably a window is in place of

¹ Council reference P97/0058

² Council reference 11/3094N

³ Council reference 12/4401N

⁴ Council reference 20/3885N

a set of French doors and there is an internal door between the kitchen and living room. I consider that these are not material differences. Whilst the approved change of use to a dwelling never took place, material operations comprised in the erection of the extension, which also formed part of the approved development, commenced within three years of the date of 12/4401N being granted.

11. I note the comments from an interested party that conditions attached to 12/4401N have not been complied with. However, there is no substantive evidence before me that they have not.
12. I find therefore, planning permission 12/4401N was implemented and the extension is lawful. Consequently, the eastern elevation extension does not constitute a breach of planning control.

Western elevation extension

13. The description of the development in the decision notice for planning permission 20/3885N is 'Single storey side extension'. There is also no dispute the application did not include for the material change of use of the building. Accordingly, on the evidence before me, the planning permission was simply for operational development for the erection of an extension to the building regardless of what the use of the building was at the time. If the Council were not satisfied that the extension would be acceptable, because the building was not in use as a dwelling, then that is a matter they could have addressed at the time. There is no dispute the extension was commenced within three years of the date of the planning permission being granted. Therefore, on the balance of probabilities, I find the western elevation extension benefits from the 2020 planning permission and consequently does not constitute a breach of planning control.
14. I acknowledge the Council's argument that the extension facilitated the material change of use of the building to three flats and the implications of the *Murffit*⁵ principle. However, the approved drawings suggest the layout of the entire building would be for a single, three bedroom dwelling. There is no substantive evidence to suggest that, at the time works on the construction of the extension commenced, it was to facilitate the use of the building for three flats.
15. I find therefore, the ground (c) appeal succeeds, insofar as it relates to the two single-storey extensions. However, it fails insofar as it relates to the material change of use of the building into three self-contained flats. Accordingly, as I have found the extensions are not a breach of planning control and the appellant makes no case that the material change of use of the building to three flats is immune from enforcement action, the ground (d) appeal does not fall to be considered.

The ground (f) appeal

16. This ground of appeal is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.
17. I have found that the two extensions are not a breach of planning control. Accordingly, I shall remove the requirement to demolish them.

⁵ *Murffit v SSE* [1980] JPL 598

18. I have found planning permission 12/4401N included the material change of use of the building to a dwelling and that the permission was implemented through the erection of the eastern elevation. As a consequence, the planning permission remains extant.
19. The development could be altered to bring it in accordance with the extant planning permission, ie by converting the building to bring it in accordance with the approved details in planning permission 12/4401N, acknowledging the western elevation is not on the approved drawings but is nevertheless lawful. This would represent a lesser step that would remedy the breach of planning control.
20. I find therefore, the ground (f) appeal succeeds. I shall vary the requirements of the notice to provide the option of either ceasing the residential use of the building; removing all internal fixtures, fittings and partition walls from the interior of the building; and removing all resultant materials; or, altering it to comply with planning permission 12/4401N. I shall also vary the times for compliance under section 6 of the notice to reflect this, providing a period of 9 months to comply with the alternative option as this would likely require work of a similar nature to step c) to ensure it complies with the approved details of planning permission 12/4401N. I do not consider any injustice would be caused to parties by this inclusion.

Formal Decision

21. It is directed that the enforcement notice is corrected and varied by the following:
 - 1) In the heading of the notice, the deletion of '(Material Change of use)'.
 - 2) Under section 5 of the notice, the deletion of requirements a), b), c) and d) and substitute the following:

Either

 - a) Cease the unauthorised residential use of the building.
 - b) Remove all internal fixtures and fittings and partition walls from the interior of the building.
 - c) Remove all materials resulting from compliance with requirement b) from the land.

Or

 - d) The building shall be altered to comply with the terms of planning permission reference 12/4401N, dated 18 January 2012 including the conditions subject to which that permission was granted.
 - 3) Under section 6 of the notice, the deletion of a), b), c) and d) and substitute the following:
 - a) 6 months after this notice takes effect.
 - b) 9 months after this notice takes effect.
 - c) 10 months after this notice takes effect.
 - d) 9 months after this notice takes effect.

22. Subject to the correction and variations, the appeal is dismissed and the enforcement notice is upheld.

A Walker

INSPECTOR