The Planning Inspectorate

Appeal Decisions

Site visit made on 28 November 2025

by A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 30th December 2025

Two appeals land at Orchard Cottage, Ashford Carbonell SY8 4BX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the "Act").
- The appeals are made by Mr Simon Angell against enforcement notices issued by the Shropshire Council on 1 November 2023.

Appeal A Ref: APP/L3245/C/23/3333460

- The breach of planning control as alleged in notice is the following: (i) the erection of an unauthorised two storey rear extension, single storey rear extension and single storey front porch extension, and (ii) the erection of a single storey timber outbuilding shown in the approximate location marked with an 'X' on the plan attached to the notice ("Notice 1").
- The requirements are to: (1) demolish the extensions namely the two-storey rear extension, single storey rear extension and single storey front porch extension and remove from the land all rubble and materials arising from the demolition, and (2) To comply with 3(ii) of this notice and to remedy the breach of planning control, demolish the timber framed building marked with an 'X' on the attached plan and remove from the Land all rubble and materials arising from the demolition of the building as described.
- The period of compliance is 9 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the 1990 Act.
- An application for costs is mad by the appellant against the Council and that decision is attached at the end of this Decision.

Summary of decision: The enforcement notice is corrected, and the appeal is allowed as set out in the formal decision below.

Appeal B Ref: APP/L3245/C/23/3333463

- The breach of planning control as alleged in the notice is the material change of use of the land to create a single dwellinghouse and erection of one dwellinghouse.
- The requirements are to: (1) Cease the occupation of the dwellinghouse. (2) Demolish the building, including disconnection and removal of any services and removal of foundations and remove from the land to a site licenced to take such items, all waste and materials as a result of undertaking these operations, and (3) restore the land to its former appearance.
- The period of compliance is as follows: for requirement 1) - 12 months and for 2) and 3) - 15 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the 1990 Act.
- An application for costs is mad by the appellant against the Council and that decision is attached at the end of this Decision.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld after corrections as set out in the Formal Decision below.

Matters concerning the Notices

1. The terms of the deemed planning application ("the DPA") are derived directly from the allegation. My initial step is to consider, by way of rhetorical question, whether the Council has accurately described the alleged breach of planning controls in each notice[1]. Additionally, there

[1] Applying the principles established in the following cases: *Hammersmith LBC v SSE and Sandral* [1975] 30 P and CR19 and *R v SSE and LB Tower Hamlets, ex parte Ahern* [1989] JPL 757.

are several aspects which require careful consideration to ensure that the notices are correct. Corrections can be made by utilising the powers available under the Act, provided that any amendments satisfy the essential test of avoiding injustice to the parties concerned[2]. If corrections risk injustice, the power cannot be safely exercised, and a notice will be quashed.

2. For reasons that will become clearer later, the planning history is relevant, and I will refer to the most pertinent aspect of that history. The original planning permission for the erection of an affordable dwelling and garage/store, alteration to existing vehicular and pedestrian access and siting of temporary caravan was granted on 2 July 2012 (for convenient shorthand, "the 2012 Permission")[3]. The approved plans show a detached dwelling and outbuilding described as a garage/store.

3. In addition to the usual commencement and compliance with approved plans conditions, the permission clearly removes permitted development rights for various classes of development. Informative 1) refers to the s106 planning obligation. The latter was subject to an unsuccessful appeal pursuant to s106B of the Act ("2025 Decision")[4]. It seems to me that the development is controlled by a combination of conditions and mechanisms set out in the clauses to the s106 agreement.

Notice 1

4. I saw that the outbuilding is not totally built in timber like the roof covering. It is therefore incorrect to allege the erection of a single-storey timber outbuilding (emphasis added). A more substantive point relates to the intent behind Notice 1. From the four corners of the document, it alleges development without planning permission and seeks to remedy that wrong. However, the Council's approach is flawed.

5. Both parties agree that building operations involved in the construction of the dwelling approved by the 2012 Permission had commenced without any issue. It follows; therefore, the permission remains extant. I too agree that the as built dwelling, although unoccupied and, from an external inspection, incomplete, has not been built in accordance with the approved plans. Neither has the garage/store, which, the Council say, has habitable accommodation spread across two floors but is immune from enforcement action. Nonetheless, the alleged extensions are not approved and substantially alter the dwelling as approved and results in development without planning permission. However, the nature and scale of building work required to remove the unauthorised extensions and revert to the scheme approved in the 2012 Permission is not insurmountable. As an alternative to total demolition, it is reasonable and proportionate to revert to the scheme approved by the 2012 Permission, which would remedy the breach at less expense and disruption.

6. The case advanced by the appeal parties indicates that they interpreted Notice 1 as attacking unauthorised operational development, but they acknowledge the valid fallback. I am satisfied that the deletion of the word "timber" in relation to the outbuilding, and the adding of an alternative requirement to comply with the terms of the 2012 Permission, does not render Notice 1 any more onerous than first issued. No injustice is caused to any party, and I will correct Notice 1.

[2] Section 176(1)(a)(b) of the Act – On an appeal under section 174 the Secretary of State may correct any defect, error or misdescription in the notice, or vary its terms, if he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority.
[3] Council ref: 11/05428/FUL.
[4] Appeal ref APP/L3245/Q/25/3363603 dismissed 8 July 2025 but subject to judicial review proceedings.

Notice 2

7. The substantive point is the description of the alleged breach of planning control. It alleges a material change in use of the land outlined in red and operational development consisting of the erection of a dwellinghouse. It seems to me the Council is unclear as to the nature of the breach.

8. The evidence does not show that the land on which the building is located formed a separate planning unit nor does it show that land was primarily used for any other purpose. For example, there is nothing before me to indicate that the land on which the unauthorised building is situated formed part of agricultural land. In fact, the evidence shows that the land adjacent to 4 Wayside Cottage was under the same ownership. The latter has been separately sold off in 2018, but there has been no change in the use of the land because the before and after uses are residential in character.

9. The appellant refers to the building as an "annexe". They explain it was originally erected pursuant to planning permission ref 13/00820/FUL ("the 2013 Permission"), which was after the 2012 Permission. It grants permission for development at 4 Wayside prior to its subdivision. The development permitted is for the erection of a two-storey extension to the property and a detached single storey garage with a small annexe room. The building replaces a caravan that had been permitted whilst building operations on the erection of Orchard Cottage were underway. However, I attach limited weight to these arguments.

10. Even if the subject building was erected and constructed as an annexe and now has its own local taxation account, the permitted use was linked to 4 Wayside Cottage and not Orchard Cottage: the latter did not exist. The ancillary connection was severed as soon as 4 Wayside Cottage was physically separated and sold from the annexe. Irrespective of whether the 2013 Permission contained a non-severance stipulation, to my mind, the subject building forms a separate unit of occupation and contains necessary facilities for day-to-day living, and it is used for primary residential purposes from the outset. It cannot function as an annexe to Orchard Cottage because the latter is not occupied nor used as a single dwellinghouse.

11. Moreover, even if an alternative view prevails and the building can be regarded as an "annexe", the as built structure is fundamentally and substantially different in terms of of its built form, design, scale and layout when compared to the outbuilding approved under the 2013 Permission. One needs to compare like-for-like, and, apart from major differences, there are no similarities. The differences are stark and significant.

12. Additionally, claiming permitted development rights for under article 3, schedule 2, part 4 or 5 to the GPDO[5] is far-fetched. The statutory language does not permit the erection of a permanent and purpose-built dwellinghouse in connection with carrying out operations granted by a planning permission or the temporary use of land.

13. The Council's own evidence[6], particularly at paragraph 2.3 to the officer's report, clearly demonstrates to me operations involved in the erection of a building for residential purposes have been carried out and there has been no change in the use of the land. Irrespective of whether it forms an annexe to Orchard Cottage, the building is primarily used for residential purposes and forms a separate and self-contained unit of accommodation albeit occupied by the appellant and his family.

[5] The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended ("the GPDO").
[6] For example, the expediency report case ref 20/07398/ENF.

14. As the alleged breach occurred prior to 25 April 2024, the previous immunity periods of 4 or 10 years apply. That said, the written submissions reveal a fundamental misunderstanding of the current law applicable to these types of breaches of planning controls. Both appeal parties have failed to appreciate the Supreme Court's judgment in *Welwyn*[7] which dates to 2011.

15. Section 4, reasons for issuing the notice as issued, refers to the breaches having occurred within the last 4 years. Section 171B(2) of the Act applies to the change of use of a building to a single dwellinghouse (my emphasis). However, if a building is erected unlawfully and used as a dwellinghouse from the outset, meaning that no change of use occurs as such, the time limit for action against the use is then 10 years. The building itself may still become immune, but the use will not.

16. As I have already said elsewhere, the facts are that the subject building was erected as a dwellinghouse from day one and there is no evidence of any change in use of the building. In fact, building operations involved in the erection of the dwelling were substantially completed at the end of 2020 or beginning of 2021 and the building was subsequently occupied and used by the appellant and his family. The notice is dated 1 November 2023, and it can require the removal of the dwelling[8].

17. The header needs correcting because no material change in use of land has occurred, so, section 3, the matters which appear to constitute the breach, is wrong in that sub-paragraph (i) should be deleted. That leaves sub-paragraph (ii), which clearly attacks the erection of one dwellinghouse and outlines the subject building in red on the plan attached to Notice 2. Section 4) should also specify the 10-year time limit, but section 5), what you are required to do, reflects the alleged breach of erection of a dwellinghouse.

18. Pulling all the above threads together, I find that Notice 2 is flawed but saveable subject to the essential test. The appellant did not challenge the notice on basis that the alleged breach in Notice 2 has not occurred nor that it does not constitute a breach of planning, nor that it is immune from action. Both appeal parties have made their case on the basis that that a dwelling has been erected. I am satisfied that no injustice is caused to any party if I am to correct Notice 2 as envisaged, which I will do should that be necessary.

Appeal A and B – ground (a) and the DPA

19. The appeal site is situated on the north-western fringe of the village of Ashford Carbonell. The site is in an area defined in the Site Allocations and Management of Development (SAMDev) Plan as open countryside. The appeal site is located within the Conservation Area ("the CA"). For ease, I will address common main issues arising in Appeals A and B.

20. The common **main issue** is the effect of development, as corrected, on the character or appearance of the CA. In Appeal A, the additional main issue is the effect of the extended dwelling on the stock of affordable homes. In Appeal B, the additional issues are as follows: whether the location of the dwelling is suitable having regard to sustainable development objectives, and the effect on the living conditions of future and existing occupiers.

Notice 1 and 2 – character and appearance

21. The village is, essentially, a part compact and part linear form of settlement with built development mainly focused on the main road running through the centre of the village with dwellings either side. Orchard Cottage is set towards the northern end and comprises an infill development in a substantial plot of ground. The village has a strong relationship with the

[7] *Welwyn Hatfield BC v SSCLG & Beesley* [2011] UKSC 15: [2011] JPL 1183 (*Welwyn*).
[8] Applied: *Caldwell & Timberstore Ltd v SSLUHC & Buckinghamshire Council* [2024] EWCA Civ 467.

surrounding rural hinterland. Its rural village form is typical of small settlements in this part of the district. There are a variety of dwellings located in plots of different shape and size.

22. The Council do not raise concerns about the design of the alleged extensions. The external appearance of the alterations blends in with the host building, due to the use of matching materials. They have been designed to reflect the simple architectural style of the host building. In addition, the outbuilding is limited in scale, and its rearward location does not harm the street scene or quality of the host building.

23. Orchard Cottage sits in a landscaped and spacious plot and there are several outbuildings and structures set some distance from the new dwelling. In this location, the size and setting of the extended dwelling, as well as the separate outbuildings, does not represent an overly intensified residential use of the plot given its size, shape and location. In addition, the plot remains open and spacious, and buildings do not occupy too much land given their built-form and positioning. Cumulatively, the development does not represent an unacceptable layout, nor does it result in the plot's over-development. When seen from the highway, the amount of built form does not result in an awkward layout, nor does the plot appear to be cramped. The extended dwelling and outbuildings are set back, and their rearward location is unlikely to harm views from neighbouring properties.

24. The building that is subject of Notice 2 is tantamount to a dwellinghouse and is not an annexe to Orchard Cottage. Although the external appearance reflects local vernacular and the gable-end faces the access, the location of the dwelling is out-of-keeping with the settlement pattern and rhythm of built form given the plot's size. The development causes visual harm to the architectural style and layout of the locality. I too concur with the Council that the dwelling's size and scale appear incongruous and at odds with the CA's special interest and results in dominant form of residential development. The appellant suggests altering the building's height, but, when considered in context of adjoining dwellings including Orchard Cottage, it has a visually jarring effect and the layout of two dwellings on this plot is at odds with the simple architectural style of the locality.

25. In National Planning Policy Framework (NPPF) 2024 terms, the harm caused to the heritage asset is less than substantial nonetheless of considerable weight. Any perceived benefits arising from the unauthorised dwelling are private rather than public. Even if there are genuine economic and social benefits, I attach these matters limited weight due to the environmental harm caused by the addition of a separate dwelling in this location.

26. Each application must be considered upon its individual merits however consistency in decision-making is reasonable. However, the examples provided by the appellant of other developments in the area are not strong nor persuasive precedents. For example, while the scale and mass of the office and garage at Gresham House might be like the appeal dwelling, the latter is designed and functions as a self-contained dwelling.

27. Pulling all the above points together, on this main issue I conclude that the Notice 1 development, at the very least, has a neutral effect and, in my assessment, preserves the character or appearance of the CA such that it satisfies Core Strategy (CS) Policies CS5, CS6 and CS11, and SAMDev Policy MD2 and MD13, which are broadly consistent with advice found in NPPF paragraphs 208 to 211.

28. On the contrary, and while the heritage statement for the appellant downplays the effect of the new dwelling on the CA, I find that the erection of a building for residential purposes conflicts with relevant local and national planning policies stated above.

Effect of the extended dwelling on the stock of affordable homes

29. The evidence about the appellant's need for an affordable home is not in dispute. Moreover, the general need for affordable homes in the district is also clear and unchallenged. The 2012 Permission for Orchard Cottage relates to a rural exception site where open market housing would not normally have been permitted. The permitted 3-bedroom dwelling would have met the appellant's needs, but things have moved on and the appellant needs a four-bedroom home to accommodate their growing family.

30. CS Policy CS11 seeks to meet the diverse housing needs and create mixed, balanced and inclusive communities. Housing developments which help to balance the size, type and tenure of the local housing stock are supported. The Council explain that the dwelling's gross internal floor area should be restricted to no more than 100 square metres (sqm), including future extensions, in accordance with the Type and Affordability of Housing Supplementary Planning Document 2012 ("the SPD"), which also requires the dwelling to remain affordable in perpetuity. However, the SPD provides for applications for extensions to be considered on their merits, including personal circumstances.

31. The appellant has submitted sufficient evidence to demonstrate a significant change in personal circumstances since development began. Details of the family's accommodation needs have been submitted: I will not set the out here given the personal nature of the evidence. I disagree with the Council's assessment and find there is a need for additional habitable accommodation, and the extended dwelling meets that need.

32. The SPD indicates that it may be acceptable to enlarge an existing affordable house to accommodate the needs of the existing household when there are genuine difficulties faced by growing households. That is relevant here because the evidence presented demonstrates a genuine difficulty. Furthermore, the SPD acknowledges that it may not be possible for occupants to move to a new house due to the chronic shortage of affordable housing in the area. Again, there is nothing to make less than credible the appellant's claim that they cannot afford to relocate as all their savings have been ploughed into the affordable dwelling they are constructing through self-finance. I am not overly concerned about the lack of information showing availability of alternative accommodation, because ethe appellant and his family have already invested time, effort and resources into this site and establish an affordable home to meet their needs.

33. The Council is concerned about the increase in floor area, and I concur that it is necessary to manage housing development in rural locations. However, at final comments stage, the Council concede the subject extensions create 25 sqm of additional floor area, which is significantly less than its original assessment of 52 sqm[9]. The Council appears to take account of accommodation in the now immune garage building, but I do not consider it to be an adjunct, and it is best described as an outbuilding given its location and distance from the dwelling. In my planning judgment, the additional extensions result in a modest increase in floor area of about 129 sqm, and the additional bulk and volume does not materially conflict with SAMDev Policy MD7a.

34. The Council's concern about the loss of this dwelling from the affordable housing stock is misplaced because the provisions found in the s106 legal agreement would remain in force. Firstly, the clauses are framed in a manner that make the obligation run with the land, and the appellant agreed to that provision. The agreement binds successors in title and is a local land

[9] Appendix C to the Council's statement of case bundle. The 52 sqm figure is said to have derived from details submitted with an application to vary conditions imposed on the 2011 Permission (Council ref 23/03536/VAR).

charge. The s106 mechanisms ensure that Orchard Cottage could only be sold in accordance with the agreed 'Sale Marketing Plan' at the 'Formula Price' and to a 'Qualifying Person'. I take comfort from the 2025 Decision in that it seems to me the Inspector did not take issue with the clause imposing the 60% of the open market value, nor exclusion of extensions from the valuation and neither the mechanisms for maintaining affordability in perpetuity.

35. The extensions to the dwelling increase the floor area over the 100 sqm limit set in the SPD. However, I attach greater weight to the appellant's personal circumstances given the need for affordable housing, and, in my opinion, the s106 agreement has a useful planning purpose. In addition, subject to conditions, which I will address later, I am satisfied that the development does not materially conflict with CS Policy CS5, CS6, CS11, SAMDev Policy MD7a and guidance found in NPPF paragraphs 67 to 68, and the Planning Practice Guidance (PPG). I conclude that the extensions and outbuilding have little, if any, effect on the supply of affordable homes in the district.

Notice 2 - sustainable development objectives

36. The appellant argues that a new school nearby renders the village a sustainable location, but I am not persuaded. In the context of this appeal, there is nothing before to suggest the village has suddenly become a sustainable location in terms of land-use planning. I consider that the issues like availability of transport and local amenities remain pertinent when considering this kind of development. The Council confirm that, for local planning policy purposes, the appeal site remains in a settlement classed as countryside where new dwellings are not permitted unless under the exceptions policy.

37. The appellant appears to have focussed their efforts and arguments on demonstrating the building is an annexe and should be granted planning permission on that basis. However, at risk of repetition, I have already explained why that reasoning is flawed. There is no cogent argument in support of the new affordable dwelling nor permission should be granted based on an exception to the usual restrictive policies applicable to this settlement. Indeed, the evidence presented does not show the dwelling is required to meet the family's affordable housing needs because Orchard Cottage meets that need.

38. Contrary to the appellant's arguments, I conclude that the new dwelling is not located in a suitable and sustainable location and the development undermines the authority's strategy as set out in CS Policy CS1, CS4, CS5 and CS11, and SAMDev Policies MD1 and MD7a. Granting planning permission for this type of development is at odds with the SPD.

Living conditions

39. The appeal plot's layout is reasonable for an extended and altered Orchard Cottage together with its outbuildings, but two dwellings is a stretch too far. The new building is located to the side of the plot roughly opposite the site entrance, but the plot's size is inadequate to accommodate two dwellings given the lack of private amenity space. If the building is used as an annexe in connection with Orchard Cottage, occupiers of both buildings would function as a single household. However, that is not what is before me. I consider that the development is unacceptable due to the lack of separate and private garden space for future occupiers of the new dwelling. Additionally, given the lack of parking and circulation space, future occupiers would compete for limited amount off-street parking space.

40. The absence or otherwise of complaints from neighbours does not mean the development is acceptable. Two dwellings would represent an intensified residential use. The increase in comings and goings associated with two dwellings is likely to be noticeable to the neighbours and result in harm caused by general disturbance. The location and positioning of the new

dwelling do not contribute nor respect existing amenity value. The development is at odds with CS Policy CS6 and SAMDev MD2 and MD7a, and NPPF135.

Other considerations

41. In terms of Notice 2, the appellant considers that a unilateral undertaking addresses concerns about the use of the dwelling as a separate unit of independent accommodation. The Council's bundle includes feedback on the drafted undertaking. It seems to me that the latter contains significant errors in the clauses, which need amending. I am not persuaded that this appeal is the right mechanism to achieve those amendments given the extent and scale of the perceived errors. It is suggested that conditions could also be imposed on the grant of planning permission to control separate sale, but these would need to work in conjunction with a binding planning obligation.

42. The appellant suggests planning permission could be granted for an alternative scheme. The 2013 Permission could be a fallback and resurrected subject to conditions. However, as I have indicated elsewhere, the latter related to 4 Wayside Cottage and is not a realistic fallback for this new dwelling. In any event, significant building work is required to alter the as built building on order for it meet with the approved plans.

43. The rights under Article 8 of the European Convention on Human Rights[10] must be taken into consideration. This includes interference with private and family life. At the forefront of my mind are the best interests of children and I am alive to concerns about homelessness. That said, I find that the grant of planning permission for the extended dwelling and outbuilding safeguards the appellant's immediate need for an affordable dwelling, and safeguards best interests of the children involved.

44. In terms of Notice 2, in this location, the inappropriate nature of the development represents a grave planning policy objection. There is a need for restrictive policies to be applied to such areas, and this restriction is an appropriate proportional response to that need. It is necessary to consider whether it would be proportionate to refuse planning permission for the Notice 2 dwelling in all the circumstances of this case. I shall consider whether refusal would have a disproportionate effect on the appellant in my overall conclusions.

45. I have borne in mind the need to eliminate discrimination; advance equality or opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. I shall consider whether dismissal of the appeal would be proportionate in the light of any potential equality impacts in my overall conclusions.

Planning balance

46. Subject to the imposition of suitably worded conditions, which I will return to later, I conclude that the extensions and outbuilding preserve the character or appearance of the CA, and the development does not have a materially harmful effect on the supply of affordable housing. Ina addition, I attach greater weight to the appellant's needs for an affordable home of this kind and scale, and human rights and best interests of children and the equality duty add further weight.

47. On the contrary, the Notice 2 dwellinghouse fails to preserve the character or appearance of the CA, is inappropriately located and harms living conditions. The arguments in favour, including the possibility of using the building as an annexe in connection with Orchard Cottage once it is complete and used as a single dwellinghouse, altering its built form or complying with the scheme approved in 2013, carry limited weight. In addition, I attach little, if any, weight to the

[10] The ECHR protections have been codified into UK law by the Human Rights Act 1998.

obligation given that conditions alone cannot control the future use of the building given the available facilities and its use as a dwellinghouse.

48. Any interference with the appellant and family's human rights must be balanced against the public interest in upholding planning policy to protect the environment. I am also mindful of the appellant's concerns regarding discrimination. However, planning permission had been granted for an affordable dwelling and my decision in Appeal A further strengthens the accommodation needs of the family. In addition, I note the period of compliance affords the appellant an opportunity to get on with the affordable home albeit financial constraints might get in the way. There is also opportunity to consider a materially different scheme for the annexe, which addresses concerns about the legal agreement. On the circumstances of this case, I am of the firm view that dismissal of Appeal B is a proportionate response and does not lead to an unacceptable violation of any of the appellant or family's human rights, which thus carry only moderate weight.

Conditions

49. The nature of the DPA for the extensions and outbuilding is retrospective. The Council suggest a condition that the window in the side (northern) elevation to the property facing Thrale Cottage shall be permanently formed as a top hung opening light and glazed with obscure glass and shall thereafter be retained in perpetuity. No further windows or other openings shall be formed in that elevation. However, given the dwelling needs fully completing and the planning enforcement difficulties demonstrated by the extensive site history, I consider that a condition requiring details of the layout, external elevations and location of the outbuildings needs to be submitted.

50. Upon careful consideration, it is my view that an appropriate alternative compromise—one which minimises both cost and disruption—would be to impose a planning condition specifically addressing the Council's concerns. Such a condition would make the development acceptable in planning terms by ensuring that the windows are controlled and the development is fully completed in accordance with agreed plans. Should it not be possible to impose a suitably worded condition, planning permission would have to be refused.

51. In situations where the development has already taken place, it is not feasible to impose a condition precedent or to require that outstanding details be agreed prior to the commencement or occupation of the development, regardless of the importance of those details. Therefore, when a condition is imposed that requires the submission and approval of details or a scheme for development which already exists, it is essential that the condition incorporates a sanction or enforcement mechanism. This is necessary to ensure compliance if the required details are not submitted or approved as stipulated. The key feature of the retrospective condition is that the operational development permitted must be removed if the required detail or scheme is not implemented in accordance with the submitted details within the prescribed timescale. Alternatively, it is submitted on time but not approved and an appeal against the Council's refusal to approve the details submitted pursuant to the condition is not made on time or an appeal is dismissed, or the scheme is submitted and approved but not implemented within the prescribed timescale. A suitably worded condition requiring the submission and implementation of an approved scheme, which meets the six tests, can be imposed.

Overall conclusions

52. Subject to the imposition of suitably worded conditions, Appeal A should succeed on ground (a). Notice 1 will be corrected and then quashed. There is no need to consider ground (f).

53. In Appeal B, for the above reasons and having regard to all other matters raised, including reference to permitted development rights and other decisions, I conclude that the deemed application on ground (a) should fail..

Notice 2 – ground (f)

54. The notice shall specify the steps to be taken, or the activities to cease, to achieve, wholly or partly, any of the purposes set out in s173(4)(a)(b) of the Act. For example, remedying the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or remedying any injury to amenity which has been caused by the breach.

55. The nub of the appellants case relates to the requirement to remove the building as they argue the requirement is disproportionate. Rather than demolition of the subject dwelling, a lesser step advanced is comply with the terms of the 2013 Permission. It is unclear as to how the steps could be varied without introducing considerable degree of uncertainty given the extent, nature and scale of the building work involved in altering the subject dwelling. That uncertainty is unacceptable given the potential liability due to failure to comply with Notice 2.

56. I have carefully given thought to the alternative step advanced. The planning merits of granting planning permission for the erection of a building for residential purposes that is substantially modified in terms of its external appearance are assessed above. The harm arising from the development would remain even if the steps required were varied to comply with the 2013 Permission. That kind of under-enforcement would not achieve the purpose behind the notice and cessation of the residential use and removal of the dwelling is the bare minimum required to remedy the breach.

57. Nothing short of full compliance with Notice 2's requirements would remedy the breach and the steps required are not excessive. Ground (f) fails.

Appeal A - formal decision

58. The enforcement notice is corrected and varied by:

    1) the deletion of the text in section 3, <u>the matters which appear to constitute the breach of planning control</u>, and substituted therefor by the following text:

       Without planning permission, the erection of a two-storey rear extension, a single-storey rear extension and front porch extension, and an outbuilding as shown in the approximate location marked with an 'X' on the plan attached to the notice.

       And

    2) the insertion, at section 5, what you are required to do, the following text:

       5(3) As an alternative to step 5(a) and (b), comply with terms of planning permission reference 11/05428/FUL, dated 2 July 2012, including the approved plans.

59. Subject to the corrections and a variation, the appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the Act, for the development already carried out, namely the erection of a two-storey rear extension, a single-storey rear extension and front porch extension, and an outbuilding, subject to the following conditions:

    1) The development hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 9 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) Within 6 months of the date of this decision a scheme, showing details of all extensions and alterations to Orchard Cottage, including the location of outbuildings, the external elevations and the openings in the north elevation with the type of window openings including obscure glazed windows, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) If within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) The approved scheme shall have been implemented and the development completed in accordance with the approved timetable. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B - formal decision

60. The enforcement notice is corrected by:

The deletion of the following text in the header below ENFORCEMENT NOTICE: "*material change of use and*"

The deletion of the text in section 3 and substituted therefor by the following text:

Without planning permission, the erection of a dwellinghouse as shown on the notice plan.

And

In section 4, substitute the text "4 years" with: *10 years*.

61. Subject to the corrections, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Costs applications

- The application is made under the Town and Country Planning Act 1990 (as amended), sections 195, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The applications are made by Mr Simon Angell for a full award of costs against Shropshire Council.
- Briefly, the appeals were in connection with two enforcement notices separately alleging the carrying out of operational development and material change in use of the land.

Decisions

1. The applications for an award of costs are refused.

Reasons

2. The PPG advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. My appeal decisions explain why Appeal A succeeds but Appeal B fails: I too have found that the annexe is tantamount to a dwelling. The applicant disagrees with the respondent's application of its own policies, but planning difficulties raised in these appeals required an exercise of planning judgement. The respondent's approach did not prevent or delay the granting of retrospective planning permission for unauthorised development.

4. Although I have come to a different conclusion in Appeal A, my Decision explains why I have attached greater weight to certain matters including personal circumstances. However, these are matters for the decision-maker to consider and the respondent took such matters into account but gave less weight to them. Nonetheless, the reasons for issuing the notices were clear and based on planning principles and perceived harms caused by the development. At appeal stage, sufficient evidence was produced to substantiate the reasons for taking enforcement action and I do not agree that the respondent's evidence contained unsupported arguments.

5. The applicant makes much of the perceived lack of consistency in decision-making, but the application of this principle does not mean identical outcomes. I do not consider the applicant clearly demonstrated that the respondent was inconsistent in acting nor determining similar cases in a consistent manner.

6. The handling of applications for planning permission, or behaviour prior to the taking of enforcement action, might be indicators of unreasonable behaviour. In this case, the submissions indicate to me that there has been a total breakdown of communication between the appeal parties: that is a matter for them to consider. The respondent decided enforcement action was expedient based on the material facts, and the applicant exercised their right of appeal. Nevertheless, the purpose of this application process is not to resolve by investigation every allegation of unreasonable behaviour. Rather it is to decide if an award of costs in respect of the appeals is justified on the available evidence in a particular case.

7. I have carefully considered this application but come to an inescapable conclusion. The applicant has not demonstrated that the respondent's behaviour amounts to unreasonable behaviour resulting in unnecessary or wasted expense as described in the PPG. It has not been demonstrated that an award of costs, full or partial, is justified in the circumstances.

A U Ghafoor

INSPECTOR