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# Appeal Decision

Site visit made on 18 May 2015

**by C A Thompson DipArch DipTP RegArch RIBA MRTPI IHBC**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 21 May 2015**

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**Appeal Ref: APP/D1780/C/14/2216252**  
**78 Malmesbury Road, SOUTHAMPTON, SO15 5FQ**

- The appeal is under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 (the Act).
  - The appeal is by Mr S Chhatwal against an enforcement notice issued by Southampton City Council.
  - The Council's reference is 13/00045/ENUDEV.
  - The notice was issued on 7 March 2014.
  - The breach of planning control as alleged in the notice is the erection of first floor extension to a dwelling to provide additional independent residential accommodation as marked with a cross on the attached plan.
  - The requirements of the notice are:
    - (i) Cease the use of the converted dwelling as 4 flats;
    - (ii) Restore the property to a single dwelling house as per drawing number 001, and dated 20 March 13, attached, and;
    - (iii) Remove the unauthorised first floor rear extension.
  - The period for compliance with the requirements is 6 months after this notice takes effect.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g), of the Act.
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## Decision

1. The notice is further varied (see below for the Council's post issue variation) firstly, under **5 WHAT YOU ARE REQUIRED TO DO**, by the deletion sub-paragraph (ii) in its entirety and replacing it with a new one which reads *...restore the property to a single dwelling house...* And secondly, under **6 TIME FOR COMPLIANCE**, delete the present sub-paragraph and replace it with the new one which reads *...12 months after this notice takes effect...*
2. Subject to these further variations the appeal is dismissed and the enforcement notice as varied is upheld.

## The Notice

3. After issue the Council amended its enforcement notice (the notice) by virtue of section 173A(1)(b) of the Act which allows it to *...waive or relax any requirement of such a notice...*
4. In his letter dated 22 May 2014 the Head of Legal and Democratic Services at the Council made the two changes to the notice as issued. Firstly, under paragraph **3 THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL**, the sub-paragraph following is deleted.

It is replaced with a new one which reads *...Without planning permission the provision of additional independent residential accommodation on the land edged red on the plan...* Secondly, under paragraph **5 WHAT YOU ARE REQUIRED TO DO**, the deletion of sub-paragraph (iii) in its entirety. I have determined this appeal on the basis of the notice as varied by the Council.

### **Ground (a) Appeal**

5. This ground is that planning permission should be granted.
6. As part of his appeal, under this ground, Mr Chhatwal made it clear that he was only pursuing planning permission to retain the first floor rear extension to the property. He explicitly stated that his ground (a) appeal did not relate to the use of the property as 4 flats and he did not challenge the requirements of the notice to use the property as a single dwelling (emphasis added).
7. Despite the Appellant's wish for planning permission to be granted, to give lawfulness to any retained rear first floor extension (taking account of a previous Inspector's conclusions on this matter in an earlier section 78 appeal), this part of the original notice allegation was removed by the Council. With no allegation, in regard to this first floor rear extension, there is no deemed planning application for its retention for me to consider. Without such a deemed planning application I can't grant any planning permission. I take no further action on the ground (a) appeal.

### **Ground (f) Appeal**

8. This ground is that the requirements of the notice are excessive.
9. With the removal of any reference to the rear first floor extension, from the notice allegations, there is no valid legal basis for requiring its removal. But the notice requirements, at paragraph 5(ii), still indicates that the dwelling must be restored as shown on drawing 001, for Job N° 13-114, dated 20 March 2013. This drawing depicts the appeal building as it was before the rear first floor extension was constructed. As the LPA now accept that this extension need no longer be removed that part of requirement 5(ii), which refers to the restoration of the building as shown of the identified drawing, should be deleted. In this limited regard the ground (f) appeal succeeds.

### **Ground (g) Appeal**

10. This ground is that there is not enough time to comply with the notice.
11. The tenancy agreements referred to in the representations have passed their end dates but as a matter of fact I saw that the property is still used as flats. It is not unlikely that new tenancy agreements will have been entered into following those which expired on 25 February 2015. I do not have details of any such new agreements but they often run for 12 months. In order to give them time to run out, or give the Appellant a chance to pursue any necessary evictions through the Courts, 6 months is an inadequate time for compliance. Twelve months would be a more reasonable period. This is necessary because of the potentially serious consequences which accompany a failure to comply with the terms of an upheld notice.
12. In reaching the conclusion that the appeal should succeed on this limited ground as well I have taken account of the Council's powers to extend the time

for compliance (also by virtue of section 173A(1)(b) of the Act). But the Appellant should know what he needs to do to put matters right within the four corners of the notice. It seems to me, therefore, that all the necessary information, including any extended time limit, should be included in the notice itself. It follows that any upheld notice should be suitably varied to take this matter into account as well. In this limited regard the ground (g) appeal succeeds.

*Colin A Thompson*