



**South Staffordshire Council**

**FINAL COMMENTS  
OF  
SOUTH STAFFORDSHIRE DISTRICT COUNCIL**

**INSPECTORATE REFERENCE:  
APP/C3430/C/24/3341483**

**SECTION 174 TOWN & COUNTRY PLANNING ACT 1990**

**APPEAL BY:  
Mr. Adam Taylor**

**SITE AT:  
The Crooked House  
Crooked House Lane  
Dudley  
DY3 4DA**

**Local Authority reference: 23/00199/UNDEV**

## **1. INTRODUCTION**

- 1.1 These Final Comments have been prepared in response to the Appellant's representations in relation to the appeal grounds (b), (a), (f) and (g). They should be read in conjunction with the LPA's Statement of Case (SoC) and associated appendices in respect of The Crooked House, Crooked House Lane, Dudley, DY3 4DA.
- 1.2 While there are numerous elements of the Statement of Case that the Council will address and challenge through the production of evidence, they wish to use these final comments to address key erroneous themes that run throughout the Appellant's case. The Council view it as important, given the nature of the Appellant's Statement of Case, to bear in mind the scope of the issues that can be considered on an enforcement appeal. This is because the Appellant raises several issues that are irrelevant to the grounds pleaded.
- 1.3 For ease the Council will use the Appellant's headings to respond to their Statement of Case. However as will be addressed below the way they have phrased the nature of the ground in the heading is not always correct.

Appeal Reference: APP/C3430/C/24/3341483.

## **2. THE GROUND (B) APPEAL - Matters identified in the Enforcement Notice have not occurred, and breaches of planning control have not occurred.**

- 2.1 The Appellant addresses Ground B) between paragraphs 30 to 46. They do not address Ground C) expressly in their Statement of Case but their heading on page 19 (and their reference to 'breaches of planning control have not occurred') suggests that they are addressing Ground B) together with Ground C). This further illustrates the overlap with the Appellant's case set out by the Council at paragraph 8.4 of our Statement of Case.

- 2.2 The Appellant repeats their assertion at paragraph 37 that where an owner/occupier does not carry out a breach of planning control then it is not development. This is incorrect and a misreading of s.55, s.171A and s.172. Where development is carried out without planning permission (regardless of how and who) then this is a breach of planning control under s.171A (1) (a). The Council is then entitled to enforce against the owner of land on which the breach of planning control occurred under s.172.
- 2.3 For the purposes of determining whether a breach of planning control has occurred in fact and law (which is what Ground B) and C) are concerned with) it is irrelevant whether enforcement action would ‘unjustly punish the owner’. The matters raised at paragraph 38 are therefore irrelevant to the Grounds pleaded. Although the Council would resist that their actions do unjustly punish the owner.
- 2.4 The scope of Ground B) is a straightforward factual question of whether the Crooked House was demolished. It was.
- 2.5 The scope of Ground C) is a straightforward question as to whether the said demolition required planning permission. Given s.55 includes the demolition of buildings, and (regardless of who caused it) the Crooked House was demolished by fire and subsequent bulldozing then this required planning permission. The lack of planning permission renders it a breach of planning control.
- 2.6 It is unclear if at paragraph 40 the Appellant is seeking to reverse the burden of proof that rests on them under Ground B and Ground C). If they are, then the Council strongly resist this. The facts of **Hill v Secretary of State for Transport, Local Government and the Regions** [2003] EWCA Civ 1904 (which still upheld the burden resting on an appellant) were unusual given the issue in dispute was the legal status of a road and whether it was classified or not. This would have involved consideration of records held by the County Council as to the status of the road.

- 2.7 That is very different to this case where the Appellant – as owner of the building – will know the state of their building and what they have or have not done. If they wish to rely on what they say is the cause of the fire to support a submission that it was not a breach of planning control, then they must discharge the burden imposed on them. Equally the Council will address why they view the demolition of the Crooked House as a breach of planning control.
- 2.8 The Council strongly dispute the suggestion at paragraph 42 and 43 that the Council’s view at that time was only that the breach arose following the fire. The narrative of the meeting is rejected and the Appellant’s reliance on a press statement from a councillor does not assist the Inspector. It was not the view of Officers at the time, and nor will it be the professional view of expert witnesses giving evidence at the Inquiry. Nor is the Inspector bound by a press statement. It carries no weight.
- 2.9 The Crooked House was demolished as a matter of fact, and under s.55 the demolition of a building is development. Given such development was unauthorised then it is a breach of planning control. Ground B) and C) must fail.

**3. THE GROUND (C) APPEAL – That those matters (if they occurred) do not constitute a breach of planning control.**

- 3.1 As addressed above while it is not specifically titled as such, the Appellant’s submissions under Ground B) are mostly Ground C). They have been addressed in the response above.

**4. THE GROUND (A) APPEAL - Where any matters identified within the Enforcement Notice constitute a breach of planning control, planning permission ought to be granted.**

- 4.1 The Appellant’s Ground A) case is confusing and the Council would submit that it is unclear as to the nature and scope of their case. This can be illustrated in several ways.

- 4.2 At paragraph 49 they suggest that if the Inspector finds that the demolition of the Crooked House was a breach of planning control but was not the fault of the Appellant then – given it would breach their human rights – they ask the Inspector to quash the Notice under Ground A). However, Ground A) is not a ‘human rights’ ground. It solely concerns whether planning permission should be granted for the breach of planning control.
- 4.3 This question is determined by the approach set out in s.38 (6) of the Planning and Compulsory Purchase Act 2004: would the development accord with the development plan or would material considerations justify a decision not in accordance with the development plan. This is a consideration of the planning merits of the development – and while it is accepted that in certain cases human rights can be a material consideration - they will never be determinative. It is not appropriate under Ground A) to submit simply – as the Appellant does at paragraph 49 – that the Notice should be quashed as the requirement to “*carry out works at excessive cost for limited community benefit would be a disproportionate and unlawful interference with its A1P1 economic rights*”.
- 4.4 In that context the Council will present evidence as to why demolishing the Crooked House would be contrary to the development plan and no material considerations justify departing from it.
- 4.5 The Council remains confused as to the Appellant’s approach to Ground A) if the breach of planning control is – contrary to their case – the demolition of the Crooked House as a whole (rather than the shell). This confusion was set out at paragraph 10.2 – 10.5 of our Statement of Case. It remains after consideration of the Appellant’s Statement of Case.
- 4.6. At paragraph 48 the Appellant confirms they are not relying on Ground A) to argue planning permission should be granted for the demolition of the Crooked House as it stood prior to the fire. But then at paragraph 49 they submit they are, but only on human rights grounds if the Inspector finds it was burnt down by a third party. But the Council is entirely unclear how the identity of the ‘fire starter’ has any

relevance in planning terms. The Statement of Case then goes on – between paragraphs 60 to 89 - to provide commentary on the Notice as if they would seek permission under Ground A) for the demolition of the Crooked House as it stood before the fire.

4.7 The Council had hoped – given the Appellant’s previously stated position in their Appeal Grounds – to limit the evidence required on the lack of planning merits for demolishing the Crooked House. However, on the current drafting of the Statement of Case the Council will have to address it in full. It is hoped that the Council may be able to clarify the position further – to save inquiry time – through the Statement of Common Ground process to avoid unnecessary and potentially unreasonable incurrence of costs.

4.8 Finally at paragraph 53 the Appellant relies on **Tapecrown** and the fact that the enforcement regime is remedial and not punitive. The Council agrees and is not seeking to punish the Appellant but remediate the breach of planning control that has occurred. But it cannot be seen how the allegation of ‘punishing’ the Appellant is relevant to either whether there is a breach of planning control or the planning merits of demolishing the Crooked House. While – as referenced in 8.7 of our Statement of Case – such allegations (which are entirely rejected) could have theoretical relevance to the Council’s decision that it was expedient to enforce. Expediency is not a matter for this Inspector but should have been raised as a challenge within six weeks of the decision to enforce (per **R (Gazelle Properties Ltd) v Bath & NE Somerset Council** [2010] EWHC 3127 (Admin)).

4.9 As reflected in the quote from **Tapecrown** at paragraph 53 of the Appellant’s Statement of Case, that case examined the required consideration by an Inspector of an obvious alternative which could be granted permission without full accordance with the Notice while remediating the breach of planning control. The Appellant has not suggested any obvious alternative other than ‘not rebuilding the Crooked House’. That is not an appropriate obvious alternative to

the requirement of rebuilding the Crooked House. This will be addressed more below.

## **5. THE GROUND (F) APPEAL – Proportionality of the terms of the Notice.**

5.1 The Appellant describes Ground F) as being a ‘proportionality’ ground. However, that is not quite accurate. S.174 of the 1990 Act sets out that Ground F) 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;*

5.2 In other words Ground F) is not a freestanding ‘the requirements would be excessive on the Appellant’ ground but concern whether they exceed what is necessary to achieve the statutory purposes of the Notice: to remedy a breach of planning control or remedy injury to amenity. Furthermore, by the time the Appeal is considering Ground F) it is because Ground A) has failed (i.e the demolition of the Crooked House was not justified in planning terms).

5.3 In that context the fact that the Crooked House was not viable (paragraph 95 - 98), or the engineering challenges and associated cost (paragraph 99) – which are both disputed by the Council - are not relevant to Ground F) if the Inspector has found that the demolition of the Crooked House has factually occurred, it required planning permission and said planning permission should not be granted. Otherwise, if cost/hardship were a valid ground under Ground F) then it would allow – as a hypothetical – a developer who has carried out unauthorised development to keep the benefit of it because it would be too costly/hard to reverse. Such an approach would entirely undermine the enforcement regime.

5.4 Instead the question is whether the requirement to rebuild the Crooked House is a necessary step to remedy the breach of planning control/amenity impact that

arose from its demolition. The Council would submit it is the only appropriate step in the circumstances.

**6. THE GROUND (G) APPEAL** – That any period specified in the Notice falls short if what should reasonably be allowed.

6.1 While issues of hardship/cost are not relevant to Ground F), the Council does accept that such arguments are relevant to Ground G). However, the Council has reflected this in the three-year period given for compliance.

**7. Wider Environmental, Sustainability and Planning Matters**

7.1 Between paragraphs 103 to 135 the Appellant raises a plethora of wider issues but – while not accepted – their relevance is questioned by the Council. It is important to bear in mind that the Appeal is not considering whether planning permission would be granted from a ‘blank slate’ to build a pub in this location. But whether – under Ground A) - planning permission should be granted to demolish an existing public house. From that perspective these points are not relevant given the assumption is the Crooked House is already in situ.

**8. Additional Points**

8.1 While the Appellant does recognise that the Appeal cannot consider the merits of rebuilding the pub in a different location (see paragraph 97), they continue to refer to the point throughout their statement of case (see for e.g 169). For clarity the argument that the Crooked House should be rebuilt in a different location is irrelevant to the Grounds of Appeal.



