

Appeal Decisions

Site Inspection on 5 September 2016.

by Graham Self MA MSc FRTPI

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

Decision date: 13 September 2016

Appeal Reference: APP/L3815/C/15/3141285

Site at: 47 Wellington Gardens Selsey PO20 0RF

- The appeal is made by Mr Raymond Griffiths under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Chichester District Council.
- The council's reference is SY/15/00074/CONHH.
- The notice is dated 25 November 2015.
- The breach of planning control alleged in the notice is: "Without planning permission, erection of a single dwellinghouse in the approximate position shown on the attached plan".
- The requirements of the notice are: "Demolish the said dwellinghouse and remove all the resulting debris from the land".
- The period for compliance is six months.
- The appeal was made on ground (b) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal fails.

Appeal Reference: APP/L3815/C/15/31412119

- The appeal is made by Mrs Griffiths. All other details are the same as those summarised above.

Summary of Decision: The appeal fails.

Appeal References: APP/L3815/C/15/3141286-8 inclusive

- These appeals are by Ms Debbie Cogger, Mr Luke Kirby and Mrs Marie Kirby respectively. All other details are the same as those summarised above, except in relation to the fee payable for the application deemed to have been made under Section 177(5) of the 1990 Act (see "Procedural Matters" below).

Summary of Decision: The appeals fail.

Appeal Reference: APP/L3815/W/15/3141283

- This appeal is made jointly by Mr and Mrs Raymond Griffiths under section 78 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal of planning permission by Chichester District Council.
- The council's reference is SY/15/02518/DOM.

- The council's refusal notice is dated 30 September 2015.
- The development was described in the application as "self contained annexe".

Summary of Decision: The appeal fails.

Procedural Matters - Number of Appeals and Deemed Application Fees

1. Some confusion may have arisen in this case owing to the number of appellants. Because the relevant legislation (Section 174 of the 1990 Act) specifies that "a person" having an interest in the land to which an enforcement notice relates or "a relevant occupier" may appeal against the notice, there is no right of joint appeal. Therefore all the individuals who appealed against the enforcement notice have to be treated as having made separate appeals, which have separate reference numbers. This does not apply to the appeal against the refusal of planning permission, because an application for planning permission can be made jointly, followed by a joint right of appeal by the applicants (under Section 78) against a refusal of permission.
2. When an appeal is made against an enforcement notice, an application for planning permission for the development enforced against is deemed to be made, under Section 177(5) of the Act. A fee is payable for this application (not for the appeal). In some circumstances the deemed application is "fee exempt". In this instance the Planning Inspectorate decided that the deemed applications by Mr and Mrs Griffiths should be treated as fee exempt. (The exemption appears to have been because of the timing of their Section 78 appeal and payment of a fee to the council at application stage). The deemed applications resulting from the other enforcement appeals have lapsed because the fees due were not paid and they were not assessed as fee exempt.
3. I have set out the points above because they affect the sequence and structure of how I explain the decisions. A further complication is that parts of the written submissions, which have evidently been prepared by an agent on the appellants' behalf, contain what appear to be implied, or possible implied, grounds of appeal, even though the grounds have not been specifically pleaded by indication on the standard appeal form.

Section 174 Appeals, Ground (b) and Possible Implied Ground (c)

4. Under ground (b) of Section 174(2) of the 1990 Act, it is claimed that the breach of planning control alleged in the enforcement notice has not occurred, as a matter of fact. The basis of the appellants' case is that a single dwellinghouse has not been formed. The appellants say that the building is currently being used as an annex for a dependant relative, ancillary to the main house.
5. There is some overlap between grounds of appeal (b) and (c) of Section 174(2). Ground (c) is a claim that what is alleged in an enforcement notice does not constitute a breach of planning control. In the interests of fairness, I have considered the appeals as if ground (c) had also been pleaded.
6. The available evidence indicates to me that the appellants may well have originally intended to construct what is referred to in the appeal statement as "an outbuilding/garden room". Some invoices from a builder refer to the building as a "garden office". However, the building was evidently used from its first occupation for residential purposes by Mr Griffiths' mother, Mrs Kirby. Indeed, it is apparent from the builder's invoices that the building was not completed, used and then later converted. The invoice for a second payment, which was due "when the framework is up" is dated 1 January 2015; then extra items such as

fitting lights, a dog flap, and "upgrades" which appear to have been to facilitate use as living accommodation were invoiced in early February; and there is no evidence that the building was completed and used for any purpose before February 2015. A council officer who made an inspection on 10 March 2015 took photographs showing that the building was being lived in as a dwelling. The photographs show a fitted kitchen, furnished bedroom, sitting room, shower room and toilet. Domestic items are visible in the kitchen, in the shower room, and on a bedside table.

7. Whatever changes may have occurred since then, it is clear that when the building was built and first occupied, it was used as a dwelling. Some of the kitchen fittings were evidently removed later. According to the appellants this happened after the application now subject to the Section 78 appeal was refused in September 2015; but the removal of the kitchen fittings does not mean that what is alleged in the enforcement notice - the erection of a single dwellinghouse - did not occur.
8. As for a possible implied ground (c), the appellants say (through their agent) that the original intention was "to use the building as an outbuilding" and that it was constructed in strict accordance with permitted development criteria. This seems to be a claim that what happened was not a breach of planning control because it was "permitted development". Such a claim is tantamount to pleading ground (c) of Section 174(2).
9. It may be helpful to explain here some points of planning law relating to the Town and Country Planning (General Permitted Development) Order (abbreviated below to "GPDO"). Under Class E of Part 2 of Schedule 2 of the GPDO, planning permission is granted for the provision within the curtilage of a dwellinghouse of (among other things) a building required for a purpose incidental to the enjoyment of the dwellinghouse as such. However, this "permitted development right" is subject to numerous provisos and limitations. The building subject to this appeal was not permitted by the GPDO for at least two reasons.
10. First, the appellants have stated that their intention when initially deciding to construct the building was to provide a store for contents and furniture while a first floor extension was built at the main house. So the appellants' primary initial requirement for the building was to provide storage to facilitate building works. A building operation is not an activity "incidental to the enjoyment of a dwellinghouse" *as a dwellinghouse*. Thus when construction began, the building was not "required for a purpose *incidental to the enjoyment of the dwellinghouse as such*". (Although I emphasise the whole of that phrase, the words *as such* are particularly important in this legislation.)
11. Second, the use of a building as what is sometimes termed primary living accommodation - such as a bedroom - is also not a purpose incidental to the enjoyment of the dwellinghouse as such. Thus even if, hypothetically, the kitchen fittings had never been installed, the building was not permitted by the part of the GPDO mentioned above. Planning permission was not granted by any other means.
12. I conclude that what is alleged in the enforcement notice occurred. The appeal against the notice on ground (b) fails. The development alleged in the notice also constituted a breach of planning control, so if ground (c) had been pleaded it would also have failed.

Deemed Applications Relating to Section 174 Appeals by Mr and Mrs Griffiths, and Section 78 Appeal

13. The description of the development for which planning permission is sought differs between the Section 78 and Section 174 appeals. The former refers to a "self contained annex". The latter refers to a dwellinghouse. Another description is used by the appellants' agent in the conclusion of the statement submitted on their behalf - this requests permission for "the use of the annexe as ancillary accommodation, with suitable conditions....to prevent future separation from the dwelling". An alternative request is what the agent calls a "temporary licence" for Mrs Kirby to occupy the building for the foreseeable future. I take this to mean a temporary planning permission subject to a personal occupancy condition. A further alternative mentioned for the appellants is what the agent vaguely terms "a direction to the local planning authority to permit the building to remain as an outbuilding, subject to any necessary requirements or adjustments".
14. I consider first the deemed application resulting from the enforcement appeal - that is to say, the application deemed to have been made under section 177(5) of the 1990 Act for the development enforced against. This application seeks retrospective planning permission for the erection of a single dwellinghouse.¹ The main issues of dispute are the effect of the development on the appearance and character of the area or on the amenities of nearby residents, having regard to relevant planning policies.
15. Despite the removal of some of the kitchen fittings, the fact remains that what is sought by the deemed applications resulting from the enforcement appeals is planning permission for a dwelling (or as the allegation puts it: "the erection of a dwellinghouse"). In my judgment this is an unsuitable location for a dwelling. Either it would have no separate plot to form an amenity area for the occupier or occupiers, as was the layout at the time of my inspection, or it would have a cramped site providing an inadequate setting, as appears to have been the case in the recent past when the land around the dwelling was fenced off from the house at Number 47. Either way, the development would be contrary to national policy as set out in the National Planning Policy Framework, which aims to achieve a good standard of amenity for all occupants of land and buildings.
16. The location of the building means that if it is used as a dwelling, normal residential activity associated with a dwelling would be placed in the furthestmost corner of what was originally the plot of Number 47, close to the back gardens of other dwellings. Some noise and disturbance could thereby arise, for example in warm weather when windows in the building may be open and neighbours may be enjoying their garden, but on balance I do not see this as likely to be a major problem. At one time, the development would have caused a significant loss of privacy at Number 45, but a timber fence has been erected to overcome this objection. In these respects I judge that the development is acceptable.
17. However, the same does not apply to the scale and design of the building. In some locations, its appearance might be unobjectionable. Here, it is unsatisfactory. The building stands in a slightly elevated position in relation to Denny's Close and although it is partly screened by fencing, the upper part of it catches the eye as an incongruous, jarring feature in the street scene. This is partly due to the cladding material, which is a grey fibre cement boarding with metal corner infills, and partly to its shape and height. Because of its size, shape

¹ The terms of the deemed application are defined by the allegation in the enforcement notice, not by any alternative description or proposal which the appellants may wish to propose.

and position, it is not visually subordinate to the house at Number 47 and it looks unnaturally squeezed into its plot and so disproportionate to its setting.

18. The use of the building as a dwelling in the absence of any off-street car parking space has evidently led to car parking on Denny's Close which has annoyed nearby residents. The annoyance as such is not a planning matter but in principle it is undesirable for new development to lead to increased on-street parking in a fairly narrow road where obstruction or safety hazards could be caused. In my judgment this point is relevant but of only supplementary importance, bearing in mind the small amounts of pedestrian and vehicle traffic likely to be using this cul-de-sac.
19. The policy background supports the council's case. The building does not meet the high standard of design specified in Policy 33 of the Chichester Local Plan. Nor does it "respect the character of the surrounding area", which is another criterion under that policy.
20. During my inspection I saw some other outbuildings, for example on the opposite side of Denny Close, which also project above boundary fencing and are close to the property boundary; but these are smaller than the disputed building, not as obtrusive, and probably came within GPDO permitted development limits. I am aware that the council recently granted planning permission for a first floor extension at Number 47 which the appellants state is intended to be finished with cladding similar to that used on the disputed building. That weakens the council's case, although I note that according to the council the colour of the proposed cladding for the extension was not specified in the relevant application. Fibre cement-type weatherboarding has maintenance advantages compared with some other materials and the appellants point out that it is used elsewhere in Selsey. I have considered these factors, but find that they do not outweigh the objections to the development.
21. I now turn to the Section 78 appeal. Irrespective of whether the term "annex" is used to describe the building, the fact remains that if the building were to provide all the normal facilities for self-contained day to day living, it would be a dwelling for the purposes of planning law. This point is reinforced by the use of the term "self contained" in the application now subject to this appeal, and applies irrespective of whether the building is occupied by a relative of those occupying the house at Number 47. Indeed, the evident existence in the recent past of a separate entrance, name-plate, and letter-box illustrates that what may be loosely described as an "annex" can function as in effect a separate self-contained dwelling; and that seems to be what happened here.
22. Some of the amenity issues might not arise to the same extent if the building were to be a "self-contained annex" instead of a "dwellinghouse", but most of the objections mentioned above, particularly those relating to design and appearance, would remain.
23. The fact that in some circumstances a similar building might be permitted under the GPDO is also not a compelling point of support for the appeals. One of the purposes of the GPDO is to reduce the number of planning applications, and not everything which is permitted under this legislation is necessarily acceptable or of good design when assessed against local and national policies.
24. In reaching my decisions I have had regard to the comments submitted by some local residents, though I agree with the appellants that many of these comments are exaggerated or incorrect. Where they are exaggerated they have limited weight; where incorrect, they have no weight. The removal of trees is mentioned

in some representations, and at the site inspection I tried to establish whether any were subject to a tree preservation order. A plan supplied by the District Council shows some trees covered by a preservation order along the border of and possibly within the appeal site, but the precise situation is not clear. The council have not raised this matter as part of their case.

25. I do not consider that a temporary permission, or a permission subject to some sort of personal occupancy condition as suggested for the appellants, would overcome the objections to the development.
26. I conclude that the council had good reasons for refusing planning permission and that permission should not now be granted, either on the deemed applications resulting from the enforcement appeals or in response to the Section 78 appeal.

Implied Ground (f)

27. Under ground (f) of Section 174(2) an appellant may claim that the requirements of an enforcement notice are excessive, and that lesser steps would be sufficient. Although the appellants have not pleaded ground (f), the appeal statement includes the contention that "the intent to demolish is considered to be excessive, as the building could revert back to an outbuilding". This comment is an implied ground (f) appeal, and out of fairness to the appellants, whose adviser may not be familiar with planning law relating to enforcement, I have considered the appeals as if ground (f) had been pleaded.²
28. Looking at the enforcement notice as a whole, particularly the requirements as specified by the council, it is apparent that the notice was issued primarily in order to remedy the breach of planning control, and its purpose was to restore the land to its condition before the breach occurred. Thus the purpose of the notice came within subsection (a) of Section 173(4) of the 1990 Act - not within subsection (b), which relates to notices aimed merely at remedying injury to amenity. In these circumstances the appellants are in a weak position in contending that the notice should be varied so that it "under-enforces".
29. Put simply, the enforcement notice is directed at the construction of an unauthorised dwelling. A requirement to remove it is not excessive.

Formal Decisions

Section 174 Appeals by Mr and Mrs Griffiths

30. I dismiss the appeals, refuse to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act and uphold the enforcement notice.

Section 174 Appeals by Ms Debbie Cogger, Mr Luke Kirby and Mrs Marie Kirby

31. I dismiss the appeals and uphold the enforcement notice.

Section 78 Appeal (jointly by Mr and Mrs Griffiths)

32. I dismiss the appeal.

G F Self
Inspector

² Had I found a possibility of this implied but not pleaded ground of appeal succeeding, I would have first offered the council the opportunity of submitting written comments, applying natural justice principles. In the event I have not judged this to be necessary.