
Appeal Decision

Site visit made on 25 November 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 16 January 2017

Appeal Ref: APP/E2734/C/16/3154241

The land situate and known as Forge House, Main Street, Great Ouseburn, York YO26 9RF

- The appeal is made under s174 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Andrew Graham Heatley against an enforcement notice issued by the Council of the Borough of Harrogate.
 - The notice was issued on 9 June 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a dwelling.
 - The requirements of the notice are:
 - 5.1 demolish the front porch; or
 - 5.1.1 alter the front porch to comply with the porch design approved by virtue of condition 2 of planning permission 14/00131/DVCON; and
 - 5.2 remove the stone window jambs from the windows in all elevations of the dwelling and replace with brick to match the brick materials used in the construction of the dwelling;
 - 5.3 install a fixed light obscure glazed window to the first floor side elevation of the Garage.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in s174(2)(a) and (f) of the Act. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
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Decision

1. It is directed that the enforcement notice be varied by, at sub paragraph 5.3, deletion of the text in entirety and substitution of "install obscure glazing to the first floor side elevation window above the garage". Subject to this variation the appeal is dismissed and the enforcement notice is upheld; and planning permission is refused on the application deemed to have been made under s177(5) of the Act.

Preliminary matters

2. The deemed application takes its terms from the allegation which, in this case, is the erection of a dwelling. The requirements of the notice, however, concern only the porch, the window jambs and the side facing first floor window. On compliance with the requirements of the notice the dwelling will, in effect, enjoy the benefits of planning permission by virtue of s173(11) of the Act.¹

¹ Under s173(11) of the Act, where an enforcement notice in respect of any breach of planning control could have required any building or works to be removed but does not do so, and all the requirements of the notice have been

3. Apart from the matters covered by the notice, the Council is content with the development in all other respects. I have no reason to disagree. There is a unilateral undertaking entered into by the appellant which has secured the payment of a commuted sum for the enhancement of public open spaces and village halls, and the submission of a land contamination assessment which has been agreed by the Council. Other matters such as the installation of bird and bat boxes, surfacing of the access and the relinquishing of permitted development rights are also covered by the unilateral undertaking.
4. I am satisfied, therefore, that whilst the deemed application is for the erection of the dwelling as a whole the matters on which I need to concentrate are those that are covered by the requirements of the notice.
5. Planning permission was granted in 2013 for a two storey dwelling with a further permission for an amended scheme being granted in 2014. In the event the dwelling as built differed in a number of respects from the schemes as approved². The 2014 permission remains extant although I have some reservations about it providing a realistic fallback position given the extent of rebuilding work that would be required. Nonetheless it is referred to in the enforcement notice³ and I shall bear it in mind as a useful point of reference for the matters under consideration in this appeal.

The appeal on ground (a) and the deemed application

Planning policies

6. The development plan policies to which I have been referred comprise Harrogate Core Strategy Policies SG4 and EQ2 and Harrogate District Local Plan Saved Policies HD20 and HD3. These policies, taken together, seek (amongst other things) to ensure that new development is well designed and respectful of its surroundings, and that it respects the privacy and amenity of neighbours. Policy HD3 seeks to resist development which would have an adverse effect upon the character or appearance of a conservation area.
7. Reference has been made to the National Planning Policy Framework [hereafter "the Framework"] which sets out the Government's planning policies for England and how it expects these to be applied at local level. The Framework is a material consideration for this appeal.
8. Section 12 of the Framework is concerned with conserving and enhancing the historic environment. It states (amongst other things) that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation⁴. A conservation area is a designated heritage asset to which this national policy applies.
9. Section 7 is concerned with requiring good design which contributes positively to making places better for people and which promotes or reinforces local

complied with then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of section 73A.

² The appellant sought planning permission for the "as built" dwelling. The application was refused. The officer's report set out the differences between the "as built" dwelling and that approved in 2014. Many of these differences were found by the Council to be acceptable. The enforcement notice covers those matters which were considered to give rise to continuing concerns.

³ One of the requirements of the notice (as an alternative to demolition) is that the porch is altered to comply with the design approved under the 2014 permission.

⁴ This is set out in paragraph 132 of the Framework.

distinctiveness. The core planning principles, set out in paragraph 17, include those of always seeking to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings, and of conserving heritage assets in a manner appropriate to their significance.

10. Whilst the development plan policies referred to above pre-date the Framework they are in general conformity with it. Policy HD3, however, does not expressly provide for the balanced approach, as set out in paragraphs 132-134 of the Framework, which is to be applied in cases where harm is identified to the significance of a heritage asset. In this respect it is of limited weight whereas the other policies carry significant weight.
11. I have also been referred to the House Extensions and Garages Design Guide which was adopted by the Council as a Supplementary Planning Document in 2005, Residential Design Guide (Supplementary Planning Guidance approved in 1999) and the Great Ouseburn Conservation Area Character Appraisal which has also been approved by the Council for guidance purposes. These documents are further material considerations for the appeal.

Statutory requirements

12. Planning law requires that planning decisions are made in accordance with the development plan unless material considerations indicate otherwise⁵.
13. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in the exercise of planning powers in conservation areas, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. It imposes a statutory duty on the decision maker to apply this test when considering development proposals within a conservation area.

Main issues

14. Both parties agree, and I have no reason to differ, that the development of the site for a single dwelling is acceptable in principle. Many aspects of the design of the dwelling are satisfactory and other matters are now resolved or covered by the unilateral undertaking. The differences between the parties lie in the detail relating to the window jambs, porch and side facing garage window.
15. Therefore, having regard to the Council's reasons for taking enforcement action, the planning policies, statutory duties and the submissions made by the parties I consider the main issues in this appeal to be:
 - a. The effect of the development upon the character and appearance of the Great Ouseburn Conservation Area in particular with regard to the porch and stone window jambs; and
 - b. The effect of the first floor garage window upon the living conditions of the occupiers of 3 Hills Cottages with particular regard to privacy.

Effect upon the character and appearance of the conservation area

16. The conservation area is of linear form with Main Street being its backbone. Its character is that of an agricultural village with continuous frontages comprised of informal groups of houses, terraces, cottages and agricultural buildings. The

⁵ S38(1) and (6) of the Planning and Compulsory Purchase Act 2004 and s70(2) of the Town and Country Planning Act 1990.

majority of buildings are of unpretentious and simple appearance. The ratio of window to wall is generally low giving the buildings a robust character reflecting their rural authenticity. Whilst there is some variety in design the prevailing unfussy appearance of the buildings, together with their common palette of materials, results in a sense of homogeneity.

17. The appeal site lies to the north western end of the conservation area, overlooking the village green which is a main focal point. When approaching along Main Street the eye is drawn towards the village green and beyond where the view opens up into countryside. However, when seen at closer quarters the appeal site is quite prominent. It is located where there is a convergence of roads with the subject dwelling being positioned quite close to the front of the plot. It is clearly seen in approaching views, from the immediate highway and footpath and in views across the road from the village green. It is also seen in more oblique and/or partially obstructed views from neighbouring land to the sides and rear.
18. The scale and form of the main dwelling, in general terms, reflects the character of the traditional buildings of the village. The porch is positioned centrally upon its front elevation and, as it contains the front door to the property, is a point of focus upon the elevation. Whilst porches are not a defining feature within the conservation area there are some other examples. A porch was approved previously as part of the 2014 permission. The enforcement notice requires, as an alternative to demolition, that the porch is altered to comply with this earlier scheme.
19. The porch, as built, is slightly wider than was previously approved and appears to have a higher eaves height thus resulting in a shallower pitch to the roof. To its front elevation there is a wide lintel above the main front door which has glazed side panels. The porch, as built, has lost the vertical emphasis of the previous design which derived from the steeper roof pitch and single door opening and which would have been more in keeping with the historic buildings and other porches of the area. Additionally the wide opening with side panels introduces a modern, decorative element which is suburban in character and out of place within the historic setting. It also compromises the ratio of brickwork to opening resulting in an elevation to the porch which is dominated by the doorway and side panels and which is at odds with the more solid, robust character of the conservation area fabric.
20. The windows within the dwelling have been constructed with stone window heads and sills which were approved as part of the 2014 scheme. The "as built" development also incorporates stone window jambs which were not proposed previously. The jambs add further adornment and are not characteristic of the simple architectural style of most of the buildings in the village. Neither are they justified by the scale and size of the appeal dwelling and the fact that it is a new (rather than historic) dwelling.
21. At my site visit it was pointed out that a property, Rosehill, across the village green had window jambs. This is one of a few of the historic properties within the conservation area that are of grander appearance with more embellishment. It sits well back from the road in extensive grounds. Its significance and the positive contribution it makes to the conservation area is derived from its history and architectural uniqueness and presence.

22. However, I do not consider that property to be an appropriate yardstick for the appeal development as to mimic its embellished style is to detract from its special architectural uniqueness. It is more appropriate that the appeal dwelling takes its reference from the understated architecture of the many terraces, cottages and rural buildings which front Main Street, the appeal dwelling appearing as a part of the continuing frontage of the built form.
23. Full stone surrounds are not locally distinctive and are barely evidenced within the village. The stone window jambs to the appeal dwelling appear unnecessarily fussy and at odds with the prevailing, simple treatments for window openings elsewhere within the conservation area. Whilst I acknowledge that there would be some practical issues arising from the removal of the jambs I cannot see why, when applying skill and care, it would not be possible to replace them with matching brickwork neatly following the existing coursing.
24. The harm arising from the porch and window jambs has a negative effect upon the character and appearance of the conservation area, albeit the degree of harm is less than substantial⁶. In weighing that harm against public benefits, I acknowledge that the site was identified in the Conservation Area Character Appraisal as being a site for improvement, and that it has now been developed and brought into beneficial use. However, that same benefit would derive if the scheme was to incorporate the changes required by the notice; and that is the preferable scenario. Whilst there would be a benefit to the developer in the saving of time, trouble and expense that would otherwise be incurred in compliance, this is a consideration to which I attach little weight as it does not provide any benefit to the public at large. I therefore conclude that the interests of preserving the character and appearance of the conservation area are not outweighed by public benefits and that the conservation area interests should prevail.
25. On this first main issue I find that the development does not preserve or enhance the character or appearance of the conservation area and is, thus, contrary to Core Strategy policies SG4 and EQ2, Local Plan policies HD20 and HD3 and national policy for conserving and enhancing the historic environment as set out in section 12 of the Framework.

Effect upon privacy

26. The side facing window is to the room above the garage which is intended for use as a study. The room also has larger roof light windows which collectively provide a good level of natural light. There was no side window shown here in the previously approved scheme.
27. The window looks out towards the side of the property at 3 Hills Cottages across a track. The side boundary at number 3 is defined by a substantial hedge which, I am told, is at a distance of some 6.2 metres from the window. The property at number 3 is set away from the boundary, there being a driveway running to the side between the property and the hedge.
28. The subject window would result in some overlooking of the side garden area of number 3. Although this area is also visible from the street the elevated position of the window, providing lines of sight towards the garden, is likely to affect the level of privacy more than might arise from casual glances of

⁶ The term "substantial harm" is covered in paragraphs 132-134 of the Framework and might include, for example, substantial or complete loss of a listed building.

passers-by at street level. Its distance from the boundary falls slightly short of what is suggested in the Council's guidance⁷. However, when taking into account its proximity to the boundary, the intervening track, the substantial hedge and the existing degree of visibility to the side garden area and driveway of number 3 from the street I consider it would not be unreasonable for the window to remain as an opening window so long as it is obscurely glazed. This is a matter I can deal with under ground (f).

29. However, insofar as the appeal under ground (a) is concerned, on this second main issue I find that the clear glazed window⁸ as inserted within the property as built has an unacceptable effect upon the living conditions at number 3 in terms of privacy contrary to Core Strategy Policy SG4 and Saved Local Plan policy HD20.

Conclusion on ground (a) and the deemed application

30. The development results in harm to the character and appearance of the conservation area and to the level of privacy enjoyed at number 3. It does not accord with the development plan when read as a whole. There are no considerations which indicate a decision other than in accordance with the development plan. The appeal on ground (a) fails.

The appeal on ground (f)

31. An appeal on ground (f) is that the steps required by the notice exceed what is necessary to remedy the breach or, as the case may be, to remedy any injury to amenity that has been caused by the breach⁹. The words "as the case may be" indicate that the main purpose of the notice should fall within one or the other category.
32. The allegation is the erection of dwelling. However, the Council has not sought the removal of the dwelling which is what would have been necessary had the purpose of the notice been to "remedy the breach". Rather it has sought lesser steps to remedy the harm caused by the breach. In this case the purpose of the notice is one falling within the second limb of ground (f) i.e. to remedy any injury to amenity caused by the breach. The appeal on ground (f) is limited to the consideration of the steps necessary to achieve that purpose.
33. With regard to the porch, the appellant proposes to reduce the eaves height and provide a steeper roof pitch. A drawing of the proposal accompanies the appeal. The appellant suggests that this scheme could be introduced into the notice as an alternative requirement.
34. I agree that a steeper roof pitch would go some way towards achieving a better vertical emphasis in the design and would more closely reflect the eaves height and roof pitch of the porch as previously approved. It would also reduce the overall mass of the porch and bring its proportions more in line with those of other porches within the conservation area and the local vernacular generally.

⁷ The House Extensions and Garages Design Guide (adopted as a Supplementary Planning Document in 2005), at Appendices D "Relationship Between Buildings" advises that a distance of 7.5 metres should generally be achieved from a first floor bedroom window to the boundary of a neighbouring private garden area subject to site specific circumstances.

⁸ At the time of my site visit I saw that the glazing had been obscured by the application of film. However, under the terms of the deemed application it is the window as existed at the time the property was built that needs to be considered.

⁹ These provisions are set out in s174(1)(f) of the Act. They reflect the purposes of an enforcement notice that are set out s173(4).

However, the proposal does not overcome my concerns regarding the treatment of the front doorway with its side panels as already explained in my consideration on ground (a). In other words, I do not consider the proposal adequately overcomes the harm as it does not go far enough.

35. Insofar as the window jambs are concerned, the appellant argues that those to the rear of the dwelling could be retained as they are not seen from the public realm.
36. I do not agree that this would be a sound approach within a conservation area. Whilst some views may be more important to the character and/or appearance of the area than others the designation covers the whole of the conservation area and not just those parts that are seen in public views. Views from outside of the conservation area looking in should also be considered. Additionally, I have regard to the statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area, which applies to the conservation area in its entirety not just its most visually prominent parts.
37. The window jambs to the rear of the property, in particular those at first floor level, are seen from neighbouring land and from the open land to the rear. All of the window jambs are seen from within the site itself. As explained in my consideration of ground (a) I consider the window jambs to be harmful to the character and appearance of the conservation area. Additionally, by removing many of the jambs, but not all, the architectural integrity of the dwelling would be compromised. Whilst the net harm would be less by the removal of the publicly facing jambs, in the overall balance the harm would still not be outweighed by any public benefits when taking into account the additional weight to be added to the interests of securing the asset's conservation.
38. In any event, without a scheme to identify the window jambs proposed for retention I would not have been able to frame any lesser steps to the necessary level of precision.
39. Whilst no argument has been made expressly under ground (f) concerning the side facing garage window I have found (under ground (a)) that an acceptable level of privacy can be achieved by obscurely glazing the window and without the requirement for it to be non-opening. I shall vary the notice accordingly. The appeal on ground (f) succeeds only to that limited extent.

Other matters

40. Concerns have been raised by an interested party about various aspects of the design of the dwelling including the absence of chimneys, the change of footprint, the insertion of additional windows and that the main dwelling now has three storeys. However, the Council has already given due consideration to these matters and found the changes (other than those covered by the enforcement notice) to be acceptable on their planning merits. I have no reason to disagree.
41. In any event, I would not be able to re-open these matters including by adding additional steps into the notice. To do so would make the notice more onerous and put the appellant in a worse position than when he embarked upon the

appeal. The legal powers available to me are limited to those that would not cause injustice to either of the main parties.¹⁰

42. The adequacy of the publicity for this appeal has been called into question. I have seen a copy of the Council's notification letter which the Council says was sent to immediate neighbours and local councillors. A late representation from an interested party to this appeal has been taken into account. I am satisfied that there is no prejudice to any party's interests in respect of this matter.
43. Various matters have been raised concerning the events leading to this appeal including those concerning the publicity of previous applications and the ownership certificate accompanying the 2014 application. However, these are not matters falling within the scope of this appeal which is limited to the consideration of the enforcement notice.
44. Reference has been made to the carrying out of work prior to undertaking a land contamination assessment, such that the Council issued a stop notice (now withdrawn); and that there was a failure to pay a commuted sum towards open space provision. However, these matters have now been resolved. The planning enforcement regime is intended to be remedial rather than punitive. These previous events cannot be held against the appellant in this appeal which must be decided on its planning merits.
45. Restrictive covenants, alleged damage to neighbouring property and disputes as to land ownership are private matters and not material planning considerations. They are not matters which I can weigh in the balance in this appeal.

Conclusion

46. For the reasons given in my consideration of grounds (a) and (f) above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variation and refuse to grant planning permission on the deemed application.

Susan Wraith

Inspector

¹⁰ S176(1)(b) of the Act states that, on an appeal, the Secretary of State may vary the terms of an enforcement notice if satisfied that the variation will not cause injustice to the appellant or the local planning authority.