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## Appeal Decision

Hearing held on 17 January 2017

Site visit made on 17 January 2017

**by Simon N Hand MA**

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

**Decision date: 20 January 2017**

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### **Appeal A: APP/J3720/C/16/3159980**

**Land at Chasers Cottage, 8 Crimscote Road, Crimscote, Warwickshire, CV37 8UE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mrs Ruth McKeown against an enforcement notice issued by Stratford on Avon District Council.
  - The enforcement notice was issued on 7 September 2016.
  - The breach of planning control as alleged in the notice is without planning permission the erection of an outbuilding (in the approximate position hatched black on the plan) together with the erection of timber fencing/means of enclosure in the approximate position marked (A-B) on the plan.
  - The requirements of the notice are a) demolish the outbuilding; (b) remove the timber fencing/means of enclosure; (c) remove all materials from the land arising from steps a) to b) identified above.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/J3720/C/16/3159981**

**Land at Chasers Cottage, 8 Crimscote Road, Crimscote, Warwickshire, CV37 8UE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Matthew McKeown against an enforcement notice issued by Stratford on Avon District Council.
  - The appeal is identical to appeal A except there is no ground (a) appeal
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## **Decisions**

### **Appeal A: 3159980**

1. The enforcement notice is corrected by deleting from the allegation the phrase “/means of enclosure” and replacing it with “and timber clad retaining wall” and varied by deleting from requirement (b) the phrase “/means of enclosure” and replacing it with “and timber clad retaining wall”. The appeal is allowed insofar as it relates to the outbuilding and timber clad retaining wall and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the outbuilding and timber clad retaining wall subject to the following conditions:

- 1) The outbuilding hereby permitted shall be for a limited period of 2 years from the date of this decision. The outbuilding hereby permitted shall be removed and the land restored to its former condition on or before the expiry of the 2 year period in accordance with a scheme of work that shall first have been submitted to and approved in writing by the local planning authority.
  - 2) Within 3 months of the date of this decision a scheme for planting along the base of the timber clad retaining wall shall be submitted to and agreed in writing with the local planning authority. The agreed scheme shall be implemented by the end of the first planting season after agreement and any plants that form part of the agreed scheme that die or are removed within the first 5 years after the scheme is implemented shall be replaced with plants of a similar type and size.
2. The appeal is dismissed and the enforcement notice is upheld as corrected and varied for the erection of timber fencing in the approximate position marked (A-B) on the plan, and planning permission is refused in respect of the timber fencing, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

### **Appeal B: 3159981**

3. The appeal is dismissed.

### **Background to the Appeals**

4. Chasers cottage is a listed building in the hamlet of Crimscote. It consists of a historic cottage with a thatched roof and what appear to be two modern extensions, one to the side, of uncertain quality and a very utilitarian one to the rear. It stands in a relatively small plot on ground set up higher than the road and set back behind a gentle, open grass slope. From the south it occupies a prominent position in the hamlet, whereas from the north it is overlooked by higher ground.
5. The appellants purchased the cottage and intend to remodel it to remove the unfortunate modern extensions and have received planning permission and listed building consent to do so. The works involve, amongst other things, building a new skin around the extensions and then removing the extensions from within, thus enabling the family to continue to occupy as much of the house as possible during construction works. No works have yet begun as the parties are involved in negotiating the various pre-commencement conditions, particularly materials to be used. I was shown various letters between them and it is hoped to have these conditions signed off in the next few weeks so that work can be begin. An added complication is the presence of bats on the site and the need to operate within the terms of the licence granted by Natural England.
6. Because of the potential disruption to the family the appellants have constructed a large timber outbuilding in the garden. This contains rooms for storage and a central room with a TV, table and chairs and sitting area for the family to use. I accept their argument that it is reasonable to provide some form of alternative accommodation, at least for the duration of the works. They have also removed an overgrown hedge on the south-eastern boundary, which I am told exposed a crumbling bank which they have stabilised with a retaining wall of concrete blocks faced by timber and topped with stone capping

which follows the boundary from points A-B on the notice. Above this they have erected a timber fence which steps down as the retaining wall steps down, and is generally about 1m or less in height above the garden land inside the fence, but several metres above the grass slope on the outside. These 3 items, the outbuilding, retaining wall and fence make up the allegation, although the notice describes the retaining wall as a "means of enclosure" and they are all required to be removed.

7. The appellants are convinced the cottage was listed by mistake and that little of any actual historic fabric remains. Because of the ambiguous wording of the Historic England (HE) advice on de-listing the appellants thought that it was open to them to raise this as an issue at this hearing. However, the question of de-listing can only be raised at a listed building consent appeal or a listed building enforcement appeal. As this is neither, it is not open to me to consider the appellant's arguments concerning de-listing. It is of course open to them to apply directly to HE to delist the cottage, but HE will not consider such a request while there are live enforcement proceedings. I accept that this places the appellants in somewhat of a "Catch 22" situation, but I am obliged to consider the appeal on the basis that the cottage is listed.
8. The Council provided an alternative plan which marked the length of fence/means of enclosure as A-B. Assuming the 'A' is on the south-east corner of the plot, which the Council confirmed was their intention, this better defines the limit of the Council's concern for the fence/means of enclosure and I shall proceed on the basis of this alternative plan.

### **The Appeal on Ground (a)**

9. The main policies are contained in the Council's Core Strategy. CS8 gives priority to the protection of historic assets; CS9 requires development to be sensitive to its setting and existing built form in the locality while CS20 states that outbuildings should be of an appropriate scale and subservient to existing buildings. The NPPF at paragraph 132 requires that great weight is given to the conservation of historic assets and at paragraph 134 where less than substantial harm to significance is found this should be balanced against any public benefits. In my view the significance of the cottage for this appeal, lies in its setting on the raised ground with the relatively open garden around, its small scale and its importance in the character and appearance of the hamlet as a whole.

#### *The retaining wall and fence*

10. It was agreed at the Hearing that the retaining wall could not just be removed as the bank would fall down. The Council have no objection to the concrete block wall as long as it is masked by appropriate materials. The remainder of the eastern boundary is made up of a stone wall and ideally the Council would prefer stone to be used as the facing material along the whole boundary. However, as we saw on site, there is room at the foot of the wall for planting to be provided, and a number of shrubs have recently been planted there.
11. I agree with the Council that the views from the south are most important and the wooden cladding to the retaining wall, topped by the fence is over-dominant and intrusive in views towards the buildings of the hamlet beyond and the listed cottage itself. However, the main negative impact is the fence. If that is removed the wooden cladding of the retaining wall, particularly with

planting in front, which would soften its outline and break up its mass, would be acceptable and cause no harm to the setting of the listed building or the character and appearance of the area.

12. The appellants would wish to retain some means of enclosure on top of the retaining wall for the sake of privacy, and intend to plant a laurel hedge, removing the fence when that has matured. I consider that the impact of the fence is harmful and it needs to be removed. I also share the Council's view that laurel hedges are generally ugly and out of place especially in a sensitive site such as this, but I accept that the planting of a hedge is not development. Nevertheless, it was suggested on site that a less intrusive fence, such as a post and rail would be acceptable until the hedge, of whatever type of plant is chosen, matured. The most acceptable outcome is therefore to retain the retaining wall and its cladding but replace the fence with one that is more suitable.

#### *The outbuilding*

13. The outbuilding is a large structure with a flat roof. It has a range of French windows on the long side facing in towards the cottage. It is placed at the highest point of the site, close to the gable wall of the original cottage. It is thus both hugely out of scale and dominates the cottage in a most harmful manner. It is especially prominent in views from the south, whilst the line of French windows is clearly visible from the higher ground to the north which adds to its sense of incongruity.
14. The appellant argue that they have deliberately created a modern looking building that is distinct from the listed cottage. This may be so, but the outbuilding is really little more than a large shed and has little design integrity of its own. The harm to the listed building is less than substantial, but towards the more serious end of that scale. There are no public benefits to the outbuilding so I find it to be contrary to the NPPF and policies CS8, CS9 and C20.
15. Originally it seems the appellants had intended the outbuilding to be a permanent feature, but they accepted at the Hearing they were unlikely to ever persuade the Council, regardless of what landscaping they proposed, that it would be acceptable, and I agree that as a permanent structure it would be harmful. Consequently, they had already proposed it should remain only for the duration of the works to the cottage, which is 2 years. The Council would prefer a genuinely and obviously temporary structure, such as a caravan or mobile home, which while no more attractive than the outbuilding would be read as part of the building works and therefore as an obviously temporary structure. The appellants, one of whom is a builder, explained the difficulty of getting a mobile home into the site. I saw there could be no access from the north, where the drive to the cottage is located due to the narrow drive and steps in the land. The appellants argued that they could not find a company with a crane of sufficient size to offload a mobile home from the road, over the grass and up onto the raised ground. Given the difference in ground levels within the site there does not seem anywhere else obvious to locate such a structure.
16. I agree that a more temporary solution would have been preferable, but the outbuilding is constructed in a way that would facilitate its disassembly and removal. There are no permanent footings and the outbuilding simply rests on

concrete blocks. Consequently, to require the outbuilding to be removed and replaced with another structure which would also be harmful to the setting of the listed cottage, and where there are doubts such a structure could actually be put in place, would seem to me to be excessive. The Council were concerned that the outbuilding should only be in position for the minimal amount of time, but there was no disagreement that 2 years was the relevant period for the works and at the end of the 2 years the Council have the powers to either extend the time for a short while or require the removal of the outbuilding.

17. The appellants need some form of long term storage and so they will have time to agree a more suitable design for a smaller outbuilding with the Council. There is also the question of delisting the cottage, should the appellants be successful then the planning merits of the impact of the outbuilding would be different.

### **Conclusions**

18. The simplest way to affect the desired result is to correct the allegation to refer clearly to a fence and a retaining wall clad in timber, then to uphold the notice in its entirety, but also to grant planning permission for the outbuilding, limited to 2 years, and for the retaining wall. By virtue of s180 the planning permission will override the notice where it deals with the same development (the outbuilding and retaining wall) which will leave the fence which should be removed within 4 months as stipulated. There is no need to consider the appeal on ground (f) as this is clearly not excessive and as 4 months is a generous time period to remove a relatively small fence there is no need to consider the ground (g) appeal either.
19. I shall attach a condition requiring a landscaping scheme to be agreed with the Council to soften the effect of the retaining wall, but I do not think it is reasonable to control landscaping on the rest of the plot as this will have no effect on the outbuilding. Should the appellants wish to erect a different timber fence they can seek the appropriate consent from the Council to do so. I shall dismiss appeal B as this is a duplicate to Appeal A.

*Simon Hand*

Inspector

## **APPEARANCES**

FOR THE APPELLANT:

Ruth McKeown  
Matthew McKeown

FOR THE LOCAL PLANNING AUTHORITY:

Gary Moss  
Alan Firth

## **DOCUMENTS**

- 1 Notification of Hearing
- 2 Letter approving archaeological works condition