

Appeal Decision

Site visit made on 26 May 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 27 June 2017

Appeal Ref: APP/Q3115/C/16/3162949

Chapel Cottage, Park Corner, Nettlebed, Henley-on-Thames RG9 6DR

- 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 James Hunt against an enforcement notice issued by South Oxfordshire District Council.
 - The enforcement notice was issued on 3 October 2016 under ref. P16/S3770/DA.
 - The breach of planning control as alleged in the notice is:
"Without planning permission, the installation of bi-fold doors in the western gable extension of the dwelling on the Land."
 - The requirements of the notice are to: *"Take out the bi-fold doors referred to in 3 above and reinstate the affected part of the wall in accordance with the details approved under the planning permission granted by the council under reference P16/S0522/FUL."*
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be varied by deleting the text at paragraph 5(1) in its entirety and substituting therefor the following: "Take out the bi-fold doors referred to in paragraph 3 above and reinstate the affected part of the wall to ensure that it strictly complies with the terms (including conditions, limitations and approved plans) of the planning permission granted under application no. P16/S0522/FUL."
2. Subject to that variation, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The enforcement notice and matters of clarification

3. In the case of operational development which differs materially from approved plans, the requirement of an enforcement notice should make the development comply with the terms (including conditions, limitations and approved plans) of the planning permission which has been granted. In exercising my duty to ensure that the notice is correct, I have therefore made a minor variation to the requirement of the notice at paragraph 5(1) therein. I am satisfied that this would not result in any injustice for any party.
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4. There is commentary from third parties about the alleged non-compliance with planning conditions relating to a car port, roof lights and a planting scheme. However, this enforcement notice appeal is confined to the single matter alleged in the subject notice. If any other matter requires formal investigation that must remain a responsibility for the Council in the first instance.

The appeal site and background

5. Chapel Cottage is a dwelling within a detached former Methodist chapel located within the rural hamlet of Park Corner. The land falls within the Chilterns Area of Outstanding Natural Beauty (AONB). The building is identified as a non-designated heritage asset.
6. Flint Cottage is the detached dwelling to the west. At my site inspection, in addition to my tour around the appeal site, I took the opportunity to view the western elevation of Chapel Cottage from this neighbouring property.
7. The enforcement notice attacks the glazed folding doors that have been inserted in the ground floor of the western gable end of a recently constructed extension at Chapel Cottage. The folding doors contain four fully-glazed sections and are capable of being fully retracted to leave a wide opening to the kitchen/dining area. The gable end is separated from the common boundary with Flint Cottage by a patio and a narrow, raised and retained bank. There is a tall mixed hedge growing along this part of the common boundary.
8. There is an extensive recent history of planning permissions for extensions and alterations at the appeal property. The most relevant are ref. P15/S2787/HH and ref. P16/S0522/FUL issued on 23 October 2015 and 21 June 2016 respectively, the latter being for material amendments to the former and providing for a solid door and two windows where the subject folding glazed doors are located.

The appeal on ground (a) and the deemed planning application

9. Taking into account all I have seen and read, I consider that the main issue in deciding if planning permission ought to be granted is the effect of the development (the folding glazed doors in the western gable of the extension) upon the amenities of the neighbouring residents in Flint Cottage with particular regard to privacy and overlooking.
10. I agree with the appellant that the most relevant development plan policy is Policy H13 of the South Oxfordshire Local Plan 2011 which covers extensions to existing dwellings. Such proposals will be permitted provided that the amenity of occupants of nearby properties is not materially harmed. This is broadly consistent with the National Planning Policy Framework which indicates that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
11. The Council explains that the Supplementary Planning Document South Oxfordshire Design Guide 2016 (SPD) was adopted in November 2016, updating the 2008 version. This is a material consideration. The Council reports that back-to-back distances between habitable rooms of properties (including existing buildings) should be a minimum of 25 m, whereas between

habitable rooms and the side gable of an adjacent property the recommended distance is a minimum of 12 m.

12. Whilst Flint Cottage may have extensive grounds to the north, west and south, its rear (eastern) elevation contains a considerable number of windows such that its eastern aspect should be considered as one of the important aspects of the property. This added to the fact that there is only about 2 m between Flint Cottage and the common boundary with Chapel Cottage means that a sensitive design should be adopted in any residential developments contemplated at either of the properties. It matters little how this long-standing physical relationship came about, especially as the historical development of this part of Park Corner has not been made clear in the written representations.
13. Measurements taken and agreed by the parties at the site visit revealed that the glazed folding doors are 7.5 m away from a low wire fence within the boundary hedge, about 9.7 m away from the closest rear-facing gable end at Flint Cottage within which there is a first floor bedroom window and about 11.25 m away from other neighbouring rear first floor windows, notably one to a landing/stairway and one to a main bathroom. Slightly further away and at a narrower angle of view, in the same rear-facing wall at Flint Cottage there are other windows serving a toilet, a bathroom and a bedroom.
14. All four elevations of Chapel Cottage are now of similar length and each of them contains at least one window to a habitable room, as recorded on drawing no. 15 CPC PE01 H . This added to the location of the main outdoor amenity space directly outside the property's most sizeable opening (the folding glazed doors) to the largest ground floor habitable room (kitchen/dining area) means that the west elevation of Chapel Cottage cannot be readily classified as a side elevation. I agree with the Council that for the purposes of the SPD the relationship between Chapel Cottage and Flint Cottage is more akin to a back-to-back relationship. The separation distance between habitable room windows here falls far short of the recommended back-to-back distance. It does not even reach the back-to-side standard.
15. I accept that any significant change of ground levels between buildings can alter the effect of the separation distance. It is apparent that land levels have been reduced by about 900 mm at Chapel Cottage. The Council says that in 2013 the ground floors of Flint Cottage and Chapel Cottage were approximately level. No cross sections have been produced to demonstrate the relative height between opposing accommodation. However, from my site inspection, I do not consider the modest change in land levels satisfactorily offsets the very short horizontal distance between the two properties.
16. When standing in the kitchen/dining room of Chapel Cottage close to the folding glazed doors there is a clear line of sight upwards towards the neighbouring first floor windows of Flint Cottage, particularly the closest bedroom and bathroom windows and the stairway/landing window. People in Flint Cottage wishing to occupy space relatively close to those bedroom and bathroom windows or move across the landing or down the stairway would feel distinctly uncomfortable doing so given the proximity of the folding glazed doors. This would be exacerbated by the extensive spread of the glazing in the doors, by their use as the principal window to the largest ground floor habitable room and by the clear open linkage they provide to the primary outdoor

amenity area. The Council correctly refers to the creation of one large, combined indoor-outdoor space which would no doubt be put to active use on pleasant days.

17. Overlooking and privacy issues also involve perception and psychology. Thus, even if those using the kitchen/dining area in Chapel Cottage had no deliberate intention of looking towards Flint Cottage, I find that the folding glazed doors result in a strong perception of being overlooked as a result of their proximity, sizeable glazed area and opening design. There is therefore a degree of psychological harm on a daily basis for the occupiers of Flint Cottage, knowing, as they do, how close the opening is to the boundary and how they themselves have, in turn, a clear view into the appeal property's kitchen/dining area.
18. The question arises as to whether any intervention can take place, if necessary through the use of planning conditions, to address the matters of overlooking and loss of privacy.
19. Reliance cannot be placed upon the boundary hedge growing on over its established height of about 2.2 m. It would be difficult to maintain a hedge at the height required to prevent overlooking. Vegetation can, of course, fail for any number of reasons over the longer term and this could include the existing boundary hedge and any new planting behind it along the raised and narrow border carried out in response to a possible landscaping condition. Fitting obscure glazing would produce an unacceptable outlook for the occupiers of the appeal property. Such glazing or vision control film carefully placed over the top quarter of the glazing in the folding doors would not be effective when those doors are open.
20. In assessing the merits of a deemed planning application any fallback is an important material consideration. The test to be applied is whether there is a reasonable possibility that if planning permission were to be refused, the use of land, or a development which has been permitted, would take place, and such use or development would be less desirable than that for which planning permission is sought.
21. Put simply, the views between the two properties would not be to the same extent if the wall contained the solid door and the two more modest-sized windows in the planning permission granted on 21 June 2016 or just the two modest-sized windows in the planning permission granted on 23 October 2015. The large combined indoor-outdoor area would also not exist. The true fallback is the scheme permitted on 21 June 2016 from studying the written representations put before me. However condition 5 in that permission may be interpreted, the appellant does not produce a specific argument to the effect that the folding glazed doors could be inserted in any event. Moreover, no appeal was brought on ground (c), the breach of planning control being acknowledged at paragraph 1.2 of his statement.
22. What has been built is unneighbourly and does not demonstrate a sensitive design. I am not persuaded that the development granted planning permission would be less desirable than that for which deemed planning permission is now sought. I therefore consider that the fallback carries little weight as a material consideration in this appeal.

23. I find on the main issue that the development has a materially harmful effect upon the amenities of the neighbouring residents in Flint Cottage with particular regard to privacy and overlooking. The development therefore conflicts with Policy H13 of the Local Plan.
24. Other matters raised include the dwelling as it previously existed in 2013 and the constrained nature of the plot in terms of locating a patio and sitting out area. The form of the dwelling in 2013 is not now a realistic fallback. In any event, the plans produced from that time show two windows in the same part of the western elevation but that elevation was set back about 2 m further away from the common boundary with Flint Cottage. Even though the land levels were higher at that time, there was also an intervening willow tree and the two windows appear to have been fitted with multiple panes. Moreover, neither of the windows were obviously the principal windows to the then separate kitchen and dining rooms and neither of those rooms approached the size of the then main habitable room (lounge) at the front. I realize that other options for an appropriate patio area are few and far between and that the patio I saw will remain as the primary outdoor amenity space regardless of the outcome of this appeal but these matters do not justify the unneighbourly impact of the folding glazed doors the subject of the notice.
25. In architectural terms, the opening creates something of a gash in the western elevation and the fenestration treatment is rather brash for a building of this type. That said, the former chapel has been considerably enlarged and altered over the years and the subject alteration has not taken place on an original elevation that is open to clear public views. As such, it would be difficult to justify a refusal of planning permission on the grounds that the scheme detracts from the significance of the building or from the character and appearance of the AONB. Still, looked at another way, the architectural approach adopted does not lend any positive support to the scheme.
26. There are allegations of increased noise and disturbance. To count against the development, I would need to be sure that such noise and disturbance arises from within the kitchen/dining area when the folding doors are open rather than just from the usage of the outdoor patio area. The evidence is not conclusive on this point.
27. Drawing all the above together, I find that the development conflicts with the development plan. I find no material considerations of sufficient weight to justify a grant of planning permission. The objections to the development could not be satisfactorily overcome by the imposition of planning conditions. Taking into account all other matters raised in the written representations, I conclude that the appeal on ground (a) should fail and planning permission should be refused on the deemed planning application.

The appeal on ground (g)

28. The issue under ground (g) is whether the compliance period is too short. The notice stipulates a compliance period of three months. The appellant requests a period of six months.
29. Determining the time needed to comply with the requirements of an enforcement notice will always be a case-specific exercise.

30. The gist of the appellant's case is that a longer compliance period would allow for discussions with the Council and his neighbours concerning the installation of a timber pergola over the patio area to ensure that there would be no line of sight between the glazed folding doors and the first floor windows in Flint Cottage. There is an acknowledgement that planning permission would probably be required owing to the location of the site within the AONB.
31. I find this scenario rather open-ended. No detailed plans have been submitted. No planning permission is in place. There is no certainty that the Council would grant planning permission for a timber pergola. There would also be a further right of appeal if such a proposal was not granted planning permission. In any event, the three-month period allows for some time for discussion and I am mindful that the Council has powers to extend the compliance period at its own discretion, if it feels that there is a good reason for doing so.
32. I have read nothing to suggest that a three-month period provides insufficient time to comply with the simple physical steps required by the notice. The harm identified in the notice also needs to be addressed in a reasonable timeframe, without any unjustified delay.
33. Having regard to all the evidence before me, I am satisfied that a three-month period for compliance is reasonable. The appeal on ground (g) fails.

Andrew Dale

INSPECTOR