
Appeal Decisions

Site visit made on 18 July 2017

by Nigel Burrows BA MRTPI

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

Decision date: 16 August 2017

Appeals A and B: APP/Y2620/C/16/3162802 & 3168982 Land at 25A Pine Walk, Weybourne, Holt, NR25 7HJ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr & Mrs S Boon against an enforcement notice issued by North Norfolk District Council.
- The enforcement notice, ref: ENF/16/0044, was issued on 26 October 2016.
- The breach of planning control as alleged in the notice is the erection of a single storey garage extension marked 'D' on the Plan.
- The requirements of the notice are demolish the garage and remove the resultant debris from site.
- The period for compliance with the requirements is 1 month.
- The appeals are proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions: The appeals are allowed, the enforcement notice (as corrected) is quashed, and planning permission is granted in the terms set out below in the formal decision

Appeal C: APP/Y2620/W/16/3161636 25A Pine Walk, Weybourne, NR25 7HJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Steve Boon against the decision of North Norfolk District Council.
- The application Ref PF/16/0785, dated 3 June 2016, was refused by notice dated 9 August 2016.
- The development proposed is described as 'Single storey garage extension'.

Summary of Decision: The appeal is allowed and planning permission is granted in the terms set out below in the formal decision

Procedural Matters

1. The enforcement notice subject of Appeals A and B appears to contain a number of defects. For example, the reasons given by the Council for issuing the notice simply state: "The garage was refused planning permission under a decision notice dated 06 June 2016." However, this does not tell the recipient why the Council subsequently considered that it was expedient to take enforcement action.¹ The Council has also failed to specify the development plan policies which are relevant to the decision to issue the notice. The Council has therefore breached a statutory requirement under section 173(10) of the Act.²

¹ The date of refusal cited by the Council is also incorrect

² Together with Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

2. I have wide powers to correct the notice under section 176. However, I am unable to address this particular defect without, in effect, becoming involved in the original decision-making process. Having said that, the purpose of this requirement has passed - namely to inform the recipient of the policy objection to the development. The main parties appear to understand the points arising from the notice and have addressed them in their evidence on the section 174 appeal. Whilst I am unable to correct this defect in the notice, on balance, I conclude that no injustice has been caused in this instance.
3. The reasons for issuing the notice also fail to state whether the 4-year or 10-year immunity period applies to the development subject of the notice. As the notice is directed at operational development, the 4-year 'rule' applies. In any event, the appellants (who are professionally represented) have not lodged the appeals on ground (d) - they do not seek to argue the development is immune from enforcement action through the passage of time.
4. The plan attached to the enforcement notice is also incorrect because it identifies 25 Pine Walk, rather than the appeal site. The Council accepts the plan is wrong and says that it could be corrected. Whilst this is a further defect in the notice, it can be corrected by deleting any reference to a plan, leaving the site to be identified in words alone (as set out in paragraph 2 of the notice). I am satisfied this correction would not cause injustice to the appellants, who appear to be in no doubt about which structure is attacked by the notice.
5. Finally, the enforcement notice did not allow a period of 28 days prior to coming into effect. In some instances this might be sufficient to render the notice invalid. However, in this particular case, I intend to use my discretion to disregard the defect because it is evident that the recipients of the notice have not been substantially prejudiced. The appellants have been able to obtain professional advice and have lodged an appeal in good time. As noted above the appeals are proceeding on grounds (a), (b), (f) and (g).
6. Turning to Appeal C, during the site visit there was some uncertainty between the parties' representatives about which plans were before the Council when it reached its decision on the planning application. The Council subsequently confirmed the relevant plan was drawing number: PL01 Revision A. I have dealt with Appeal C on this basis.

Appeals A and B - ground (b)

7. The issue under ground (b) is whether or not the breach of planning control alleged in the enforcement notice has occurred as a matter of fact. The appellants accept that 'elements of work' have been undertaken which require planning permission. However, their stance is that a garage extension has not actually been built as alleged in the notice, because the works are only partially completed. Nonetheless, there is compelling evidence before me to demonstrate that the works carried out to the side of 25A Pine Walk are part and parcel of a single building project that involves the erection of a single storey garage extension.³
8. Section 172(1)(b) empowers the Council to issue an enforcement notice when it 'appears' to them that there has been a breach of planning control and they consider it expedient to take enforcement action (having regard to the provisions of the development plan and other material considerations). The Council evidently concluded the unauthorised works appeared to involve the construction of a garage extension. Notwithstanding the fact that the construction works ceased, I consider the allegation in the enforcement notice adequately describes the nature and purpose of the development.
9. On the balance of probability, I therefore conclude that the matters alleged in the enforcement notice have taken place as a matter of fact. The ground (b) appeals fail.

Appeals A and B - ground (a) and Appeal C

10. The deemed applications arising from the ground (a) appeals are for the matters alleged in the enforcement notice, in other words 'the erection of a single storey garage extension'.

³ The works so far carried out involve the erection of a gable wall parapet, rear wall and frame to the front

Turning to the proposal subject of Appeal C, this was partly retrospective. In effect, permission is sought for the same structure, namely a 'single storey garage extension'.⁴

11. Taking into account all that I have seen and read, I consider there are two main issues in all of these appeals. The first is the implications of the development for the occupiers of the neighbouring property, 25 Pine Walk. The second is the effect of the development upon the character and appearance of the site and the surrounding area.

Issue 1: Implications for the neighbouring occupiers

12. The planning history of the land is well known to the main parties and does not need to be recited in any great detail here. Suffice to say that 25A Pine Walk is a recently constructed bungalow erected within the curtilage of 25 Pine Walk. These properties are situated at the end of a cul-de-sac within a modern housing estate in Weybourne.
13. As noted earlier, the works so far carried out to the side of the bungalow comprise the erection of a gable wall parapet, a rear wall and a frame to the front of the proposed garage extension. The Council points out that the garage would fill the gap between the bungalow and the boundary to the adjacent property, 25 Pine Walk. The works include the adaptation of the boundary wall to form the side gable parapet of the garage, which is about 3.5m at its highest point. The Council argues this would have an overbearing impact on the occupiers of the adjacent property, and it would also lead to a loss of light when compared to the 1.8m high boundary wall originally permitted.
14. The Council's concern is understandable. However, events have moved on. According to the appellants' submissions, both properties are in the same ownership and 25 Pine Walk is currently undergoing 'refurbishment'. At the site visit, I observed that 'reconstruction' might be a more appropriate description of the works being carried out. In any event, the appellants confirm the proposed reconfiguration of 25 Pine Walk will involve the removal of the original kitchen window upon the side elevation. Furthermore, it is confirmed the garage will not affect any windows to habitable rooms.
15. In other respects, notwithstanding the overall height of the side gable parapet to the garage, it appears to lie almost opposite the taller flank gable existing on what remains of the original side elevation of 25 Pine Walk. To my mind, it should not appear unduly assertive or overbearing in this location. On balance, I conclude the garage extension would not have a 'significantly detrimental effect' upon the amenity of the occupiers of 25 Pine Walk as alleged by the Council. I further conclude that, in this particular respect, it would not conflict with the relevant development plan policies cited by the Council, including EN 4 of the Core Strategy⁵. An acceptable degree of residential amenity should also be retained between these properties, as required by this policy.

Issue 2: Character and Appearance

16. The Council is concerned that the development would erode the open nature of Pine Walk and its surroundings. The Council's stance is that the erection of 25A Pine Walk was considered acceptable, in part, because it involved the demolition of the original garage attached to 25 Pine Walk, thereby preserving an acceptable distance between the original and proposed dwellings. Be that as it may, it could be argued that the Council's decision to allow the subdivision of the curtilage of 25 Pine Walk has, in effect, introduced a significant change in the open nature of this part of Pine Walk.
17. As matters stand, I consider the provision of a subordinate garage extension to the side of 25A Pine Walk would not result in a material loss of open character around the end of the cul-de-sac, which is characterised by a relatively tight-knit relationship between properties. Bearing in mind the discrete nature of the development around the end of the cul-de-sac, I consider the garage extension would not have a detrimental impact on the wider character and appearance of the estate, or otherwise harm the landscape quality of

⁴ The Council's description of the application is 'Single storey garage extension (part retrospective)'

⁵ North Norfolk Local Development Framework: Core Strategy Incorporating Development Control Policies (2008).

the Norfolk Coast Area of Outstanding Natural Beauty (AONB). Moreover, there is no evidence before me to suggest there has been a loss of significant views through the site of the AONB, or of the coastal area and countryside beyond this modern housing estate.

18. Overall, I conclude the garage extension would not be inappropriate to its particular context. It would not harm the character and appearance of the site and the surrounding area as alleged by the Council. In this respect, it would not be inconsistent with the requirements of policy EN 4. Furthermore, it would not conflict with policy EN 1 of the Council's Core Strategy, insofar as it seeks to protect the special qualities of the AONB.⁶

Overall Conclusions

19. In view of my findings on ground (a), I have concluded that Appeals A and B should succeed. The enforcement notice⁷ will be quashed and permission will be granted on the deemed applications. Therefore, it is unnecessary for me to deal with the ground (f) and (g) appeals. I also conclude that Appeal C should succeed for similar reasons.
20. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decisions.
21. The Council has suggested planning conditions in the event of the appeals being allowed. As the development has already been commenced, it would not be necessary to impose the standard condition concerning the implementation of the permissions. However, I agree that it is reasonable and necessary to ensure the works are carried out in accordance with drawing: PL01 Revision A, to ensure the satisfactory development of the site. A condition requiring matching materials is also reasonable and necessary in order to safeguard the character and appearance of the area.

Formal Decisions

Appeals A and B: APP/Y2620/C/16/3162802 & 3168982

22. The enforcement notice is corrected by:
- (a) Deleting from paragraph 2 (THE LAND TO WHICH THIS NOTICE RELATES) the following words: '*shown edged red on the attached plan (The Plan)*'.
 - (b) Deleting from paragraph 3.(i) (THE MATTERS WHICH APPEAR TO CONSTITUTE THE BREACH OF PLANNING CONTROL) the following words: '*marked 'D' on the Plan*'
23. Subject to the above corrections to the enforcement notice, the appeals are allowed and the notice is quashed. Planning permission is granted on the applications deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a single storey garage extension on Land at 25A Pine Walk, Weybourne, Holt, NR25 7HJ subject to the following conditions:
- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: drawing number: PL01 Revision A.
 - 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Appeal C: APP/Y2620/W/16/3161636

24. The appeal is allowed and planning permission is granted for development described as 'Single storey garage extension' at 25A Pine Walk, Weybourne, Holt, NR25 7HJ in accordance with the terms of the application Ref PF/16/0785, dated 3 June 2016, and the plans submitted therewith, subject to the following conditions:

⁶ Similarly, I find that it would not conflict with the provisions of paragraph 115 of the NPPF

⁷ As corrected

- 1) The development hereby permitted shall be carried out in accordance with the following approved plan: drawing number: PL01 Revision A.
- 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Nigel Burrows

INSPECTOR