
Appeal Decision

Site visit made on 2 August 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 04 September 2017

Appeal Ref: APP/N3020/C/16/3164372

Land known as 80 Church Drive, Daybrook, Nottinghamshire NG5 6LD

- 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 Elaine Curtis against an enforcement notice issued by Gedling Borough Council.
 - The enforcement notice was issued on 1 November 2016.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a building.
 - The requirements of the notice are:
 - a) Demolish the unauthorised building on the land (shown on the attached plan).
 - b) Remove from the land and take to a lawful disposal point all resulting debris including the foundations of the building, associated cess pit and all building materials and building equipment; and
 - c) Re-instate the land to its former condition as garden land.
 - The period for compliance with the requirements is 2 months after this notice takes effect.
 - 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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Formal Decision

1. The appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the erection of a building at 80 Church Drive, Daybrook, Nottinghamshire NG5 6LD referred to in the notice, subject to the following conditions:
 - 1) Unless within one month of the date of this decision, details of measures to ensure that there can be no overlooking of the garden to 78 Church Drive through windows on the southern elevation of the building hereby permitted, are submitted in writing to the local planning authority for approval, and unless the approved details are implemented within one month of the local planning authority's approval, occupation of the building shall cease altogether until such time as the said details are approved and implemented.
 - 2) If no details in accordance with condition 1) are approved within one month of the date of this decision, occupation of the building shall cease altogether until such time as the details approved by the local planning authority are implemented.
 - 3) Upon implementation of the approved details specified in condition 1), they shall thereafter be retained in use as such.
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- 4) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in conditions 1) and 2), the operation of the time limits specified therein will be suspended until that legal challenge has been finally determined.
- 5) This permission relates to the building as shown on Drawing CD-17-01 dated April 2017 subject to its retention in accordance with condition 3).
- 6) The building hereby permitted shall not be used for any commercial purpose but used only for purposes which are ancillary to the enjoyment of the existing use of the ground floor flat at 80 Church Drive as a dwelling and shall not be used as separate living accommodation.
- 7) Within one month of the date of this permission, any remaining cooking, shower, bathing and laundry facilities shall have been removed from the building and no such facilities shall be installed in the building thereafter.

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

Background and main issues

2. 80 Church Drive is divided into two flats, each occupied by a tenant. A building has been constructed in the log cabin style, in the rear garden of the ground floor flat. The notice refers to a building and I see no reason to disagree that it meets the established criteria for such a definition. It is a substantial structure, resting on its own weight and connected via the ground floor flat to electricity and water, with drainage to a small septic tank. Inside is a wood burning stove, a kitchen area, living area, a bathroom, a bedroom and a store. In May 2016 the Council refused an application for planning permission that would have enabled the outbuilding to be retained, citing reasons similar those for issuing the enforcement notice.
3. The main issues, which reflect those identified by the Council are:
 - a. Whether the building, including its use is acceptable in this location, having regard also to its effect on the character and appearance of the area; and
 - b. The effect of the development on living conditions of occupiers of the development and occupiers of neighbouring properties.

Nature and use of the building and its effect on character and appearance

4. The Council considers that the building is a self-contained dwelling within a separate planning unit, having the appearance and facilities of a separate dwelling and therefore it is unacceptable in principle, not being used for purposes ancillary to the use of the flats at No 80.
5. Permitted development rights do not apply to development in the curtilage of a dwellinghouse that is a flat, however this factor is not in itself a good reason to refuse permission. The building as measured by the Council is about 2.8m high with a footprint of some 7.78m by 4.47m. A timber fence, some 1.5m high separates No 80 from the garden of No 78, whilst on the north boundary are former school premises, now a business centre, separated by a brick wall about 3m high on the garden side. The gardens for Nos 76, 78 and 80 are longer than others in the terrace and the rears of Nos 76 and 78 possess a larger area towards the bottom of the plots, having widths in that location of about twice those of other plots in the terrace.

6. There are doors at each end of the building and windows on all sides. Despite these openings and the presence of the flue, in my opinion the use of timber in its construction and relatively modest size in relation to the deep rear garden area, give the building an appearance rather of a large garden shed or outbuilding, than a conventional dwelling.
7. The building is larger than others that I saw in the surrounding rear gardens of the terrace. Its width is at odds with the relatively narrow width of the garden, however its overall size, the shallow pitch of its roof, timber construction and green painted finish do not render it an unduly prominent or incongruous structure within its particular domestic context. The building has no impact on the street scene, and views of it are limited from within the rear of properties in this part of Church Drive. It is sub-ordinate to the host building in appearance, being sited towards the bottom of the rear garden at a lower level than and sloping away from the rear elevations within the terrace.
8. Whilst the appearance of the building is relevant, the functional link between its use and the main dwelling is a key factor to consider in assessing whether its use is ancillary to the primary residential use, and so in the same planning unit.
9. No 80 is owned by the appellant, who is very close friends with her tenants. The building was intended for her to stay over while visiting her elderly mother in the area. The Council says that as a guest of the ground floor tenant, she should be able to sleep over in the sitting room of the flat and as she is not related to either tenant, her occupation of the building independently of the ground floor tenant would not be for purposes incidental or ancillary to the flat.
10. Nevertheless, it is also proposed to use the building in association with the ground floor flat as a garden room or summerhouse for storage purposes, including for garden tools and materials, as well as occasional sleeping accommodation for the occupant of the flat and guests. The appellant would accept a condition, if planning permission were granted, that secured the removal of cooking, shower, bathing and laundry facilities. It is not proposed to use the building as an independent and separate dwelling and it would be dependent on the ground floor flat for essential day-to-day facilities. I accept that the use of the building as a garden room and store would be for purposes that are incidental to the use of the ground floor flat, as would its use for general domestic storage, such as for the tenant's bike and other equipment.
11. I saw that cooking facilities had already been removed and the bare wooden floors were unswept throughout the building, with much of the floorspace given over to storage use for garden and other domestic paraphernalia. There was a bare mattress in one of the rooms. Comments received from the elderly tenant of the ground floor explain in detail why, due to a neighbour's condition that causes some noise and disturbance, he occasionally finds it necessary to gain respite by using the building to rest in or sleep in. Notwithstanding such use, the permanent removal of the facilities as proposed would in my view deprive the building of the essential qualities of a separate dwelling in that it would no longer provide all the normal facilities required for day to day living.
12. The Council refers to the judgments in *Rambridge*¹ and *Peché D'or*² in arguing that accommodation put to a purpose of ordinary residential use cannot be

¹ *Rambridge v Secretary for State for the Environment and East Herts DC* [1996] EWHC Admin 262

² *Peché D'or Investments v Secretary of State for the Environment* [1996] JPL 311

considered incidental. That may be so but this appeal is not dealing with the specific issue of whether planning permission is required for the development as it is agreed that permitted development rights do not apply here. Whilst it may be true that the appeal building was initially provided with an intention that it should serve a primary residential purpose, the notice does not specify any use at the time of issue. I cannot ignore that it is not intended to be used as a separate dwelling or the purposes for which it is proposed to be used, and whether it is or can be made acceptable in planning terms. With that in mind, I consider that an occasional use of the building by the tenant or his guests, for sleeping over in the particular circumstances described by both of them, would not vitiate its character as a building used for purposes incidental or ancillary to the use of the flat, provided that such use remains subsidiary to the primary residential use of the latter.

13. There is an additional access to the rear gardens from Church Drive via an alleyway and a shared path that intersects the gardens. It is thus said that the appellant could stay overnight in the building even if the ground floor tenant were away from home. This may be so but there is no good reason to suppose that this would not be by arrangement with the tenant with whom she has a close relationship involving emotional care and support, albeit not familial. The route is available to the tenant and any of his invitees, and as such does not necessarily point to the building being considered as a separate planning unit.
14. Taking the above factors into account, I find that subject to conditions restricting its facilities and use, the building would not be a separate dwelling. Its form and function are not such as to take it out of the planning unit comprised within the ground floor flat and its garden. Overall, considering its siting and design, the building has no unacceptably adverse impacts on the character or appearance of the host property or its surroundings.
15. In these respects it complies with Policy ENV1 of the Gedling Borough Replacement Local Plan, 2005 (LP) in that it is of an appropriately high standard of design, including its scale, bulk, form and materials, having regard to the appearance of the area and the relationship between the building and its setting. It also complies with Policy 10 of the Greater Nottingham: *Broxtowe, Gedling and Nottingham City Aligned Core Strategies* (Part 1 Local Plan), 2014 (CS), in that it is of a scale, massing, style and detail that is appropriate to its location. The policies are in line with the National Planning Policy Framework, especially Paragraph 17 in that the development achieves an acceptably high standard of design, appropriate to its local context.

Living conditions

16. The Council's objections to the development are based on the contention that it is used as a separate dwelling, and therefore it cites the lack of amenity space, parking facilities and satisfactory access to the building. The access through the ground floor flat is in my view perfectly adequate for purposes incidental or ancillary to its use, and separate parking or amenity space is unnecessary for these purposes. The local highway authority did not object to the planning application to retain the building, subject to a condition preventing commercial use, which condition is also offered by the appellant in this appeal.
17. The windows on the south elevation of the building overlook the rear garden of No 78 and I accept that this gives rise to an actual or perceived loss of privacy. A condition to secure modifications to the building to ensure that there can be

no overlooking of the garden is proposed. Subject to this condition and bearing in mind the boundary treatment, size and layout of the gardens, in my view the siting of the building would not be so oppressive to occupants of No 78 as to have unacceptably harmful impacts on their living conditions.

18. I therefore conclude that the building would comply with the aims of LP Policy ENV1 and CS Policy 10 to prevent development that has significant adverse effects on amenities of adjoining occupiers, including by reason of the level of activity on site. It would also comply with the Framework, Paragraph 17 by providing a good standard of amenity for existing and future occupants of land and buildings.

Conclusion and conditions

19. For the above reasons I will therefore grant permission for the appeal building. I turn to consider what conditions should be attached to the permission, mindful of advice in Planning Practice Guidance as to their use.
20. The appellant has offered a number of conditions for consideration in the event of the appeal being allowed. Whilst not commenting on these conditions the Council has suggested a condition that the use shall be ancillary to the use of the ground floor flat and shall not be severed from it. In my experience "severance" in this context can give rise to legal niceties such that it is often not an issue that is readily enforceable by condition alone. Having regard to both parties' suggestions it is necessary and sufficient to impose a condition that restricts the use to ancillary purposes to the flat, whilst preventing any non-commercial use or use as separate dwelling. I see no reason why the Council could not investigate and take action on any breach of the condition, which is similar to the model condition in the annex to Circular 11/95.
21. Conditions to ensure that the openings in the southern elevation of the building are permanently obscured to prevent overlooking to the garden of No 78 are required to protect the living conditions of neighbours. Subject to these conditions it is necessary for the avoidance of doubt to define the building and control its external appearance by reference to the drawing Ref CD-17-01 which shows the structure as built.
22. Finally a condition to ensure that cooking, shower, bathing and laundry facilities are permanently removed from the building is needed to prevent it from having the character of a separate dwelling. The appellant seeks to retain the toilet. For the avoidance of doubt I disagree that the correspondence shows that the Council was clearly willing to countenance its retention. However given that the use of the building includes limited sleeping over as described, I see no good reason why it is necessary to remove it or the washbasin.

Conclusion on ground (a)

23. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

Grahame Kean

INSPECTOR