The Planning Inspectorate

Appeal Decision

Site visit made on 13 March 2018

by Simon Hand MA

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

Decision date: 20 March 2018

Appeal Ref: APP/J1860/X/17/3175767
Rimmers Bungalow, Wichenford, Worcester, WR6 6YT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs Sanders against the decision of Malvern Hills District Council.
- The application Ref 17/00010/CLE, dated 6 December 2016, was refused by notice dated 11 April 2017.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is a C3 dwellinghouse.

Decision

1. The appeal is dismissed.

Background and Issues

2. Rimmers Bungalow was granted outline planning permission by the Council in 1982 and reserved matters were agreed in 1983. It is common ground that the bungalow was built and occupied sometime in 1984 and has been lived in ever since. Both outline and reserved matters were subject to a condition limiting occupation to an agricultural worker. The appellant now argues that it seems the bungalow was not built in the correct location. It follows it is unauthorised by the original grant of planning permission and that planning permission was never therefore implemented. Perhaps of more importance is that the conditions on that planning permission cannot be enforced. The works were completed more than 4 years ago and so an LDC for the bungalow should be issued.

3. The Council have no dispute with the operation of the 4 year rule or the consequences that would flow from the issue of an LDC. However, they argue that the difference between the actual and the authorised location of the bungalow is minor and so it was built in accordance with the original planning permission and no LDC is required.

4. The appellant says the bungalow was built 3.5m closer to the road and 2.5m further east than the approved location. The main issues in the appeal are therefore whether these measurements are correct and if so does such a discrepancy take the bungalow beyond the parameters of the grant of planning permission to the extent that it is unauthorised?

Reasons

5. Firstly I note that the measurements for the approved siting of the bungalow have been scaled from the plans. The original plans were submitted with the reserved matters application and these are held on microfiche at the Council's offices. They have been printed out and the measurements scaled from them. The distance of the approved bungalow from the original farmhouse at Rimmers Farm is scaled at 70m but it is contended it has actually been built 72.5m away. The block plan, from which the 70m measurement is taken is at a scale of 1:2500 and at that scale the thickness of a line can account for 1m. The distance to the road is less uncertain as it is scaled from a 1:200 scale plan at 16.9m at its closest, whereas it has actually been built 3.5m closer at 13.4m.

6. However, I note the Council warned the appellant that the microfiche copies were difficult to scale as they were very large, but it may be possible to measure the on-screen ruler to transfer the scale to the printed-off plans. Given the inherent difficulties of scaling from plans and the age and accuracy of the plans themselves I think that at the very least there must be some doubt as to exactly where the bungalow should have been built. As the differences between the actual and proposed locations are really quite small, a variation of only a metre would have a considerable impact.

7. Turning to the question whether the differences are material or not, I note there is still a substantial overlap between the two footprints, and that over 50% of the bungalow is where it is supposed to be – assuming I accept the appellant's measurements as completely accurate. I note the Inspector's views in a City of York appeal[1] where he suggested that what counted as a deviation from the plans could be site specific. In that case the dwelling was in a countryside location and the was no appreciable difference in where it had been built as opposed to where it was supposed to be built – it was, at its largest extent, about 1.6m out from its approved position. I agree that the context can be important. I doubt that if a 10,000m^2 warehouse was built 3m off its agreed location that would even be noticed, but for an infill dwelling that was designed to be 3m from its neighbour, but was built only 1m away, that discrepancy would be immediately noticeable and significant.

8. In this case the bungalow is set in a large garden surrounded by fields, apart from to the west where Rimmers Farmhouse lies. The distances from the road and the nearest other buildings are considerable and the discrepancy of a few metres is not appreciable and would not lead to any planning issues such as impact on neighbours, site lines, being cramped on site etc.

9. I note the court judgements and appeal decisions that have been provided. There is no legally defined measurement or percentage beyond which a discrepancy must be material and it is a matter of fact and degree in each case. The decisions provide by the appellant all involve substantial variations from the plans usually where there is only a very small overlap of the two footprints, unlike this case. The appellant also seeks to differentiate this appeal from the York case as in that appeal there was no condition requiring the development to be built in accordance with the approved plans. However, there is no such condition in this case either. The reference to plans is on the grant of outline planning permission and refers to the plans submitted at that

[1] APP/C2741/X/15/3002638

time which apparently did not include any footprints or the specific location of the bungalow. All the detailed plans were submitted with the reserved maters application which has no plans condition.

10. It seems to me therefore this case falls somewhere between the York case, where the discrepancy was only a metre or so and the other appeals quoted where the discrepancy was significant. However, given my views on the likely accuracy of the measurements and on the actual context of the site, I do not think that the appellant has made out his case that on the balance of probability the bungalow was not built in accordance with the two consents granted in 1982 and 1983 and I do not consider that the bungalow is unlawful. There is therefore no reason to issue an LDC.

Other Matters

11. The appellant refers to the case of Wycombe DC v Williams where a discrepancy of 0.4m was found to be within normal tolerances, but that does not define a limit. In the York appeal 1.6m was found not to be material.

12. The appellant also refers to a condition requiring the laying out of a driveway and waiting and turning area in front of the bungalow. This could not have been constructed as approved due to the bungalow being closer to the road. However, this condition is not a pre-commencement condition so if it was breached it would not render the development unlawful. I also note it is subject to the clause that the works are carried out "to the satisfaction of the Local Planning Authority". As there has been no enforcement action for over 30 years I presume the works were to the Council's satisfaction.

13. The Council required a separate application for the garage on the site which was built 4.2m and 2.4m out of position. These discrepancies are greater than for the bungalow itself, and given the relatively small size of the garage meant there was only a little overlap between the two footprints. This is a good example of the importance of context.

14. Finally the appellant points out the boundaries of the site are not as shown on the original plans, but this does not render the bungalow permission unlawful, and, if anything, just adds to the difficulty in determining exactly where the bungalow should have been built.

Simon Hand

Inspector