



Appeal Decision

Site visit made on 30 October 2018

by Tim Belcher FCII, LLB (Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 05 November 2018

Appeal Ref: APP/J1860/X/18/3203066

Sabrina, Astley Burf, Stourport-on-Severn, DY13 0RY

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawful Use or Development ("the CLU").
- The appeal is made by Paul Edwards ("the Appellant") against the decision of Malvern Hills District Council ("the Council").
- The application Reference 17/00776/CLE, dated 5 May 2017, was refused by notice dated 8 December 2017.
- The application was made under Section 191(1)(a) of the 1990 Act.
- The use for which the CLU is sought is described in the appeal form as, "the continued use of Sabrina as a dwelling-house (C3: use as a sole or main residence)."

Summary of Decision: The appeal is dismissed.

Relevant Background Matters

1. On 25 January 2008 the Council refused planning permission¹ for the "Relocation of chalet Sabrina" ("the 2008 Refusal").
2. On 10 October 2008 conditional planning permission² was granted by the Council in summary for a replacement dwelling ("the 2008 Planning Permission").
3. Condition 10 of the 2008 Planning Permission states, "The chalet hereby approved shall be occupied for holiday purposes only and shall not be occupied as a person's sole, or main place of residence" ("Condition 10").
4. The Appellant purchased Sabrina in March 2014.
5. On 4 December 2014 the Council granted conditional planning permission³ to the Appellant for a replacement dwelling known as The Willows. I was shown where that replacement dwelling is sited when I carried out my site visit.

Matters that are agreed

6. Sabrina was substantially complete more than four years before the date of the application for the CLU.
7. Sabrina differs from the building that was approved by the 2008 Planning Permission. The main differences are set out in this Appeal Decision.

¹ Council reference: 07/01758/FUL

² Council reference: 08/01272/FUL

³ Council reference: 14/00803/FUL

8. The use of a dwelling-house as a holiday let is a use that falls within Class C3 of the Town and Country Planning (Use Classes) Order 1987.
9. Sabrina has not been occupied in accordance with Condition 10.

Application for costs

10. Applications for costs were made by the Appellant and the Council. These applications will be the subject of separate Costs Decisions which will be issued at a later date.

Reasons

11. It is axiomatic that if developers wish to avail themselves of a planning permission it is their responsibility to ensure that development is carried out in accordance with the planning permission and approved plans. I have not been referred to any statutory obligation on a Local Planning Authority to ensure that development is carried out in accordance with planning permission which either they or the Secretary of State grants. I am aware that the Appellant did not, and was not responsible for, the carrying out of the building works which resulted in the construction of Sabrina. It seems likely to me that the Appellant was satisfied that Sabrina was built in accordance with the 2008 Planning Permission because at the time of its purchase Sabrina was less than four years old since its substantial completion.
12. I am aware that Councils sometimes carry out the building control function when building works are carried out in their area but that role is not to check compliance with any relevant planning permission although I have no doubt that if major discrepancies are obvious then Building Control Officers often report such matters back to the relevant Officers within the Local Planning Authority.
13. As stated above Sabrina was not built in strictly accordance with the 2008 Planning Permission. Accordingly, the Appellant is of the view that Sabrina is not encumbered by Condition 10.
14. The Appellant has explained that Sabrina as built:
 - a) Is not in the same position as the building shown on the approved plans.
 - b) Is taller than the building shown on the approved plan.
 - c) Has a larger footprint than the building shown on the approved plans.
 - d) As a result of b) and c) above has a greater volume than as shown on the approved plans.
 - e) Has a larger curtilage than as shown on the approved plans.
15. With regard to:
 - a) a) above - the Appellant has explained that Sabrina's footprint covers about 60% of the footprint of the building's proposed position shown on the approved plans.
 - b) b) above - the Appellant pointed out at the site visit that the land on which Sabrina has been built was not entirely level. The approved plans showing the elevations of the proposed building showed the site where the proposed

building was to be sited as being entirely level. The additional height of Sabrina is, in part, due to the "cross-fall" of the site. However I accept that the ridge height of Sabrina is about 0.5 of a metre higher than the approved height.

- c) c) above – Sabrina has a floor area which is about 10 square metres greater than the approved building.
- d) e) above – The Appellant has shown that Sabrina has a curtilage that is larger than as shown on the approved plans. At the site visit it was explained that the increase in Sabrina's curtilage was due to fact that the parking area shown on the approved plans (which was adjacent to Sabrina's curtilage) had been incorporated into Sabrina's curtilage by the removal of a fence/hedge that was indicated on the approved plans as separating the parking area for Sabrina from its proposed curtilage.

16. I also noted at the site visit that:

- a) The size and position of the two windows in the north east elevation of Sabrina were slightly larger and in different positions to those shown on the approved plans.
- b) The size of the window and the position of the window and the patio door in the south east elevation differ from that shown on the approved plans.
- c) The size of the window and patio doors in the south west elevation differs from that shown on the approved plans.

17. Whilst I was unable to obtain access to the interior of Sabrina it was clear that its internal layout broadly reflected the design of the building shown on the approved plans.

18. Having been to the site I consider that any reasonable person with the benefit of the approved plans would conclude that Sabrina is the dwelling which was approved by the 2008 Planning Permission. It is a timber clad single-storey dwelling with a tiled roof set within a garden. The alignment of Sabrina is generally in accordance with the approved plans.

19. I have noted the Appellant's view that in terms of an assessment against the Development Plan at the time the 2008 Planning Permission was granted and having regard to the 2008 Refusal that he considers that the Council would not have approved Sabrina as built.

20. I am of the view, as a matter of fact and degree, that the differences between Sabrina as built and the 2008 Planning Permission are not material in the circumstances of this case. Sabrina is in the open countryside and has no immediate residential neighbours and the minor discrepancies between the details identified on the approved plans and what was built was unlikely to ever come to the attention of the Council.

21. Having concluded that Sabrina was built in accordance with the 2008 Planning Permission then Condition 10 applies to that occupation of Sabrina. There is no argument by the Appellant that Condition 10 could not be enforced by the Council if Sabrina complied with the 2008 Planning Permission. Accordingly, Sabrina cannot lawfully be used as a person's sole or main residence as Condition 10 specifically excludes this.

Overall Conclusions

22. For the reasons given above I conclude that the Council's refusal to grant the CLU in respect of the continued use of Sabrina as a dwelling-house (C3: use as a sole or main residence) was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in Section 195(3) of the 1990 Act and dismiss the appeal.

Formal Decision

23. The appeal is dismissed.

Tim Belcher

Inspector