The Planning Inspectorate

Appeal Decisions

Site visit made on 13 June 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 11 July 2019

Appeal A Ref : APP/G2245/C/18/3207346
Land at Richlands Convenience Store, 5 the Parade, Dynes Road, Kemsing, Kent, TN15 6RE

- 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 A Benedict against an enforcement notice issued by Sevenoaks District Council.
- The notice was issued on 14 June 2018.
- The breach of planning control as alleged in the notice is the erection of a single storey rear extension, erection of an external staircase and air conditioning units.
- The requirements of the notice are the removal of the single storey rear extension, the removal of the external staircase on the rear elevation of the extended building, the removal of the air conditioning units in their current location and returned to their previous location and the return of the site to its previous condition including access to the first floor.
- The period for compliance with the requirements is four months.
- 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.

Summary of Decision: the appeal is dismissed and the enforcement notice is upheld with correction

Appeal B Ref : APP/G2245/W/18/3207291
Land at Richlands Convenience Store, 5 the Parade, Dynes Road, Kemsing, Kent, TN15 6RE

- 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 A Benedict against the decision of Sevenoaks District Council.
- The application Ref 18/00450/FUL, dated 28 December 2017, was refused by notice dated 3 May 2018.
- The development proposed is demolition of rear storage units and external staircase to facilitate erection of a single storey rear extension, erection of external stairs to the rear and air con units.

Summary of Decision: the appeal is dismissed

Preliminary Matter

1. The enforcement notice the subject of Appeal A incorrectly refers to policy E1 of the Allocations and Development Management Plan (the ADMP) instead of policy EN1. There is no misunderstanding between the parties as to the Council's concerns about the development and the error is typographic. I consider that no injustice would arise if I exercise my powers of correction and I shall do so, if appropriate.

Appeal A Ground (a) appeal and Appeal B

Main Issues

2. The main issues in the determination of these appeals are the effect of the development on (i) the character and appearance of the host property and the surrounding area and (ii) the living conditions of neighbouring properties with particular regard to overlooking and privacy. The main issues are the same in both Appeal A and B and therefore I shall consider them together.

Character and appearance

3. The appeal site is located within a parade of local services and convenience stores within the village of Kemsing bounded by a predominantly residential area. A shop occupies the ground floor with a residential unit above. A narrow access runs to the rear of the parade of shops. Views of the rear of the shops are prominent from gardens of nearby dwellings.

4. The development plan (including the Core Strategy and the ADMP) reflects the National Planning Policy Framework (the Framework) in emphasising the importance of good design. Policy EN1 of the ADMP provides that the form of development should respond to the scale, height, materials and site coverage of the area and layout should respect the character of the site.

5. Planning permission has been granted for demolition of existing rear storage units and external staircase to facilitate the erection of a single storey rear extension and alterations to shop front to include new door to flat (ref 16/00616/FUL) (the Permission).

6. The Appellant draws attention to the similarities between the development carried out and the Permission. But there are material differences between the development approved by the Permission and the development the subject of these appeals including its design and it comprises development without planning permission.

7. The single storey rear extension has a flat rear elevation with no recess. It has no provision for refuse storage. Its rear door leads to the external staircase which provides access to the first floor accommodation over the top of the extension. Appeal B plans show metal railings which extend along the length of the single storey roof.

8. The design of the extension and staircase appear incongruous and not in keeping with their setting. I note that the original rear elevation of the host building included an external staircase but the staircase the subject of these appeals is materially different. It is more prominent and has no platform. It is visually prominent from Knavewood Road and its elevated position and overall height and bulk create a dominating appearance. I note other staircases in the

vicinity but these are generally located further back within the sites and are of different design. The external staircase is incongruous and out of keeping with other staircases in the parade.

9. The air conditioning units are located on the rear of the single storey extension under the external staircase. They are relatively large in size and only partly obscured by fencing. In their setting and in the context of the separation distance between the units and neighbouring residential properties I find them to be a discordant feature. I note the complaints of noise from neighbours but there is no noise assessment before me and I have not considered this as a main issue in the determination of these appeals.

10. I conclude that the development causes undue harm to the character and appearance of the host property and surrounding area and does not accord with relevant policies in the development plan (including policy EN1 of the ADMP) and the Framework.

Living conditions

11. Policy EN2 of the ADMP provides that development will be permitted where it would provide adequate residential amenities for existing and future neighbours.

12. The rear elevation of the site faces no. 5 Knavewood Road and is separated only by a narrow pathway. Whilst I agree that an external staircase is a long established feature of the property and creates a degree of mutual overlooking I agree with concerns of neighbours in Knavewood Road that the extent of overlooking from the repositioning of the staircase and its elongated nature causes a negative impact on their day to day enjoyment of their homes. The wider view of properties along Knavewood Road causes undue harm to the living conditions of neighbours with particular regard to overlooking and loss of privacy.

13. I conclude that the development causes undue harm to the living conditions of neighbours with particular regard to overlooking and privacy and does not accord with relevant policies in the development plan (including policy EN2 of the ADMP) and the Framework.

Conclusion

14. I have concluded that the development causes undue harm to the character and appearance of the area and to the living conditions of neighbours with particular regard to privacy and overlooking.

15. I have considered the Appellant's arguments regarding a fall back position arising out of the Permission. I cannot be certain on the evidence before me that there is a reasonable possibility that if planning permission is refused in these appeals that the Permission would be implemented. Moreover the difference between the impact of the development the subject of the Permission and the development the subject of these appeals is significant.

16. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance and the conditions suggested by the parties. I do not consider that landscaping or screening could adequately overcome the identified harm.

17. For the reasons given the appeal should not succeed and planning permission should not be granted.

Appeal A Ground (f) appeal

18. This ground of appeal is that the steps required by the notice are excessive.

19. There are two purpose that an enforcement notice can seek to achieve – to remedy the breach of planning control or to remedy the injury to amenity caused by the breach. The notice requires the land to be restored to its previous condition and therefore its purpose is to remedy the breach of planning control. No lesser steps than those set out in the notice would satisfy that purpose.

20. The Appellant says that to demolish the structure only to rebuild it in accordance with the Permission is an excessive requirement. But the notice does not preclude the Appellant from implementation of an extant planning permission.

21. For the reasons given above the ground (f) appeal does not succeed.

Appeal A Ground (g) appeal

22. This ground of appeal is that the period for compliance is unreasonably short. The notices provides for a four month compliance period.

23. The Appellant argues that four months is unreasonable and impractical. He suggests that twelve months would be a reasonable period.

24. I have balanced competing interests- the private interest of the Appellant and the public interest in bringing the identified harm to an end without unnecessary delay. I recognise the steps require the appointment of contractors and alternative storage facilities to be secured and I consider that six months would strike an appropriate balance.

25. For the reasons given above I conclude that a reasonable period for compliance would be six months and I am varying the notice accordingly prior to upholding it.

Formal Decisions

Appeal A

26. It is directed that the enforcement notice be corrected by substituting 'policy EN1' for 'policy E1'. The appeal is allowed on ground (g) and it is directed that the enforcement notice is varied by the substitution of six months as the period for compliance. Subject to this correction and variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

27. The appeal is dismissed.

S.Prail

Inspector