The Planning Inspectorate

Appeal Decisions

Site Inspection on 24 July 2019

by Graham Self MA MSc FRTPI

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

Decision date: 07 August 2019

Appeal Reference: APP/C1625/W/18/3214025
Site at: Cherry Tree House, Road from Batch Farm to Hillfield, Cranham GL4 8HZ

- The appeal is made by Mr Brandon Overs under Section 78 of the Town and Country Planning Act 1990 as amended against a refusal of an application for removal or variation of a condition following the grant of planning permission. The refusal was by Stroud District Council.
- The council's reference is S.18/1093/VAR.
- The application was dated 15 May 2018. The refusal notice was dated 3 July 2018.
- The proposal was described in the council's refusal notice as: "Variation of Condition 5 (approved plans) from permission S.15/0917/FUL (Amendments to design of property)".

Summary of Decision: The appeal fails.

Appeal Reference: APP/C1625/C/18/3215830
Site at: Land and Premises at Cherry Tree House, Cranham, Gloucester, Gloucestershire GL4 8HZ

- The appeal is made by Mr Adrian Overs under Section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by Stroud District Council.
- The council's reference is S.17/0335/UNBWK.
- The notice is dated 25 October 2018.
- The breach of planning control alleged in the notice is: "Without planning permission, the erection of a building shown edged in blue on the attached plan, built not in accordance to the approved plans".
- The requirements of the notice are:
  a. Demolish the building.
  b. Remove the resultant materials from the land.
- The period for compliance is six months.
- The appeal was made on ground (f) as set out in Section 174(2) of the 1990 Act.

Summary of Decision: The appeal fails.

Procedural Matters

1. Two different site addresses appear in the headings above. This is because in accordance with normal practice I have quoted the site addresses from the application for the Section 78 appeal and from the enforcement notice for the Section 174 appeal. Both appeals relate to the same site.

2. The condition which is now subject to the Section 78 appeal is Condition 5 of a planning permission granted in July 2015. The description of that proposal as stated in the 2018 application was:

> "Proposed three bedroom chalet bungalow (resubmission after refusal of S.14/2115/FUL) planning ref S.15/0917/FUL dated 06/07/2015".

3. Condition 5 of the permission provided that:

> "The development hereby permitted shall be carried out in all respects in strict accordance with the approved plans listed below:
>
> Proposed plans and elevations of 15/04/201
> Plan number = 14.766.05."

4. In the application now subject to appeal, the reason the applicant wished the condition to be removed or changed was stated as: "The condition states that the development should be carried out in accordance with approved plan ref 14.766.05, whereas the correct plan ref was 15.766.05. The as built construction incorporates variations to the height and roofscape". The application sought variation of the condition "to indicate that the building is built in accordance with revised scheme drawing ref 18.766.10".

5. Both the planning authority and the appellant's agent have referred to the proposal as "development" - for example, the planning authority's refusal notice is headed "Description of Development"; and documents submitted for the appellant refer to "proposed residential development".

6. There are some muddles here. For a start, an application to vary a condition attached to a planning permission is not "development" as defined in Section 55 of the 1990 Act. It seems to me that what was really being sought by the application now subject to the Section 78 appeal was not just "to indicate that the building is built in accordance with scheme drawing ref 18.766.10", but to seek retrospective planning permission for development already carried out (or mostly carried out), which is the erection of a dwelling, and for completion in accordance with the "revised scheme" drawings. The allegation in the enforcement notice ("the erection of a building") refers to the same development.

7. The only sensible way to consider the Section 78 appeal is on the basis that the "building" (which at the time of my inspection was structurally complete as a shell but unfinished internally) is intended to be a dwelling, but bearing in mind that some details, such as the nature of the glazing in certain windows, could potentially be subject to conditions if planning permission were to be granted. The fact that Condition 5 of the 2015 referred to the "wrong" plan number is a subsidiary matter. Even without this condition, a building not built in accordance with the permission would be unauthorised, and as appears to be generally agreed in this case, the building on the site was not authorised by the 2015 permission.

8. I also record here that the drawings labelled "As Built Plans" do not show accurately what has been built. I did not make fully detailed measurement checks of the whole building, but I noticed some differences from the drawings

including the size of two window openings in the east elevation (which are about twice as deep as shown in the drawings). I also noted that the northern part of the appeal site, labelled ""private amenity area cannot be seen" on one of the plans, is overlooked from other properties, including an upper-floor bay-shaped glazed structure at Woodborough and the southernmost terrace at Windycot. The overlooking is angled and not particularly close (the distance varies between around 20-40 metres depending on the viewpoint); but it is from a height, and the "cannot be seen" label is incorrect.

Section 78 Appeal against Refusal of Permission

9. The main issues raised by this appeal concern the design of the building and its effect on the amenities of neighbouring residential properties. These issues have to be considered having regard to relevant planning policies.

10. The appeal site is in an unusual location, closely adjacent to and partly surrounded by a group of existing dwellings, with its access along a shared right of way leading from what appears to be an unnamed track. The ground level in this area slopes irregularly down from roughly south-east to north-west.

11. The proposal to build a dwelling on this site has had a difficult history, apparently involving an "architect/builder" whose employment on the development was discontinued some time ago. Planning permission was granted in July 2015 for a proposed chalet bungalow, after earlier applications had been either refused or withdrawn. The building currently on the site has not been built in accordance with the 2015 permission - it is in a slightly different position and there are other differences including the floor slab level, roof height and shape, and some window positions. The internal layout also differs significantly, including the position of the staircase and layout of rooms.

12. The differences between what was permitted and what has been built have resulted in altered elevation designs, partly it seems to accommodate the fact that the area of the first floor is greater than the 2015 permitted proposal. The vertical proportion of wall to roof in the building now on the site is such that the building does not have the shape that I think most people would describe as a "chalet bungalow" with dormer-style windows set into the roof slope. The existing building has a kind of "dormer wall" at first floor level in its west elevation, taking up a large proportion of the roof slope. The north elevation has a gable instead of a partly hipped roof at first floor level, and the building as a whole also has a "high-shouldered" shape, the effect of which is to make the structure bulkier than might result from simply an increase in roof height. The overall effect is to make the building more like a two-storey house than a chalet bungalow.

13. The two properties most affected by the development are Windycot, which is east-south-east of the appeal site, and The Paddock, to the north. The dwelling at Windycot stands at a higher level than the appeal site and has outside terraces at different levels, from where there are views over the appeal site towards the west and north-west. As a general principle, it is not a proper purpose of planning control to preserve a view from a property across other private land, but in this instance the combination of siting, height and bulk of the building on the appeal site has had a major impact on the outlook from Windycot.

14. I am also concerned about the closeness of the proposed vehicle parking area to Windycot. Even allowing for the elevated position of Windycot and its outside terraces, the closeness of the parking area and the enclosed layout of this area would mean that noise would be reflected, and vehicle movements and activities

such as slamming of car doors would be likely to cause disturbance to occupiers of Windycot. A fence or wall might conceivably be erected above the vertical drop on the boundary between these two sites but that could be structurally difficult and in any case would unduly confine the main outlook from Windycot.

15. The dwelling at The Paddock is close to the northern boundary of the appeal site - a flat-roofed projection where there is a small utility area next to The Paddock's kitchen is only about a metre from this boundary, the rest of the dwelling being further away. There is some vegetation screening, which could potentially be increased. The effect of the disputed building on The Paddock is not a matter of overlooking, because the main feature of the building's elevation facing The Paddock is a gable wall which has no first floor windows; but the close presence of this gable at a higher level than The Paddock has a dominating and overbearing effect on the outlook from The Paddock.

16. Planning policies of potential relevance to this case are mostly generalised and so require judgment to be applied. For example, Policy CP14 of the Stroud District Local Plan provides that development will be supported where (among other things) it achieves no unacceptable adverse affect on the amenities of neighbouring occupants. Policy ES3 of the Local Plan provides that permission will not be granted to any development which would be likely to lead to (among other things) noise, general disturbance or an overbearing effect. I judge that the development subject to this appeal does not meet the aims of those policies.

17. In some locations, the design features mentioned above might not be objectionable. Here, because of the local topography and the sensitive location of the site so closely adjacent to other properties, the combination of building height and bulk has an unacceptably dominating effect on the outlook from The Paddock in particular; and if completed to the point of occupation and use as a dwelling with vehicle access, would have other adverse effects on the amenities of adjacent dwellings because of noise and disturbance. In summary, I judge that the scheme goes beyond the threshold of normal good neighbourly development.

18. I have considered the possibility of imposing conditions; but conditions could not make the development satisfactory.

19. I conclude that planning permission should not be granted. Therefore the appeal against the refusal of planning permission does not succeed.

Section 174 Appeal, Ground (f)

20. Under this ground of appeal it is claimed that the requirements of the enforcement notice go beyond what is necessary to remedy the breach of planning control. The appeal statement refers to discussions which have taken place with the planning authority to explore ways of making adjustments to the building to mitigate its impact. The appellant has also stated (in comments submitted by his agent in June 2019) that "we are very willing and able to modify the build to get it back as close as possible to the permitted planning dimensions".

21. The problems with this development have obviously not arisen through any deliberate attempt to flout planning controls. I sympathise with the position in which the appellant (Mr Adrian Overs) and his brother (Mr Brandon Overs, the appellant for the Section 78 appeal) now find themselves. But I cannot let natural sympathy override other considerations. An appeal against an enforcement notice on ground (f) of Section 172 is not an appropriate means of

getting planning permission for an alternative scheme, and I am not in a position to re-design the disputed building.

22. The council has opted not to submit a statement of case (relying on the officer's report) and I do not know the details of discussions between the appellant or his agent and the council. I have noted the suggestion that obscure glazing could be installed in some windows, but I have not been able to devise lesser steps which would overcome the objections to the unauthorised development and could suitably be substituted for those in the council's notice. I conclude that the appeal against the notice on ground (f) fails.

Formal Decisions

Appeal Reference APP/C1625/W/18/3214025

23. I dismiss the appeal.

Appeal Reference APP/C1625/C/18/3215830

24. I dismiss the appeal and uphold the enforcement notice.

G F Self

Inspector