



Appeal Decisions

Hearing Held on 3 July 2019

Site visit made on 3 July 2019

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal A: APP/M3455/C/19/3223185

Land at 1 Sandwell Place, Lightwood, Stoke-on-Trent ST3 7HW

- 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 Asif Naseem against an enforcement notice issued by Stoke-on-Trent City Council.
- The enforcement notice was issued on 18 January 2019.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of a dwelling.
- The requirements of the notice are 1. Demolish the unauthorised dwelling in its entirety to ground level; 2. Remove from the land all materials arising from compliance with requirement 1 above.
- The period for compliance with the requirements is 12 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 allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision (however note the requirement for modifications in accordance with condition 1).

Appeal B: APP/M3455/W/19/3215722

Land at 1 Sandwell Place, Lightwood, Stoke-on-Trent ST3 7HW

- 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 Asif Naseem against the decision of Stoke-on-Trent City Council.
- The application Ref 61500, dated 28 July 2017, was refused by notice dated 9 May 2018.
- The development proposed is erection of a new two storey family home utilising roof space.

Summary of Decision: The appeal is allowed, and planning permission granted subject to the conditions set out below in the Formal Decision (however note the requirement for modifications in accordance with condition 1).

Appeal C: APP/M3455/W/19/3215725

Land at 1 Sandwell Place, Lightwood, Stoke-on-Trent ST3 7HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Mr Asif Naseem against the decision of Stoke-on-Trent City Council.

- The application Ref 62006, dated 1 December 2017, was refused by notice dated 9 May 2018.
- The application sought planning permission for Erection of detached dwelling with rear balcony without complying with a condition attached to planning permission Ref 59699, dated 11 July 2016.
- The condition in dispute is No 2 which states that "The development hereby permitted shall be carried out in accordance with the following approved plans and documents
 - Proposed Floor Layout & Elevations Drawing No. 9208/111 Revision A dated 27 June 2016 received by the Local Planning Authority on 27 June 2016
 - Proposed Site Plan, Proposed Levels and Streetscene Drawing No. 9208/001 Revision D dated 27 June 2016 received by the Local Planning Authority on 27 June 2016"
- The reason given for the condition is For the avoidance of doubt and in order to define the permission.

Summary of Decision: The relevant planning permission has now lapsed and therefore no further action is taken in relation to this appeal.

Application for costs

1. At the Hearing an application for costs was made by Mr Asif Naseem against Stoke-on-Trent City Council. This application is the subject of a separate Decision.

Preliminary Matters

2. The appeal is lodged on grounds (a) and (f). Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land. The schemes advanced by the appellant as 'Option 3' and 'Option 5' are neither for the retention of what is built nor do they benefit from planning permission. Accordingly in order to give proper consideration to these alternatives I need to deal with them under ground (a), and amongst other things consider whether these outcomes could be achieved by granting planning permission "in relation to the whole or any part" of the matters alleged in the notice, either with or without conditions, in accordance with Section 177(1)(a) of the Act.
3. There is no dispute that planning permission Ref 59699 lapsed on 11 July 2019, without having been implemented. As an expired planning permission ceases to exist, there can be no section 73 appeal. I therefore take no further action with regard to Appeal C.
4. There is no dispute between the parties that the Council is able to demonstrate a five-year supply of housing land, and that consequently its development plan policies should attract full weight.

Appeal A on ground (a) and Appeal B

Main Issues

5. The main issues are i) the effect of the development on the character and appearance of the surrounding area, whilst taking into account any fallback position and ii) in the event that harm is found in this regard, whether the harm is outweighed by human rights considerations.

Reasons

Character and Appearance

6. The appeal site consists of a large, symmetrically designed, detached dwelling, with projecting bay windows, a central glazed feature with balcony and front dormer windows. It sits between two distinct residential areas, characterised by predominantly traditional semi-detached dwellings in a relatively straight alignment along Star and Garter Road to the west, and modern detached dwellings that follow the curved line and gradually rising gradient of Sandwell Place to the east.
7. In general terms I am in no doubt that the house, because of its overall height and depth, relative to adjacent properties, and its individual, modern design, stands out as being at odds with its surroundings, even when taking into account the contrast in character between, and to a degree within, the areas referred to above. The dwelling is particularly prominent in longer distance views from higher ground level to the east, over an expanse of open space extending from diagonally opposite the site. From this perspective the scale and design of the dwelling, including a large amount of the blank gable elevation, higher eaves level and central glazed feature and dormers emphasising the three-storey height, draw the eye as a relatively abrupt change to the visual rhythm of more similarly scaled and designed detached dwellings elsewhere along Sandwell Place.
8. I conclude for the above reasons that the dwelling appears incongruous with its surroundings. I have taken into account various supporting comments from third parties, including the quality of the development and the improvement to the physical condition of the site and security of surroundings compared to the situation beforehand. However, I have no reason to object to the quality of the build in its own right and note that the aforementioned improvements to the appearance and security of the site would not depend on the form and design of the dwelling that has been implemented. These considerations therefore attract very limited weight.
9. As such I find the development to be in conflict with Policy CSP1 of the Newcastle Under Lyme and Stoke on Trent Spatial Strategy 2009 (SS), Policy R3 of the Newcastle Under Lyme and Stoke on Trent Urban Design Guidance Supplementary Planning Document 2010 (SPD) and the National Planning Policy Framework (the Framework) insofar as they seek to promote high quality design and new housing well related to its surroundings.

The Fallback position

10. The site has a relatively lengthy planning history, involving a sequence of planning permissions granted by the Council for a dwelling of individual design, leading up to the planning permission in July 2016, for the scheme on which the current development is based. The appellant's position is that, aside from a small number of minor variations the Council has not taken issue with, the development accords with the July 2016 planning permission, with the exception that it has been constructed at higher ground level. The failure to excavate the site in accordance with expectations has resulted in the overall height of the dwelling being some 0.75 metres taller than approved.

11. Whilst the Council agree in principle that the finished ground level is at the heart of the discrepancy, it regards the overall height to be 0.86 metres taller than approved, such that the development does not accord with the permission granted. However, at the Hearing, the Council's Development Manager said that in addition to this concern, it would now take the view, in hindsight, that the approved design is not acceptable in this location, as it fails to integrate with its surroundings.
12. Notwithstanding this, the Council took the decision to grant planning permission for the dwelling in 2016. Whilst there is no dispute that the scheme, as built, measures taller than that approved under the previous planning permission, due to the difference between approved and implemented ground levels, it is nevertheless relevant that a majority of the design features and the building footprint have been previously approved.
13. The weight that should reasonably be given to this 2016 planning permission is therefore a key factor in my decision. At the time of the Hearing, the July 2016 planning permission was due to expire approximately one week later. The appellant's representations referred to the theoretical possibility of that permission being implemented, and therefore safeguarded, in the time between the Hearing and the permission lapsing. They say that this would result in a fallback position that, because of the similarity with what has actually been constructed on site, would weigh heavily in support of the retention of the dwelling as-built.
14. However the implementation of the 2016 planning permission would be predicated on the existing dwelling being demolished and the site excavated accordingly. I consider there would have been no realistic prospect of this action being taken in the absence of my decision. Furthermore, even if my decision had been issued prior to the permission lapsing, I am simply not persuaded that the necessary steps required to implement the 2016 permission would have been achievable in such a short period of time. My view in this regard is bolstered by the existence of the ground (g) appeal, claiming that 12 months would be insufficient time to comply with the notice.
15. Notwithstanding this, it is still relevant to assess the matter in the context that the Council made the decision to grant planning permission in 2016, and that that decision has only very recently expired. The Council confirmed at the Hearing that there has been no change in terms of the planning policy context, in relation to which the 2016 planning permission was taken. It also confirmed that there has not been any change to the physical circumstances of the site and its surroundings in this time. Therefore, whilst this permission would appear to have now lapsed, on the grounds that it was not lawfully implemented, under the circumstances and given the relative similarity between this permission and what has been constructed, albeit that there are material differences to distinguish the two, it nevertheless constitutes a material consideration weighing in support of the grant of planning permission in this case.
16. To its credit the Council has been transparent in conceding that it effectively made a mistake in granting the 2016 planning permission, saying that it would now apply its judgment differently. However, irrespective of differences in professional judgement between officers, the 2016 permission was ultimately a Council decision, for which the Council was collectively responsible. Consistent

decision making is key to upholding confidence in the planning system and, as such, like cases should be determined in a like manner. Accordingly in my view, a previous permission, albeit one that has recently lapsed, cannot simply be overlooked when it is sufficiently closely related to the issues that regard should be had to it.

17. Drawing the above considerations together, in the event that an application was made now to develop the site in accordance with the 2016 permission, I cannot rule out that planning permission would ultimately be forthcoming.
18. In light of this, it is important to consider the net impact between what has been built and what was previously permitted. Whilst the difference between the as-built dwelling and its immediate surroundings is most stark, seen in close proximity from the front of the property, this visual impact is relatively fleeting as one passes the site quickly. Furthermore views of the property from the junction of Star and Garter Road are substantially screened due to the presence of boundary planting.
19. As set out above it is considered that the most enduring views of the site are from longer range, further to the east along Sandwell Place. With greater distance the net visual impact of the development, when compared to what was previously deemed approvable, would not be starkly obvious, even when taking into account the differences in opinion between the parties regarding the degree of difference in question. It seems to me that a large expanse of the gable elevation, the central glazed feature and the front dormers would still remain visible.
20. Notwithstanding this, the approved dwelling would have sat lower on the site, and in my view would have stood out less prominently and therefore would have appeared less incongruous. I therefore consider that the as-built dwelling has still resulted in material net harm such that, on balance, the implications of the 2016 planning permission would not carry such weight as to justify the retention of the dwelling as constructed.

Other Matters

21. There have been a number of further objections raised against the development by third parties. I am satisfied that the building is sufficiently separated from adjacent properties not to result in harm to outlook or the availability of natural light. In terms of the need to safeguard privacy, the orientation of the dwelling and requirement to fit obscure glazing to side facing windows is sufficient to prevent overlooking of adjacent property.
22. Despite concern regarding parking provision, it was apparent from my visit that there is an extensive forecourt area available, and nothing before me to suggest that the development would lead to parking congestion on the adjacent street. Concerns raised with regard to potentially inadequate ground conditions have not been substantiated.
23. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission.

Human Rights

24. I recognise that the loss of the appellant's dwelling would result in significant interference with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998 (HRA). However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies.
25. In this case I have found the residential development to be in conflict with planning policies which would not be outweighed by its similarity with the 2016 planning permission. Although evidence has not been provided of the appellant's personal finances, from the submissions made it is apparent that he was required to sell his previous house in order to fund the existing development. It is also apparent from the evidence provided by the Council that the parties on whom the notice was served included the National Westminster Bank. This indicates that the appellant did not fund the development outright but needed to rely on mortgage finance and also that mortgage payments are outstanding. I have been provided with no evidence to suggest that the appellant was not relying on his builder and professional advisers to ensure the development was in accordance with planning permission or has benefitted financially from the site not being excavated.
26. On the balance of probability, I consider that in the context of a likely existing mortgage and the scale of the re-development cost involved, that the appellant would face significant financial loss if required to demolish the dwelling and construct or rent an alternative. Furthermore it seems that the prospect of raising further debt finance could be in doubt. I am in no doubt that these factors would be a cause of significant stress to the appellant.
27. Whilst it would appear that no alternative accommodation has been investigated, the appellant confirmed at the Hearing that his youngest two children are still attending school, which I have no reason to doubt. Clearly the loss of the dwelling and the need to make alternative provision would potentially be very disruptive to their learning and overall wellbeing.
28. Notwithstanding a difference in view about whether the appellant was warned by the Council, before the works were completed, about the possibility of a requirement for demolition, when taking into account the above, the degree of interference with human rights that would be caused would be substantial. This consideration therefore attracts significant weight.
29. However I am not persuaded, in the overall planning balance, that even in light of the human rights position, the complete demolition of the dwelling would not be a proportionate response to the harm caused by the development. Notwithstanding this it remains necessary for me to consider whether an acceptable alternative outcome can be achieved through the grant of planning permission, that would result in less severe consequences.

The 'Option 5' alternative

30. The difference between this alternative proposal and the unauthorised development, as constructed, essentially relates to the removal of the dormer windows in the roof of the front elevation, replacing them with rooflights, and

- the part-reconstruction of the central glazed feature, such that the apex would be lowered in relation to the main roof.
31. In this scheme the siting of the dwelling, window positions and floorspace would remain unaltered such that the house would still be very similar in scale, form and design. I also concur with the view that the lowered glazed central feature would constitute part of its present form.
 32. Therefore notwithstanding the Council's representations, having regard to case law¹, 'Option 5' can reasonably be regarded as 'part' of the scheme that constitutes the breach of planning control. As such, in accordance with s177(1)(a) of the Act, it would be possible to grant planning permission for this alternative proposal, as constituting part of the matter to which the notice relates.
 33. I consider that the amendments encapsulated by Option 5, whilst resulting in a plainer expanse of roof to the front elevation and retaining much of the overall scale of the dwelling, would serve to remove the uncharacteristic flat-roofed front dormer windows and reduce the prominence of the central feature. In so doing I consider that the distinctive and unusual appearance of the dwelling would be 'toned down' and would appear less at odds with the other dwellings on Sandwell Place.
 34. On balance I am not persuaded that the alterations would be enough to make the development accord with the Framework, Policy CSP1 of the SS and Policy R3 of the SPD. However, I consider that the degree of policy conflict would be significantly reduced and that this alternative is to be preferred when considered in relation to the 2016 permission design which, for the above reasons, I have found could potentially be approved again if re-submitted. Notwithstanding this, in my judgement, the negative consequences that would arise from the complete demolition of the dwelling, as discussed above, would serve to tip the balance in favour of the Option 5 alternative.
 35. I have had regard to the appeal decisions submitted by the Council, with respect to human rights issues. However it seems to me that the circumstances of those cases are different to the present appeal, such that it does not logically follow that the enforcement notice should be upheld in this case.
 36. In terms of human rights considerations, arising from the implementation of Option 5, I recognise that the modifications required would result in some interference with the appellant's human rights under Article 8. However from the information before me and the representations at the Hearing it is apparent that the financial burden of undertaking the modifications would be considerably less than the cost of demolishing and rebuilding the dwelling.
 37. Furthermore it appears that the family would not be required to move to alternative accommodation whilst the modifications to the building were being carried out. Accordingly I am not persuaded that the degree of interference with human rights would in this case be disproportionate to the value of the building modifications.

¹ *Ioannou v Secretary of State for Communities and Local Government*, [2015]; *Arnold v Secretary of State for Communities and Local Government* [2017] EWCA Civ 231

The 'Option 3' alternative

38. This Option would involve modifying the design of the dwelling by truncating the main roof apex, thus reducing the overall height by some 0.75 metres, by introducing a section of flat roof. In the appellant's view, the effect of this modification would be to make the overall height of the dwelling commensurate to that approved under the July 2016 planning permission.
39. However whilst the height of the dwelling would be reduced, I am in no doubt that from distance, the flat roof section, in the context of the retained dormers and central glazed feature, would appear somewhat contrived and even more at odds with its surroundings than the existing dwelling. This option would therefore result in significant harm to the character and appearance of the surrounding area and as such would be in conflict with the aforementioned policies. The harm, in my view, would not be outweighed by the harm caused by the previous planning permission, as would be the case with Option 5. Nor would this harm be outweighed by the relative financial savings of implementing this option, when compared with Option 5.

Planning Balance and Conclusion

40. I have found the existing development to be in conflict with relevant planning policies and that the prospect of an alternative development being implemented in accordance with the July 2016 planning permission would not attract sufficient weight to overcome this harm. However I have found that the 'Option 5' alternative would result in reduced policy conflict. Furthermore in this scenario the harm would be outweighed by the prospect of an alternative development being implemented in accordance with the July 2016 planning permission and / or by the adverse consequences that would arise from complete demolition of the existing dwelling, when having regard to human rights considerations.
41. Accordingly I conclude that the appeal should succeed on ground (a) and planning permission will be granted subject to conditions, including a requirement for the development to be modified in accordance with the 'Option 5' proposal.

Conditions

42. I have considered the need for appropriate conditions. A condition requiring modifications to be made to the design of the dwelling, in accordance with Option 5, is needed in the interests of the character and appearance of the area.
43. The purpose of this condition is to require the appellant to comply with a strict timetable for dealing with modifications which need to be addressed in order to make the development acceptable. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent implementation of the outstanding detailed matter because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission, where the changes are not implemented during the time set by the condition. Should the requirements of the condition not be met in line with the strict timetable, then the dwelling

would have to be demolished. The parties have raised no objection to the imposition of this condition.

44. Conditions are required controlling the use of external materials to safeguard the character and appearance of the area. Conditions removing permitted development rights in relation to extensions, outbuildings and potential additional windows; requiring the retention of side facing windows in obscure glazing and preventing the use of the rear extension as a balcony are all required in order to protect the living conditions of residents and the character and appearance of the area.
45. It is apparent from further information provided after the Hearing that separate foul and surface water drainage systems have been installed, albeit with some minor divergence from approved plans. However, taking into account the photographic evidence provided and that no related problems appear to have been recorded, I am satisfied that the imposition of a further condition will not be required.

Appeal A on grounds (f) and (g)

46. Because of my decision to allow the ground (a) appeal subject to conditions, and planning permission is granted subject to modification in accordance with the 'Option 5' proposal, the enforcement notice will be quashed. Consequently the appeals on grounds (f) and (g) do not fall to be considered and I need take no further action in this regard.

Formal Decisions

Appeal A

47. 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 dwelling on Land at 1 Sandwell Place, Lightwood, Stoke-on-Trent ST3 7HW referred to in the notice, subject to the conditions below.

Appeal B

48. The appeal is allowed, and planning permission granted for erection of a new two storey family home utilising roof space at Land at 1 Sandwell Place, Lightwood, Stoke-on-Trent ST3 7HW in accordance with the terms of the application Ref 61500, dated 28 July 2017, subject to the conditions below.

SCHEDULE OF CONDITIONS

- 1) The dwelling hereby permitted shall be demolished and all materials resulting from the demolition shall be removed from the land within **twelve months** of the date of failure to meet the requirement set out in i) below:
 - i) Within **six months** of the date of this decision the unauthorised dwelling, the subject of the notice, shall be completed in accordance with the modifications shown on the following drawing: 2379/18/08 dated August 2018 (known by the appellant and Council as 'Option 5').
- 2) All new external materials used in accordance with condition 1 above shall match those of the existing dwelling.
- 3) Details of the proposed rooflights shall be submitted to and approved in writing by the Local Planning Authority, prior to being installed. The modifications shall be carried out in accordance with the approved details and thereafter retained.
- 4) The obscure glazing fitted to the east side elevation of the dwelling shall be retained in perpetuity.
- 5) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 or any order revoking or re-enacting that Order, with or without modifications, no extensions to any elevation, outbuildings or additional windows on the east and west elevations shall be erected within the curtilage of the dwellinghouse.
- 6) The flat roofed single storey rear element shall at no time be used as a balcony without the prior consent of the Local Planning Authority.

END OF SCHEDULE OF CONDITIONS

Roy Merrett

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Asif Naseem	Appellant
Carl Copestake	Agent (Knights Plc)
Alan Corinaldi-Knott	Agent (Knights Plc)
Rob Pattinson	Solicitor (Knights Plc)

FOR THE LOCAL PLANNING AUTHORITY:

Killian Garvey	Barrister
Tom Coates	Development Manager
Karen Kent	Planning Officer
Kerry Mee	Planning Enforcement Officer

INTERESTED PARTIES:

John Clowes	Lightwood Community Group
Sean Gifford	Local resident
Talib Hussain	Local resident
Zahoor Hussa	Local resident
Yasir Hussain	Local resident

Documents Submitted at Hearing:

- Letter of support from local resident
- Drawing RBS – 17/0949/001 Rev A – Topographical Survey
- Drawing RBS – 18/1064/002 – Elevations
- Drawing NAS216/1-003 – As Constructed Street Scene
- Case Law – *Ioannou v Secretary of State for Communities and Local Government*, [2015]; *Arnold v Secretary of State for Communities and Local Government* [2017] EWCA Civ 231

Documents submitted following Hearing:

- Drainage condition – planning note
- Appellant's response to case law submitted