



Appeal Decisions

Site visit made on 12 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 17th January 2020

Appeal A: ref. APP/G2625/C/19/3225581

Bowthorpe Road Methodist Church, 302 Bowthorpe Road, Norwich NR5 8AB

- 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 by David Everitt against an enforcement notice issued by Norwich City Council.
 - The enforcement notice, ref. 18/00016/ENF No. 2, was issued on 1 March 2019.
 - The breach of planning control alleged in the notice is the construction of a church hall on the Land without planning permission.
 - The requirements of the notice are to:
EITHER
 - a. Demolish the church hall shaded orange on the site plan attached to this notice (Plan B), remove all demolition materials from the site and make good the western wall of the vestry and toilet facilities marked in green on the attached site plan (Plan B);OR
 - b. Partially remove the pitched roof to the church hall and the gable wall to the north elevation and replace it with a hipped roof to the northern most elevation of the church hall building as illustrated in blue on the elevation plan attached to this notice (Plan C) The replacement hipped roof shall:
 - i. result in an eaves height on the north elevation which matches that of the west and east elevations of the existing pitched roof;
 - ii. have a pitch of no greater than 45 degrees;
 - iii. be a complete hip between the newly created eaves as detailed at i. above and the existing ridge line;
 - iv. be constructed with materials matching the pitched roof on the east and west elevations;
 - v. be provided with rainwater goods matching those in place on the east and west elevations;
 - vi. be void of any openings or windows.
 - The period for compliance with either of the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.
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Appeal B: ref. APP/G2625/W/18/3209787

**Bowthorpe Road Methodist Church, 302 Bowthorpe Road,
Norwich NR5 8AB**

- 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 David Everitt against the decision of Norwich City Council.
 - The application ref.17/02024/F, dated 19 December 2017, was refused by notice dated 25 July 2018.
 - The development proposed is demolition of existing dangerous structure, building a new church hall with amenities, and connecting to the existing church.
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Decisions

Appeal A: ref. APP/G2625/C/19/3225581

1. 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 construction of a church hall on land at Bowthorpe Road Methodist Church, 302 Bowthorpe Road, Norwich NR5 8AB referred to in the notice, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: C765/3 02/A; C765/2 01; C765/3 15/A; C765/3 04/A; C765/3 52/E, and C765/3 56.
 - 2) (a) Unless within 1 month of the date of this decision programmes clearly indicating the timescales for completion of the scheme for secure bicycle storage; the scheme for refuse storage and re-cycling; and the scheme for the proposed landscaping works (including a landscape management plan setting out management responsibilities and a schedule of maintenance operations for all landscaped areas for a minimum period of five years following implementation) are submitted to the local planning authority for approval in writing, and unless the approved schemes for secure bicycle storage, and refuse storage and re-cycling are implemented within 3 months of the local planning authority's approval, or in the case of the landscaping works the first available planting season following the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.
(b) If no programmes in accordance with this condition are approved within 6 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.
(c) Upon implementation of the approved programmes specified in this condition, the schemes for secure bicycle storage, and for refuse storage and re-cycling shall be retained thereafter as approved, and the landscaping management plan shall continue as approved.
(d) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Appeal B: ref. APP/G2625/W/18/3209787

2. The appeal is allowed and planning permission is granted for the demolition of existing dangerous structure, building a new church hall with amenities, and connecting to the existing church at Bowthorpe Road Methodist Church, 302 Bowthorpe Road, Norwich NR5 8AB in accordance with the terms of the application ref.17/02024/F, dated 19 December 2017, and the plans submitted therewith, subject to the following conditions:
 - 1) The development hereby permitted shall be carried out in accordance with the following approved plans: C765/3 02/A; C765/2 01; C765/3 15/A; C765/3 04/A; C765/3 52/E, and C765/3 56.
 - 2) (a) Unless within 1 month of the date of this decision programmes clearly indicating the timescales for completion of the scheme for secure bicycle storage; the scheme for refuse storage and re-cycling; and the scheme for the proposed landscaping works (including a landscape management plan setting out management responsibilities and a schedule of maintenance operations for all landscaped areas for a minimum period of five years following implementation) are submitted to the local planning authority for approval in writing, and unless the approved schemes for secure bicycle storage, and refuse storage and re-cycling are implemented within 3 months of the local planning authority's approval, or in the case of the landscaping works the first available planting season following the local planning authority's approval, the use of the site shall cease until such time as a scheme is approved and implemented.
(b) If no programmes in accordance with this condition are approved within 6 months of the date of this decision, the use of the site shall cease until such time as a scheme approved by the local planning authority is implemented.
(c) Upon implementation of the approved programmes specified in this condition, the schemes for secure bicycle storage, and for refuse storage and re-cycling shall be retained thereafter as approved, and the landscaping management plan shall continue as approved.
(d) In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary matters

3. In Appeal A on ground (b) The appellant argues that the matters alleged have not occurred since the 2016 planning permission expressly permits the erection of a church hall. This is effectively an appeal on ground (c) – that there has been no breach of planning control. I have treated the appeal on grounds (b) and (c) together.
4. The proposal in Appeal B is effectively for retention of the development that is subject of the enforcement notice. I have therefore treated Appeal A on ground (a) and Appeal B together.

Background matters

5. In July 2016 planning permission subject to conditions was granted for the demolition of existing structures on the appeal site and erection of a church hall extension¹. This has been largely completed as is in use. The Council's

¹ Decision notice ref. 16/00414/F dated 11 July 2016.

principal concern is the siting of the hall in relation to the northern site boundary.

Appeal A on grounds (b) and (c)

6. Grounds (b) and (c) are two of the so-called 'legal' grounds on which the burden of proof is on the appellant to show that on the balance of probabilities on ground (b) that the alleged breach has not occurred as a matter of fact, and on ground (c) that there has been no breach of planning control.
7. Looking first at ground (c), the appellant does not accept that the development carried out is not in accordance with the planning permission. This is on the basis that it accords with the plans numbered 52/A and 52/H² when compared with the aerial photograph of the site. Furthermore, any discrepancy arises from an incorrect illustration of the rear (northern) boundary on plan number 03/C. I note that plans 52/A and 52/H are not approved drawings for the 2016 planning permission, and appear to be similar to plan 52/E submitted with the refused application 17/02024/F subject of Appeal B.
8. The most relevant approved plans are 02/A, the proposed site location plan, and 03/C the proposed site plan, with parking. These are both referred to in the decision notice in Condition 2 that requires development to be carried out in accordance with the approved plans. Neither plan gives a dimension for the distance of the new hall from the back boundary, and I note there is a discrepancy between these plans in that plan 03/C shows the front elevation of the hall standing slightly forward of the existing church building, whereas plan 02/A shows the front elevation very slightly to the rear of the front of the existing church building. I note also that approved plan 16.2, which is at a larger scale, shows a similar relationship between the front elevations of the proposed hall and the existing church.
9. The aerial photograph submitted by the appellant shows the front elevation of the hall as built to be in approximately the position indicated on plans 02/A and 16.2. However, the back – northern – corner of the hall appears very much closer to the northern boundary of the site than on either of the approved drawings, or on plans 52/A and 52/H. It appears to me there is a significant discrepancy between any of the drawings put forward and what has actually been built. The length of the new hall in comparison with the existing church building appears very much the same as between drawings, and it is therefore likely there has been an error in showing the location of the new hall in relation to the back boundary.
10. This error was clearly undetected, but nevertheless the building as it stands is significantly closer to the back boundary than is indicated on the approved drawings. I consider, as a matter of fact and degree that the position of the new hall does not accord with the position shown on the approved plans. On the balance of probabilities the development has not been carried out in accordance with planning permission ref. 16/00414/F as a result of a significant divergence from the approved plans. Furthermore, also on the balance of probabilities, it is clear that the alleged breach has occurred as a matter of fact. The appeals on grounds (b) and (c) therefore fail.

² For the sake of clarity I have omitted the job number – C765/3 – from all the plan references.

Appeal A on ground (a), the deemed planning application, and Appeal B

11. I consider the main issue in the cases to be the effect of the development on living conditions for occupants of dwellings in the vicinity of the appeal site in terms of daylighting, overshadowing and outlook.
12. I saw that the north-eastern corner of the church hall stands about 6.5 metres from the northern site boundary, measured at right angles to the boundary. This dimension increases to roughly 10 metres at the north-western corner. The Council consider the north-eastern corner of the hall on the approved drawings is shown as approximately 9 metres from the boundary when measured at right angles to that boundary. The enforcement notice states this minimum dimension is 4.5 metres less than indicated on the approved drawings rather than 3.5 metres less. This discrepancy has arisen as a result of the difference between the dimension to the boundary measured along the line of the eastern flank of the hall, and that taken at right angles to the boundary.
13. The closest dwelling to the new hall is no. 10 Old School Close. It is a two-storey semi-detached house standing with its flank wall parallel and close to the northern appeal site boundary. Its back garden extends towards the west of the house. There is an approximately 1.8 metre high fence on the common boundary, a conservatory on the back of the house, and there are dense shrubs growing above the fence.
14. All windows on the western elevation of no. 10 face slightly away from the new hall, and it appeared to me that the effect on daylighting in those rooms would be relatively slight. This is borne out by the analysis of daylighting submitted by the appellant. This concludes that there would be very little impact on windows of habitable rooms in terms of the vertical sky component of daylight, and that all the assessed rooms in the house would comfortably meet the Building Research Establishment (BRE) guidelines on daylight distribution.
15. As to sunlight in habitable rooms at the back of no. 10, given their orientation it must be the case that no sun would shine on the back of the house until after midday at any time of year. The appellant's analysis shows that there would be little impact in terms of available sunlight hours in the relevant rooms, and they would comfortably meet the BRE planning guidance in that respect.
16. Regarding sunlight to the back garden, there would clearly be some loss before midday, particularly in winter, but relatively little in the afternoon. Again, the appellant's analysis shows there would be little impact on the hours of direct sunlight for the external amenity space, and the BRE guidelines would be comfortably met.
17. As noted above the back of no. 10 faces slightly away from the hall. Furthermore, the distance of gable end of the hall from the boundary increases towards the west. As a result, views of the hall from the house are oblique, and there is little impact upon the outlook from within the house. Furthermore, the boundary fence and shrubbery will screen the hall looking from the back garden.
18. As to other dwellings in Old School Close – principally the bungalows to the west of no. 10 – they are at a distance from the hall such that there can only be a small impact upon sunlight, daylight and outlook.

19. Although the presence of the new hall inevitably has a degree of impact on residential amenity, I am aware that the extended church provides an important community benefit. I consider this benefit outweighs such relatively small impact as there is. I conclude on the main issue that the development causes no significant harm to living conditions for occupants of dwellings in the vicinity of the appeal site in terms of daylighting, overshadowing and outlook. The development accords with the development plan, in particular Policy DM2 of the Council's Development Management Policies Local Plan of 2014, which seeks to prevent unacceptable impact on living conditions, and to prevent overshadowing, and loss of light and outlook. The appeal on ground (a), and the planning appeal therefore succeed.
20. The development already largely exists as defined in the planning appeal proposals. The proposals include landscaping works, retention of trees, provision of secure bicycle parking, and a refuse/recycling bin store. These elements are to my mind necessary to make the development acceptable. Insofar as they may be incomplete, I consider it would be necessary and reasonable to impose planning conditions requiring the development to comply with the application drawings, and to require the appellant to comply with possibly outstanding matters.
21. I have drafted this latter condition so as to require the appellant to comply with a strict timetable for dealing with such matters. 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, and a permission granted in a ground (a) enforcement appeal, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of outstanding detailed matters because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements.

Conclusions

22. For the reasons given above and having regard to all other matters raised I conclude that Appeal A should succeed on ground (a) and planning permission will be granted on the deemed planning application. The enforcement appeal on grounds (f) and (g) does not therefore need to be considered. The appeal on ground B succeeds and planning permission will be granted.

Stephen Brown

INSPECTOR