



Appeal Decision

Site visit made on 10 February 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 09 March 2020

Appeal Ref: APP/R4408/C/19/3232682

Land adjacent 35 George Street, Goldthorpe, Rotherham S63 9AY

- 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 Mohammed Akbar Sharif against an enforcement notice issued by Barnsley Metropolitan Borough Council.
- The enforcement notice was issued on 7 June 2019.
- The breach of planning control as alleged in the notice is development has taken place pursuant to planning permission ref: 2016/0060 (Erection of a pair of semi-detached dwellings, amended plans), granted by the Council on 28th July 2016. However, the development which has been constructed on site is not in accordance with the approved plans and conditions granted by the Council. The development has therefore been constructed in a way which is materially different to that approved by the Council and therefore does not have planning permission.
- The requirements of the notice are: -
 - (i) Demolish the development in its entirety and
 - (ii) Remove all building materials, foundations, rubble and waste associated with the demolition of the development from the site, ensuring the land is left in a safe condition.
- The period for compliance with the requirements is 2 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 (the 1990 Act).

Summary 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.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
2. Planning permission¹ for the erection of a pair of semi-detached dwellings on the appeal site was granted by the Council on 28th July 2016 subject to a number of conditions (the planning permission). The description of the alleged breach cites that the development has not been carried out in accordance with the approved plans and conditions of that planning permission. Where it is considered that the development differs materially from the scheme granted planning permission it is reasonable to consider that the development has been

¹ Ref: 2016/0060

carried out without planning permission rather than a breach of a condition with regard to compliance with the approved plans.

3. As the enforcement notice cites section 171A(1)(a) of the 1990 Act and given the reasons for issuing the notice the Council clearly consider that the development is materially different to that granted planning permission. Nevertheless, as there is a ground (a) appeal and a deemed planning application I have to ensure that the breach of planning control as stated in the enforcement notice consists of an accurate description of the alleged breach as it is the basis for considering the deemed planning application.
4. In this case the description of the breach of planning control contains wording that does not relate to an act of development and is more akin to reasons for issuing the enforcement notice. Consequently, I intend to delete the wording '*development has taken place pursuant to planning permission ref: 2016/0060 (Erection of a pair of semi-detached dwellings, amended plans), granted by the Council on 28th July 2016. However, the development which has been constructed on site is not in accordance with the approved plans and conditions granted by the Council. The development has therefore been constructed in a way which is materially different to that approved by the Council and therefore does not have planning permission*'. I intend to substitute that wording with '*the erection of a pair of semi-detached dwellings*'. Taking into account the evidence before me, the appellant clearly understands that the notice is directed at the erection of the dwellings as constructed. I consider that I can carry out these corrections without injustice to either main party. I will therefore correct the enforcement notice in these respects, in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act.

The ground (a) appeal and deemed planning application

Background

5. As stated above, planning permission was granted for a pair of semi-detached dwellings on this site subject to a number of conditions. These included conditions relating to the development being carried out in accordance with the amended plans, the provision and surfacing of parking/ manoeuvring facilities and windows on a side elevation being obscure glazed. I acknowledge that the annotation of the front and rear elevations on the approved plans for the planning permission was transposed.
6. I observed on site that the external elements of a pair of semi-detached dwellings that appear to be of a similar design and size to that shown on the plans associated with the planning permission have been substantially completed. However, the dwellings do not appear to be occupied and the boundary treatments and any parking/manoeuvring facilities do not appear to have been constructed. The alleged breach of planning control states that the dwellings have been constructed in a way that is materially different to that approved. The reasons for issuing the notice cite the position of the dwellings, their contrived design, window positions and the lack of two off-street parking spaces for each dwelling.
7. The appellant has submitted plans and elevations² that he considers represents what has been constructed on the appeal site. However, I noted that the size

² Plan Ref; As built plans & elevations Rev E

and position of some of the fenestration within the dwellings as constructed does not entirely correlate with those plans. As such, in these respects I have dealt with the appeal on the basis of what has been constructed on the appeal site.

8. The appellant has also submitted a Site Plan - Rev G indicating where he considers that the parking/manoeuvring facilities can be provided within the appeal site. All parties have had the chance to comment on that plan and there would not be injustice to any party by my consideration of it.
9. I have not been provided with any evidence to indicate that the planning permission is still extant or that the conditions attached to it were formally discharged. Furthermore, the application site for that scheme included an area adjacent to Highgate Court that does not form part of the appeal site. As a result, a boundary wall/railings preclude vehicular access to the side of one of the dwellings.
10. As such, I consider that it is unlikely that the consented scheme would be implemented, as shown on the approved plans before me, and it therefore has limited weight as a fallback position. Nevertheless, this recent permission indicates that the Council considered, at that time, the dwellings as allowed would not result in harm to the character and appearance of the area, the living conditions of the occupiers of nearby dwellings or highway safety. Consequently, it is reasonable to treat the planning permission as a material consideration in this appeal.

Main Issues

11. The main issues are: -

- The effect on the character and appearance of the area;
- The effect on the living conditions of the occupiers of 18 Highgate Court (No 18) with regard to privacy;
- Highway safety with regard to parking provision.

Reasons

Character and appearance

12. The area surrounding the appeal site is characterised by mainly residential dwellings that consist of a mix of traditional terraces and more modern detached and semi-detached dwellings. As such, there is a variety to the styles, sizes and positions of fenestration that are apparent on these dwellings.
13. The dwellings as constructed are at different ground levels to each other due to the sloping topography of the site and the external materials used in their construction is in keeping with the nearby dwellings. The overall width and height of the dwellings as constructed appears to be very similar to that shown on the approved plans for the planning permission. In these respects, the dwellings are also in keeping with nearby dwellings.
14. I acknowledge that the fenestration on the front and rear elevations differs to that on the approved plans as the front and rear elevations have been transposed – this appears to have arisen from the error, highlighted above, on the approved plans. Nonetheless, the style and size of the windows is not

dissimilar to that of other fenestration that is visible in the vicinity of the site. The difference to the fenestration pattern of the front elevation has resulted in a slightly greater solid to void ratio than that shown on the approved plans of the planning permission. In addition, the design and position of the fenestration on the side elevations are different to that shown on the approved plans. However, these alterations to the fenestration have not significantly altered the overall architectural character of the dwellings when compared to that approved through the planning permission.

15. The Council have stated that the position of the dwellings on the site is different to that on the approved plans. Notwithstanding, the issue highlighted above with the part of the site adjacent to Highgate Court, the Council has not specified how the positioning of the dwellings differs to that shown on the approved plans. I observed on site that the dwellings appear to be in a similar position on the site to that shown on those approved plans.
16. Taking into account all of the above, I consider that dwellings as constructed do not and when the scheme is fully completed it would not harm the character and appearance of the surrounding area. It follows that the development is and would comply with Policy D1 of the Adopted Local Plan (LP) which, amongst other things, seeks development that is of a high-quality design that will be expected to respect local character.

Living conditions

17. The windows on the side elevation of the one dwelling (Plot 2) face towards the adjacent dwelling at 18 Highgate Court. As stated above, the design and position of those windows is different to that on the approved plans. I also note that a condition on the planning permission states that '*The windows on the side elevation of the property facing 18 Highgate Lane shall be obscure glazed and shall thereafter be retained as such*'. Notwithstanding, the typographical error in the address the reason for that condition is in the interests of neighbouring amenities.
18. The windows as installed do not appear to be obscure glazed and it is not clear if they are capable of being opened. Whereas, the windows on the approved plans would appear to be capable of being opened on one side and the condition did not restrict the opening of them.
19. The first-floor window on the side elevation of Plot 2 has been positioned further towards the rear of the dwelling than that shown on the approved plans. Combined with the fact that No 18 and its garden area is at a lower ground level than the appeal site this would mean that the future occupiers of the dwelling on Plot 2 would be able to overlook into that garden area. This would have an adverse impact on the current levels of privacy enjoyed by the occupiers of No 18 and as such it would result in harm to their living conditions in that respect.
20. Nonetheless, this harm is capable of being mitigated by the imposition of a planning condition that requires the windows to be obscure glazed and their opening restricted before the dwelling is occupied. Although concern has been raised with regard to the appellant complying with such a condition, it would be open to the Council to enforce against any breach of that condition.

21. In conclusion, with a condition imposed the development would not harm the living conditions of the occupiers of No 18 with regard to privacy. It follows that the development would comply with paragraph 127 of the National Planning Policy Framework Planning (the Framework) which states, amongst other things, that decisions should ensure that developments create places with a high standard of amenity for existing and future users.

Highway safety

22. George Street is a no through road and the appeal site fronts part of the turning head that forms the end of the highway where it bounds Highgate Court. There is a wall and railings between George Street and Highgate Court that precludes vehicular access between those roads. There is a children's play area on the opposite side of George Street.
23. LP Policy T4 states, amongst other things, that new development will be expected to be designed and built to provide all transport users within and surrounding the development with safe, secure and convenient access and movement. The Council has stated that a Supplementary Planning Document (SPD) requires 2 car parking spaces to be provided for a dwelling of the size of those constructed. However, I have not been provided with a copy of that SPD and as such it has little weight in this case.
24. The Framework states at paragraph 109 that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
25. The submitted site plan and the approved drawings indicate that the dwelling adjacent to 35 George Street (Plot1) would have 2 off street parking spaces to its side. There is no dispute that these spaces are capable of being provided. The wall/railings between George Street and Highgate Court preclude vehicular access to the parking area, that is shown on the approved plans, to the side of the dwelling on Plot 2. The submitted site plan indicates that access to that parking area could be provided from the access drive that runs between the rear of the dwellings on George Street/Highgate Court and those dwellings that front onto Highgate Lane. This access drive is relatively narrow and whilst it does appear to be used to access vehicular parking areas near to its junctions with the highway there is little evidence to suggest that there other parking areas served off it. I observed that its narrow width was further restricted by the storage of waste bins and other items along it but that it was relatively straight in alignment and there was good visibility along it.
26. It may be physically possible for a vehicle to access the rear of Plot 2 from the access drive. However, given the restrictions noted above I consider that it is highly likely that the future occupiers of that dwelling would, for convenience reasons, park on George Street in close proximity to their dwelling even if rear access to a parking area was provided.
27. The traditional terraced housing that fronts onto George Street has no off-street parking from that street. The access drive to the rear does appear to be used to provide vehicular parking to the rear of a small number of these dwellings. As such, there was a moderately high demand for on-street parking spaces in George Street at the time of my site visit (middle of the day). I acknowledge, this only provides a snapshot in time and that at other times of

the day and year, taking into account the play area, that the levels of on-street parking may be higher.

28. Nevertheless, the alignment and relatively generous width of George Street ensure that there is sufficient visibility and space for vehicles to be able to easily pass parked vehicles without adversely affecting highway safety even when vehicles are parked on both sides of the street. Moreover, these factors also ensure that the free flow of traffic is not appreciably impeded by that on-street parking. In addition, I did not observe any evidence of unsafe parking or significant issues relating to the safe and efficient operation of the highway network.
29. Furthermore, there is no evidence before me to indicate that existing on-street parking is causing harm to highway safety or impeding the safe and efficient operation of the highway network. I acknowledge that the vehicles associated with Plot 2 would be parked within the turning head. However, I observed that, given the width of George Street, even with cars parked within the turning head that vehicles can safely turn within it.
30. Taking into account all of the above, I consider that even with on-street parking from Plot 2 that it is highly unlikely that the development would result in an unacceptable impact on highway safety or that the residual cumulative impacts on the road network would be severe. It follows that the development would comply with LP Policy T4 and paragraph 109 of the Framework.

Conditions

31. I have not been provided with any suggested conditions by either party. However, I have been provided with a copy of the conditions imposed on the planning permission and the parties were given the chance to comment on whether those conditions would be necessary in this case.
32. As the development has already commenced and given my findings above in relation to the external materials used on the dwellings I consider that the time limit, approved plans and materials conditions are not required.
33. Even though, I have found that the on-street parking associated with Plot 2 would not have an unacceptable impact on highway safety the site plan indicates that there would be a parking area to the side of Plot 1. To ensure that the materials used for that parking area do not have an unacceptable impact on highway safety I consider that it is necessary to impose a condition in that respect.
34. There is no indication that foul and surface water drainage details have been discharged and to ensure the acceptable drainage of the area a condition is necessary. I have not imposed the separate condition on surface water run off as I consider that it would duplicate the drainage condition.
35. As the development is not complete, I consider that a condition on the hours of operation and deliveries is necessary to protect the living condition of nearby occupiers.
36. There is little evidence to indicate whether a retaining wall would be required to Highgate Court, so I have amended the wording of the condition. The condition in relation to boundary treatments is required in the interests of the character and appearance of the area.

37. Given my findings above a condition in relation to obscure glazing the windows in the side elevation of Plot 2 is required. It is not clear if the windows can be or are designed to be opening but it is necessary to ensure that the opening of the windows is restricted in the interests of the living conditions on the occupiers of No 18.

Conclusion

38. For the reasons given above I conclude that the appeal should succeed on ground (a) and I will grant planning permission in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended, which will now relate to the corrected allegation. The appeal on grounds (f) and (g) does not therefore need to be considered.

Formal Decision

39. It is directed that the enforcement notice be corrected by: -

- The deletion of the words '*development has taken place pursuant to planning permission ref: 2016/0060 (Erection of a pair of semi-detached dwellings, amended plans), granted by the Council on 28th July 2016. However, the development which has been constructed on site is not in accordance with the approved plans and conditions granted by the Council. The development has therefore been constructed in a way which is materially different to that approved by the Council and therefore does not have planning permission*' from the description of the alleged breach;
- The substitution of the wording above with '*the erection of a pair of semi-detached dwellings*' within the description.

Subject to these corrections the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act, for the development already carried out, namely the erection of a pair of semi-detached dwellings on the land adjacent 35 George Street, Goldthorpe, Rotherham S63 9AY, subject to the following conditions:

- 1) The parking/manoeuvring facilities, indicated on the Site Plan - Rev G to serve the dwelling adjacent to 35 George Street, shall be surfaced in a solid bound material and made available for the manoeuvring and parking of motor vehicles prior to that dwelling being brought into use, and shall be retained for that sole purpose at all times.
- 2) Construction or remediation work comprising the use of plant, machinery or equipment, or deliveries of materials shall only take place between the hours of 0800 to 1800 Monday to Friday and 0900 to 1400 on Saturdays and at no time on Sundays or Bank Holidays.
- 3) No part of the development shall be occupied or brought into use until:
 - (a) Full foul and surface water drainage details, including a scheme to reduce surface water run off by at least 30% and a programme of works for implementation, have been submitted to and approved in writing by the Local Planning Authority:

(b) Porosity tests are carried out in accordance with BRE 365, to demonstrate that the subsoil is suitable for soakaways;

(c) Calculations based on the results of these porosity tests to prove that adequate land area is available for the construction of the soakaways;

Thereafter no part of the development shall be occupied or brought into use until the approved scheme has been fully implemented. The scheme shall be retained throughout the life of the development.

- 4) No part of the development hereby permitted shall be brought into use or occupied until there has been submitted to and approved in writing by the Local Planning Authority a plan and details indicating the design and the position of all boundary treatments to be erected throughout the site. The boundary treatments shall be completed before any of the dwellings are occupied. Development shall be carried out in accordance with the approved details.
- 5) The dwelling hereby permitted, adjacent to 18 Highgate Court, shall not be occupied until the windows on its side elevation have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter.

D. Boffin

INSPECTOR