



Appeal Decisions

Site visit made on 4 June 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 7 August 2020

Appeal Refs: APP/X1355/C/19/3240887 (Appeal A) & APP/X1355/C/19/3240888 (Appeal B)

Land to rear of 85 Newholme Estate, Station Road, Wingate, County Durham TS28 5EW

- 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 Percy Stephenson (Appeal A) and Mrs Gillian Stephenson (Appeal B) against an enforcement notice issued by Durham County Council.
 - The enforcement notice was issued on 11 October 2019.
 - The breach of planning control as alleged in the notice is: without planning permission, the operational development comprising of the partial constructed single storey brick building.
 - The requirements of the notice are: a. permanently dismantle the single storey building and dispose of all resultant building materials and debris to an appropriate registered site. b. restore the land to its previous condition of hard standing with a top layer of gravel.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C – Appeal Ref: APP/X1355/W/19/3240785

Land to rear of 85 Newholme Estate, Station Road, Wingate, County Durham TS28 5EW

- 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 Percy Stephenson against the decision of Durham County Council.
 - The application Ref DM/19/00976/FPA, dated 23 March 2019, was refused by notice dated 25 July 2019.
 - The development is described as 'proposed single storey dwelling (retrospective)'.
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - The deletion of the text '*partial constructed*' from the allegation; and
 - The deletion of the word '*ten*' from the first line of text in paragraph 4 – 'Reasons for issuing this notice' – and its replacement with the word '*four*'.
2. Appeals A and B are allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under

s.177(5) of the 1990 Act as amended for the operational development comprising of the single storey brick building.

3. Appeal C is dismissed.

The enforcement notice

4. The single storey brick building that is the subject of the enforcement notice is now complete, whereas the enforcement notice refers to it as being partially constructed. I have therefore directed that the notice be corrected to reflect this fact.
5. It is common ground between the main parties that the building was not in use at the time the enforcement notice was issued. The notice thus attacks only the operational development, and not a material change of use. The time limit for enforcement relating to operational development in s171B(1) is after the after the end of the period of four years beginning with the date on which operations are substantially completed, and not ten years as stated in the notice. I have therefore directed that the notice be corrected accordingly. I am satisfied that no injustice to either of the main parties arises as a result of these corrections.
6. Having established that the notice relates to operational development comprising the brick building, the Council's first reason for issuing the notice, which relates to living conditions, does not follow if the building was not occupied at the time the notice was served. However, these matters are material to the s78 appeal (Appeal C), and I have considered them accordingly.

Appeal C – s78

Main Issues

7. The main issues are:
 - the effect of the development on the living conditions of nearby residents with particular regard to privacy;
 - whether the development makes adequate provision for external amenity space; and
 - the effect of the development on the character and appearance of the surrounding area.

Reasons

8. The Council consider that the appeal site is a sustainable location for development, in terms of its proximity to services and public transport. The Council state that they are able to demonstrate a six year supply of deliverable housing. Set against that, they confirm that policies for the supply of housing in the District of Easington Local Plan (LP, 2001) are out of date as they derive from an evidence base that is also out of date.
9. LP Policy 3, which defines settlement limits and states that development outside settlement limits is in the countryside for planning purposes, is therefore considered out of date, and to be afforded only limited weight. That being the case, paragraph 11 of the National Planning Policy Framework (NPPF) is engaged, with the effect that development should be granted permission

unless: i) the application of policies in the NPPF that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF taken as a whole.

Living conditions of nearby residents

10. The appeal site is situated on land to the rear of a row of two storey semi-detached dwellings on Newholme Estate. The Council's document entitled 'Residential Amenity Standards - Supplementary Planning Document' (SPD, 2020) sets out guidance on the space and amenity standards that are expected for new residential developments. This document supercedes Appendix 6 of the LP, which was referred to in the planning officer's report.
11. In order to achieve good standards of privacy between existing and new dwellings, the SPD sets out minimum separation distances. However, these do not include recommendations for rear elevation to rear elevation distances, as would be the case here. Nevertheless, the SPD requires that spacing between windows should achieve suitable distances for privacy and light, whilst also preventing cramped and congested layouts. Although it is close to the appeal site, 83 Newholme Estate has a large detached garage at the back of the plot which limits any visibility between the two sites. I am therefore satisfied that there would be no material effect on the privacy of residents at No 83.
12. The proposed site plan indicates that the main two storey rear elevation of 84 Newholme Estate would be separated from the back of the new dwelling by around 14m. If the single storey rear projection at No 84 is taken into account, then the separation distance is less, at approximately 11.4m.
13. The SPD recommends a separation distance of 10m between a main facing elevation and a single storey gable elevation that does not contain a habitable room. The Council contend that as the brick building does not present a gable to No 84, the SPD advice can be afforded only limited weight in this instance. However, the Council do not elaborate on why the rear elevation of the brick building, if occupied, would have a greater detriment to the privacy of No 84 than a gable elevation in the same location.
14. The proposed drawings show that two windows are proposed to the rear elevation to serve a bathroom and a shower room, neither of which would be habitable rooms. Were I to allow the appeal and grant permission for the use of the building as a dwelling, the rear windows could be required by condition to be obscure glazed. In addition, the close boarded fence between the appeal site and No 84 would largely block views between the ground floor windows of the buildings, even if the rear windows at the appeal site were not obscured.
15. The separation distance between the appeal site and No 84 exceeds the minimum distance advised in the SPD, albeit that the circumstances here are slightly different. The proposed rear windows would serve non-habitable rooms and could be obscure glazed. Therefore, in the absence of convincing evidence to the contrary, I conclude that there would be no material loss of privacy for either the future residents or for existing residents at No 84. There would be no conflict with LP Policy 35, insofar as it requires that there should be no serious adverse effect on the amenity of neighbouring residents or occupiers, or with the requirements of the SPD.

Provision of external amenity space

16. The SPD advises that developments should incorporate usable, attractively laid out and private garden space conveniently located in relation to the property it serves. Such space should be of an appropriate size, having regard to the size of the dwelling and character of the area. Gardens should be no less than 9m in length, unless site specific circumstances allow for a reduction.
17. The proposed site plan shows limited provision for amenity space at the proposed dwelling. Much of the plot would be taken up with parking space to the side of the building. The areas to the front and rear of the building would be too narrow for amenity use, although the required side footpath would be provided. Only the roughly square area at the western end of the structure would appear to be available as outdoor space.
18. The SPD does not prescribe specific dimensions beyond the 9m length recommendation. However, it is an established principle that the quality and usability of amenity space also need to be taken into account. Outdoor areas should be sufficient for day to day uses such as, for example, a table and chairs to sit out, clothes drying, relaxation, gardening and safe children's play. It appears to me that the proposed space would not be big enough for those purposes in respect of a three bedroom dwelling capable of accommodating a small family. Furthermore, although the building is largely hidden from public view, the proposed outdoor area is adjacent to the access track. Therefore, future residents using the space would be likely to be visible to those passing on the track, which would lead to a sense of diminished privacy.
19. Drawing these factors together, I conclude that the proposed dwelling would fail to make adequate provision for external amenity space, contrary to the aim of LP Policy 35 to provide adequate open space, and the NPPF, which requires a high standard of amenity for future users.

Character and appearance

20. As noted above, to the north of the appeal site is Newholme Estate, which comprises dwellings set out in a linear pattern facing the road. To the south of the site is a paddock which gives way to open agricultural land.
21. The Council state that the rear plots of Newholme Estate form a strongly defined building line which presents a clear boundary to the settlement. However, it is clear that two dwellings have been established beyond this line, which are Sapphire Cottage to the east and Lily Cottage to the west. These appear to be lawful developments. The site location plan shows that there is a further building to the west of Lily Cottage, although there is no detail before me to identify it.
22. Sapphire Cottage is more closely related to the road, and faces a number of buildings opposite, so to that extent it reflects more directly the grain of the settlement. However, it still sits to the south of the line to the rear of Newholme Estate. Lily Cottage more strongly establishes a departure from the linear form and does not reflect the layout or massing of the Newholme Estate buildings. I have taken into account the presence of the adjacent chalet building, but this structure is unauthorised and so cannot be considered as a precedent.

23. The development is located on land that was previously an area of hardstanding and is closely associated in visual terms with dwellings to the north, east and west. These existing developed areas provide a degree of enclosure to the appeal site which would help to assimilate it. The site is also largely hidden from public view, and although this is not a determinative matter, it substantially lessens any visual impact arising from the development. Although the development physically adds to the existing urban form, its location on pre-existing hardstanding limits any sense of intrusion into the open countryside. It is a relatively small, unassuming building that does not, in my view, create undue urban sprawl.
24. I therefore conclude that the development would have an acceptable effect on the character and appearance of the surrounding area. No conflict would arise with LP Policy 1, which sets out general principles of development, or with LP Policy 3, which restricts development outside development limits.

Conclusion

25. Although I have found the proposal to be acceptable in terms of privacy and character and appearance, it would fail to provide adequate living conditions for future residents in terms of outdoor space. There would be a marginal benefit in terms of the contribution of a unit to the local housing supply. However, in the context of the extant six-year housing land supply, this benefit carries limited weight. Any social and economic benefits arising from the development would be minimal. In the absence of any compelling need for housing in this location, I conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the minor benefits I have identified.
26. Appeal C is therefore dismissed.

Appeals A and B on ground (a)

27. As stated above, the enforcement notice attacks only the operational development, and not the material change of use of the land for residential use, on the grounds that the building was not occupied with the notice was served.
28. The main issue in Appeal A on ground (a) is therefore limited to effect of the development on the character and appearance of the surrounding area.
29. As may be seen from my conclusion on Appeal C, I have found that harm would arise from the residential occupation of the building. However, for the reasons discussed above, I consider that the building itself is acceptable in terms of its impact on the character and appearance of the surrounding area.
30. Therefore, Appeals A and B succeed and deemed planning permission for the operational development of the brick building is granted. However, no permission is granted for the residential occupation of the building. That being the case, I am mindful that this permission leaves the brick building without a defined use. However, it is for the appellant to resolve this matter independently of this particular appeal process.

Conclusion

31. Because of my conclusion above, there is no need for me to go on to consider Appeals A or B on ground (g).

32. For the reasons given, Appeal C is dismissed. However, Appeals A and B are allowed, deemed planning permission is granted for the operational development, and the enforcement notice, subject to correction, is quashed.

Elaine Gray

INSPECTOR