The Planning Inspectorate

Appeal Decisions

Site visit made on 30 June 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2020

Appeal A: APP/E2734/C/20/3244270
Appeal B: APP/E2734/C/20/3244271
Fairfield House, Athelstan Lane, Hutton Conyers, Ripon HG4 5DX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr James Edward Scholes (Appeal A) and Mrs Sarina Scholes (Appeal B) against an enforcement notice issued by Harrogate Borough Council.
- The enforcement notice, numbered 19/00507/PR15, was issued on 26 November 2019.
- The breach of planning control as alleged in the notice is the erection of a dwelling with an integral garage and the formation of a new vehicular access without planning permission.
- The requirements of the notice are (1) demolish the unauthorised dwelling and integral garage; (2) remove all materials used in their construction from the site; and (3) reinstate site to the original ground levels.
- The period for compliance with the requirements is 6 months from the date upon which the notice takes effect.
- Appeal A 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.
- Appeal B is proceeding on the grounds set out in section 174(2) (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not 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 have lapsed.

Summary of decisions: Both appeals succeed in part on grounds (f) and (g) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decisions. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended in respect of Appeal A.

Procedural matters

1. Appeals were made on ground (b), contending that the dwelling benefits from planning permission, albeit with variations. However, and without injustice, this argument is more appropriately considered as appeals on ground (c)[1].

2. The Council adopted the Harrogate District Local Plan 2014 – 2035 (the Local Plan) on 4 March 2020 and I have therefore had regard to policy HP3 of that plan in considering the appeal on ground (a).

[1] That those matters, (i.e. the matters stated in the notice which give rise to the alleged breach of planning control), if they occurred, did not constitute a breach of planning control.

The combined appeals on grounds (b) and (c)

3. The appellants contend that planning permission granted for the dwelling was lawfully commenced and that while some elements of the completed dwelling differ from the original permission[2], granted in October 2015, they accord with subsequent approved variations.

4. The lower ground floor as built on site is approximately twice the size of the one shown on the plans from the original permission. The dwelling is therefore substantially and materially different from the original permission. A lower ground floor of the size built was permitted in December 2015 following an application under section 73 of the 1990 Act[3]. This second permission granted under section 73 took effect as a new, independent permission that sat alongside the original permission, which remained intact and unamended.

5. The planning history includes approval of details required by conditions of the second permission in April 2016[4], indicating that the developer intended to build out that permission, not the original one. A photograph in the appellants' supplementary statement shows that a larger lower ground floor of the size approved in the second permission, albeit with different window openings, had been constructed by 19 February 2017.

6. On the basis of these facts, the first permission was not commenced. The passage of time between the approval of the second permission in December 2015 and the photograph of February 2017 indicates that the formation of the footings was a lawful commencement of that permission, granted under section 73, prior to any above ground changes occurring.

7. The developer believes that the application[5] for a non-material amendment to alter the central window in the front elevation at ground floor[6] also included raising the eaves. However, while there may have been an understanding with the planning officer on that point, no drawings were produced. Furthermore, the report which informed the Council's decision only considered the window, reflecting its description of the proposal as "Alterations to Positioning of Fenestration". The description also confirms the proposal was an amendment to the original permission, which had not been commenced. The dwelling as built must therefore be compared with the second, unamended, permission in the appeals on this ground.

8. I saw significant deviations from the plans of the second permission in the completed dwelling. At ground floor level, in addition to the window mentioned above, the entire rear elevation is a mirror image of the approved drawing and 2 windows in that elevation have been replaced with bi-folding doors. At roof level, the eaves have been raised and the roof pitch is shallower, dormer windows in the front and rear roof slopes project further forward, a dormer window has been deleted from the front roof slope and a rooflight in the rear roof slope has been repositioned. At lower ground floor level there is an altered window in the front elevation, with associated changed ground contours and a retaining wall, and the omission of a canopy over the front door. Lintels over doors and windows have been omitted, and glazing bars altered throughout.

[2] 15/01454/FUL, dated 28 October 2015, issued 29 October 2015
[3] 15/03851/DVCON, dated 21 December 2015, issued 23 December 2015
[4] 16/00658/DISCON, granted 4 April 2016
[5] 17/00830/AMENDS, granted 24 March 2017
[6] The floor at ground level in the rear elevation and above the lower ground floor in the front elevation

9. These changes result in a building so substantially and materially different that the second permission cannot reasonably be said to have been implemented in full accordance with the approved plans. Consequently, the dwelling as built does not have planning permission, the breach alleged in the notice has occurred, and the appeals on grounds (b) and (c) must fail.

The appeal on ground (a)

10. The main issue in this ground of appeal is the effect of the dwelling, as constructed, on the character and appearance of the area with particular regard to the local distinctiveness of Hutton Conyers.

Reasons

11. There is similarity of design with the 2 houses immediately beyond on Athelstone Lane; however, they are also the subject of enforcement notices, issued for similar reasons, that require their demolition. Accordingly, I cannot view them as representative of the character and appearance of the area, in which I saw consistency in the use of features such as lintels and in the spaces between upper floor windows and eaves.

12. In contrast, the absence of lintels over doors and windows and the raised eaves result in a dwelling that neither enhances or reinforces the characteristics and qualities that contribute to the village's local distinctiveness. Notwithstanding the support for it expressed by local people, the dwelling fails to respond positively to local built form or to take account of the contribution of fenestration, roofscape and detailing to local distinctiveness. As such, it compares poorly with the design approved in the second permission. The degree of variation from that permission is so great that the dwelling as built does not form part of that scheme and permitting the deemed planning application would not realise it.

Other matters

13. It has not been suggested that the altered fenestration has an adverse effect on the living conditions of neighbours through overlooking. However, this does not alter my finding on the main issue.

Conclusion on ground (a)

14. For these reasons the dwelling is visually unattractive and harmful to the local distinctiveness of Hutton Conyers, in conflict with policy HP3 of the Local Plan and Part 12 of the National Planning Policy Framework. It is therefore unacceptable and deemed planning permission should not be granted for it as constructed. The appeal on ground (a) should therefore not succeed.

The appeals on ground (f)

15. To succeed on this ground, it must be demonstrated that the steps required by the notice are excessive and that lesser steps could overcome the breach of planning control constituted by the erection of a dwelling without planning permission. The appellants identify a range of options for improving the appearance of the dwelling, from introducing banding under the eaves to making the roof fully match the plans approved as part of the second permission.

16. While these are genuine attempts to address the Council's concerns and would undoubtedly improve the appearance of the building, they would not realise the dwelling approved in the second permission. Therefore, even if the suggested changes were made, a dwelling without planning permission would remain erected, in breach of the notice.

17. However, as the second permission was lawfully commenced, it would be possible to achieve full implementation of that permission by altering the dwelling more extensively than the options identified by the appellants. As noted, the enlarged central window in the ground floor front elevation was approved as an amendment to the original permission, which was not commenced, so it cannot form part of this alternative approach. This alternative would remedy the breach by making the development comply with the terms (including conditions and limitations) of a planning permission which has been granted in respect of the land. This is a lesser step than the total demolition set out in the requirements of the notice and on that basis, the appeals on ground (f) succeed and I shall vary the notice accordingly.

The appeals on ground (g)

18. The appellants state that finding alternative accommodation would risk disrupting their children's schooling and would cause distress. They also express concern that moving would make it difficult for them to continue providing care to a nearby relative. For these reasons, and to allow for purchase of another home, an extended period of at least 18 months is sought.

19. These points are appreciated, although they appear to be consequences of complying with the notice, and not necessarily of the time scale for doing so. However, the locations of the children's schools, where the relative lives, where the appellants might wish to move and information about the local housing market have not been provided. It is therefore not possible to afford significant weight to the appellants' evidence on this ground, and I am mindful that it is not certain that any alternative timescale would allow resolution of the difficulties they identify.

20. An extended period of 18 months or more would be equivalent in effect to a temporary planning permission. It would allow the prolonged retention of an unauthorised development that has been found harmful and would thus be inconsistent with my findings in the appeal on ground (a). However, the Council has identified a possible alternative period of 12 months and this would give the appellants greater flexibility in compliance taking account of the current uncertainty caused by the Covid-19 outbreak. On that basis, the appeals on ground (g) succeed and the notice should be varied accordingly.

Conclusions

21. For the reasons given above, I conclude that the combined appeals on grounds (b) and (c) and the appeal on ground (a) should not succeed and the appeals on grounds (f) and (g) should succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal A - Formal Decision

22. The appeal is allowed on grounds (f) and (g) and it is directed that the enforcement notice be varied in section 5 by:

- Inserting the word "Either:" before requirement 1);
- Inserting the words "Or: 4) Alter the dwelling to fully comply with drawings 1.9 and 1.10 granted planning permission under reference 15/03851/DVCON" after requirement 3); and
- By the deletion of "Six months" and the substitution of "Twelve months" in the time for compliance.

23. Subject to these variations the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B – Formal Decision

24. The appeal is allowed on grounds (f) and (g) and it is directed that the enforcement notice be varied in section 5 by:

- Inserting the word "Either:" before requirement 1);
- Inserting the words "Or: 4) Alter the dwelling to fully comply with drawings 1.9 and 1.10 granted planning permission under reference 15/03851/DVCON" after requirement 3); and
- By the deletion of "Six months" and the substitution of "Twelve months" in the time for compliance.

25. Subject to these variations the appeal is dismissed and the enforcement notice is upheld.

Mark Harbottle

INSPECTOR