



Appeal Decision

Site visit made on 14 July 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th August 2020

Appeal Ref: APP/A3010/C/20/3246013

Land east of 30 and to the rear of 10-30 Clinton Street, Worksop, S80 2RY

- 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 Esther Kate Foster against an enforcement notice issued by Bassetlaw District Council.
- The enforcement notice, numbered 19/00169/ENF, was issued on 27 November 2019.
- The breach of planning control as alleged in the notice is, without the required planning permission, the erection of a two-storey detached property.
- The requirements of the notice are (i) Demolish the two storey property; and (ii) remove from the site to an authorised place of disposal; all hard-core, waste, debris, bricks and associated items produced by the demolition process, including: concrete, reinforced concrete, metal, timber and plastic.
- The period for compliance with the requirements is Three (4) Four calendar months after this Notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a correction and a variation in the terms set out below in the Formal Decision.

Decision

1. It is directed that the enforcement notice is corrected by deleting "Three (4)" from the time for compliance in section 6.
2. It is further directed that the enforcement notice is varied by deleting the words "to an authorised place of disposal" from requirement (ii) in section 5.
3. Subject to the correction and variation, 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.

4. Preliminary matter

5. As issued, the notice gave a compliance period of "Three (4) Four calendar months" after it takes effect. The Council has confirmed this was a drafting error and I am satisfied it would not cause injustice to the appellant to correct the period for compliance to "Four calendar months".

The appeal on ground (a)

Main Issue

6. The main issue is the effect of the development on the living conditions of neighbouring residents with regard to overlooking and privacy.

Reasons

7. The dwelling stands between and behind terraced housing on Clinton Street and semi-detached houses on Kenilworth Close. There are no roof windows facing 10 - 30 Clinton Street, so the dwelling does not affect the privacy of neighbours in that direction.
8. The upper window in the eastern gable affords views toward the foot of the back gardens belonging to semi-detached houses at 32-42 Clinton Street. However, these are long back gardens and the window is set back from the boundary. The effect on privacy is therefore limited and acceptable. A similar window in the western gable faces the back garden of Gladstone Villa but views of the house and garden are blocked by a large outbuilding, thereby avoiding any loss of privacy.
9. However, the first floor window openings facing the nearest houses in Kenilworth Close are relatively close to the common boundary and afford clear views over their back gardens and towards their rear windows. The occupation of the dwelling would therefore give rise to overlooking that would detrimentally affect the residential amenity of nearby residents through loss of privacy.

Other matters

10. The Council granted planning permission¹ for a bungalow and the appellant explains that the project changed to result in the 2-storey dwelling following advice from a Council officer who was mistakenly thought to be from the planning service. While this misunderstanding has caused the appellant difficulty, the appeal on this ground must be determined on the merits of the development as built rather than its origins.
11. The effect of the dwelling on the character and appearance of the area has been found acceptable in the Decision of another Inspector². I have no disagreement with that analysis, but it does not alter or outweigh my findings on the main issue.

Conclusion on ground (a)

12. For the reason given, the building has a detrimental effect on the residential amenity of nearby residents in Kenilworth Close through loss of privacy and is thus unacceptable and contrary to policy DM4 of the Bassetlaw Core Strategy & Development Management Policies DPD and the Council's Supplementary Planning Document, "Successful Places". Accordingly, the appeal on ground (a) should not succeed.

¹ 18/01568/RSB, granted 31 January 2019

² APP/A3010/W/20/3244208, dismissed 16 June 2020

The appeal on ground (f)

13. To succeed on this ground, it must be demonstrated that the steps required to comply with the notice are excessive and that lesser steps could overcome the breach of planning control alleged in the notice. The bungalow permitted by the Council was an entirely different building, with significant differences in footprint, massing and siting. Accordingly, it could not be realised by removing the roof windows from the dwelling, as the appellant suggests. The dwelling would therefore remain unauthorised and the breach of planning control would not be overcome.
14. I understand that while the appellant drew up a modified scheme with no windows in the roof space, the Council did not accept it as a resubmitted planning application. Details of this modified scheme have not been provided, so any variation of the steps to allow for it would risk rendering the notice imprecise and create unacceptable uncertainty about what must be done to comply with it.
15. Consequently, the steps set out in the notice, including full demolition, are the only precise means of securing compliance with the notice before me. However, requirement (ii) is excessive in specifying that materials arising from demolition must be taken to an authorised place of disposal. This is because the breach of planning control would be remedied once the lesser step of removing those materials from the site has occurred.
16. Subject to this variation of the notice, the appeal on ground (f) should not succeed. Nevertheless, the period for compliance with the notice, especially if corrected to 4 months, would afford a reasonable opportunity to progress a planning application for the modified scheme.

Conclusion

17. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Mark Harbottle

INSPECTOR