



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: 4 September 2020

Appeal Refs: APP/X1355/C/19/3243797 (Appeal A) & APP/X1355/C/19/3243798 (Appeal B)
Dwelling rear of 80-82 Newholme Estate, Station Road, Wingate, Co 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 18 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a free standing chalet/park home style building at the site and its occupation as a residential dwelling.
 - The requirements of the notice are: 1. Cease the use of the single storey building as a dwelling. 2. Permanently remove the building and associated residential paraphernalia from the land. 3. Remove the raised platform and dwarf wall which surround the single storey building from the land. 4. Restore the land to the previous condition of hard standing with a top layer of gravel.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) (d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/X1355/C/19/3243799 (Appeal C)
Dwelling rear of 80-82 Newholme Estate, Station Road, Wingate, Co 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 Miss Brydie Lily Stephenson against an enforcement notice issued by Durham County Council.
 - The enforcement notice was issued on 18 November 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a free standing chalet/park home style building at the site and its occupation as a residential dwelling.
 - The requirements of the notice are: 1. Cease the use of the single storey building as a dwelling. 2. Permanently remove the building and associated residential paraphernalia from the land. 3. Remove the raised platform and dwarf wall which surround the single storey building from the land. 4. Restore the land to the previous condition of hard standing with a top layer of gravel.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(d) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal Ref: APP/X1355/W/19/3243694 (Appeal D)
Dwelling rear of 80-82 Newholme Estate, Station Road, Wingate,
Co 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/19/00997/FPA, dated 23 March 2019, was refused by notice dated 25 July 2019.
 - The development is described as 'retrospective application for single storey building/park home used as residential dwelling'.
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Decisions

1. It is directed that the enforcement notice be amended by the deletion of the text 'six months' from the period for compliance, and its substitution with the text 'ten months'.
2. Subject to this amendment, Appeals A, B and C are dismissed and the enforcement notice is upheld.
3. Appeal D is dismissed.

Background

4. The development comprises a chalet-style dwelling on land to the rear of Newholme Estate. The chalet comprises a long rectangular structure with a shallow pitched roof. To the front and one side, it is surrounded by a brick plinth incorporating shallow steps. An outbuilding, which is referred to as a utility/washroom, is also located to the side of the dwelling.

Whether the appeal structure is a building or a caravan

5. The enforcement notice is headed 'operational development and material change of use'. The appellants diverge in their views as to whether the structure is a building, or a caravan which would not be a building operation. With reference to the relevant case law, there is no single definition of what constitutes a building operation. In *Barvis Ltd v SSE and Essex CC* ((1971) P&CR 710) three tests are set out; the size of the building or structure, the degree of permanence, and the degree of physical attachment to the land.
6. The appellants state that the chalet has been in its current position for just over four years, and has been occupied by Miss Brydie Stephenson since June/July 2015. Prior to this, it had been occupied by other members of the family for more than 10 years and had been in different locations within the wider site. However, even if the structure has been moved around, it is necessary to consider whether it is now a permanent building as defined in section 336(1) of the 1990 Act.

Size

7. According to the plans submitted with Appeal D, the structure measures approximately 8m wide by 6m deep. It contains three bedrooms, a bathroom, and an open plan kitchen/living room area. In my view, this is a size that may comfortably be regarded as amounting to a building.

Physical attachment to the ground

8. The chalet is currently hemmed in by the stepped plinth and the outbuilding. It could not be towed away unless one or both of these structures were substantially demolished and removed. There is little information before me regarding the servicing of the dwelling, but any services would also need to be disconnected and made safe. Alternatively, the chalet might be able to be lifted directly upwards by a crane once the services had been dealt with.
9. The degree of attachment of the chalet itself to the ground is not clear. I saw that there is a gap between it and the ground at the rear, where it is supported. However, there can be little doubt that the structure remains securely in position under its own weight. In any case, the tasks described above could not be undertaken quickly or easily and would involve some preparation. They would be likely to involve at least one or two day's work.
10. Therefore, taking the whole development into account, I am satisfied that its degree of physical attachment to the ground and the work involved in moving it point to the existence of a building operation.

The degree of permanence

11. Miss Stephenson currently occupies the chalet with her young child and she confirms that she has no intention to move from the dwelling. Even if Miss Stephenson were to vacate the dwelling for any reason, it seems likely that further tenants would be sought. It therefore seems to me that the chalet is intended to remain in use as a dwelling indefinitely, and to that extent it is a permanent development.
12. Taking these factors in combination, I conclude that the size, degree of permanence, and the degree of physical attachment of the development are sufficient to establish that the chalet is a building and not a caravan. I note that this conclusion tallies with the view of Miss Stephenson within her evidence in respect of Appeal C.

The planning unit

13. It is consistent with case law including the judgment in *Burdle v Secretary of State for the Environment* (1972) 1 WLR 1207 that the planning unit should be determined with regard to the unit of occupation, and the concept of physical and functional separation. Three broad categories of distinction were identified in *Burdle*.
14. Firstly, a single planning unit where the whole unit of occupation is used for one main purpose and any secondary activities are incidental or ancillary. Secondly, a single planning unit where the whole unit of occupation is in a mixed use because the land is put to two or more activities and it is not possible to say whether one is incidental to another, or, in the case of a composite use, where the component activities fluctuate in their intensity from time to time but the different activities are not confined within separate and physically distinct areas of land. Thirdly, the unit of occupation comprises two or more physically separate areas that are occupied for substantially different and unrelated purposes, in which case each area is used for a different main purpose (together with its incidental and ancillary activities) ought to be considered as a separate planning unit

15. Mrs Stephenson contends that the planning unit relating to the appeal site extends to the full area owned by Mr Percy Stephenson, which is shown edged in blue in the statement of case. She argues that the planning unit is mixed insofar as it contains both Lily Cottage and the appeal building, the play and parking and hardstanding areas for both dwellings, and is also used for the storage of building materials associated with Mr Stephenson's own activities. However, there is insufficient information for me to be certain of the scale of the storage use, and whether or not it is incidental to the residential usage.
16. In the context of a site within single ownership, it is a matter of fact and degree as to whether the uses within the site constitute one planning unit in a mixed use or separate planning units, each with an individual primary use.
17. Within the submissions, the appellants contend that the chalet is ancillary to the main dwelling at Lily Cottage and could be considered to be an annex. However, where a self-contained area provides all the facilities necessary for independent day-to-day living - for cooking, eating and sleeping - whether within a building, part of a building, caravan or other structure or a combination of these - and the building is used for residential purposes, its use as someone's home or dwelling would not normally be considered incidental or ancillary.
18. It is stated that Miss Stephenson and her child use the facilities at Lily Cottage, but it is not unusual for close family members to visit each other's dwelling and use, for example, the kitchen and bathroom facilities whilst they are there. Although the occupants of Lily Cottage provide childcare and support, it is confirmed that the occupants of the chalet provide their own meals and laundry. There is no suggestion of any significant level of dependency or that a single household is in operation in this case.
19. Instead, the evidence strongly points to a separate residential use at the appeal site. There is nothing to suggest that Miss Stephenson does not lead an independent life within her own household, albeit one that is physically close to other members of her family. The chalet has its own address and is liable to Council Tax independently of Lily Cottage. It can also be accessed directly from the track leading from the main road, without needing to enter the immediate curtilage of Lily Cottage.
20. The appellants state that a shared outdoor space and a play area are available which are used by the wider family. I will come back to the provision of outdoor space under ground (a) below. However, the lack of external amenity space for the chalet does not preclude it from forming a separate planning unit. Conversely, it would be unusual for an annex to have its own dedicated outbuilding, as is the case here.
21. In the absence of compelling evidence to the contrary, these factors lead me to conclude that the chalet dwelling is physically and functionally separated from Lily Cottage. Therefore, on the evidence before me there is as a matter of fact a separate planning unit in residential use at the chalet for which planning permission is required.

Appeals A, B and C on ground (d)

22. Ground (d) is that, at the time the enforcement notice was issued, it was too late to take enforcement action against the matters stated in the notice.

23. I have concluded above that the chalet is a building that comprises operational development. Therefore, for the appeal to succeed, it needs to be shown that the alleged unauthorised development was substantially complete four years prior to the service of the enforcement notice, in other words, by 23rd March 2015.
24. In sworn statements, Mrs Stephenson and Miss Stephenson state that Miss Stephenson has occupied the dwelling since June/July 2015, which is within the relevant four-year period. They state that prior to that date, it was occupied by other family members. However, the appellants have produced little evidence to indicate the date on which the works in question were substantially complete. Even if the chalet had been towed into place from another location, the plinth and the outbuilding were clearly constructed on site. It might be expected that contract agreements or invoices for the labour, or receipts for the materials, could have been supplied, but no such evidence is before me.
25. A number of Council Tax records from 2009 onwards have been provided as evidence to demonstrate that a dwelling was occupied for in excess of 10 years prior to the serving of the enforcement notice. The appellants contend that a caravan has been present and occupied, but has been moved around the wider site, which seems to be borne out by the Council Tax records. However, they do not assist with pinpointing the date at which the existing chalet was moved into its current location, or the construction of the plinth and outbuilding.
26. A number of images from Google Earth Pro and one from Getmapping have been submitted. Of these, only the July 2018 image shows what appears to be the appeal building in its current location. In contrast, the 2015 image shows the appeal site as a largely clear area of hardstanding. The exact date of the image within 2015 is not given, although I note that the trees appear to be in leaf, suggesting at least a spring date. Crucially, however, the image does not offer any firm evidence as to the date when the operational development was carried out.
27. Miss Stephenson states that prior to 2016, she was too young to claim Housing Benefit. However, she has claimed Housing Benefit since 2016. This falls well within the four-year period, and so this evidence does not weigh in the favour of the appeals. Northumbrian Water and TV licence payment receipts have also been supplied. However, without the invoices showing the residential address these relate to, I cannot be certain that these documents relate directly to the appeal site.
28. The balance of probability test applies to ground (d) considerations. However, the burden of proof remains on the appellants, and not the Council. In this particular case, the evidence falls far short of that required for me to be certain that the operational development was substantially complete by 23rd March 2019. Therefore, the test of the balance of probability has not been met.

Conclusion on ground (d)

29. The development is not immune from enforcement action through the passage of time and the appeals on ground (d) fail.

Appeals A and B on ground (a) and Appeal D (s78)

Main Issues

30. 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

31. The dwelling is situated on land to the rear of a row of two storey semi-detached dwellings on Newholme Estate. 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 now of some age.
32. 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

33. 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.
34. The chalet is located to the rear of properties at Newholme Estate to the north. Within the rear elevations of these dwellings are habitable rooms whose windows face the rear elevation of the chalet. The submitted plans show that of the three rear windows of the chalet, two serve one bedroom each. I note that these bedrooms are single aspect and have no other windows.
35. The Council state that the separation distance between the windows in question is around 9.7m, whereas the appellants estimate the distance at around 11-12m. Appendix 6 of the EDLP requires a minimum separation distance of 21 metres between facing elevations containing windows to habitable rooms.

36. However, on site, I saw that the outlook from the rear of the chalet is directly towards the blank rear wall of a single storey building. This breeze block wall rises to a height above the tops of the rear chalet windows. That being the case, it did not appear likely that there can be any intervisibility between the windows of both properties, which leads me to the conclusion that there can be no meaningful loss of privacy at either the chalet or the nearest residence.
37. I therefore conclude that the development accords with LP Policy 35, insofar as it requires that there should be no serious adverse affect on the amenity of people living in the vicinity of the development.
38. I note that the outlook from the rear chalet windows is very limited, which is likely to have a detrimental impact on the living conditions of those using the rooms. However, the Council do not raise an objection on this matter, and no concerns have been raised by third parties, so I have not considered it any further.

Provision of external amenity space

39. 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.
40. With reference to the proposed plan, the external space associated with the property is severely limited. The majority of the space to the front and east side of the chalet is taken up with the plinth, and the space behind the dwelling is too narrow to be of use. The only available space is in front of the outbuilding. In addition to being too small for a three bedroom dwelling, this space lacks privacy. It is also in use for the storage of bins and is the main point of access to the outbuilding. These factors further decrease the quality and usability of the space for outdoor living purposes.
41. Although permitted development rights for extensions into this space could be removed, it is unclear how this would mitigate the Council's objection, given that the external space does not amount to a garden area in the first place, and is already inadequate for that purpose.
42. I note the appellants' contention that shared external spaces are available to the occupants of the chalet. However, this arrangement depends on the close family relationship between the residents. Were I to allow the appeals, there would be nothing to stop the chalet being rented out or sold to an unrelated third party. In that scenario, the lack of external amenity space would be unacceptably detrimental to the living conditions of those occupants.
43. The current availability of shared space therefore does not justify the departure from the requirements of LP Policy 35, insofar as it aims to provide adequate open space, and the NPPF, which requires a high standard of amenity.

Character and appearance

44. The appeal site lies to the south of Newholme Estate, which comprises dwellings set out in a linear pattern facing the road. To the south of the site itself is a paddock which gives way to open agricultural land.

45. 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 a further building to the west of Lily Cottage, although there is no detail before me to identify it.
46. 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.
47. The chalet is located on land that was previously an area of hardstanding. It is closely associated in visual terms with dwellings to the north, east and west. These previously developed areas provide a degree of enclosure to the appeal site which help to assimilate it. The chalet 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 encroachment into the open countryside. It is a relatively unobtrusive building with a limited curtilage that does not, in my view, create undue urban sprawl.
48. I therefore conclude that the development has an acceptable effect on the character and appearance of the surrounding area. No conflict arises with LP Policy 1, which sets out general principles of development, or with LP Policy 3, which restricts development outside development limits.

Other Matters

49. It has been suggested by the appellants that there is scope to impose a condition to link the chalet to Lily Cottage as an annex. However, as I have found that the development does not display the characteristics of an annex, and instead has all the characteristics of an independent dwelling, such a condition would not be appropriate in this case.
50. I have taken into account the representation of support for the development, but this has not led me to a different conclusion.

Conclusion

51. Although I have found the development to be acceptable in terms of privacy, and character and appearance, it fails to provide adequate living conditions at the chalet in terms of the provision of outdoor space.
52. The development brings a marginal benefit in terms of the contribution of one unit to the local housing supply. I have taken into account that the Council include an allowance for small scale windfall sites. However, in the context of the Council's extant six-year housing land supply, this benefit carries limited weight. Any social and economic benefits arising from the development are likely to be relatively small. For example, although reference is made to the average Council Tax charge for a Band D property in the area, the submitted evidence shows that the chalet is in fact within Band A.

53. In the absence of any compelling need for housing in this location, I conclude that the adverse impacts of the development significantly and demonstrably outweigh the minor benefits I have identified.

54. Appeals A and B on ground (a) thus fail, and Appeal D (s78) is dismissed.

Appeals A, B and C on ground (g)

55. Ground (g) is that the period for compliance with the notice, in this case six months, falls short of what is reasonable.

56. The appellants instead seek a 12 month period of compliance. I accept that Mr Stephenson's other properties are occupied and unavailable to Miss Stephenson. She is a young single mother on a limited income, and I agree that she should not be adversely affected in terms of impact on her health and finances. I have also taken into account the implications and uncertainties brought about by the current coronavirus pandemic.

57. I am concerned that the requested 12 month period would be tantamount to a temporary planning permission, which would be inappropriate. In any case, despite the difficulties alluded to, the appellants have offered no detailed reason as to why it should take a full year to comply with the requirements, or to find new accommodation for Miss Stephenson.

58. Nevertheless, in view of Miss Stephenson's personal circumstances, and the ongoing pandemic situation, I consider that 10 months would be a reasonable period for compliance. This would also have the advantage of extending the period into the early summer months next year.

59. To that extent, the appeals succeed on ground (g).

Overall conclusion

60. Appeals A, B, C and D are dismissed, and the enforcement notice is upheld, subject to variation.

Elaine Gray

INSPECTOR