
Appeal Decision

Site visit made on 12 August 2020

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 06 October 2020

Appeal Ref: APP/M9496/C/20/3250579

Land to the west of B6465, south of Black Harry House, Wardlow, Buxton, Derbyshire

- 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 James Bailey against an enforcement notice issued by the Peak District National Park Authority.
- The enforcement notice was issued on 25 February 2020.
- The breach of planning control as alleged in the notice is without planning permission, building operations comprising the erection of a dwellinghouse on the Land.
- The requirements of the notice are:
 - a) Demolish the unauthorised building
 - b) Remove all items and debris arising from that demolition and remove all materials associated with the unauthorised building from the Land.
- The period for compliance with the requirements is four months in respect of requirement (a) and six months in respect of requirement (b).
- 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.

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

The appeal on ground (a) and the deemed planning application

1. The main issues are:

- whether the development complies with development plan policies for the provision of housing within the National Park;
- whether the development preserves or enhances the character or appearance of the Wardlow Conservation Area; and
- the effect of the development on the living conditions of the occupants of Black Harry House with particular regard to outlook and daylight/sunlight matters.

Background

2. Planning permission was granted in October 2018 for an affordable local needs dwelling, reference NP/DDD/0217/0130. That permission was subject to a section 106 agreement. It seems based on the evidence before me that permission is extant. There is no dispute between the main parties that the dwelling which has been constructed is materially different from that approved and consequently, does not constitute the implementation of the permission. Although the appellant has not stated whether they would build the approved dwelling in the event that the appeal was unsuccessful, given that permission is

extant, it offers a fallback position against which I consider it is reasonable to assess the dwelling subject of the appeal.

Housing policy

3. Policy HC1 of the Core Strategy¹ states that provision will not be made for housing solely to meet open market demand and goes on to set out the exceptional circumstances under which new housing in the National Park will be permitted, including where it addresses eligible local need and it remains affordable and restricted to local occupation in perpetuity. Policy DS1 of the Core Strategy lists the settlements where new building development will be acceptable for affordable housing.
4. The criteria which define eligibility for such housing are set out in DMP² Policies DMH1 and DMH2 and the explanatory text to those policies. Policy DMH1 states that in such settlements new build housing will be permitted where there is a proven need for the dwelling and any new build housing is within size thresholds set out in the policy.
5. Paragraph 6.24 of the explanatory text in the Housing Chapter of the DMP relates to the circumstances when new affordable housing is justified. It states that the Authority has agreed with the Housing Authorities that it will require the same information when individuals apply to build affordable housing for their own use in a Core Strategy DS1 settlement. The relevant Housing Authority for this area is Derbyshire Dales District Council and their assessment process is known as 'Home Options', which is a choice based letting scheme.
6. The extant planning permission was for a dwelling which was for an affordable home designed to meet a local housing need, the appellant's demonstrated need. However, the way 'need' is assessed has changed since that approval.
7. It appears that the appellant's family circumstances have also changed since that permission was granted and he now has three children and consequently the family consists of five people. The maximum gross internal floor area for a five-person dwelling as set out in Policy DHM1 is 97m². However, the dwelling as built has a floor area of around 109m² which the appellant stated is a 12% increase over the permitted maximum. Whilst the appellant considered this to be a fairly modest increase, I do not share this view.
8. It is evident from the explanatory text that the purpose of the restriction on size is to ensure that such houses remain affordable to people in housing need locally. It is stated that this has been an effective tool over successive plan periods, alongside restricted occupancy, in holding values below market value to the extent that houses remain affordable to those in housing need locally.
9. The appellant suggested that the additional floor area could be further 'discounted' from the freehold valuation when calculating and stipulating the approved selling price of the dwelling. And, that such a provision could be put into effect by way of an appropriate deed of variation to the existing section 106 agreement.

¹ Peak District National Park Local Development Framework Core Strategy Development Plan Document – Adopted October 2011

² Development Management Policies Part 2 of the Local Plan for the Peak District National Park Adopted May 2019

10. I have not been provided with a copy of the section 106 agreement relating to the original permission nor a proposed deed of variation setting out such terms as suggested. In the absence of substantive evidence or explanation, I cannot be certain about if and how this could be achieved and have reservations about whether this would be lawful and reasonably enforceable in the longer term. Additionally, I consider such an approach could undermine the Authority's adopted and established approach to controlling and maintaining a supply of reasonably affordable homes for those in local need.
11. I acknowledge the Authority's comments about potential use of the roof space however, I note that condition 5 of the extant planning permission stated that the roof space shall not be used as additional living accommodation. I therefore see no reason why, if I were minded to allow the appeal, that this could not be secured by condition.
12. Whilst I acknowledge that the Authority found a need in respect of the previously approved dwelling, the way need is assessed has changed and I note that the appellant's family circumstances have also changed. In the absence of details about how need was previously assessed and evidence that such a need exists, having regard to the current mechanism for assessing need, I cannot be certain there is a proven need for the dwelling as built. In this regard the previous acceptance of need only carries limited weight in my assessment.
13. Overall, in the absence of evidence of need, a completed section 106 agreement or deed of variation relating to the dwelling built, and on the basis of the internal floor area, the development is contrary to Policies DS1 and HC1 of the Core Strategy and Policies DMH1, DMH2 and DMH11 of the DMP.
14. Policy DMH3 of the DMP relates to occupancy on second and subsequent occupation of affordable housing and is not directly relevant to this main issue and weighs neither for nor against the development.

Conservation area

15. Wardlow is a small village consisting of sporadic development, predominantly houses and farms, located close to the road in a traditional linear form. It is this form along with its relationship to the traditional strip field system surrounding the village from which its significance is derived.
16. Properties in the village tend to be of two stories and whilst of varied design, they are largely of straightforward traditional appearance. I also noted a modest number of infill developments of more modern appearance including bungalows.
17. As stated in the Peak District National Park Authority design guide (the design guide) Peak District cottages and houses are traditionally only one room deep and this results in houses having a relatively narrow gable width stated to be around 5.5m – 6m. Houses are generally two storey with low eaves and are rectangular in form and have strong horizontal proportions to their front walls. Traditionally gables were plain and supported a simple ridged roof, at a relatively shallow pitch which gave the roof much less prominence than the walls.
18. The dwelling as built is taller both to eaves and ridge height, wider and deeper with a steeper roof pitch. The effect of the taller ridge and steeper pitch,

combined with the increased gable depth, is that the roof area appears uncharacteristically and disproportionately large relative to the overall width and eaves height of the house. Its appearance does not reflect traditional local design or design found within the Conservation Area.

19. Whilst viewed in isolation the design may not appear fundamentally harmful, its incongruity is compounded by its proximity to a house with a modest roof and straight forward proportions. As a result, the dwelling does not integrate well and therefore causes harm to and fails to preserve or enhance the character or appearance of the Conservation Area.
20. The use of stone, natural slate and window detailing are positive elements in the design and I acknowledge that individually some of the variations, when compared with the dwelling approved, would be largely imperceptible, including the increased gable depth and the narrower space between the side and broadly south boundary. However, these are matters which cannot outweigh the harm identified above.
21. I observed at my site visit that within the National Park there are properties with steeper roof pitches, including the church in Wardlow and a barn further along the road from the appeal property, referred to by the appellant. However, such pitches tend to be combined with narrow gables and wide frontages such that the appearance is not the same as the dwelling subject of the appeal.

Public benefits

22. Given the scale of the proposal within the context of the Conservation Area as a whole, I consider the harm to be less than substantial. Nevertheless, I am mindful that in the National Planning Policy Framework (the Framework) paragraph 193 says great weight should be given to the conservation of a designated heritage asset and any harm to such assets should require clear and convincing justification.
23. Paragraph 196 states that where a proposal would lead to less than substantial harm to the significance of such an asset, that harm should be weighed against the proposal's public benefits including, where appropriate, securing its optimum viable use. This requires a balancing exercise of harm against the public benefits of the development.
24. In this case the development contributes an additional dwelling to the supply of housing however, in the absence of demonstrable need for the development, such benefits are limited.
25. Consequently, the public benefits do not outweigh the great weight that I am required to attach to the heritage asset's conservation. Overall, I conclude that the development does not accord with the design and heritage protection aims of Policy GSP3 of the Core Strategy, and Policy DMC3 and DMC8 of the DMP. Together these policies seek a high standard of design which preserves or enhances the character or appearance of the Conservation Area. It also fails to accord with the heritage protection aims of the Framework and guidance contained in the Authority's design guide.

Living conditions

26. The dwelling is located broadly south of and in close proximity to the shared boundary with an adjacent two storey detached dwelling, Black Harry House.
27. There is dispute between the parties about the dimensions as built, including its position within the site, compared with that approved. However, there is no dispute that it is located further back from the highway and that it is wider, taller and the gable width is deeper. Consequently, the dwelling projects further beyond the rear elevation of Black Harry House than that approved, and its massing is greater overall.
28. The appellant stated the rear wall of the house is located 1.7m further to the west however, the Authority stated that the north west corner of the dwelling is sited around 3m further west. This is not an insignificant difference and, in this context, close to a neighbouring dwelling, is likely to have some consequences for matters of acknowledged importance such as over shadowing.
29. The Authority stated that the design guide recommends not more than a 45-degree line from the back of an existing property to a new two storey building and I note that the Authority considered that line should be drawn from the nearest part of the neighbouring house. However, the 45-degree rule, which is essentially an imaginary line, is more commonly drawn at 45 degrees from the mid-point of a neighbouring properties nearest windows across the boundary.
30. The appellant contended, on the basis of their measurements and using the more commonly adopted approach to the 45-degree rule, that the dwelling does not fall within this line.
31. The 45-degree rule is one measure to aid the assessment about likely impacts however, the appellant's evidence does not take into account the increased ridge height or the steeper roof and the effect that this is likely to have on sunlight matters, particularly during the winter when the sun occupies a lower position and the days are shorter.
32. Overall, in the absence of detailed evidence to suggest otherwise, and on the basis of my site observations, I find that due to the increased massing and siting further back into the site, that the dwelling will have an unacceptable shading effect on Black Harry House and its garden.
33. The lawn at the rear of Black Harry House sits at a slightly higher ground level than the house and beyond that is open agricultural land. Notwithstanding the rear projection on the broadly northern end of the house and buildings in the north west corner, the views out from the house and garden offer an otherwise open aspect.
34. The dwelling occupies a previously vacant area of land and undoubtedly the dwelling has resulted in a change to the outlook from Black Harry House and its garden. Nevertheless, whilst the dwelling will be visible from within the house and garden of Black Harry House, it does not extend along the entire length of the boundary and as views from the house and garden are otherwise largely unobstructed, I find there is no material harm as a result of an overbearing impact on the outlook from within the house or garden.

35. Similarly given this otherwise open aspect to the rear and in the absence of substantive explanation, I consider there would be no harm in respect of loss of daylight.
36. Consequently, whilst the dwelling causes no harm as a result of loss of daylight or outlook, it would nevertheless cause unacceptable harm to the living conditions of the occupiers of Black Harry House in respect of sunlight matters. This is contrary to Policy DMC3 of the DMP which states that particular attention will be paid to the amenity of other properties that the development affects. It also conflicts with the aims of the Framework which seek to ensure a high standard of amenity for existing and future users.

Conclusion

37. I have found conflict with development plan policies for the provision of housing which are a fundamental part of the development plan. I have also found harm to the Conservation Area, a matter of great weight, and harm to the living conditions of the occupants of a neighbouring dwelling.
38. Therefore, having regard to all matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

39. An appeal on ground (f) is a claim that the requirements of the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity resulting from the breach.
40. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first s173(4)(a) is to remedy the breach of planning control which has occurred. The second s173(4)(b) is to remedy any injury to amenity which has been caused by the breach.
41. In this case the enforcement notice requires the demolition of the dwelling and all subsequent materials to be removed. As such I find its purpose is to remedy the breach of planning control.
42. The appellant contended that the requirement to demolish the dwelling is excessive and unnecessary for the purpose of addressing and/or mitigating any adverse impacts. However, other than in respect of their comments regarding a deed of variation which I have addressed under the ground (a) appeal, they did not specify lesser steps that they consider would overcome the harm.
43. In order to remedy the breach of planning control, it is not excessive to require the demolition of the dwelling and the removal of all resulting materials from the land. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

44. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant stated that the period for demolishing the dwelling should be extended to six months and the removal of materials and debris from the site to eight months.

45. The Authority in their statement, commented that they have no objection to the extension of the compliance periods as suggested by the appellant. I consider these would be adequate periods in which to demolish the dwelling and clear the land.
46. Consequently, in light of the agreement between the parties, I conclude that it is reasonable and proportionate to extend the periods as requested. To this extent the ground (g) appeal succeeds.
47. Additionally, I acknowledge the uncertainty regarding restrictions associated with the Covid-19 pandemic and note that the Authority have powers under s173A(1)(b) to extend any period for compliance, a matter which is entirely at their discretion, without prejudicing their right to take further action.

Formal Decision

48. It is directed that the enforcement notice is varied by the deletion of four months and the substitution of six months as the period for compliance with requirement (a) and the deletion of six months and the substitution of eight months as the period for compliance with requirement (b).
49. Subject to the above variations, I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Felicity Thompson

INSPECTOR