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## Appeal Decision

Hearing Held on 29 September 2020

Site visit made on 30 September 2020

**by Simon Hand MA**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 08 October 2020**

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**Appeal Ref: APP/P1615/C/18/3216444**

**Land at 9 Culver Street, Newent, Gloucestershire, GL18 1DB**

- 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 Waitin Ltd against an enforcement notice issued by Forest of Dean District Council.
  - The enforcement notice, numbered EN/0197/18, was issued on 15 October 2018.
  - The breach of planning control as alleged in the notice is without planning permission the construction of 11 residential dwellings.
  - The requirements of the notice area: a) demolish all of the building works and dig out all foundations, including any associated drainage, within the red lined area as indicated on the attached site location plan numbered 1; b) demolish the boundary treatment located within the blue hatched area on the attached site location plan numbered 1; c) reinstate the boundary treatment along the blue line indicated in the approximate location on the attached site location plan numbered 2; d) regrade the land evenly; e) remove from the land all resultant materials generated through compliance with Steps 1 to 4 above.
  - The period for compliance with the requirements is 9 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### Costs Application

1. An application for costs was made by the appellants against the Council and is the subject of a separate decision.

### Decision

2. It is directed that the enforcement notice be corrected: by the deletion of the number "11" from the allegation and its replacement with the number "9". Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the erection of 9 dwellings on the land shown edged and hatched black on the plan annexed to this decision, subject to the conditions in the attached annex.

### Preliminary Matters

3. During the course of the appeal the appellant withdrew grounds (b) and (e) and also agreed not to pursue a nullity argument.

## **Background to the Appeal**

4. Planning permission was granted on appeal for a development of 9 houses. This involved the demolition of 9 Culver Street, to provide an access through to the site. This access would be flanked by two new houses (plots 1 and 2), the remaining 7 would comprise a terrace of 4 and three detached houses behind Culver Street along with a garage block and parking spaces etc.
5. During the course of the development rather than build the garage block the construction of two houses was begun instead, on the same footings. The garage block would have been in a corner of the site that stuck out behind the gardens of Nos 7 and 5 Culver Street, the latter being a listed building. When the Council visited the site, following complaints, they saw two houses where the garage block should be and half the garden of No5 taken up by the development. It was also obvious that the 2 houses beside the access, plots 1 and 2, which are the most visible part of the development had not been built according to the plans. The streetscene plan showed the roofs of the new houses and their existing neighbours to be the same, but it was clear from the work undertaken so far, they would tower over their neighbours.
6. The appellant has explained that the builders, who have now been replaced, were working off out of date plans that showed 11 houses on the site. Once this was pointed out the two houses were demolished and topsoil spread over the footprint of the two houses. However, the foundations and floor slab remain beneath the soil ready to be used for the garage block as approved.
7. The appellant also explained they had an agreement with the owners of No5 to construct a temporary fence halfway across the back of their garden to protect the listed building (and presumably enable easy access to the back of the garage block area). There were no works being undertaken on that element of the garden of No5 outside of the protective fence and the garden would be restored once development of the site was complete.
8. The houses on plots 1 and 2, according to the appellant were also built according to the plans, it was the neighbouring houses that had been drawn too tall on the streetscene plan that was the problem. Thus the as-built houses on plots 1 and 2 were perfectly lawful.
9. I will deal with the issue of the timing of the demolition and explanations in the costs decision, but suffice to say, at roughly the time the 2 houses on the garage block were being demolished an enforcement notice was issued by the Council alleging the construction of 11 houses without planning permission. That notice is subject to this appeal.

## **The Appeal on Ground (a)**

10. There is a considerable history of communication between the appellant and the Council concerning exactly what it is they were concerned about. It seems easiest therefore to simply go through the matters discussed at the hearing, where, thanks to the co-operative efforts of both teams, a considerable degree of agreement was possible.
11. Firstly a number of site layout plans have been produced, particularly Rev A, Rev D and Rev J. I do not need to go into their rather complicated history as it is not relevant for this appeal. Suffice to say, the difference between them are minor. It is agreed that Rev J is the "as-built" layout for which the appellant

- seeks planning permission. The main differences between this and the layout granted on appeal are the terrace of four houses has been split into two pairs of semis – granted permission by the Council following a s73 application – and a slightly truncated rear garden to plot 2. The two houses on plots 1 and 2 are now slightly narrower so there is some more room between the plot 2 house and its immediate neighbour, No7 Culver Street. The house on plot 9 has also been moved slightly. It was agreed these changes have no material effect on garden sizes and were essentially minor changes.
12. The two houses on the garage block footings have been demolished and the Council are content the footings can still be used for the garage block as approved.
  13. The red line boundary of the site has not changed and the Council accept the fence across the back of No5 is temporary and so there is no harm to setting of the listed building and the development has not encroached onto land outside of the red line boundary.
  14. A number of details of the houses on plots 3-9 were discussed. It was agreed that rooflights and chimneys would be inserted as shown on the approved details of the house types. The chimneys are important for consistency in the streetscene. French doors on plots 3-6 had been replaced by sliding doors; the first floor balconies had been removed, and the corresponding French doors replaced by windows. It was agreed these changes were minor and caused no harm.
  15. It was agreed the changes to the garden sizes were minor and did not have any negative effect on amenity. It was also agreed the Council had no issue with the details of the door surrounds, parking and access to the houses and the change in the position of plot 9.
  16. This leaves the houses on plots 1 and 2 as the only matter of contention between the parties. It is agreed that as built the two houses are in accordance with the plans showing their external elevations, but as shown on an overlay plan provided by the appellant none of the houses on the streetscene plan (7791/5) are drawn accurately. The heights of plot 1 and the existing house next to it are shown more or less accurately up to eaves level, but both have much taller roofs. This is particularly the case for the existing house which in reality has a very low ridge line. The house on plot 2 is shown accurately in height up to eaves level, but with a taller roof, while its neighbour (No7) is shown taller to the eaves and roof. Both the houses on plots 1 and 2 are shown considerably too wide, but that is not an issue as it is the overall heights that impact on the streetscene. An accurate version of the streetscene shows that the houses as built on plots 1 and 2 have the same eaves level as their neighbours but taller ridgelines, almost twice as tall in the case of plot 1.
  17. The streetscene plan was thus entirely inaccurate and it is not disputed that the development cannot be completed in accordance with that plan. The appellants argument is two-fold. The two houses are built exactly in accordance with the actual elevations and floor plans of house type A as shown on the relevant plans allowed on appeal. This is not disputed. Therefore they have built what they have planning permission for. Secondly, the planning permission only applies to development within the red line, the neighbouring houses are outside the control of the appellant and the fact they are incorrectly drawn on the streetscene plan does not in any way invalidate the planning

- permission. A subsidiary argument was that there would be difficulty in framing the allegation or requirement for any enforcement notice purporting to deal with this issue, precisely because the streetscene cannot be replicated in real life.
18. The Council argued that the plans formed part of the planning permission and were secured by condition. If it proved impossible to build part of the development in accord with one of the plans then part was unlawful and an enforcement notice could require it to be demolished. A new planning permission would be needed to redesign the offending houses. They said the developer could not pick and choose which plans to follow, the streetscene was not an illustrative plan, it purported to be scale drawing, and formed an important part of the Inspector's reasoning when granting permission<sup>1</sup>.
19. In my view although both arguments are well made, they are clearly irreconcilable. It is however the case that the site lies in a conservation area and close to various listed buildings. The impact of removing No9 (which was not listed) and opening up the previously built up frontage was carefully considered by the previous Inspector and I have no reason to disagree with his view that the maintenance of a consistent building line and similar eaves and ridge heights would ensure the existing rhythm and pattern of development on Culver Street would not be materially disrupted. As built the house on plot 1 would tower over its much smaller neighbour and that on plot 2, although not so out of scale, when taken together with plot 1 would nevertheless clearly and materially interrupt the existing rhythm and pattern so as to harm the character and appearance of the conservation area and the streetscene, contrary to the Council's policies<sup>2</sup>.
20. I agree with the Council therefore that the streetscene plan was an important element in the decision making process and as it failed to accurately describe the streetscene in any way it is impossible to build the development in accordance with that plan. The appellant cannot pick and choose which plans are adhered to, they all form part of the planning permission. In this case only 2 houses are affected, and I can see no problem therefore with an enforcement notice alleging that they had not been built in accordance with the plans and should be demolished.
21. However, the principle of developing plots 1 and 2 with two detached houses is not in dispute it is just the design. It was agreed that a redesign of the roof could overcome the problem. A revised plan (reference 1-2020 (although dated October 2019)) showing the proposed new roofs and how they fit into the streetscene has been agreed with the Council and it was further agreed the Council would have no objection to a grant of planning permission subject to a condition requiring these new roofs to be constructed.

## Conclusions

22. In my view the evidence shows that the two houses that had been built on the footprint of the garage block had been demolished just before the notice was issued. Statutory declarations from various people all agreed that the demolition works had been completed by 13 October 2018 and the notice was issued on the 15<sup>th</sup> October. This simplifies matters considerably. I shall

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<sup>1</sup> APP/P1615/A/13/2201368 DL paragraphs 8 & 9

<sup>2</sup> AP5 of the FoD DC Allocations Plan and CSP.1 of the FoD DC core strategy

therefore correct the allegation to the construction of 9 houses without planning permission, and then grant planning permission for those 9 houses subject to conditions to ensure the minor variations from the original plans are either rectified (in the case of chimneys) or authorized and the new roofs are provided for plots 1 and 2.

23. I also note the plans attached to the enforcement notice do not accurately show the appeal site and I shall attach a new plan based on 03J Rev J so that there is no dispute as to the area covered by the grant of planning permission.

### **Conditions**

24. It was agreed a condition was required to ensure the development was carried out in accordance with the plans as listed. This would be plans submitted as part of appendix H of the appellant's appeal statement, 05A (house type C); 77931/3A (house type B); 1-2020 (house type A revised plan]; 7791/6A (garages) and 03J Rev J (as built layout and proposed landscaping). I shall word the condition to ensure the minor deviations as discussed above are approved. It was agreed the tiles to the roofs of the houses on plots 1 and 2 should be conditioned as suggested by the Council. A landscaping condition should refer to Rev J plan not Rev D.
25. Conditions were also required for the construction method statement, ecology report, tree survey and floor levels. It was agreed parking, turning and access should refer to Rev J, a condition requiring details for foul water discharge has been agreed and no further windows, dormers or rooflights should be allowed.

*Simon Hand*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Hugh Richards - of counsel  
Simon Firkins - SF Planning  
Hekmat Kaveh - appellant

### FOR THE LOCAL PLANNING AUTHORITY:

Richard Bowen - Asbri Planning  
David Haig – conservation advisor

### **Conditions Annex (10 conditions)**

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 1-2020 (house type A with revised roof plan); 7791/6A (garages) and 03J Rev J (as built layout and proposed landscaping).
2. The house constructed in accordance with plans 05A (house type C) and 77931/3A (house type B) should have rooflights and chimneys provided in accordance with those plans.
3. The roofs of the houses on plots 1 and 2 shall be constructed of Marley Eternit interlocking plain roof tile - smooth brown in colour.
4. The landscaping scheme shown on the approved plan 03J Rev J, shall be fully implemented not later than the first planting season following the completion of the development. If at any time during the subsequent five years any tree, shrub or hedge forming part of the scheme shall for any reason die, be removed or felled it shall be replaced with another tree, shrub or hedge of the same species during the next planting season.
5. The construction method statement approved under P0086/16/DISCON shall be carried out fully in accordance with the approved details.
6. All works shall be carried out in accordance with the recommendations set out in section 6 of the All Ecology Dusk Emergence and Dawn Re-entry Surveys for Bats (Rev 1) document dated November 2012 approved on planning permission P0800/09/FUL.
7. All works shall be carried out in accordance with the recommendations set out in the Tree Survey dated 13 May 2013 (ref. TR.PLN.13.101) and the Arboricultural Impact Assessment and Tree Protection Scheme dated 21 June 2013 (ref. TR.PLN.13.16.B), both prepared by Tree Reports Ltd and approved on planning permission P0800/09/FUL.
8. Finished floor levels in the development hereby permitted shall be set a minimum of 600mm above the 1 in 100 year return period flood level, taking into account the effects of climate change.
9. The development shall not be occupied until the parking spaces, turning facilities garages and access shown on the approved plan 03J Rev J have been constructed, laid out and provided ready for use. The land so provided shall not thereafter be used for any purpose other than for the parking, turning and garaging of vehicles and cycles.
10. The development hereby permitted shall not be occupied until proposals for foul and surface water drainage with sufficient details incorporating where appropriate the principle of Sustainable Drainage Systems (SUDS) within the development have been submitted to and approved in writing by the Local Planning Authority. Prior to the first occupation of any dwelling the approved drainage shall be carried out in accordance with the approved details and permanently maintained as such thereafter.

11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification), no windows, dormer windows or rooflights other than those expressly authorised by this permission shall be constructed unless an express grant of planning permission is first obtained from the Local Planning Authority for such windows, dormer windows or rooflights.



## Plan

This is the plan referred to in my decision dated: 08 October 2020

by **Simon Hand MA**

**Land at: 9 Culver Street, Newent, Gloucestershire, GL18 1DB**

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Scale: not to scale

