
Appeal Decision

Site visit made on 3 November 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 27 November 2020

Appeal Ref: APP/Z2830/C/20/3257138

Land at 24 Woods Lane, Potterspurty NN12 7PT

- 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 Justin Carlin of Summerfields Homes Ltd against an enforcement notice issued by South Northants District Council.
- The enforcement notice was issued on 15 July 2020.
- The breach of planning control as alleged in the notice is four roof lights have been installed on east aspect and two on the western elevation without the benefit of planning permission.
- The requirements of the notice are: -
 1. Carefully remove the rooflight windows and framing inserted in the roof on the eastern elevation of the building.
 2. Replace the windows with rooftiles which replicate in terms of materials, form and colouring those which were removed and making good any damage with materials and methods that exactly match the existing building.
 3. Remove from the land all debris arising from these works.
- The period for compliance with the requirements is 30 December 2020.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (e) of the Town and Country Planning Act 1990 as amended (the 1990 Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with corrections.

The Notice

1. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the 1990 Act, or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority.
2. The matters that constitute the breach of planning control (BPC) and the requirements of the enforcement notice (EN) must correlate with each other. Moreover, the requirements of the EN are limited by sections 173(4)(a) and (b) of the 1990 Act. Where planning permission has not been granted for the development, the power is simply to restore the land (which includes a building) to its previous condition. There is no statutory power to require the appellant to undertake works which would result in an improvement to that previous condition and the requirements should not be based on subjective judgements.
3. As such, I intend to delete the wording of the BPC, in paragraph 3, and replace it with *'Four rooflight windows have been inserted in the roof on the eastern*

elevation and two in the roof on the western elevation of the building without the benefit of planning permission'. I also intend to correct the wording of requirement 1 by deleting the word '*Carefully*' at the start of that requirement as it is a subjective judgement as to whether something is removed carefully. Additionally, I intend to delete the wording of requirement 2 and replace it with '*Replace the rooflight windows removed under requirement 1 above with rooftiles which replicate in terms of materials, form and colouring those that were removed to install those rooflight windows*'. This ensures that the requirement restores the roof to its previous condition. The parties were given the chance to comment on these corrections and they can be carried out without injustice to the parties.

4. The period for compliance with the notice, in paragraph 6, is given as 30 December 2020. However, an appeal was been made before the notice took effect. Taking account of the compliance period, I shall therefore correct the notice by deleting '*by 30 December 2020*' and substituting it with '*within 3 Months*'. I am satisfied that these corrections would not cause injustice to either the local planning authority or the appellant as they do not alter either the purpose or actual requirements of the notice.

Procedural Matters

5. The appeal form indicates that planning permission¹ was sought for the insertion of the rooflight windows and that the planning application was refused and an appeal² (section 78 appeal) was made against that refusal. The appellant requested that the section 78 appeal was linked to this appeal and both determined together. However, due to the time between the submission of the 2 appeals this was not possible, and the section 78 appeal has been determined. The appellant has submitted the planning statement that accompanied the section 78 appeal with this appeal. I have treated that planning statement as the grounds of appeal in support of the ground (a) appeal and deemed planning application.
6. The appeal form states that the appellant is Mr Justin Carlin on behalf of Carlin Cox Developments Ltd. However, Mr Carlin requested that the name of the company be altered to Summerfields Homes Ltd and stated that this company is now the owner of the appeal site. I have dealt with the appeal on this basis.
7. The evidence before me indicates that the South Northamptonshire Local Plan (Part 2) (LP) has been recently adopted and now forms part of the development plan. The Council confirmed that LP Policy SS2 is relevant to this appeal and I have been provided with a copy of it. The parties are aware of, and have had the opportunity to comment on, this information and they are not therefore prejudiced by my consideration of it. It is incumbent on me to consider the most relevant and up to date information in reaching a decision and I have therefore dealt with the appeal on this basis.
8. I acknowledge that the Council appears to be investigating other elements/details of the appeal building in relation to whether planning permission has been granted or is required for them. However, these matters are not before me.

¹ Ref No: S/2020/0056/FUL

² Ref No: APP/Z2830/W/20/3249562

The ground (e) appeal

9. The appellant has stated that Summerfields Homes Ltd have the right of appeal as they have been the owners of the land since at least January 2020 and have taken over the site from Carlin Cox Developments Ltd.
10. The appellant is the director of Carlin Cox Developments Ltd and Summerfields Homes Ltd and the EN was not served on the latter. He considers that the Council would have been aware of the change in ownership since the submission of the planning application to regularise the development on this site in January 2020. Nevertheless, the Council has stated that a Land Registry search carried out in April 2020 indicated that Carlin Cox Developments Ltd owned the land.
11. Even if the notice has not been correctly served, section 176(5) of the 1990 Act provides that failure to serve may be disregarded if the appellant has not been substantially prejudiced by the failure to serve him. In this case the appellant is the director of both companies cited above and has been able to submit an appeal against the enforcement notice and argue it fully during these appeal proceedings. It cannot, therefore, be said that he has suffered any prejudice as a result of any failure to comply with the rules concerning service. There is no suggestion that any other person may have been prejudiced. I conclude, therefore, that in the circumstances of this case any failure by the Council in terms of service of the enforcement notice may be disregarded. Consequently, the appeal on ground (e) fails.

The ground (a) appeal and deemed planning application

Main Issue

12. The main issue is the effect of the development on the significance of the appeal building, a non-designated heritage asset, and the character and appearance of the surrounding area.

Reasons

13. The appeal building is located within the village of Potterspurty, close to the junction of Woods Lane and High Street. It is a one and a half storey stone building with a pitched tile roof. An application for prior approval³ was granted in 2018 to change the use of the building to 2 dwellinghouses and planning permission⁴ was granted for external alterations to the building in 2019.
14. The appeal building appears to be of considerable age and the evidence before me indicates that it was historically associated with 100 High Street (No 100), an adjacent building. No 100 is grade II listed and a post office/general convenience store is operating from within it. The Council states that the appeal building is identified as a locally significant building in its Potterspurty Village Design Statement, and I have no reason to dispute this.
15. As such, it is reasonable to consider that the appeal building can be treated as a non-designated heritage asset (NDHA). From the information before me and my observations I consider that the significance of the appeal building is largely derived from its age, form, fabric and architectural features, as well as its historical association with No 100. As such, the appeal building has aesthetic

³ Ref No: S/2018/0820/PA

⁴ Ref No: S/2019/0240/FUL

and historic value that contributes to the overall character and appearance of the area.

16. I acknowledge that the appellant considers that as the building is within a settlement and was associated with No 100 that it is not a rural building. Nonetheless, the Council's '*The Re-use of Rural Buildings For Residential Use Supplementary Planning Document*' (SPD) states that it relates to agricultural, industrial or ancillary buildings both in the open countryside and in rural villages. Potterspury is a small settlement situated in a rural area and I consider that it reasonable to consider that it is a rural village. Furthermore whilst, the appeal building does not appear to have been used as an agricultural or industrial building the evidence before me indicates that it served as an ancillary building providing storage for the commercial use at No 100.
17. The SPD at paragraph 7.8 states, amongst other things, that '*the roof can be the most important feature of a building. Unbroken roof slopes should be retained and traditional materials and finishes should be used on all roofs. Flush-fitting rooflights may sometimes be acceptable but must be kept to a minimum and must be kept to a single horizontal plane, not at different levels on the roof.*' This reflects the guidance at paragraphs 7.55 and 7.56 of the Council's Design Guide (DG).
18. In this case, prior to the rooflight windows being inserted, the roof slope on the eastern elevation of the building was visually unbroken. That roof slope is clearly seen in views from High Street and in its unbroken form it undoubtedly formed part of the aesthetic value that contributes to the significance of the NDHA and the character and appearance of the area. However, the rooflight windows project above the plane of the roof, they are of differing sizes and they are at different levels on the roof. The combination of these factors means that the rooflight windows appear visually dominant on that roof slope and the aesthetic value contribution made by that roof slope has been significantly reduced. Consequently, the development has materially harmed the significance of the NDHA and the character and appearance of the area.
19. The appellant has stated that the rooflights are required to allow light into the building and provide a good standard of living accommodation for the occupants. Nevertheless, the Council has stated that it has permitted the replacement of an existing south-facing gable window, the installation of a new north-facing gable window and two rooflights on the western elevation. Moreover, there is little evidence before me to indicate that without the rooflight windows on the eastern elevation that the living conditions of the occupants would be harmed. As a result, these matters do not outweigh the harm identified above.
20. I acknowledge that the external alterations approved in 2019 included rooflight windows within the roof slope on the western elevation. However, that roof slope is largely screened from views from the public realm and I do not have the full details of the design or positioning of the rooflight windows that were approved at that time. Furthermore, whilst there are rooflight windows in nearby properties those properties appear to be modern dwellings rather than converted traditional buildings. Therefore, they are not fully comparable to the case before me. I have also taken into account the section 78 appeal decision

and I consider that this decision is in accordance with it. In any case, I am required to determine this appeal on its individual merits.

21. Taking into account all of the above, the development is contrary to LP Policy SS2 which, amongst other things, states that planning permission will be granted where the development uses a design-led approach to demonstrate compatibility and integration with its surroundings and will not adversely affect built heritage. It is also contrary to Policy BN5 of the West Northamptonshire Joint Core Strategy Local Plan Part 1 (2014) which, amongst other things, seeks to secure and enhance the significance of the area's heritage assets and ensure the sensitive re-use of under used heritage assets. It is also contrary to the guidance contained within the SPD and the DG.

Other matters

22. Whilst the Council make no reference, in their reasons for issuing the EN, to the effect of the development on the setting of No 100, as a statutory consideration, I am required to have regard to this matter when determining the appeal. From my observations and the information before me the special interest/significance of the listed building appears to be largely derived from its age, form, fabric and architectural features. Furthermore, it would appear that the elements of setting that contribute to its significance include its relationship with High Street and Woods Lane and its immediate plot. I have no reason to dispute the findings on this matter within the Council's Delegated Report and I therefore consider that the development does not harm and therefore preserves the setting of the listed building.
23. I note that the appellant considers that the Council failed to recognise that as a matter of fact and degree the new use as dwellings had commenced. However, there is no ground (c) appeal before me, that the matters did not constitute a breach of planning control, and there is no suggestion that in its current form the development is not a breach of planning control. I have also noted the points made by the appellant about the Council's handling of the matter. However, these points have not affected my decision, which is based on the planning merits of the proposal.
24. The references to other development plan policies have been noted. However, the development plan policies to which I have referred are considered the most relevant to this appeal.

Conclusion – ground (a) appeal and deemed planning application

25. In this case there are no material considerations which indicate that the development should be determined other than in accordance with the development plan. For these reasons, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

Overall Conclusion

26. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Formal Decision

27. It is directed that the enforcement notice be corrected by: -

- deleting the wording of the BPC, in paragraph 3, and replace it with '*Four rooflight windows have been inserted in the roof on the eastern elevation and two in the roof on the western elevation of the building without the benefit of planning permission*';
- deleting the word '*Carefully*' at the start of requirement 1;
- deleting the wording of requirement 2 and replacing it with '*Replace the rooflight windows removed under requirement 1 above with rooftiles which replicate in terms of materials, form and colouring those that were removed to install those rooflight windows*';
- Deleting the wording '*by 30 December 2020*' and replacing it with '*within 3 Months*' as the compliance period in paragraph 6.

28. Subject to these corrections the appeal is dismissed and 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.

D. Boffin

INSPECTOR