



Appeal Decision

Virtual Hearing Held on 20 October 2020

Site visit made on 23 October 2020

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/Y3425/C/19/3231520 Hillside, Milford Road, Stafford ST17 0JY

- 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 Stuart Jarvis against an enforcement notice issued by Stafford Borough Council.
- The enforcement notice was issued on 7 May 2019.
- The breach of planning control as alleged in the notice is: Without planning permission, the erection of a conservatory in the approximate position marked with a cross on the attached plan.
- The requirements of the notice are:
 - (i) Remove the conservatory
 - (ii) Remove from the land all building materials and rubble arising from compliance with the first requirement above and restore the land to its condition before the breach took place by levelling the ground and reseeding it with grass.
- The period for compliance with requirement (i) is two months and three months for requirement (ii)
- 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. 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 Act.

Decision

1. 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 a conservatory, subject to the following condition:
 - 1) Obscure glazing to the side of the conservatory on the boundary with Willow Cottage shall be retained for the life of the development.

Procedural Matters

2. The breach of planning control refers to the conservatory only. The requirements should flow from the breach. The first requirement is the removal of the conservatory but the second requirement was unclear as to what exactly was required. However, the Council did provide clarification at the hearing and stated that the requirements should only require the removal of the conservatory. Nevertheless, as I have subsequently allowed the appeal and

quashed the notice, it is not necessary for me to formally amend the requirements.

Planning History

3. Planning permission was originally granted for a kitchen extension on 2 November 2015¹. An application for retention of the conservatory which now formed the rear of the kitchen extension was refused on 24 August 2016². A further application for the kitchen extension which was 0.9 metres longer than shown on the original plans was approved on 29 November 2017³. A final planning application to retain the conservatory was refused on the 31 January 2019⁴. The reasons for the refusals of planning permission for the conservatory related to the amenity of the occupiers of Willow Cottage. The enforcement notice was subsequently served on 7 May 2019.

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

Main Issue

4. The main issue is whether the conservatory harms the living conditions of occupiers of Willow Cottage due to its design with particular regard to outlook and loss of light.

Reasons

5. The appeal dwelling is a two-storey semi-detached property which together with the adjoining dwelling, Willow Cottage, form a pair of cottage-style dwellings. Both the appeal dwelling and Willow Cottage have long gardens which slope away to the rear. The development consists of a modest rectangular conservatory with obscure glazing to the sides. The conservatory is added on to the kitchen extension to create a single open plan kitchen and living area. Beyond the conservatory is an area of decking on the same level and, beneath the decking and the conservatory, there is an area for storage. Further decking and steps extend down to the garden which is on a lower level than the dwelling due to the sloping features. The Council confirmed at the hearing that the notice relates only to the conservatory itself that forms the rear of the kitchen extension.
6. Willow Cottage has a substantial rear patio area across the width of the dwelling. The flank wall of the kitchen extension of the appeal dwelling is directly on the shared side boundary and forms a backdrop for the patio area. A set of steps to the middle of the patio area provide access to the garden. The conservatory at the appeal dwelling is in line with the steps as the patio extends along the full length of the solid kitchen wall.

Outlook

7. The prominent feature along the shared boundary is the kitchen wall. Given the limited views from the patio areas directly in front of the rear windows of Willow Cottage of the conservatory that I observed at my site visit, I do consider it unlikely that views from inside the rear of Willow Cottage would cause material harm to outlook. The angle of the conservatory in relation to the

¹ 15/22909/HOU

² 16/24406/HOU

³ 17/26911/HOU

⁴ 18/29347/HOU

rest of the garden and the presence of a substantial mature tree in the garden at Willow Cottage to the farthest side of the conservatory from the house further limits views from the garden back towards the conservatory. Given the size of the garden at Willow Cottage and the position of the glazed conservatory at the end of the existing kitchen wall, I do not consider that the conservatory harms the outlook of occupiers of Willow Cottage.

Light

8. The Design Supplementary Planning Document 2018 (the SPD) is intended to provide guidance for new builds including extensions and Appendix 2 sets out the 45 degree rule. The rule states that extensions to new dwellings should not cause an unreasonable loss of daylight or an unreasonable degree of overshadowing to any habitable rooms in neighbouring properties or gardens. Plans provided show how imposing a 45 degree line from the rear of Willow Cottage does cut across the corner of the approved kitchen extension and the conservatory.
9. However, the SPD recognises that the 45 degree rule should not be applied on a mechanical basis and reference should also be made to site considerations including: design and character of existing property and neighbouring properties; distance of existing buildings to site boundaries; siting of adjoining buildings within the site; orientation of the appeal property in relation to neighbouring properties; existing boundary features including walls and trees; and garden size.
10. The Council states that the garden would not have any direct sunlight in the afternoon. However, the conservatory is glazed and is adjacent to a modest section of garden at Willow Cottage between the conservatory and the steps to the patio where there are currently garden sheds. The sun path analysis drawings commissioned by the appellant provide comparisons with and without the conservatory. The Council did query why the drawings covered only June and did not include other seasons of the year. Nevertheless, the 3pm drawings show that the bulk of the patio area is in shade with or without the conservatory, largely due to the kitchen wall and the existing mature tree in the garden of Willow Cottage to the side of the conservatory.
11. However, given the location of the conservatory just beyond the patio, any loss of daylight or overshadowing is likely to impact the modest area between the patio steps and the boundary. The bulk of the garden beyond the patio remains out of shadow with minimal differences in the comparison drawings. In my view, applying the site specific factors listed does mean that the development is not in conflict with the 45 degree rule.

Occupiers of Willow Cottage

12. Mr Haynes has lived at Willow Cottage since June 2020 and has no objection to the retention of the conservatory. The previous occupier Mrs Brown bought Willow Cottage in December 2016 which was after the erection of the conservatory. She has no objection to the retention of the conservatory and stated that she had no difficulty in selling Willow Cottage earlier this year. Whilst any grant of planning permission would run with the land, it is nevertheless relevant that two sets of occupiers of Willow Cottage do not support the Council's reasons for serving the notice.

13. For the reasons given, I conclude that the development does not harm the living conditions of the occupiers of Willow Cottage with regard to outlook and light. There is therefore no conflict with Policy N1(e) of the Plan for Stafford Borough Council 2011-2031 which, amongst other things, requires design and layout to take account of light implications together with the amenities of adjacent residential areas. It also does not conflict with Appendix 2 of the SPD which, amongst other things, refers to applying site specific factors when applying the 45 degree rule.

Other Matters

14. A written objection was received during the notification process for the appeal hearing date from Mr Butler whose garden backs onto the garden of the appeal dwelling. He considers that the conservatory invades his privacy and has provided photographs taken from different view points. I was able to stand both inside and outside the conservatory as part of my site visit to see the view across to Mr Butler's dwelling. However, given the distance between the conservatory and Mr Butler's dwelling and the presence of mature vegetation on the common rear boundary apart from one gap, I do not consider that the extent of any overlooking causes material harm.

Conditions

15. The Council confirmed at the hearing that the installation of obscure glazing to the side of the conservatory addressed any previous concerns with regard to loss of privacy for occupiers of Willow Cottage. A condition to retain glazing to the side of the conservatory on the boundary with Willow Cottage is therefore appropriate and reasonable to protect the amenities of occupiers of Willow Cottage. As the development already exists, no other conditions are required.

Conclusion

16. For the reasons set out above, the appeal under ground (a) therefore succeeds. Conditional planning permission will be granted on the application deemed to have been made under Section 177(5) of the 1990 Act (as amended) for the erection of a conservatory. That being the case there is no need for me to consider grounds (f) and (g).

E. Griffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stuart Jarvis and	Owners
Annabelle Jarvis	Counsel
Christian Hawley	Plan Associates - Agent
Reddy Nallamilli	

FOR THE LOCAL PLANNING AUTHORITY:

Nicholas Lawrence	Stafford Borough Council
	Deputy Development Manager

INTERESTED PERSONS:

Claire Brown	Former Neighbour
Nicholas Haynes	Neighbour

Documents submitted during the hearing

Document 1: Appeal presentation of the appellant
Document 2: Photographs of the development
Document 3: Planning Permission No 17/26911/HOU and Plan No HMRS/PD2/221