



Appeal Decisions

Site visit made on 8 December 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 January 2021

Appeal A: Ref: APP/N2739/C/20/3258365

Field View, Wistow Road, Selby, North Yorkshire YO8 3LY

- 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 John Wilson against an enforcement notice issued by Selby District Council.
- The enforcement notice was issued on 24 July 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the change of use to garden land, siting of a static caravan, installation of a water harvesting tank and the extension of hardstanding.
- The requirements of the notice are Step 1 Permanently cease the use of the static caravan as an independent dwelling; Step 2 Permanently remove the static caravan from the site, including the hardstanding underneath, the balcony and steps and the water harvesting tank along with any associated pipes; Step 3 Permanently cease the use of the Land as residential garden land and remove any residential paraphernalia.
- The period for compliance with the requirements is Step 1 – 30 days; Step 2 – 60 days; Step 3 – 30 days.
- The appeal is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld with a correction and variations in the terms set out below in the Formal Decision.

Appeal B: APP/N2739/W/20/3258363

64 Wistow Road, Selby, North Yorkshire YO8 3LY

- 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 John Wilson against the decision of Selby District Council.
- The application Ref 2019/0901/FUL, dated 4 February 2020, was refused by notice dated 3 July 2020.
- The development proposed is Retrospective application for the retention of an existing mobile home, enlargement of domestic curtilage, installation of water harvesting tank, and re-alignment of access to Wistow Road.

Summary of Decision: The appeal is allowed in part and is dismissed in part as set out below in the Formal Decision.

Appeal B

Preliminary Matters

1. The development described on the planning application form included reference to the installation of a water harvesting tank. The Council excluded this element from consideration on the basis of insufficient information being

provided to support the proposal. However, it does not appear that the planning application was made formally invalid by the Council on this basis, nor from the information before me, that any revisions to the description of development were discussed and agreed with the applicant. Accordingly it was not open to the Council to unilaterally delete reference to this proposal from the scheme. I have therefore included this element of the proposed development in my decision.

2. The description of development includes reference to the "enlargement of domestic curtilage". However "curtilage" is not actually a use of land and it would not therefore be appropriate to make my decision on this basis. Having regard to the alleged breach of planning control it would be appropriate to refer to the change of use to garden land instead.
3. The references in the planning application to a 'mobile home' and in the enforcement notice to a 'static caravan' relate to one and the same structure. The terms are therefore used interchangeably throughout this decision.
4. The appellant says that the caravan is used by members of his own family, ancillary to the main dwelling, and is not therefore used as independent accommodation. The Council do not dispute that the development should be assessed on this basis. However, notwithstanding this, the caravan is sited in part of the former field, that is subject to the present change of use application, and is therefore in a different planning unit to the main dwelling. Activities carried on within a single planning unit cannot be incidental to activities carried on outside that unit. The caravan therefore still represents development beyond the settlement limits.
5. Whilst the notice includes the requirement to cease the use of the caravan as an independent dwelling, this could be corrected so as to simply refer to the use of the caravan ceasing. I am satisfied that this would not result in injustice to the appellant as there is a further requirement to remove the caravan in any event, added to the fact that I propose a relaxation to the relevant compliance periods.

Main Issues

6. The main issues are i) the effect of the mobile home and extended garden area on the character and appearance of the surrounding countryside and the adjacent settlement form and ii) the implications of the realigned access road in terms of highway safety.

Background

7. The appeal site is in an edge of settlement location, where the northern extension of Selby, along Wistow Road, runs into the open countryside. Specifically the site includes the dormer bungalow known as Field View, 64 Wistow Road, and its immediate forecourt area. There appears to be no dispute that these features lie within, or partially within, the defined Development Limits of Selby. However the proposed development, subject to this retrospective planning application, including the mobile home, enlargement of the domestic garden, water harvesting tank and realigned access all lie outside the Development Limits and in the open countryside.

Reasons

Character and Appearance

8. The settlement form along Wistow Road is characterised by a linear arrangement of predominantly two storey dwellings, set back from the highway with verdant boundary planting. The western edge of the settlement is marked by the bungalows at No 62 and on the opposite side of the road, which continue the east - west linear form of the settlement. No 64, though situated behind No 62, in a backland location, is nevertheless respectful of the western edge of the settlement. Beyond this area, to the west, the built form of the settlement gives way to relatively flat and open countryside, characterised by trees, hedges and open fields, with occasional sporadic dwellings. Because of its edge of settlement location, the appeal site is very prominent when approaching from the north-west and west, along Wistow Road and Sherburn Road respectively. I noted during my visit that the formally constructed footpath ends opposite the junction of these two roads. However, I am not persuaded that this equates to a lack of passing pedestrians able to see the site.
9. The mobile home is sited to the north-east of the main dwelling, beyond its curtilage area. It is finished with pale, horizontal upvc cladding and a tiled roof. Though I have no reason to question the quality of the structure as a unit for residential purposes, in its own right, it is typically rectangular in shape and relatively functional in appearance. Despite its limited scale, the functional form and uncharacteristic light colouring of the structure ensures that it stands out as an incongruous feature in relation both to its open surroundings and the darker brickwork of larger adjacent buildings. Furthermore the development draws the eye, in terms of pulling the east – west linear orientation of the settlement, uncharacteristically northwards. The fact that the caravan may be lived in by members of the appellant’s family does not overcome the harm identified.
10. The extended garden covers an extensive field, immediately to the west and north of Field View. Though currently laid to grass it is nevertheless prominent from the public domain, over existing boundary treatments. I consider that the use of this land as a vastly extended garden, with the sorts of domestic outdoor paraphernalia, such as play and garden equipment, that invariably accompany such uses, would result in an unsympathetic domestic encroachment into the informality of the surrounding open countryside. The relatively well-defined western edge of the settlement would be diluted through the uncharacteristic sprawl of development further to the north and west.
11. I therefore find that both the existing mobile home and enlargement of the domestic garden result in harm to the character and appearance of the surrounding countryside and the adjacent settlement form. The appellant has referred to the presence of a dwelling with comparable curtilage area situated further to the north. However it was apparent from my visit, that this site is far less prominent and appears more as a sporadic dwelling away from the settlement edge. I do not therefore agree that the circumstances of that site and the appeal site are comparable. Furthermore I am not persuaded that either the location of the land adjacent to the main dwelling and settlement boundary or the removal of permitted development rights for new outbuildings

in relation to the main dwelling constitute special circumstances which would overcome the harm I have identified and justify the development in this case.

12. I noted during my visit that various conifer and laurel hedges have been planted around the perimeter of the appeal site, with the intention of screening both the mobile home and extended garden area. However these hedges would take considerable time to mature and become effective and so would not offer a realistic solution. In any event the argument that a mobile home and extended garden area would be out of public view for this reason would not be compelling in principle, as it could be repeated too often to the overall detriment of the character and appearance of the countryside.
13. These developments therefore conflict with Saved Policies ENV1 and H15 of the Selby District Local Plan 2005 (LP); with Policies SP2A, SP10, SP13, SP18 and SP19 of the Selby District Core Strategy 2013 (CS) and with the National Planning Policy Framework insofar as they seek to control development in the open countryside and secure high quality design which is sympathetic to the form and character of its surroundings. Policy SP4 of the CS, as referred to by the Council, is concerned with the management of residential development in settlements. It is not therefore relevant to the current case which concerns development outside the Development Limits.
14. With regard to the water harvesting tank, though I consider that it was technically incorrect to remove this element from the description of development without the agreement of the applicant, as set out above, I concur with the Council that, from the limited information provided regarding its design, it would not be possible to grant planning permission for this feature.

Highway Safety

15. Whilst there have been concerns raised by third parties, I note that the Council do not take issue with the realigned access, either in terms of appearance or in highway safety terms. Highway safety was not a reason for the refusal of planning permission and I note that the Highway Authority did not object to the scheme or recommend the imposition of conditions on highway safety grounds.
16. It was evident from my visit that visibility along the highway, for drivers emerging from the site, is somewhat restricted in a westerly direction, due to the proximity of the site access to a bend in the road. However the standard of visibility is not significantly less, when compared with the approved access to the site, which is positioned immediately to the east. Drawing the above considerations together I conclude that the realigned access would not result in harm to highway safety. Accordingly this element complies with Policy ENV1 of the LP insofar as it requires regard to be had to the proposed means of access.

Appeal A on ground (f)

17. The ground of appeal is that the steps required to comply with the notice exceed what is necessary to remedy the breach of planning control. The appellant's case is that the mobile home could be brought inside the curtilage of the main dwelling in order to reduce its impact. It is argued that it would therefore be unnecessary to remove it from the site. However, I have been provided with no details as to any proposed alternative siting of the structure.

I am not therefore in a position to be able to consider any potential alternative siting. The ground (f) appeal therefore fails.

Appeal A on ground (g)

18. The appeal on ground (g) is that the time given to comply with the requirements is too short and that more time should be allowed to cease the use of the caravan and to remove the structure and related works.
19. I recognise that the loss of residential use of the mobile home would interfere with rights under Article 8: The Right to Respect for Private and Family Life and for the Home of the Human Rights Act 1998. However these are qualified rights and Article 8(2) provides that interference may be justified where it is in the interests of, amongst other things, the economic well-being of the country, which has been held to include the protection of the environment and upholding planning policies.
20. I have not been provided with any information to indicate that the occupier of the mobile home would face unusual difficulty in finding alternative accommodation. I consider that a compliance period of 60 days, within which to cease use of the caravan, would be a proportionate response in this case. In this context, recognising that the subsequent requirement to remove various structures and works from the site is unlikely to be unduly complicated, whilst also taking into account the constraints posed by the ongoing public health emergency, I consider that allowing 120 days for this to be completed would be reasonable.
21. The ground (g) appeal succeeds to this extent.

Conclusion

Appeal A

22. For the reasons given above I consider that the appeal on ground (f) should not succeed. However the period for compliance with the notice falls short of what is reasonable, and I shall therefore vary the enforcement notice prior to upholding it. Furthermore the notice should be corrected to delete reference to the caravan as an independent dwelling.
23. Section 180 of the Act states that where after the service of an enforcement notice planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission. Consequently the notice ceases to have effect with regard to the extension of hardstanding forming the realigned access, because this now benefits from planning permission and is therefore lawful for planning purposes.
24. S173(11) of the Act provides that (a) where an enforcement notice in respect of any breach of planning control could have required works to be removed but does not do so; and (b) all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission shall be treated as having been granted by virtue of s73A in respect of development consisting of the construction of those works. Accordingly this means that any further areas of hardstanding encompassed by the alleged breach of planning control, with the exception of that directly beneath the caravan, shall be

treated as having gained planning permission once the enforcement notice is complied with.

Appeal B

25. For the reasons given above I conclude that the appeal should be allowed in part and dismissed in part.

Formal Decisions

Appeal A

26. It is directed that the enforcement notice be corrected by the deleting the words "as an independent dwelling" in relation to Step 1 of Schedule 5.

27. It is directed that the enforcement notice be varied by the deletion of the words "30 days" in relation to Step 1 of Schedule 6, and the substitution of the words "60 days" instead; and by the deletion of the words "60 days" in relation to Step 2 of Schedule 6, and the substitution of the words "120 days" instead.

28. Subject to this correction and variations the appeal is dismissed, and the enforcement notice is upheld.

Appeal B

29. The appeal is dismissed and planning permission is refused for Retrospective application for the retention of an existing mobile home, change of use to garden land and the installation of water harvesting tank. The appeal is allowed and planning permission is granted only insofar as it relates to the re-alignment of access to Wistow Road at 64 Wistow Road, Selby, North Yorkshire YO8 3LY in accordance with the terms of the application, Ref 2019/0901/FUL, dated 4 February 2020, and Plan LOC01 and Drawing 191021.1, so far as relevant to that part of the development hereby permitted, subject to the conditions in the schedule below.

Conditions

30. I have considered the comments regarding suggested conditions. A condition regarding the driveway material is required to ensure satisfactory drainage to reduce the risk of flooding. Conditions removing permitted development rights in relation to outbuildings or structures that could potentially be sited on, or partly on, the realigned access drive, and requiring landscaping measures to help screen this feature, are required in the interests of the visual amenity of the area. Whilst it has been suggested that a covenant exists to prevent planting, I have not been provided with any evidence or details of such a constraint. A contamination condition is not required given the retrospective nature of the application.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The driveway hereby permitted shall be constructed, and thereafter retained, only in permeable material.
- 2) Within three months of the date of this decision a detailed landscaping scheme shall be submitted to the Local Planning Authority for approval. The approved scheme shall be implemented by the end of the next available planting season. Any trees or plants which within a period of 5 years from being planted die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no outbuildings or other structures shall be erected.

END OF SCHEDULE OF CONDITIONS