
Appeal Decision

Site visit made on 8 June 2021

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9th July 2021

Appeal Ref: APP/Z2505/C/20/3261848

Jasmine Cottage, Pitcher Row Lane, Algarkirk, Boston PE20 2LJ

- 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 Michael Wallace against an enforcement notice issued by Boston Borough Council.
- The enforcement notice, numbered PENF0303/19, was issued on 29 September 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a two-storey rear extension, the erection of a detached garage and the erection of fence and gates along the front of the property and that is in excess of 1 metre high.
- The requirements of the notice are (1) Demolish the two-storey rear extension and restore the house to its original condition before the unauthorised development took place. Remove from the site all associated debris and materials arising from that demolition; and (2) Demolish the fence and remove from the site all associated debris and materials arising from that demolition.
- The periods for compliance with the requirements are (1) 6 months and (2) 28 days from the date the notice takes effect.
- 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 (the 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 Act.

Summary of decision: The appeal succeeds in part on grounds (f) and (g) and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

The Notice

1. A detached garage and gates are included in the alleged breach of planning control, but the notice does not require any steps to be taken in respect of them. Varying the notice to include any such requirements would make it more onerous and would thus cause injustice to the appellant. My decision will therefore focus on the remaining aspects of the breach.

The appeal on ground (a)

Main issues

2. The main issues are:
 - The effect of the two-storey extension on the living conditions of neighbours in terms of outlook and sense of enclosure.

- The effect of the fence on the character and appearance of the area.

Reasons

Living conditions

3. Jasmine Cottage and Ivy Cottage form a semi-detached pair of dwellings. The rear part of Ivy Cottage has an 'L' shaped plan form with a small detached outbuilding on the common boundary. The appeal property had a single-storey rear extension that met this outbuilding, so there has been a degree of enclosure to the immediate rear of Ivy Cottage for some time.
4. Ivy Cottage has obscure glazing in a back door and a ground floor bathroom window, both facing the appeal property. While I have no doubt the two-storey extension has reduced the natural light to the bathroom, it is not a habitable room and the outlook from it is therefore of limited significance.
5. Views from a rear facing kitchen window are framed by the bathroom, the outbuilding, and the two-storey extension. Although the kitchen is small, and regardless of how it may be used now, it has the potential to accommodate a small dining area. It is reasonable to take account of this, and the possibility of habitation, when assessing the effect of the two-storey extension.
6. There is a first-floor window directly above the kitchen window. Although this window receives more light, the two-storey extension has reduced the outlook from it. While the appellant refers to a letter from a former occupier to suggest this is a bathroom window, the letter does not say where the bathroom was and, as noted, there is a ground floor bathroom.
7. The two-storey rear extension projects significantly further than the single-storey extension did and reaches the rear boundary. As a result, it intrudes in the outlook from rear facing windows in Ivy Cottage, is overbearing, and increases the sense of enclosure.
8. The appeal site previously contained mature trees that affected the outlook from Ivy Cottage. However, as those trees have been felled, an accurate comparison with the current situation is not possible. Even so, there would have been a degree of outlook through and beneath the branches and, as the trees were deciduous by all accounts, there would have been seasonal variations. Furthermore, photographic evidence shows that the largest tree, a weeping willow, was significantly further away from Ivy Cottage than the two-storey extension. This would have reduced its effect in terms of outlook and sense of enclosure.
9. Consequently, the two-storey extension impacts upon a neighbouring land use by reason of visual intrusion and it has not been demonstrated that an appropriate level of residential amenity has been secured.

Character and appearance

10. Roadside dwellings in the area are interspersed with agricultural land and tend to have open road frontages or low hedges. While some modern dwellings have high hedge boundaries, these are set back from the road, which helps to maintain a degree of openness.
11. The sense of openness and the predominance of hedge boundaries are important components of the rural character of the area. In contrast, the fence

forms a hard boundary with an urbanising effect. It has not been demonstrated that it would contribute to the landscape character of the location.

Conclusion on ground (a)

12. For the reasons given, the two-storey extension has an adverse effect on living conditions for occupiers of Ivy Cottage and is contrary to policies 2 and 3 of the South East Lincolnshire Local Plan 2011-36. For the separate reasons given, the design of the fence is inappropriate to the local area and is also contrary to policy 3.
13. Accordingly, the two-storey rear extension and fence are unacceptable and the appeal on ground (a) must fail.

The appeal on ground (f)

14. For the appeal to succeed on this ground, the appellant must demonstrate that the steps required to comply with the notice are excessive and that lesser steps could overcome the alleged breach of planning control. The breach of planning control to which the notice's requirements apply is the erection of a two-storey rear extension and a fence along the front of the property exceeding 1 metre in height. The purpose of the notice is to remedy the breach.
15. The appellant has indicated that, if the notice is upheld, he will erect a replacement extension and a new fence, both within the parameters permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order). It is therefore submitted that a fallback exists, and the notice should be varied to require the extension to be reduced in size and the fence to be reduced in height, such that they are permitted by the Order.
16. While this variation is suggested in good faith, it presents 2 practical difficulties in respect of the two-storey extension. The first is that reducing the extension would not remedy the breach of planning control if a 2-storey rear extension, as described in the notice, would still exist. Secondly, the changes that would need to be made for the extension to correspond to what the Order would have permitted have not been identified, neither has it been demonstrated that such changes are structurally feasible. Consequently, and in view of the nature and extent of work that might be required, the variation that would follow from the appellant's argument would make the notice imprecise. This is unacceptable because it would not be certain how to achieve compliance.
17. In contrast, there can be certainty about the suggested reduction in the height of the fence. Class A of Part 2 of Schedule 2 to the Order provides, subject to limitation A.1(a)(ii), that a replacement fence not exceeding 1 metre in height adjacent to Pitcher Row Lane would be permitted development. If the notice were varied to require a similar result, it would be sufficiently clear for the appellant to know how to comply.
18. Consequently, requirement (b) is excessive and the appeal on ground (f) succeeds to the extent that the notice should be varied to allow the option of reducing the height of the existing fence such that it does not exceed 1 metre.

The appeal on ground (g)

19. It is not disputed that the two-storey extension could be demolished within the 6-month period stated in the notice. However, it contains a kitchen and bedroom and demolition would therefore disrupt the appellant's household. The suggested alternative of 9 months would provide greater flexibility and may reduce the likelihood of disruption during school term times.
20. In addition to his stated intention of building a permitted development rear extension, the appellant may apply for planning permission for an alternative scheme. The 6-month period stated in the notice should be sufficient for an application to be submitted and determined and the Council has confirmed that a revised timescale could be agreed if appropriate, as allowed by section 173A(1)(b) of the Act.
21. However, both courses would involve the construction of a replacement extension. The time required for this should be considered, if only to make it more likely that demolition and construction could be undertaken as a single project, thus minimising disruption to the appellant's family.
22. The appeal on ground (g) therefore succeeds and the notice should be varied accordingly.

Conclusions

23. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and the appeals on grounds (f) and (g) should succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

24. The appeal succeeds on grounds (f) and (g) and it is directed that the enforcement notice be varied in section 5 b) by:
 - The insertion of the words "or reduce the fence to not exceed 1 metre in height" after the words "Demolish the fence"; and
 - The insertion of the words "or reduction in height" after the words "that demolition".
25. It is further directed that the notice be varied in section 6 by the deletion of the words "six months" and the substitution of the words "9 months".
26. Subject to these variations the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Mark Harbottle

INSPECTOR