



Appeal Decisions

Site visit made on 3 August 2021

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th August 2021

Appeal A Ref: APP/K0425/C/20/3262275

Appeal B Ref: APP/K0425/C/20/3262276

Land at 2 Sycamore Cottages, Church Road, Lane End, Buckinghamshire HP14 3HL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr James Ansell (Appeal A) and Mrs Rebecca Ansell (Appeal B) against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice was issued on 3 September 2020.
- The breach of planning control as alleged in the notice is without planning permission a material change of use of detached outbuilding to self-contained independent dwelling.
- The requirements of the notice are: 1. Cease the use of the outbuilding as a self-contained dwelling; and 2. Remove the cooking facilities (including the oven, hob and cooker hood) and/or the bathroom facilities (including the bath and/or shower) from the outbuilding; and 3. Remove all materials and debris resulting from carrying out step 2 of the notice from the land.
- The period for compliance with the requirements is six months.
- Appeal A 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. Appeal B is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The enforcement notice is quashed.

Appeal C Ref: APP/K0425/C/21/3273043

Appeal D Ref: APP/K0425/C/21/3273045

Land at 2 Sycamore Cottages, Church Road, Lane End, Buckinghamshire HP14 3HL

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr James Ansell (Appeal C) and Mrs Rebecca Ansell (Appeal D) against an enforcement notice issued by Buckinghamshire Council.
- The enforcement notice was issued on 1 April 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a detached building used as a self-contained independent dwelling.
- The requirements of the notice are: 1. Demolish the building; 2. Remove from the land all materials and debris resulting from carrying out step 1 of the notice.
- The period for compliance with the requirements is six months.
- Appeal C 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. Appeal D is proceeding on the grounds set out in section 174(2) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified

period for Appeal D, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.

Summary of Decisions: The appeals are dismissed and the enforcement notice is upheld with a variation.

Procedural Matters

1. The enforcement notices relate to the same building. The notice in Appeals A and B alleges a material change of use to a dwelling. The notice in Appeals C and D alleges the erection of a building used as a dwelling. Both notices therefore relate to what in essence is the same breach of planning control. Although dated several months apart, the Council confirmed that the notices had been issued in the alternative.
2. The building attacked by the notices was erected following the grant of planning permission at appeal for what was described as a "*replacement single storey timber clad garage/store/garden room building*" in June 2016¹. According to the appellants, the building was substantially complete by early 2020 and it was first occupied in April of that year. The available evidence suggests that by 8 June 2020, the building had been in use as a dwelling for around two months. There was no dispute that as erected, the building deviates significantly in terms of its external dimensions compared to the approved scheme. Other changes from the approved scheme include enlarged and additional windows, installing photovoltaic panels and a chimney, as well as forming a mezzanine floor. The available evidence therefore shows it is highly likely that the building was erected as a dwelling. There was no evidence that erection of the building and its use as a dwelling are not part and parcel of the same breach of planning control.
3. For the above reasons, the 'material change of use' notice does not accurately reflect the nature of the breach. The allegation in that notice is incorrect. What has occurred is in fact operational development comprising the erection of a dwelling. There is a risk of uncertainty and injustice if the two notices subsist in respect of essentially the same breach. As the requirements in the notices differ, the appellants would be unsure which notice they had to comply with in the event that they were both upheld. Moreover, compliance with the 'material change of use' notice would then have consequences for the building in terms of the unconditional planning permission deemed to be granted by s173 (11) of the 1990 Act; this cannot have been what the Council intended. Whilst the 'material change of use' notice could be corrected, it is not appropriate to do so where the result would be, as in this instance, duplication of another enforcement notice. In such circumstances, clarity can only be achieved by quashing the notice which has been found to be incorrect. Accordingly, I shall quash the 'material change of use' notice.
4. An appeal made on ground (a) is that planning permission ought to be granted in respect of the breach of planning control alleged in the enforcement notice. Therefore, the deemed planning application derives its terms directly from the allegation. At s177(1)(a), the 1990 Act provides for the granting of planning permission in respect of all or part of the alleged breach. The Courts have confirmed that this power does not extend to granting permission for an

¹ Appeal Ref: APP/K0425/D/16/3144956.

alternative form of development that differs from the alleged breach².

Consequently, the deemed application arising from the ground (a) appeal in Appeal C can only be for erection of a self-contained dwelling.

5. As the notice does not allege erection of a building used as ancillary accommodation, such a use is not part of the matters stated in the notice as constituting a breach of planning control; it is a different form of development, involving materially different planning considerations and would be assessed against other Development Plan policies. I appreciate that interested parties have had an opportunity to comment on the appellant's submissions during this appeal. Even so, the allegation in an enforcement notice must correctly reflect the breach which has occurred. A notice cannot be corrected simply to enable consideration in the deemed application of an alternative form of development to the allegation in the notice as issued. Consequently, whether planning permission should be granted for the building for use as ancillary accommodation is not a matter before me.
6. The revised National Planning Policy Framework (the Framework) came into force during the course of the appeals. The main parties have been given the opportunity to comment on the implications of the revised Framework in respect of the appeals. I have taken the revised Framework into account in my decision on the ground (a) appeal in Appeal C.

Appeals A and B-the enforcement notice

7. For the above reasons I conclude that the enforcement notice does not specify with sufficient clarity the alleged breach of planning control. It is not open to me to correct the error in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would be caused were I to do so. The enforcement notice is invalid and will be quashed. In these circumstances the appeal under grounds (a), (f) and (g) as set out in s174(2) of the 1990 Act as amended and the application for planning permission deemed to have been made under s177(5) of that Act do not fall to be considered.

Appeal C-Ground (a) appeal

Main issues

8. The main issues in this ground of appeal are:
 - The effect of the dwelling on the character and appearance of the area, including the Chilterns Area of Outstanding Natural Beauty (AONB) and whether the character or appearance of the Lane End Conservation Area (CA) is preserved or enhanced.
 - The effect on the living conditions of the occupiers of adjoining residential property, having regard to privacy, noise and disturbance and the vehicle parking arrangements.
 - Whether suitable living conditions are provided for the existing and future occupiers of the dwelling, having regard to private outdoor amenity space.

² *Richmond upon Thames LBC v SSE* [1972] 224 EG 1555; *Ioannou v SSCLG & LB Enfield* [2014] EWCA Civ 1432.

Reasons

Effect on character and appearance of the area and the AONB, whether the character or appearance of the CA is preserved or enhanced

9. The appeal site contains a semi-detached cottage (No 2) set back from and orientated at a right angle to Church Road, in spacious grounds. No 2 and the attached cottage (No 1) are of traditional character and external materials and are identified as an important building in the CA. In the previous appeal, the Inspector highlighted the broadly linear form and mix of different property types as factors which contribute to the character and appearance of the CA, that of the environs of the cottages being defined by the presence of trees and hedges which, together with areas of open space along Church Road, provide a green and spacious feel. I find no sound reason to disagree with that assessment.
10. Since the previous appeal, the Wycombe District Local Plan (LP) has also been adopted. However, there was nothing before me to indicate that Development Plan or national policy had altered to the extent that materially different conclusions would now be reached in respect of the planning merits of the approved scheme. Therefore, whilst that scheme can no longer be implemented it is a material consideration, to which I attach significant weight.
11. The dwelling is offset at a right angle from No 2's front elevation. There is garaging at the front with one-bedroom accommodation arranged over two floor levels at the rear. The dwelling occupies a similar siting to the building in the approved scheme, using similar external materials comprising dark coloured timber clad walls above a brick plinth, with a slate roof. In terms of the deviations in size from the approved scheme, it was not disputed that the dwelling is around 2 m greater in depth, the depth of the garden elevation gable end having also increased by around 1.5 m. In addition, there was no dispute that the dwelling is around 0.5 m wider, with an increase in the overall height varying from around 0.6 m at the front to approaching 1.5 m at the rear. There was no sound reason to disagree with the above assessment.
12. In terms of overall scale, the dwelling has a relationship to the cottages and the surroundings not dissimilar to that of the building in the approved scheme. The dwelling retains the stepped profile reducing as the ground falls away towards the rear of the site and it utilises a pitched roof form with traditional external materials appropriate to the surroundings. From Church Road, the dwelling is seen as a single storey structure, the roofline of which does not exceed the eaves level of No 2. From other viewpoints, the dwelling appears taller than a single storey structure but as the overall height does not exceed the eaves level of No 2, it is seen as an appreciably lower built feature. The apparent increase in height at the rear has been offset in part by digging further into the sloping ground. In addition, the increase in size has been accommodated without appreciably eroding the sense of spaciousness in the grounds of No 2 over and above the approved scheme. As a result, the increased size notwithstanding, the dwelling is not viewed as a disproportionately large built feature in relation to the cottages or its surroundings when compared to what was previously approved.
13. Be that as it may, the approved scheme was for an ancillary structure with relatively simple lines, having an inherently solid, largely functional and

unassuming appearance, reflecting the qualities of a traditional rural outbuilding as well as its use for secondary or incidental purposes in association with No 2. Compared with the approved scheme, the dwelling has a significantly larger opening in the garden elevation due to the increased depth and height of the gable end. There are also extra openings in the rear elevation and a number of rooflights have been installed. These external alterations have considerably and appreciably increased the extent of glazing in the elevations compared with the approved scheme and together with the formation of a mezzanine floor, facilitate the use as a dwelling. The increase in the number and size of the elevational openings and the reflective finishes of the glazing, as well as that of the photovoltaic panels, contrasts significantly with the more muted tones of the wall and roof materials. In totality, these changes contribute to the building having a greater assertive appearance more consistent with the use as primary living accommodation.

14. As a result, whilst the built form is not dissimilar to the approved scheme in views from Church Road, overall it is more obviously residential in terms of its character and appearance, the sense of such use being reinforced by the presence of the chimney. In views at the rear at from adjoining land, there is a greater feeling of competition visually with the cottages meaning that the scale notwithstanding, the sense of subservience apparent in the approved scheme has been significantly eroded. Also, given the location set well back from Church Road alongside the rear gardens of adjoining residential property, the dwelling occupies a 'backland' situation without a proper street frontage, being markedly at variance with the largely linear pattern of residential development in the vicinity. These factors all contribute to the dwelling giving rise to an appreciably greater built-up and more 'suburbanised' feel, which neither respects nor reflects the local pattern of development and is entirely at odds with the open, spacious and green visual qualities of the environs. This has in turn eroded the setting of the cottages and diminished their contribution to the CA as an important building.
15. Therefore, I find that the dwelling has caused unacceptable harm to the character and appearance of the area and in doing so, it fails to conserve the landscape and scenic beauty of the AONB and does not preserve or enhance the CA. The harm to the significance of the CA is less than substantial. The revised Framework advises that such harm should be weighed against any public benefits. In my view, there are no public benefits provided by the dwelling which outweigh the harm to the significance of the heritage asset.
16. As the dwelling does not conserve the natural and historic environment nor achieve a high quality design, it fails to accord with criteria in LP Policy CP9. By not conserving the natural beauty of the AONB nor respecting the natural beauty and built heritage of the Chilterns, nor enhancing the sense of place and local character in its design, the dwelling also does not accord with criteria in LP Policy DM30. In addition, by not improving the area's character and the way it functions nor demonstrating a positive response to its natural and built context, nor creating a positive and attractive building and space through high quality design of appropriate character and scale, form, layout and detailing, the dwelling does not accord with criteria in LP Policy DM35. Furthermore, by not promoting conservation and enhancement of the historic environment, the dwelling does not accord with LP Policy CP11 nor, for similar reasons, LP Policy DM31; these two policies were not referenced in the notice but were

subsequently drawn to my attention. Moreover, by not achieving a well-designed place nor conserving and enhancing the natural and built environment, the dwelling is inconsistent with the revised Framework.

Living conditions of occupiers of adjoining residential property

17. Prior to erection of the dwelling, the occupiers of No 2 would have enjoyed a reasonably secluded and private garden, in which any overlooking by other properties was considerably offset by the significant distances involved and intervening boundary features. The expansive glazing in the garden elevation and the rear elevation means that occupiers of the dwelling are able to directly overlook No 2's rear garden at close quarters. Screen planting has not significantly diminished the appreciable sense of overlooking now experienced in No 2's rear garden. As pedestrian access to the dwelling is via No 2's rear garden, that further erodes the sense of privacy that occupiers of No 2 might otherwise have reasonably expected to enjoy.
18. The dwelling's garden elevation faces towards the rear garden of Oak Cottage, over the intervening garden of No 2. Compared with the approved scheme, the increase in size and corresponding increase in the extent of the glazing in the gable end means that the dwelling is seen as a slightly more obvious built feature from Oak Cottage. However, in my judgment any increased sense of being overlooked is likely to be minimal, given the significant distance between the dwelling and that property. Maturing planting on the boundary with No 2 also helps to frame views of the dwelling from Oak Cottage and breaks up the apparent extent of the glazing. Such planting is likely to be most effective during the summer months, i.e., at a time when residential occupiers are likely to be spending more time in their gardens. Also, as the gable end is at an oblique angle to Oak Cottage there is limited opportunity for direct views of that property from the dwelling. In similar situations, the Council's Residential Design Guidance does not insist on a minimum of 25 m between dwellings. Therefore, the dwelling has not resulted in the occupiers of Oak Cottage experiencing an appreciably greater sense of being overlooked compared to the approved scheme. However, this does not alter my findings in respect of the adverse effects on the privacy of occupiers of No 2.
19. In addition, given the orientation of the cottages and the relatively low levels of pedestrian and vehicle traffic passing their front elevations, occupiers of No 2 as well as No 1 might reasonably expect to enjoy significant levels of peace and quiet, both internally and in their private gardens. Pedestrian and vehicular access to the dwelling is immediately in front of the cottages. The presence of an additional dwelling has introduced the associated day-to-day activities and pedestrian and vehicular comings and goings in proximity to the cottages. As the dwelling is probably occupied by one or two people, there is likely to be a significant number of such comings and goings. As a result, the occupiers of both cottages are likely to have experienced a considerable and unacceptable increase in levels of noise and disturbance from the day-to-day comings and goings associated with the dwelling. In reaching the above conclusions, I am mindful that the appellant raised no objections. However, that is not a good reason for permitting unacceptable harm to the living conditions of occupiers of adjoining residential property. Residential occupiers can change quickly, whilst the consequences of development will endure for a long time.

20. In terms of vehicle parking, my understanding is that occupiers of the dwelling share use of the garage and the off-street parking area in front with the occupiers of No 2. This equates to the provision of at least three parking spaces, in line with advice in the 2015 Buckinghamshire County Parking Guidance. In my view, the parking arrangements are suitable and convenient for the users and are likely to provide sufficient turning space for vehicles to enter and leave the site in forward gear. Interested parties drew attention to incidences of vehicle parking on nearby land associated with the site. Whilst I can understand the inconvenience that this may have caused, there was no firm evidence to show that such parking had been other than an irregular occurrence. As a result, I am not persuaded that the vehicle parking arrangements for the dwelling have adversely affected the living conditions of adjoining residential occupiers.
21. Nevertheless, given the adverse effects on privacy and having regard to the associated noise and disturbance, the dwelling has caused unacceptable harm to the living conditions of occupiers of adjoining residential property. In doing so, the dwelling fails to accord with criterion in LP Policy CP9, as it does not contribute positively to making places better for people. Also, the failure to prevent significant adverse impacts on the amenities of neighbouring land and property does not accord with criterion in LP Policy DM35. There is parking sufficient to meet the needs of occupants without significant adverse impact from overspill parking, in accordance with criteria in LP Policy DM33. However, the failure to create a high standard of amenity for existing users is inconsistent with the revised Framework.

Living conditions of existing and future occupiers of the dwelling

22. The dwelling has no associated private outdoor amenity space. As the garden of No 2 is used and overlooked by the appellant and their family, that cannot also be regarded as a private space for the dwelling. Consequently, occupiers of the dwelling have limited opportunity to undertake the range of activities that would normally be associated with an amenity space—for example informal recreation, cultivating plants, or drying washing. The lack of access to amenity space has resulted in a restrictive living environment for occupiers of the dwelling, particularly when compared to the generous private gardens enjoyed by adjoining residents. Whilst public open space might be available for informal recreation in the wider area, that is not a suitable and convenient alternative to private on-site provision. It follows that suitable living conditions are not provided for existing and future occupiers of the dwelling. Failure to provide an appropriate level of amenity for future occupants does not accord with criterion in LP Policy DM35. Also, by not providing a high standard of amenity for future users, the dwelling is inconsistent with the revised Framework.

Other matters

23. The local examples of ancillary accommodation, together with other LP Policies and a Supplementary Planning Document, all referred to by the appellant, concern a different form of development and are therefore of limited relevance. A number of interested parties made representations, including several in support of the appellant. However, the other matters raised, including any contribution made by the building to mitigating the effects of climate change, carry limited weight.

Conclusion on ground (a)

24. The dwelling harms the character and appearance of the area and does not conserve the landscape and scenic beauty of the AONB, nor does it preserve or enhance the character or appearance of the CA. Additionally, the dwelling has caused unacceptable harm to the living conditions of occupiers of adjoining residential property, whilst suitable living conditions for the existing and future occupiers are not provided. Therefore, the dwelling does not accord with the Development Plan and is inconsistent with the revised Framework. For these reasons, the ground (a) appeal does not succeed.

Appeals C and D

Ground (f) appeals

25. The ground of appeal is that the notice requirements are excessive.
26. At s173 (4), the 1990 Act provides that an enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place, or the purpose of remedying any injury to amenity caused by the breach. Although the notice does not state as such, its purpose must be to remedy the breach. The notice requires nothing less than demolition of the dwelling, by which the site would be restored to its condition before the breach took place.
27. A requirement to cease the use as a dwelling would not remedy the breach. The building, which was erected as a dwelling and is unauthorised, would remain in situ. Similarly, ground (f) cannot be relied on to achieve a development that is not part of the matters stated in the notice. To my mind, no steps which stop short of the notice requirements would remedy the breach. Therefore, the requirements are not excessive and are reasonable in order to remedy the breach. The ground (f) appeals fail.

Ground (g) appeals

28. The ground of appeal is that the time specified for complying with the notice requirements falls short of what should reasonably be allowed.
29. Restrictions associated with the COVID-19 pandemic have been eased since the appeals were made. Consequently, it is unlikely that the occupiers of the dwelling would encounter significant difficulty in sourcing and securing suitable alternative accommodation within a couple of months at most. Even so, my understanding is that at present, the appellants would be required to give a minimum of four months' notice in respect of any possession proceedings following termination of a tenancy. In my estimation, it is likely to take around a couple of months to complete the demolition of the dwelling and associated works. Therefore, the timescales probably involved in securing the cessation of the unauthorised use together with undertaking the demolition works are likely to make complying with the notice requirements within a six-month deadline a significant challenge.
30. Given the above factors, extending the compliance period from six to nine months would allow a more generous length of time in which to secure the cessation of the unauthorised use and have the demolition works carried out. This would strike an appropriate balance between remedying the planning

harm identified in the notice as soon as practicable, whilst also giving appropriate weight to the occupiers' circumstances and the appellants' responsibilities. Also, given the appellants' misunderstanding of the scope of matters which could be considered under ground (a), extending the compliance period as set out above would afford a suitable opportunity to submit a planning application for an ancillary use of the building and have that application determined, such use not being part of the matters stated in the notice. However, that should not be taken as any indication of the likely outcome of an application; in the first instance that would be for the Council to consider in the light of all the circumstances.

31. For the reasons given above I conclude that a reasonable period for compliance would be nine months and I am varying the enforcement notice accordingly, prior to upholding it. The appeals under ground (g) succeed to that extent.

Conclusion

32. For the reasons given above I conclude that the ground (a) and ground (f) appeals should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the deemed application.

Formal Decisions

33. Appeals A and B-the enforcement notice is quashed.
34. Appeals C and D-it is directed that the enforcement notice be varied by the deletion of "*six months*" in paragraph 6 and the substitution of "*nine months*" as the period for compliance. Subject to this variation the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR