



Appeal Decisions

Site visit made on 26 October 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 03 November 2021

Appeal A Ref: APP/M3455/C/21/3276657

Appeal B Ref: APP/M3455/C/21/3276658

269 Hartshill Road, Hartshill, Stoke-on-Trent ST4 7NQ

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Daniel Bibbey against an enforcement notice issued by Stoke-on-Trent Council. Appeal B is made by Ms Laura Roberts.
- The enforcement notice was issued on 5 May 2021.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a detached outbuilding and engineering operations to form a tiered garden upon the land.
- The requirements of the notice are:
 - 1) Remove the detached outbuilding from the land;
 - 2) Remove the retaining walls, constructed using timber sleepers, and restore the land to the levels and condition prior to development taking place. For the avoidance of doubt, drawing 19-DB-01 dated 22/06/2019 and showing a section through the existing garden and a plan, is attached to this notice. The resulting sloping land shall be finished to lawn using either an appropriate turf or grass seed.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the 1990 Act as amended. Appeal B is proceeding on grounds (f) and (g).

Summary of Decision: The appeals are dismissed and the enforcement notice is upheld in the terms set out below in the Formal Decision.

Preliminary Matters

1. No 269 Hartshill Road is a terraced house, which forms part of a listed row. The property is located within the Hartshill Conservation Area. Access to the rear is obtained via a pedestrian alley, which runs the length of the terrace. Beyond the alley, there is an area of previously unused land that has become incorporated for residential purposes associated with the houses. The land to the rear of No 269 has been altered to create a tiered garden and an outbuilding, to be used as a home office, has been sited at the upper level. The Council has sought to take enforcement action in respect of the engineering operations that formed the tiered garden and the outbuilding itself.
2. There is a relevant planning history. In November 2019, planning permission was refused for the erection of a garden building and tiered garden¹. A subsequent appeal was dismissed². The appeal relates to the same site and concerns the same development as that before me and is recent. The decision carries considerable weight, therefore.

¹ Ref 64540.

² Ref APP/M3455/D/20/3247201 dated 17 June 2020.

3. Appeal A is made on ground (a), that planning permission should be granted for the matters alleged. I am requested to consider the matters comprising the changes to the garden only. This would require me to exercise my powers under 177(1) of the 1990 Act and issue a 'split decision'³. However, the terms of the deemed planning application are derived from the allegation. Hence, planning permission is sought for "the erection of a detached outbuilding and engineering operations to form tiered garden". I must, therefore, consider the whole of the development enforced against, although I accept that it is open to me to grant planning permission for part of that development.

Appeal A on ground (a) and the deemed planning application

Main Issues

4. I consider that the main issues as set out in the previous Inspector's decision remain relevant. They are the effect of the development on -
- i. the living conditions of the occupiers of 267, 271 and 273 Hartshill Road, in terms of outlook and privacy; and
 - ii. the character and appearance of the area, which lies within Hartshill Conservation Area, and the setting of the listed buildings at Minton's Cottages, 267-281 Hartshill Road.

Reasons: Living Conditions

5. The land to the rear of the terrace slopes steeply upwards away from the houses and is used by varying degrees as gardens. At the appeal property, four tiers have been created and the outbuilding is sited on the uppermost tier. I saw that it is positioned at a higher level than other garden buildings nearby and is prominent in views from the alley. The building extends across the width of the plot and it appears as a dominant structure due to its size and scale, which is exacerbated by its siting. As such, it is likely to have an adverse effect on the outlook from the ground and first floor rear windows of Nos 267, 271 and 273 Hartshill Road.
6. The front elevation of the outbuilding incorporates double sliding patio doors, which extend from floor to ceiling. The windows would allow views into the rear of the neighbouring properties. Given that the use of the building would be as a home office, it is likely to be occupied for periods equating to a standard working day. The nature and use of the building, combined with its siting and fenestration, is such that it is likely to lead to a loss of privacy due to overlooking and the perception of being overlooked.
7. The engineering operations have altered the profile of the land from a steep slope to a series of tiers. The earth is retained using 'walls' made from railway sleepers. The engineering operations are considerable and the tiers form a dominant feature that is visually prominent. The levelled areas at the appeal property are designed to make the space more useable for recreational purposes. It follows that such use would be greater than at present. This is likely to lead to a loss of privacy, due to increased overlooking, and the perception of being overlooked, especially by the people using the upper tier.

³ S177(1) provides that planning permission may be granted 'in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates' – and so an Inspector may make a split decision on ground (a).

8. From my observations on site, the loss of privacy resulting from the development is likely to adversely affect the living conditions of the occupants of Nos 267, 271 and 273 Hartshill Road.
9. I appreciate that the other gardens are steeply sloping, and some have been levelled in parts, but the works are generally less extensive and/or the land is designed for growing rather than recreation. I have considered whether the harm could be mitigated through landscaping as suggested. While this would soften the appearance of the tiered areas, I am not satisfied that it would overcome my concerns relating to loss of privacy as the planting would have to be considerable and it may take several years to become established.
10. I conclude on this issue that the development would be harmful to the living conditions of the occupiers of 267, 271 and 273 Hartshill Road, in terms of outlook and privacy. The development is contrary to SA14 and Policy CSP1 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy 2006-2026 (2009) and Policies R15 and R17 of the Newcastle-under-Lyme and Stoke-on-Trent Urban Design Guidance: Supplementary Planning Document (2010) (SPD), which promote good design while protecting privacy and outlook.

Character and Appearance

11. No 269 forms one of a row of listed cottages within a symmetrical terrace, dating from circa 1840. The architectural features are distinct and are reflective of the Gothic style. I consider the significance, insofar as relevant to the matters before me, can be attributed to the form and detailing of the cottages. I note there have been some alterations to the rear of the cottages but these are not extensive and do not diminish the significance of the heritage assets. The garden areas at the rear of the terrace form part of the setting to the listed buildings. The land overall retains an informal, low key and utilitarian appearance. It does not compete with the listed terrace but is a complementary feature, which makes a positive contribution to its setting.
12. The outbuilding forms a modern and dominant structure that does not reflect the nature of the land to the rear of the listed terrace. Other buildings in the area tend to be more utilitarian in type and function. The building relates poorly to the design of the listed cottages and stands out as an uncharacteristic feature. The engineering operations have created a formal series of terraces, which are also at odds with the appearance of the area. The outbuilding and tiered garden harms the contribution the land makes to the setting of the listed buildings, adversely affecting their heritage significance.
13. The Hartshill Conservation Area includes Stoke Cemetery and the mixed residential areas to the north. The Council's Appraisal document highlights the importance within the area of the buildings by Gilbert-Scott which include the church/vicarage/school group and the groups of cottages along Hartshill Road, including the listed terrace. It is these characteristics which make the area distinctive and add to the significance of the Conservation Area. The outbuilding and tiered garden are not visible in public views from the Conservation Area. However, as set out above, the development forms an uncharacteristic feature which is at odds with its surroundings. As such, it impacts adversely on the significance of the Conservation Area.

14. I have identified harm to the significance of designated heritage assets. This harm would be less than substantial in this instance, as it would be relatively localised, but nonetheless of considerable importance and weight. No justified public benefits have been advanced that would outweigh the harm to the heritage assets.
15. I conclude that the development does not preserve the character and appearance of the Hartshill Conservation Area, nor the setting of the listed buildings at 267-281 Hartshill Road. The proposal would be contrary to SA14 and Policies CSP1 and CSP2 of the Spatial Strategy, and Policies HE3 and HE4 of the SPD, which seek to protect and enhance heritage assets.
16. For the reasons set out above, the ground (a) appeal fails.

Appeals A and B on ground (f)

17. The appeals have been made on ground (f) and, therefore, I must consider the statutory purpose of the enforcement notice. The purposes are set out in Section 173(4) of the 1990 Act as (a) remedying the breach by making any development comply with the terms of any planning permission which has been granted, by discontinuing any use of the land or by restoring the land to its condition before the breach took place, or (b) remedying any injury to amenity which has been caused by the breach.
18. The steps seek the removal of the unauthorised works and the restoration of the land to its previous condition. It is clear that the purpose of the enforcement notice is to remedy the breach of planning control. Consequently, on the ground (f) appeals, I must decide whether the steps required by the notice exceed what is necessary to remedy the breach identified.
19. The development has been undertaken without planning permission. To rectify the breach, the works must be removed. There are no lesser steps offered that would achieve the statutory purpose behind the notice. Consequently, the appeals on ground (f) must fail.

Appeals A and B on ground (g)

20. The appeals on ground (g) are that compliance period specified in the notice falls short of what should reasonably be allowed. The works required are not complex and I consider it likely that it would be possible to comply with the relevant steps within the six months allowed. The ground (g) appeals fail, therefore.

Conclusion

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

Formal Decisions

22. 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.

Debbie Moore Inspector