
Appeal Decisions

Site visit made on 5 November 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 December 2021

Appeal A: APP/B3030/C/21/3271360

Appeal B: APP/B3030/C/21/3271361

Land known as 2 Rose Cottage, Newark Road, Caunton, Newark NG23 6AE

- 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 Mrs Julie Long (Appeal A) and Mr Paul Long (Appeal B) against an enforcement notice issued by Newark & Sherwood District Council.
 - The enforcement notice, numbered 20/00411/ENFC, was issued on 23 February 2021.
 - The breach of planning control as alleged in the notice is, without planning permission, the erection of an open-sided outbuilding (referred to as a pergola) forward of the principal elevation.
 - The requirements of the notice are:
 - A. Dismantle the pergola and all component parts (including the flue, legs, roof and 'bar') from the land.
 - B. Remove all resulting materials from the land.
 - The period for compliance with the requirements is 2 months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
 - Since the prescribed fees in respect of Appeal B have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed. Accordingly, Appeal B is proceeding on the grounds set out in section 174(2) (f) only.
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Decisions

1. It is directed that the enforcement notice be corrected by deleting the words 'from the land' from Requirement A in Section 5 (What you are required to do). Subject to that change the appeals are dismissed and the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Preliminary matter

2. Requirement A at section 5 of the enforcement notice finishes with the words 'from the land'. These do not make sense in their context and appear to have been included in error. However, read as a whole, the effect of the requirements are clear and do not appear to have caused any misunderstanding. Accordingly, I am able to correct the notice (under the provisions of s176(1)(a) of the Act) by deleting the offending words without causing injustice to either party. I will make that change in order to improve the clarity of the notice.

The appeal on ground (a)

Main Issue

3. The main issue is the effect of the development on the character and appearance of the Cauntton Conservation Area.

The Conservation Area

4. The Cauntton Conservation Area encompasses the main built up part of the village, including the Manor House and its grounds. Buildings in the Conservation Area are not set out in any set pattern and are interspersed with significant gaps and greenery. There is extensive use of brick. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
5. The appeal property and its attached neighbour Pheasant Cottage are a traditional pair of cottages within the Conservation Area. They are set back from the road and Rose Cottage has a good-sized front garden, which is screened with fencing and gates. The cottages, which have painted brick walls, fit well within their setting and make a positive contribution to the Conservation Area.
6. With its simple wooden construction and sheet metal roof, the building targeted by the enforcement notice has a rather basic, (the appellant says 'rustic') appearance. As a consequence, it appears out of place in this location in front of the main elevation of the cottage, where any significant structures might be expected to better reflect the character and qualities of the cottage itself. The significant size of the structure (the appellant advises that the main structure is 2.3m at its highest, falling to 2.13m) means that it dominates close views of the front of the cottage. The contrast in materials compared to the brickwork of the cottage, together with the metal flue incorporated into the structure, which projects significantly above the roof, add to its incongruous appearance. The appellant says that only about 25% of the remaining curtilage of the property is occupied by outbuildings, but that does not alter my view regarding the significant visual harm arising from this one.
7. The effect of the building on the street scene (and therefore the Conservation Area) is significantly reduced due to the screening provided by the tall fence and gates along the garden boundary. Nevertheless, the building is sufficiently tall to be clearly seen from the road, even when the gates are closed, as well as from the neighbouring Pheasant Cottage, and the flue is particularly noticeable due to its height. Consequently, while I do not consider the building to be of such a scale as to be overbearing in views from Pheasant Cottage, its incongruous appearance results in harm to the character and appearance of the Conservation Area.
8. The National Planning Policy Framework (the Framework) makes a distinction between substantial and less than substantial levels of harm to heritage assets. In this case, the Conservation Area is the relevant heritage asset and the degree of harm is less than substantial. Nevertheless, the Framework attaches great weight to the conservation of designated heritage assets, and the harm in this case brings the development into conflict with Core Policy 14 of the Newark and Sherwood *Amended Core Strategy* and with Policy DM9 of the

Council's *Allocations and Development Management* Development Plan Document (the ADMDPD), which seek to protect the District's heritage assets in accordance with national policy. The harmful appearance of the building also leads to conflict with the design aims within Policies DM5 and DM6 of the ADMDPD.

Other Considerations

9. Various other concerns regarding the impact of the development have been raised by a neighbouring occupier. However, since I have concluded that planning permission should not be granted in any event based on the matters raised by the Council, these other concerns can make no difference to my decision and I have not considered them further.
10. The area to the front of the appeal property is the only outdoor space serving it, which clearly limited options available to the appellant in terms of the siting of the structure, but that consideration does not outweigh the harm I have found.

Conclusion

11. I have found harm to the character and appearance of the Conservation Area and consequent conflict with policies of the development plan. This leads me to the view that there is conflict with the development plan as a whole. I do not consider that there are any public benefits that outweigh the harm I have found. Accordingly, planning permission should not be granted and the appeal on ground (a) fails.

The appeals on ground (f)

12. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the building in its entirety. This is consistent with the purpose of remedying the breach of planning control in accordance with s173(4)(a).
13. The appellants have set out a number of alternative measures the notice could require instead of total removal of the building. These include lowering the flue (the lowest option being the same height as the rear elevation), recolouring or recovering the roof to produce a slate grey finish, reducing the overall height of the structure and/or removing the roof to reveal the wooden framework. It is important to note that the whole of the structure is unauthorised. Consequently, only the removal of the building will fully remedy the breach of planning control. That said, the enforcement regime is intended to be remedial rather than punitive, and it is important to consider the appellants' proposals in that context.
14. However, I am not satisfied that the measures the appellants propose would fully address my concerns. Changing or removing the roof would not change the overall bulk and visual impact of the structure. A lowered structure would be less noticeable from outside the appeal property. Nevertheless, it would remain a bulky structure which would appear incongruous in this location.

15. Moreover, I have no evidence regarding the effect of reducing the height of the flue on its effectiveness in terms of directing fumes and smoke away from the neighbouring property. It seems to me that allowing smoke to emerge at a lower level could allow it to linger. Accordingly, given the proximity of the stove to the boundary to Pheasant Cottage, any requirement to lower the flue could have a harmful effect on living conditions there. Retaining the flue at full height means that it would continue to be in clear view from the road and from Pheasant Cottage.
16. For these reasons, while the appellants' proposals could reduce the visual harm arising from the structure, they would not fully address my concerns. Accordingly, the appeal on ground (f) fails.

Overall conclusion

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

Peter Willows

INSPECTOR