



Appeal Decisions

Hearings Held on 23 November 2021 and 26 January 2022 (Virtual Event)

Site visit made on 23 November 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2022

Appeal A: APP/P4415/C/20/3265333

Land at Hepworth Drive, Swallownest, Sheffield

- 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 Kevin Pullan, Surebay Properties Ltd, against an enforcement notice issued by Rotherham Metropolitan Borough Council.
- The enforcement notice was issued on 25 November 2020.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised erection of 2 detached dwelling houses and a pair of semi-detached houses (shown on attached plan as Plots 4, 4A, 5 and 5A).
- The requirements of the notice are Demolish plot numbers 4, 4A and 5 and remove from the site any resultant building materials.
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 174(2)(a), (b), (c), (e), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as varied in the terms set out below in the Formal Decision.

Appeal B: APP/P4415/W/20/3256298

Land at Hepworth Drive, Swallownest, Sheffield

- 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 Kevin Pullan, Surebay Properties Ltd, against the decision of Rotherham Metropolitan Borough Council.
- The application Ref RB2019/0292, dated 19 February 2019, was refused by notice dated 3 July 2020.
- The development proposed is a pair of semi-detached houses and two detached houses.

Summary of Decision: The appeal is withdrawn and therefore no further action is taken in relation to this appeal.

Appeal C: APP/P4415/W/20/3262508

Land at Hepworth Drive, Swallownest, Sheffield

- 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 Kevin Pullan, Surebay Properties Ltd, against the decision of Rotherham Metropolitan Borough Council.
- The application Ref RB2020/1353, dated 24 August 2020, was refused by notice dated 21 October 2020.
- The development proposed is a pair of semi-detached houses and two detached houses.

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

Application for costs

1. At the Hearing an application for costs was made by Mr Kevin Pullan, Surebay Properties Ltd, against Rotherham Metropolitan Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

2. At the Hearing the appellant confirmed, with regard to Appeal A, that appeal grounds (b), (c) and e) were withdrawn. He also confirmed that he no longer wished to proceed with Appeal B and consequently that appeal was also withdrawn. Accordingly I take no further action with regard to these matters.
3. It was also agreed between the parties that the as-built development which is the subject of the deemed planning application, as part of Appeal A, equates to the scheme for which planning permission is sought in relation to Appeal C.
4. The Hearing was adjourned in November 2021 as it became apparent that the occupiers of the properties on Doctors Row, situated adjacent to the proposed development, had not been notified by the Council with regard to the Hearing arrangements.
5. At the site visit various measurements relating to the housing plots, including separation distances, garden lengths and gutter heights were taken and agreed between the parties.
6. Following the resumption of the Hearing, the Council confirmed that having taken into consideration the measurements recorded during the site visit, and despite having some reservations regarding the application of the so-called 25-degree rule between Plot 5 and No 8 Doctors Row, it no longer objected to the development in terms of its effect on natural light entering the rear rooms and gardens of Nos 2 and 8 Doctors Row.
7. The Council also confirmed that, after further consideration, it no longer regarded the Plot 4 dwelling as having an overbearing effect on No 2 Doctors Row. Accordingly this was also no longer a reason for it refusing planning permission.
8. I have no reason to take a contrary view and therefore do not propose to consider the specific issues identified in the previous two paragraphs any further.
9. The Council confirmed that its concern regarding Plot 4 was limited to overlooking of the rear garden of No 20 Hepworth Drive.
10. The appeal is lodged on grounds (a) and (f). Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
11. In the event that I conclude the as-built scheme is unacceptable, the appellant has advanced an alternative scheme for consideration. This alternative scheme essentially differs in that the rear bedroom window on the Plot 4 dwelling is recessed, and the overall height and eaves level of Plot 5 is reduced with the incorporation of dormer windows.

12. This scheme, which is currently the subject of a separate planning application to the Council, is neither for the retention of what is built nor does it benefit from planning permission. Accordingly in order to give proper consideration to this alternative I need to deal with it under ground (a) and consider whether this outcome could be achieved by granting planning permission “in relation to the whole or any part” of the matters alleged in the notice, either with or without conditions.

Appeal A on ground (a) and Appeal C

Main Issues

13. The ground (a) appeal is that planning permission should be granted. Having regard to the above the main issues are the effect of the development on the living conditions of neighbouring residents with particular regard to i) privacy of the rear garden area of No 20 Hepworth Drive; ii) outlook in relation to the rear of No 8 Doctors Row and iii) outlook in relation to the rear of properties situated on Shaldon Grove.

Reasons

Living Conditions - No 20 Hepworth Drive

14. The dwellings subject to the present appeals form part of an infill residential development, accessed via a short cul de sac.
15. Plots 4 and 4A comprise a pair of semi-detached dwellings. Both the height and building line of these plots are slightly staggered in relation to one another, to take into account changes in ground level. These dwellings are orientated perpendicular to the rear of the adjacent dwelling, No 20 Hepworth Drive.
16. One of the Council’s primary concerns is that the length of the rear garden of Plot 4 is sub-standard and because of proximity, the first-floor rear elevation window in that property causes the rear garden of No 20 Hepworth Drive to be overlooked.
17. During the visit I saw the external parts of Plot 4, including the rear garden area. I also went inside the building there to consider the outlook from the rear of the dwelling. The boundary between the two properties is formed by a tall and dense privet hedge. It seemed to me that this hedge provides substantial screening to the adjacent rear garden. Even from first floor level, although it was possible to see the tops of some garden structures, it was not possible to see the surface area of the neighbouring garden and I consider that the activities of users of that garden would remain very well secluded.
18. Whilst it would be possible to see the rear windows of No 20, from Plot 4, because of the separation distance and angle of orientation between the dwellings, I am satisfied that the relationship between the two would not result in internal rooms being directly overlooked to the detriment of privacy.
19. The Council has raised the concern that there would be nothing to prevent the hedge, and the screening it provides, from being removed in future. However it is undisputed between the main parties that the hedge is in joint ownership, straddling the boundary of the two properties. It therefore seems to me that neither the consent is likely to be given, nor the incentive exist, to remove this boundary feature. Furthermore, having regard to the relatively generous

length of the garden at No 20, even if the hedge was removed in future the chances of activity within that rear garden area being directly overlooked would be reduced.

20. The length of the rear garden of Plot 4 was measured on site as approximately 9.35 metres. I do not consider this to be at odds with the Council's guidance, as set out in the South Yorkshire Residential Design Guide 2011, which seeks a rear garden depth of "about 10 metres".
21. I conclude that the relationship between Plot 4 and No 20 Hepworth Drive does not result in harm to living conditions due to overlooking, which for the avoidance of doubt would still be my view in the unlikely event that the screen hedge was to be removed. Accordingly the development would not conflict with Policy SP 55 of the Rotherham Local Plan (Sites and Policies) 2018 (LP), or the National Planning Policy Framework (the Framework) insofar as they seek to achieve high quality design and safeguard living conditions.

Living Conditions - No 8 Doctors Row

22. Plot 5 is a two-storey dwelling with hipped roof. The side elevation of the dwelling is adjacent to the rear boundary of No 8 Doctors Row (part of a line of dwellings that front onto Hepworth Drive), and spans almost the entire width of the No 8 plot. The Council's concern is that the Plot 5 dwelling, because of its scale and siting, is overbearing on the rear of No 8, leaving its neighbour with an excessive sense of enclosure.
23. From measurements taken during the site visit, the gap between the two buildings is some 10.9 metres. Also Plot 5 is sited at a higher ground level, by approximately 0.9 metres. It was apparent from my visit that the Plot 5 building, because of its scale, proximity and siting results in a highly imposing presence that dominates outlook from the rear rooms and garden of No 8. It seemed to me that the effect was exacerbated by a lack of variation in features to break up the continuity of the side elevation wall. I therefore concur with the Council that in its present form, the structure is overbearing and results in oppressive living conditions for the adjoining residents at No 8. I disagree that the relationship between the two buildings is similar to that which was subject to a previously approved layout¹. In that case the two-storey side elevation of the main dwelling was set back further away from the rear of No 8.
24. In exercising my planning judgement, I am mindful that the appellant has referred to the British Research Establishment document 'Site Layout Planning for Daylight and Sunlight - A guide to good practice' in support of the appeal. However this document specifically relates to site layout planning to achieve good natural light, rather than to quality of outlook which is the matter in question.
25. I should place on record that I did not consider Plot 4 to have a similar effect in relation to No 2 Doctors Row. However in that case there is a bigger gap between the two dwellings which are also sited at similar ground level. Furthermore the comparable ground levels mean that more of the hipped roof of Plot 4 is visible from the rear of No 2 than the roof of Plot 5 is visible from the rear of No 8. The visibility of the roof serves to draw the eye away from

¹ Planning permission RB2019/0832

the continuity of the side elevation. Having regard to the above I did not regard Plot 4 as having the same overbearing effect.

26. Drawing the above considerations together I conclude that the scale and siting of the Plot 5 dwelling is harmful to outlook from the rear rooms and garden of No 8 Doctors Row. Accordingly this element of the development is in conflict with Policy SP 55 of the LP and with the Framework, insofar as they seek to ensure that development provides a decent living environment and is appropriate for its location taking into account matters including living conditions.
27. The appellant points out that there has been no objection to the development from any occupiers of the frontage properties. Notwithstanding this, I have a statutory duty to consider the impact of development including on future neighbours, even when no specific objection from third parties has been forthcoming.
28. Reference was also made to an example of an alternative development approved by a different Council, where a more relaxed approach was taken to separation distances between buildings. Furthermore, photographs of nearby housing estate layouts have also been provided to illustrate a similar point. Whilst I have no reason to doubt this, each scheme must be dealt with on its individual merits and I do not have before me all of the relevant circumstances that resulted in those developments going ahead. A different approach taken at a different site does not therefore justify the grant of planning permission in this case.
29. In addition, whilst I acknowledge that the developed nature of the site may have served to address anti-social behaviour problems previously taking place there, this effect did not depend on the specific form of the as-built scheme, and accordingly does not attract weight.

The alternative scheme

30. In light of the above findings I have given consideration to the alternative scheme advanced, insofar as this involves the proposed modifications to Plot 5. In doing so I have been mindful of the relevant case law presented by the appellant, in terms of the duty placed on the Inspector to consider whether an obvious alternative exists to make a scheme more acceptable and whether this could be regarded as part of the existing scheme, even though new works may be involved.²
31. The amended Plot 5 scheme would involve a reduction in the overall height and eaves level of the dwelling. It would also involve flat roof dormer windows being incorporated in the front, rear and north side elevations. I consider that the Plot 5 alternative involves significant changes to the scale and design. To my mind the alterations could not be regarded as an 'obvious' alternative, and whilst I acknowledge that the 'new works' may not be determinative, the resulting design amounts to a significant change to the appearance of the upper part of the dwelling, notably the front and rear elevations.

² *Tapecrow Ltd v FSS & the Vale of White Horse DC* [2006] EWCA Civ 1744 and *Bhandal v SSHCLG & Bromsgrove DC* [2020] EWHC 2724 (Admin)

32. The alternative scheme may be satisfactory in terms of siting and appearance. However for the above reasons I am not satisfied that it can be regarded as 'part' of the scheme that constitutes the breach of planning control. As such, in accordance with s177(1)(a) of the Act, it would not be possible for me to grant planning permission for this alternative proposal, as constituting part of the matter to which the notice relates. It will therefore be for the Council to resolve this question, in the first instance, through determination of the current planning application. I am not persuaded that this stance would result in any disproportionate interference with the appellant's Human Rights.

Living Conditions - Shaldon Grove

33. I have taken into consideration the concerns raised by residents, who appeared at the Hearing, with regard to the proximity of the side elevation of Plot 4A to the rear of Nos 47 and 49 Shaldon Grove and the imposing effect on rear gardens.
34. However in this case, whilst I accept that the development will have changed the nature of the direct outlook, the gap between the buildings is greater than in the case of the frontage properties, as discussed above. This means that the new development does not dominate outlook and lead to the strong sense of enclosure in the same way that Plot 5 effects No 8 Doctors Row. This factor alone would be sufficient for me not to reject Plot 4A on grounds of outlook. Furthermore, I am mindful that the two-storey elevation of Plot 4A, as-built, is in a similar position to a corresponding dwelling that was previously granted planning permission³. Drawing the above considerations together, I conclude that these concerns would not constitute a ground to refuse planning permission.
35. The resident of No 49 Shaldon Grove has raised the concern that the development will result in more light being blocked from their greenhouse. I accept that the relative position of the rear garden in relation to the development might result in a degree of overshadowing. However, when considering the presence of existing boundary trees, that are already likely to cause some shading, and that any impact would be for a relatively short period of time, I am not persuaded that this would be a sufficient ground to refuse planning permission.
36. The appellant confirmed at the Hearing that the ground level of parts of the appeal site had been reduced. However there is nothing to persuade me that the construction of a short section of retaining wall adjacent to the northern boundary of the site would result in land stability or maintenance difficulties for the rear of properties on Shaldon Grove. Furthermore, I do not consider that the trimming of tree branches that were overhanging the site boundary has resulted in harm to the visual amenity of the area.
37. Concerns were also raised that the increased number of houses and associated additional families would mean the potential for more noise disturbance. However the proposed use of the land is consistent with the established residential nature of the surrounding area, and as such this ground of objection is simply not compelling.

³ Planning permission RB2019/0832

Conclusion

Appeal A

38. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matters the subject of the enforcement notice (Plots 4, 4A and 5A), but otherwise I will uphold the notice, with a variation, and refuse to grant planning permission on the remaining part (Plot 5). The requirements of the upheld notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of s180 of the Act.
39. 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 demolition of Plots 4 and 4A because this now has planning permission.

Appeal C

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

Appeal A on ground (f)

41. The ground of appeal is that the steps required by the notice to be taken are excessive. The requirements of the notice are to return the land to its condition before the breach of planning control took place. It follows that the purpose of the notice is to remedy the breach.
42. I have found that the requirements of the notice should apply only in relation to Plot 5. I have also found, as set out above, that the alternative scheme proposed for Plot 5, and currently subject to a separate planning application, cannot be regarded as 'part' of the matters before me for consideration. The appellant has also suggested that the dwelling, as developed on the site, could be reduced in width. However in this regard there are no details before me for consideration.
43. Given that the purpose of the notice is to remedy the breach of planning control, this can only be achieved, in the present circumstances, by restoring the land to its condition before the breach took place, insofar as this concerns Plot 5. To require that does not, therefore, exceed what is necessary and the appeal on this ground must fail.

Appeal A on ground (g)

44. The appeal is that the time allowed to comply with the notice is too short. The appellant seeks to extend the compliance period to at least twelve months to allow time for the outcome of the current planning application, and any subsequent appeal, should this be necessary.
45. I am mindful that I have found planning harm in terms of the relationship between Plot 5 and No 8 Doctors Row, and to relax the compliance period excessively would risk undermining the whole purpose of the notice. On balance I am persuaded that there would be justification to lengthen the time for compliance with the enforcement notice from six months to twelve months.

I consider this would be proportionate, hopefully allowing sufficient time for the outcome of the current planning application to be resolved and for any amendments to be made to Plot 5, should this scheme be permitted. The ground (g) appeal therefore succeeds to this extent.

Conditions

46. I have had regard to the conditions suggested by the Council. A condition is required to confirm the approved plans in the interests of certainty. A condition requiring the site to be landscaped is required in the interests of visual amenity. The parts of the site to be used by vehicles need to be surfaced so that they are able to deal effectively with surface water drainage. A condition requiring that glazing to the side elevations of the approved dwellings is obscured and non-openable is required in order to prevent overlooking and to protect privacy.

Formal Decisions

Appeal A

47. It is directed that the enforcement notice be varied by the deletion of the words "6 months" in section 6 and the substitution of the words "12 months" instead.
48. Subject to the variation the appeal is allowed insofar as it relates to Plots 4, 4A and 5A and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of 1 detached dwelling house and a pair of semi-detached houses on Plots 4, 4A and 5A at Land at Hepworth Drive, Swallownest, Sheffield and subject to the conditions in the schedule below.
49. The appeal is dismissed and the enforcement notice is upheld, as varied, insofar as it relates to Plot 5 and planning permission is refused in respect of the erection of 1 detached dwelling house on Plot 5 at Land at Hepworth Drive, Swallownest, Sheffield on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

50. The appeal is dismissed insofar as it relates to Plot 5 and planning permission is refused for the erection of one detached house. The appeal is allowed insofar as it relates to Plots 4, 4A and 5A and planning permission is granted for a pair of semi-detached houses and one detached house at Land at Hepworth Drive, Swallownest, Sheffield, in accordance with the terms of the application Ref RB2020/1353, dated 24 August 2020, so far as relevant to that part of the development hereby permitted and subject to the conditions in the schedule below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans (insofar as they relate to approved Plots 4, 4A and 5A only):

SK 4/8/20 Sht 1 - Site Location Plan; SK 4/8/20 Sht 2 - Site Layout;
SK 4/8/20 Sht 3 - Boundary Treatment; SK 4/8/20 Sht 4 - Landscaping;
SK 4/8/20 Sht 5 - Landscaping Schedule; SK 4/8/20 Sht 6 - Drainage
Layout; SK 4/8/20 Sht 7 - Plots 4 and 4A; SK 4/8/20 Sht 8 - Plots 4 and 4A;
SK 4/8/20 Sht 9 - Plot 5A; SK 4/8/20 Sht 10 - Plot 5A;
SK 4/8/20 Sht 12 - Elevation Views
- 2) Landscaping of the site as shown on the approved plan (drawing no. SK 4/8/20 Sht 4) shall be carried out during the first available planting season following completion of the development. Any plants or trees which within a period of 5 years from completion of the development die, are removed or become seriously damaged, or that fail to thrive, shall be replaced within the next planting season with others of a similar size and species.
- 3) Before the development is first occupied, that part of the site to be used by vehicles shall be constructed with either:
a/ a permeable surface and associated water retention / collection drainage,
or; b/ an impermeable surface with water collected and taken to a
separately constructed water retention/discharge system within the site.
The area shall thereafter be maintained in a working condition.
- 4) Any first-floor windows on the side elevations of Plots 4A & 5A facing north (towards Shaldon Grove) and on the side elevation of Plot 4 facing south (towards Doctors Row) shall be fitted with obscure glazing to a minimum industry standard of Level 3. No part of those windows that are less than 1.7 metres above the floor of the room in which they are installed shall be capable of being opened. The windows shall be permanently retained in that condition thereafter.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Miss Sarah Clover – Counsel for the Appellant

Kevin Pullan - Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew West – Development Management Officer

Jonathan Wragg – Enforcement Officer (appeared 23 November 2021 only)

INTERESTED PERSONS:

Mrs Hudson – Local resident

Documents submitted following the Hearing:

1. Case Law: *Tapecrow Ltd v FSS & the Vale of White Horse DC [2006] EWCA Civ 1744* and *Bhandal v SSHCLG & Bromsgrove DC [2020] EWHC 2724 (Admin)*
2. List of suggested conditions from the Council