
Appeal Decision

Site visit made on 21 July 2022

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 20 September 2022

Appeal Ref: APP/M4510/C/22/3297733

2 Dukes Cottages, Lemington, Newcastle upon Tyne NE15 8SH

- 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 Syed Hossein Mokhtary against an enforcement notice issued by Newcastle-upon-Tyne City Council.
 - The enforcement notice is dated 4 April 2022.
 - The breach of planning control as alleged in the notice is: Without planning permission, the construction of a breeze block outbuilding and hardstanding to rear and the erection of metal palisade fencing and gates to the front greater than 1 metre in height.
 - The requirements of the notice are: 1. Remove the breeze block outbuilding and enclosure to rear. 2. Remove the entire area of hard standing to the rear and reinstate this area to garden land associated with 2 Dukes Cottages by i. relaying topsoil to a depth of not less than 100mm onto the surface. ii. Following compliance with (i) above, make good the area with turf, adjusting levels to ensure that it is laid level with the surface of the surrounding land. 3. Remove the metal palisade fencing and gates to the front.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have 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 as amended falls to be considered.
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Decision

1. The appeal on ground (c) in respect of the hardstanding succeeds.
2. The appeal on ground (a) in respect of the outbuilding succeeds and planning permission is granted on the application deemed to have been made under s.177(5) of the 1990 Act as amended for development already carried out, namely the construction of a breeze block outbuilding to the rear of the property at 2 Dukes Cottages, Lemington, Newcastle upon Tyne NE15 8SH, subject to the following conditions:
 - 1) The outbuilding hereby permitted shall at all times be ancillary to the residential use of the dwelling known as 2 Dukes Cottages.
 - 2) Within 2 months of the date of the decision, the outbuilding hereby permitted shall be rendered and/or painted with a white finish.
3. In view of the above, it is directed that the enforcement notice is corrected by the deletion of the text of the requirements in its entirety, and its substitution with the text: '1. Remove the breeze block enclosure to rear. 2. Remove the metal palisade fencing and gates to the front.'

4. The appeal on ground (a) in respect of the rear breeze block enclosure wall and the metal palisade fencing and gates at the front fails, as does the appeal on ground (f) in respect of the fencing and gates, and so the enforcement notice, as corrected, is upheld and deemed planning permission is refused for those specific elements.

Planning history

5. The Council received a complaint about unauthorised development at 2 Dukes Cottages in February 2020. Through their investigations, they learned that the appellant intended to subdivide the land and use the rear garden as a car lot and car storage area. The new outbuilding was to provide additional storage and facilities for this new commercial use.
6. The appellant submitted a planning application, ref: 2020/0897/01/DET, for the demolition of a previous garage at the site, the erection of the new detached outbuilding, and a single storey rear extension in connection with the part change of use of the existing house for a car showroom. In addition, permission was sought for the provision of associated parking and the erection of a 2.4m high metal gate and fence. This application was refused in October 2020.
7. A second planning application, ref: 2021/0037/01/DET, was submitted for the demolition of the house and the change of use of land from residential to a car lot. The proposal included the erection of single storey storage and WC buildings, and the erection of palisade fencing and a gate to the front of the property. This application was also refused and was subsequently dismissed at appeal, ref: APP/M4510/W/21/3286220.

The appeal on ground (c)

8. Ground (c) is that there has not been a breach of planning control.
9. Schedule 2, Part 1, Class F sets out the limitations and conditions relating to hard surfaces within the curtilage of a house. Firstly, such a hardstanding must be provided for 'any purpose incidental to the enjoyment of the dwelling house'. Providing that limitation is fulfilled, development is permitted by Class F subject to the condition that where (a) the hard surface would be situated on land between a wall forming the principal elevation of the dwellinghouse and a highway, and (b) the area of ground covered by the hard surface, or the area of hard surface replaced, would exceed 5 square metres, either the hard surface shall be made of porous materials, or provision shall be made to direct run-off water from the hard surface to a permeable or porous area or surface within the curtilage of the dwellinghouse.
10. The appellant argues that, as it is located at the rear of the property, the hardstanding falls within permitted development limitations. As noted above, the appellant had intended to use the hardstanding as a car lot and storage area. Clearly, such a purpose would not be incidental to the enjoyment of a dwellinghouse, and would fall outside the limitations of Class F.
11. However, the notice does not attack any material change of use of the land. There is no evidence that that appellant's proposed new business use had commenced. The house and its plot therefore remain in lawful residential use. At the time of my visit, the hardstanding area was being used for flower tubs and planters of various different sizes. There is nothing to preclude its use for

normal domestic purposes, and there is no evidence that it is being put to any other use. I therefore find that it falls within permitted development limits.

12. Turning then to the outbuilding, Class E allows for the provision of outbuildings within the curtilage of a dwellinghouse that are incidental to the enjoyment of a dwellinghouse, subject to a number of limitations and conditions. One of these is that the height of the structure should not exceed 2.5 metres if it is located within two metres of the boundary of the curtilage of the dwellinghouse. In this instance, one side elevation of the building is located on the boundary with the adjacent dwelling.
13. The rise in natural ground levels from the front to rear of the back plot has made it necessary for the structure to vary in height between the front and the back walls. The 'Permitted development rights for householders - Technical Guidance' (TG, Department for Communities and Local Government, 2017) explains that, when determining height, the measurement should be taken from the highest ground level immediately adjacent to the building to its highest point. The appellant argues that on the side facing away from the host property, the building measures around 2.45m from the highest part of the adjacent ground to the eaves height, and thus falls within the height limits.
14. However, the height restriction under Class E applies to the whole edifice. The TG clarifies that if any part of the building is within two metres of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5 metres. Therefore, any breach of height limits takes the whole structure outside of the permitted development right.
15. The submitted proposed elevations show that on the side of the outbuilding nearest to the house, it stands at 3.2m from ground to eaves. This detail alone takes it outside Class E, regardless of the use to which it is put.
16. I conclude that the appellant has not shown that the construction of the outbuilding falls within permitted development limits. This matter alleged in the notice therefore constitutes a breach of planning control and the appeal on ground (c) fails in respect of the outbuilding.
17. However, for the reasons given above, appeal (c) succeeds in respect of the hardstanding in the rear of the plot.

The appeal on ground (a) and the deemed planning application

Main issues

18. The main issues are the effect of the development on:
 - the character and appearance of the surrounding area; and
 - the living conditions of occupiers of No 2 and the neighbouring residents.

Reasons

Character and appearance

19. The appeal site at No 2 and the adjoining 1 Dukes Cottages are a pair of semi-detached dwellings which closely mirror each other's design. They are brick built with prominent front-facing gables and a central chimney. The small front garden plots are bounded by low walls built in a similar red brick.

20. The area immediately around the appeal site and its neighbour is characterised by commercial development, with a supermarket on one side, and a tyre repair garage and car wash on the other. The pair are isolated from other housing by these commercial developments, but there are residential areas to the north and west. Despite this isolation, Nos 1 and 2 retain a distinct domestic character and appearance that contrasts strongly with the surrounding land uses.
21. At the front of the appeal site, palisade fencing and gates have been installed. These are unpainted and comprise a series of upright metal elements with horizontal cross bars. Standing at approximately 2.4m, they are close in height and character to the fencing of the adjacent commercial premises, but have an added feature of shaped tops as a security measure.
22. Whilst the new gates and fencing might be appropriate for a property in commercial use, the appeal site, as noted above, remains in domestic use. In this context, they bring a stark, utilitarian appearance that is out of keeping with No 2 and its neighbour. Their height is excessive in relation to the modest proportions of the house and front plot at No 2, and adds to their industrial appearance. Drawing these factors together, the fence and gates are dominant and overbearing in the streetscene, and fail to harmonise with the established residential character of the appeal site.
23. At the rear of the house, the new outbuilding has a rectangular footprint and a flat roof. It sits at a distance of approximately 5.7m from the back elevation of the dwelling. At the time of my visit, it was finished in pointed concrete block, although I understand that the appellant is willing to render or paint the building.
24. In this location, the building effectively splits the rear plot in two, resulting in a loss of the previous sense of volume and spaciousness, which can be seen in the photographs of the rear plot. Also, the breeze block wall, running from the corner of the outbuilding to the corner of the house, results in an unattractively confined space that is at odds with the previous openness at the back.
25. Although the outbuilding is fairly shallow back to front, at about 6.2m, it spans the width of the main house, thus visually dominating it. To that extent, it is not a subservient feature. This effect is augmented by the slightly higher ground level of the outbuilding in relation to the house.
26. However, by way of a fallback position, the appellant cites the provisions of Class E which would allow him to construct a single storey building which could cover up to 50% of the total area of the curtilage, excluding the footprint of original house. This would be on the proviso that such a building met the other requirements of Class E, including height and usage.
27. The existence of such a fallback is a material consideration and the courts have set out a two-stage approach, the first question being whether there is greater than a theoretical possibility that such a development might take place. There is no reason to assume that the appellant would not implement such a scheme were I to dismiss the appeal. Therefore, I am satisfied that there is a greater than theoretical possibility of a larger outbuilding being built in the rear plot under permitted development rights.

28. That being the case, the second question is what weight should be ascribed to the appellant's fallback position. From the extent of the rear plot at No 2, it is likely that a structure could be built within Class E limits that could be significantly larger than the unauthorised outbuilding which would have a perceptibly worse impact on the character and appearance of the property.
29. Notwithstanding the drawbacks of the existing development, I must attach significant weight to this fallback position. On that basis, I therefore conclude that the withholding of planning permission for the outbuilding as built would not be justified in this instance.
30. However, I conclude that the gates and fencing and the breeze block enclosure unacceptably harm the character and appearance of the property and the surrounding area, contrary to Policy CS15 of the Core Strategy and Urban Core Plan for Gateshead and Newcastle upon Tyne (CSUCP) and Policy DM20 of the Newcastle upon Tyne Development and Allocations Plan (DAP), which jointly seek to deliver high quality and sustainable design.

Living conditions

31. The Council's concerns relate to the effect of the breeze block building on the living conditions of the occupiers of No 2, and the neighbouring residents at No 1. However, they give little detail as to the specific effects they are concerned about. I note that appeal ref: APP/M4510/W/21/3286220 was dismissed partly on the grounds of harm to the living conditions of neighbours. However, that proposal was for the demolition of No 2 and the creation of a commercial car lot.
32. The Inspector's concerns related to the noise and disturbance that would have arisen from the material change of use. In respect of the new building, they found that 'the domestic scale and form of the appeal building, and its positioning would have an adequate relationship with No 1 in terms of sunlight, daylight and outlook.' From the evidence before me, I have no reason to take a different stance in relation to the outbuilding as built.
33. In terms of the effect on the occupants of No 2, the outbuilding constrains the previous outlook that was available along the length of the plot. However, such an outcome could equally be achieved through the appellant's argued fallback position, which is discussed above.
34. Conversely, the breeze block wall results in the enclosure of the area to the back of the house on all four sides. This has led to an oppressive feel within this outdoor area, and significantly diminishes the quality of the space, cutting it off from the remainder of the garden plot.
35. I therefore conclude that the breeze block wall unacceptably harms the living conditions of existing and future residents at No 2, contrary to DAP Policy DM23, which requires a good standard of residential amenity for existing and future occupants of land and dwellings, and CSUCP Policy CS14, which seeks to prevent negative impacts on residential amenity.

Conditions

36. The Council have suggested a number of conditions which I have taken into account. I have imposed only the conditions which relate to the permitted outbuilding. The condition restricting the use of the permitted outbuilding for

residential use is appropriate in the interests of achieving a satisfactory form of development. I have also imposed the appellant's suggested condition relating to the finish of the outbuilding, in the interests of character and appearance.

The appeal on ground (f)

37. Ground (f) is that the steps required to comply with the requirements of the notice are excessive. As the appeal on ground (a) succeeds in respect of the outbuilding, I shall not consider it further under ground (f).
38. The appellant suggest that the breeze block wall could be rendered and/or painted. Whilst this would go some way to improving its appearance, it would not overcome the harms I have identified above.
39. The appellant goes on to suggest that the gates and fence could be painted and/or moved further back within the plot. However, these measures would not overcome the issue that the industrial, utilitarian design of the fencing and gates is fundamentally at odds with the domestic character of No 2. These measures would therefore not achieve the aim of the enforcement notice, which is to remedy the breach of planning control.
40. The appeal on ground (f) therefore fails.

Conclusion

41. The appeal achieves partial success on ground (c) in respect of the rear hardstanding.
42. The appeal achieves partial success on ground (a) in respect of the outbuilding and deemed planning permission is granted for that element of the development.
43. The appeal on grounds (a) and (f) fails in respect of the fencing and gates and the breeze block wall, and the enforcement notice, as varied, is upheld.

Elaine Gray

INSPECTOR