
Appeal Decision

Site visit made on 5 September 2022

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 21 October 2022

Appeal Ref: APP/E2734/C/22/3297365

West Croft, Day Lane, Darley, Harrogate, North Yorkshire HG3 2QR

- The appeal is made by Stephen Coulter under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 19/00636/PR15) issued by the Council of the Borough of Harrogate on 9 March 2022.
 - The breach of planning control alleged in the notice is "the erection of a replacement dwelling otherwise than in accordance with the plans approved under permission 15/02361/FUL".
 - The requirements of the notice are to demolish the dwelling and remove all materials used in its construction from the site.
 - The period for compliance with these requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) and an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting a breach of planning control.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the erection of the replacement dwelling at West Court, Day Lane, Darley, Harrogate, North Yorkshire HG3 2QR otherwise than in accordance with the plans approved under permission 15/02361/FUL, subject to the following conditions: -
 1. Within one month of the date of this appeal decision, written confirmation shall be provided to the Council that in respect of energy and water efficiency Level 4 of the outgoing Code for Sustainable Homes has been achieved. (Reason: To safeguard the environment and mitigate climate change.)
 2. Within one month of the date of this appeal decision, written confirmation shall be provided to the Council that the package treatment plant and associated drainage complies with appropriate guidance BS 6297:1983. The package treatment plant and associated drainage must be installed and maintained in accordance with the manufacturer's instructions and recommendations. (Reason: To ensure suitable drainage to the site.)
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Reasons for the decision

Ground (a)

The main issue

2. The main issue in ground (a) is the effect that the dwelling, as built, has on the character and appearance of the site and the surrounding area.

Planning policies and guidance

3. The dwelling is in the Nidderdale Area of Outstanding Natural Beauty (AONB), where Policy GS6 of the Harrogate District Local Plan 2014-2035 states that the natural beauty and special qualities of the Area will be conserved and enhanced. The supporting text (see paragraphs 3.61, 3.70 & 3.71) states:
 - (i) The designation as an AONB “does not preclude development but all proposals for development ... will be expected to conserve and enhance its special qualities. In assessing this, the proportion and form of development, how it reflects local vernacular and the distinctive historic and settlement character through design, style, scale, massing and materials used will be considered”;
 - (ii) “All features that contribute to the beauty and special nature of the AONB, which include man-made features, buildings, walls, parks and gardens, planted woodland etc., and consequently new design (including landscape design), should be of quality and appropriate to its context” [sic]; and
 - (iii) “Proposals for development in the AONB should have regard to the Harrogate District Landscape Character Assessment and Landscape Design Guide, as set out in policy NE4: Landscape Character ...”.
4. Policy NE4 indicates that development should (a) have particular regard to maintaining the aesthetic qualities of the natural and man-made heritage within the landscape, (b) be informed by and be sympathetic to the distinctive landscape character areas identified in the Harrogate District Landscape Character Assessment and respect the distribution and form of settlements and buildings in their landscape setting, and (c) protect and/or enhance the character, appearance and local distinctiveness of the landscape.
5. The Landscape Character Assessment divides the District into 106 Character Areas each with their own distinct character and sense of place. The appeal site is in Area 13, Nidderdale Valley, which is described as diverse. In relation to the built environment in Area 13, the assessment notes that there are lots of scattered individual farmsteads and that the traditional vernacular building materials include local gritstone with stone slate roofs; it advises that new buildings must protect these vernacular characteristics.
6. When permission 15/02361/FUL was granted for the replacement dwelling the applicable policy was Policy H20 Replacement Dwellings in the Countryside in the Harrogate District Local Plan (2001, as altered in 2004). This policy has now been superseded by Policy HS7 in the current local plan, which states that proposals for replacement dwellings will be supported where they meet five criteria. The criteria that have been referred to in this appeal are: “B. The new

dwelling is not materially larger than the existing dwelling” and “D. The new dwelling is of a design which in terms of scale, mass, materials and architectural detail is sympathetic to the landscape character and local vernacular”. Policy HP3: Local Distinctiveness indicates that buildings here should be designed so as to protect, enhance or reinforce the characteristics, qualities and features that contribute to local distinctiveness.

7. If the dwelling had been built in accordance with the permission and a proposal had then been put forward to extend it as it has been built, that proposal would have been supported by Policy HS8 provided there was “no adverse impact to the character or appearance of the dwelling or the surrounding area”.
8. The Government’s National Planning Policy Framework (NPPF) states (i) that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, which have the highest status of protection in relation to these issues, and that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, recognising the intrinsic character and beauty of the countryside, and (ii) that good design is a key aspect of sustainable development and that development that is not well designed should be refused. (See paragraphs 126-134 and paragraphs 174 and 176 of the NPPF.)

Relevant planning history

9. Planning permission 15/02361/FUL was granted on 15 September 2015 for the erection of a replacement dwelling on the site, subject to eleven conditions. The dwelling was to be a replacement for the bungalow which was in a similar position on the site. The development was considered to comply with the planning policies then in force and not to harm the character or spatial quality of the area or the visual amenity of the AONB.
10. The appellant complied with all the pre-conditions that had been imposed on the planning permission and the Council discharged them in January 2016. The bungalow was demolished later that year.
11. The replacement dwelling that was then erected was not built in accordance with the approved plans. A planning application to retain the dwelling as it stood was refused on 5 July 2021 (ref: 21/01386/FUL) and an appeal against that decision was dismissed on 9 May 2022 (ref: APP/E2734/W/21/3289743).

Fallback position

12. The appellant seeks, as a minimum, to be put in a position where he is allowed to carry out works to make the dwelling comply with the terms of planning permission 15/02361/FUL, rather than having to demolish it as required by the notice as issued. The permission is still extant because the development was lawfully commenced in 2016 when the bungalow was demolished and the completion of the development in accordance with the approved details would not be a breach of any of the planning conditions that are still subsisting. What the appellant seeks to do, as a minimum, constitutes a fallback position; it would require extensive works to revert to the approved details, but it is feasible and there is a real prospect of the fallback position being carried out if this appeal fails, since the alternative required by the notice would be the total demolition of the dwelling and the loss of a home.

Assessments and conclusions

13. Appeal decision APP/E2734/W/21/3289743 focussed mainly on a comparison between the replacement dwelling as built and the bungalow that previously stood on the site. The inspector concluded that it was materially larger than the bungalow and "Moreover, it is of a scale which, in this location, detracts from the scenic beauty of the AONB".
14. The inspector then assessed the dwelling as built against the approved replacement dwelling under the heading "Other Matters" as follows: "I accept that the differences between the two are unlikely to be discernible at longer distances. However, despite some similarities in the design, it is in closer views, where I have previously found harm, where the differences in scale and fenestration detailing, would be apparent."
15. The harm relating to fenestration detailing was identified as the roof lights and the Juliet balcony at the rear. In the current appeal, I have taken into account (a) that the General Permitted Development Order does not exclude the insertion of rooflights in houses in AONBs, (b) that, although the Juliet balcony at the rear has replaced a smaller approved window, the approved French windows at the rear have been replaced by a smaller window, leaving the overall appearance of the openings in the rear elevation substantially unchanged and (c) that the rear of the dwelling is screened by trees from any viewpoints beyond the site itself. In other respects, there is no dispute that the design of the dwelling and the materials used in its construction respect the traditional vernacular characteristics and distinctiveness of Area 13.
16. The fallback position was not considered in the previous appeal. Now that it has been shown to exist and to have a real prospect of being carried out, the main focus in terms of planning merits has shifted to a comparison between the impact of the replacement dwelling as built and the replacement dwelling that could still be completed in accordance with planning permission 15/02361/FUL. The style and the building materials used would be very similar; the main difference that could have an effect on the character and appearance of the site and the surrounding area is the increase in the size of the dwelling at roof level that has been carried out in order to provide additional accommodation in the roof space, a difference that the previous inspector indicated would not be discernible at a distance.
17. In my assessment of the character and appearance of the appeal site and the surrounding area I have made more comprehensive observations of my own than were recorded in the previous appeal. There are substantial outbuildings on the appeal site that were not previously referred to. Nearby, this part of the AONB contains significantly more buildings than previously mentioned, including the development at Scot Beck Bridge and along Dairy Lane, the modern bungalows at Hookstone Garth and more development along Day Lane to the south. As noted in the Landscape Character Assessment there are in addition lots of scattered individual farmsteads, many of which have similarities in design and in the use of traditional vernacular building materials to the replacement dwelling as built; some of these are more prominent in the landscape.

18. I have also obtained the details of the Hookstone House Farm development in respect of which the previous inspector stated: "I do not have full details of the circumstances that led to that dwelling being accepted." The approved development is the erection of a new detached dwelling at Thornthwaite Brow, a short distance to the south-west of the junction with Day Lane at Scot Beck Bridge. The planning application was supported by the Parish Council and was approved by the Borough Council in 2003 on the basis that it would not harm the landscape of the AONB and would be a rounding-off of the existing development. The dwelling is in a prominent location; it was built on previously-undeveloped garden land close to the roadside; it is higher and has a greater footprint than the replacement dwelling built on the appeal site; in other respects the design and the materials used are similar.
19. I have attached considerably more weight to the professional judgment of Smeeden Foreman who prepared the Landscape and Visual Appraisal in November 2020, which was briefly considered in the previous appeal. The Appraisal assesses in comprehensive detail the landscape and visual impacts of the differences between the replacement dwelling as built and the replacement dwelling as approved and concludes that the impact from every perspective is either unchanged, neutral, negligible or minor. These conclusions confirm my own observations.
20. Consequently, I do not find that the replacement dwelling as built has an impact on the character or appearance of the site or the surrounding area sufficient to justify refusing planning permission. Nor, having regard to all the factors considered in this appeal, do I consider the replacement dwelling as built to be in conflict with the planning policies and guidance set out in paragraphs 3 to 8 above.
21. The appeal has therefore been allowed on ground (a) and planning permission has been granted for the development described in the notice.

Planning obligation

22. The ground (a) appeal has succeeded on its standalone planning merits and not because of any of the obligations entered into in the unilateral undertaking given by the appellant pursuant to section 106, none of which are necessary to make the development acceptable.

Planning conditions

23. The Council have suggested that a condition withdrawing a wide range of permitted development rights should be imposed in the event of the appeal succeeding on ground (a). The reason for this proposed condition has not been given by the Council, but it would match Condition 6 on planning permission 15/02361/FUL, the reason for which was given as: "In order to protect the visual amenities of the surrounding area in view of the prominence of this site." I have not imposed this condition, because the General Permitted Development Order already excludes permitted development rights for development in AONBs to the extent considered necessary throughout the country and, in the light of my conclusions in this appeal, I do not consider that further restrictions are justified in this instance.

24. I have reviewed all the other conditions that were imposed on planning permission 15/02361/FUL and have repeated with minor changes those that are still ongoing and applicable to the dwelling as built, giving the same reasons for these conditions as were previously given.

Grounds (f) and (g)

25. Following the success of the appeal on ground (a), the enforcement notice has been quashed. Grounds (f) and (g) no longer fall to be considered.

D.A.Hainsworth

INSPECTOR