

Appeal Decision

Site visit made on 9 May 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2023

Appeal Ref: APP/Y2003/C/22/3306674

Land adjacent to Dondoreen, Marsh Lane, Barton Upon Humber DN18 5HF

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeal is made by Mr James Pearson of Charworth Homes Ltd against an enforcement notice issued by North Lincolnshire Council.
 - The notice was issued on 5 August 2022.
 - The breach of planning control as alleged in the notice is without planning permission the partial erection of three dwelling houses and three detached single garages with associated infrastructure.
 - The requirements of the notice are:
 - i) Cease undertaking any developments, engineering operations, building operations, building or other such works upon the site other than those expressed in paragraphs 5.i & 5.ii of this Notice;
 - ii) Demolish all structures erected/being erected upon the site including any associated below ground works and remove all resultant demolition waste from the site to an authorised place of disposal; and
 - iii) Following the demolition and removal of all resultant waste, ensure the land is returned to its natural land level with clean soil.
 - The period for compliance with the requirement is six months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by:
 - The deletion of 'to an authorised place of disposal' from sub-paragraph 5.ii.
 - The deletion of sub-paragraph 5.iii and the substitution of 'iii. Following demolition and removal of all resultant waste, the land shall be returned to its previous condition that existed prior to the breach occurring.'
2. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

The Enforcement Notice

3. Section 176(1) of the Act provides a wide ranging power to correct or vary the terms of an enforcement notice provided that it would not result in injustice to the parties.
4. Some of the requirements in paragraphs 5.ii and 5.iii are excessive. In 5.ii the notice will be fully complied with when the waste is removed from the site. Requiring anything further is excessive because it goes beyond remedying the breach. It will be a matter for the appellant to decide how he should then legally dispose of the waste. In 5.iii it is not clear to me what the 'natural' ground level

was or whether it comprised 'clean soil'. However, given that the appellant is best placed to know the condition of the land prior to the breach occurring it is sufficient to require that it is restored to that former condition.

5. I am satisfied that no injustice to the appellant or the Council would arise by my varying the notice in terms I have set out above. I have therefore done so using the powers available to me under Section 176(1) of the Act.

Preliminary Matter

6. The breach of planning control as alleged in the notice states "without planning permission the partial erection of three dwelling houses and three detached single garages with associated infrastructure". This was confirmed at my site visit as the properties were partially constructed, to a level below first floor height and the development has therefore not been completed. In this situation, s177(1) of the Act only allows for a grant of planning permission for the whole or part of the matters alleged in the notice and therefore planning permission cannot be granted for more than the partially constructed buildings. Another grant of planning permission would be required to complete the buildings but an appeal against the refusal of the s78 application is not before me. My decision is therefore restricted solely to the unfinished buildings as alleged in the notice.

Appeal on ground (a)

7. The ground of appeal is that planning permission ought to be granted for the matters alleged in the notice.

Main Issues

8. The main issues are:
- whether the unfinished buildings alleged in the notice preserve or enhance the character or appearance of the Barton Conservation Area (BCA); and
 - the effect of the unfinished buildings alleged in the notice on the living conditions of occupiers of neighbouring properties.

Reasons

Conservation Area

9. The appeal site lies within the BCA. In accordance with the duty imposed by section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Moreover, paragraph 199 of the National Planning Policy Framework (the Framework) states that when considering the impact of new development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
10. The BCA has a historic core of commercial properties with residential properties located around the periphery of the BCA boundary. The area surrounding the appeal site is characterised predominantly of detached residential properties.
11. As previously described, the appeal site has partially constructed buildings below first floor level. There are also building materials including bricks stored on the site along with several storage containers and metal fencing along parts of the

boundary. The current state of the partially built structures could remain in situ indefinitely in the absence of any planning permission for their completion, and as such they result in an incongruous appearance which is highly visible and detrimental to the residential character of the surrounding area.

12. The appellant explains that the site was previously grassland area and that there is a mix of property styles in the area with an intention to step the development back from the private roadway. I also note that the appellant was willing to make changes to the scheme at the planning committee. These matters, however, do not alter my findings that the partially constructed buildings detract from the appearance of the street scene and have an adverse effect on the character of the BCA.
13. The development does not preserve or enhance the character and appearance of the BCA. The development is contrary to Policies HE2, DS1, H5, H7 and H8 of the North Lincolnshire Local Plan (LP), Policies CS5 and CS6 of the North Lincolnshire Core Strategy (CS) and paragraph 199 of the Framework which seeks all new development to be well designed, respect and enhance the historic environment, and preserve or enhance the character and appearance of conservation areas.

Living conditions – neighbouring occupiers

14. Due to the unfinished development's height and scale, it does not have any overbearing or overlooking effects upon neighbouring properties. The alleged development therefore does not have any harmful effects on the living conditions of occupiers of neighbouring properties with regards to outlook and privacy.

Other matters

15. The appellant's statement of case includes matters such as amenity space, flood risk, housing land supply, parking provision, access, anti-social behaviour, density, previously developed land and the site being located close to shops and services. However, as set out previously, while these matters would be pertinent to an application for completed houses, there is no appeal against the refused planning application for me to consider. The appeal on ground (a)/deemed application before me only relates to retaining the "as built" structures as they are. Granting planning permission in such circumstances would not be appropriate given they could remain in their present state indefinitely with no other extant planning permission in place for their completion.

Conclusion

16. For all the above reasons, the alleged development does not preserve or enhance the character and appearance of the BCA. This harm to the BCA is not outweighed by other considerations. Accordingly, the appeal fails on ground (a).
17. I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Chris Baxter

INSPECTOR