



Appeal Decisions

Site visit made on 4 September 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th November 2023

Appeal A Ref: APP/T2405/C/22/3305853

Appeal B Ref: APP/T2405/C/22/3305854

4 Green Lane, Countesthorpe, Leicestershire LE8 5QQ

- 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 Act).
 - The appeals are made by Mr Michael Rowley (3305853) and Mr John Rowley (3305854) against an enforcement notice issued by Blaby District Council.
 - The notice was issued on 27 July 2022.
 - The breach of planning control as alleged in the notice is:
Without planning permission the unauthorised construction of a timber framed outbuilding ("the building"); decking; alterations to land levels and the installation of lawn edging timbers in the approximate position shown solid green on the attached plan.
 - The requirements of the notice are to:
 - i) *Remove the building, decking and lawn edging timbers from the land*
 - ii) *Reinstate the land to the adjacent land level and reseed with grass seed.*
 - The period for compliance with the requirements is 9 months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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. Appeal B proceeds on grounds (c) and (f) only.
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Decision

1. It is directed that the enforcement notice is varied by:
 - The deletion of sub-paragraph 5.ii) and the substitution of 'ii) Reinstate the land to its previous condition that existed prior to the breach occurring.'
2. Subject to the variations, the appeals are 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.

Applications for costs

3. An application for costs was made by Mr Michael Rowley and Mr John Rowley against Blaby District Council. This application is the subject of a separate Decision.

The Enforcement Notice

4. 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.
5. With regards to paragraph 5.ii) of the notice, it is not clear to me whether the land was previously grassed and therefore this requirement may be excessive. The appellant is best placed to know the condition of the land prior to the

breach occurring and it is sufficient to require that it is restored to that former condition.

6. 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.

Appeals on ground (c)

7. An appeal on ground (c) is that the matters alleged at Section 3 of the notice, if they occurred, do not constitute a breach of planning control. The onus of proof in ground (c) appeals is on the appellant and the test of the evidence is on the balance of probability.
8. Section 171A(1)(a) of the Act defines a breach of planning control which includes the carrying out of "development" without the required planning permission. In section 55(1) of the Act "development" is defined to include the carrying out of "building operations" and in addition to this a "building" is defined in section 336 of the Act to include "any structure or erection, and any part of a building". In this regard, the *Skerritts*¹ case established three primary tests for assessing whether a structure amounts to a building, these being size, permanency and the degree of physical attachment.
9. The appellants claim that the structure described in the notice is not a building, but a caravan which meets the definition as stated in the Caravan Sites and Control of Development Act 1960 (CSCDA60). The appellants further state that whilst the structure is not a twin-unit caravan it does meet the definition of a caravan structure as defined in section 13(1) of the Caravan Sites Act 1968 (CSA68).
10. In law, a caravan is only a caravan if it meets the description laid down in section 29 of the CSCDA60 and the CSA68. Section 13 of the CSA68 effectively establishes a three-part test as to whether a structure falls to be within the definition of a caravan, and these are in relation to dimensions, construction and mobility. The dimension test relates to limits on length, width and the height of the living accommodation as set out in section 13(2). The construction test relates to section 13(1)(a) which requires that it is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps and other devices. The mobility test derives from section 13(1)(b) which requires that the structure, when assembled, is physically capable of being moved by road from one place to another, whether towed or transported on a motor vehicle or trailer.
11. The structure meets the dimensions set out in section 13(2) of the CSA68. The appellant confirms that the structure is not permanently affixed to the ground being on concrete pads and is capable of being transported by lorry or low-loader with crane assist. Letters from the building contractor, who constructed the structure, and a structural engineer have confirmed that the structure can be moved and therefore I consider the mobility test is met.
12. The construction test requires that the structure is composed of not more than two sections separately constructed and designed to be assembled on site by means of bolts, clamps and other devices. The appellants state in the response to the Planning Contravention Notice that "...we subsequently decided that we

¹ *Skerritts of Nottingham Ltd v SSETR (No. 2)* [2000] 2 PLR 102

would have the mobile home constructed on site – as opposed to having it pre-built off-site, delivered on a lorry and craned into position. The mobile home currently being constructed on the Property is bespoke and, therefore, there is no associated 'make & model number'. As stated above, the mobile home is currently being constructed 'from scratch' on the Property. The materials have been delivered on a lorry, in several loads."

13. The appellants have referred to an appeal decision² where the Inspector found that the provisions of section 13(1)(a) of the CSA68 were met. The circumstances in this appeal decision were that the access to the site was not conducive to delivery in two sections and it was therefore taken apart and transported in smaller segments to the site where it was then reassembled in to two sections and was then bolted together in the conventional way envisaged by section 13. There are significance differences between this case and the circumstances of this appeal. The appellants confirm that the structure was constructed 'from scratch' by materials delivered on a lorry, and this is evidenced further by submitted photographs of the construction stage of the structure. This is significantly different to sections being delivered before being reassembled and bolted together.
14. From the evidence before me, which includes the appellants confirmation that the structure was built from scratch using materials delivered on a lorry, along with photographs of it being constructed as well as a letter from the building contractor describing how they constructed each part of it, it is clear that the structure was not assembled or bolted together but instead multiple elements were constructed to make it. The method of construction therefore fails the construction test. To meet the statutory definition, there has to be compliance with all three parts of the test, and this has not been demonstrated to be the case. As such, on the balance of probability, I conclude that the structure does not amount to a caravan, as defined in CSA68 and CSCDA60.
15. I now turn to the three tests of size, permanency and the degree of physical attachment as to whether the structure would amount to a building. The size is not insignificant, as the structure has separate rooms including a kitchen, living room and a bedroom, which is enough to accommodate all facilities for day to day living. In terms of permanence, it is indicated in the evidence, including details in the approved certificate of proposed lawful development³, that the structure is used as a granny annexe for use incidental to the main dwelling. There is no indication that there is an intention to move the structure in the future. Consequently, I consider that the structure has a substantial degree of permanence. There would be no physical attachment to the ground, other than by the weight of the structure and connection to drainage. This factor alone is not decisive though.
16. Taking into account all three factors, including the method of construction that was undertaken by a person carrying on business as a builder, I am of the view that the structure does amount to a building for the purposes of section 55 of the Act. As the structure is a "building" and is therefore defined as "development", it consequently requires planning permission.
17. The appellants alternatively argue that as a building the development is permissible under Schedule 2, Part 1, Class E of the Town and Country

² Planning Inspectorate ref numbers: APP/Q1153/C/08/2064995 and 6; and APP/Q1153/A/08/2064993/NWF

³ Local Planning Authority ref number: 20/1246/CLP

Planning (General Permitted Development) (England) Order 2015 (GPDO). Class E states that development is not permitted if it is situated within the curtilage of a listed building. The appellant argues that the development is not located within the curtilage of 4 Green Lane (No 4) which is a Grade II listed building. Whilst the appellant states that the development is situated on land forming part of the residential curtilage of No 4, it is argued that it does not fall on land which forms part of the historic curtilage of No 4.

18. The curtilage of a building is generally any area of land that is around and associated with that building. The courts⁴ have said that there are three key factors in assessing whether a structure or object is within the curtilage of a listed building. These are the physical layout of the listed building, ownership, past and present, and the use or function, past and present.
19. In terms of the physical layout, whilst there is some low level fencing and shrubbery between the development and the listed building, the development is physically in close proximity to the building and is within its residential grounds. The development and the listed building are within the same ownership and there is no compelling evidence to suggest the land which the development sits on was not in the same ownership as the listed building in the recent past. Historic Ordnance Survey maps suggest that there may have been a boundary separating the land in which the development now sits on and the listed building. This is not however conclusive that they did not have a connected use or function. It is clear though that the development does sit within the residential curtilage and therefore there is a shared use and function.
20. From the evidence before me, which includes the map attached to Historic England's official list entry, the development is located within the curtilage of a listed building. Therefore, the development is not permitted under Schedule 2, Part 1, Class E of the GPDO.
21. Irrespective of the above matter, the development is primary living accommodation as it has a living room, bedroom and a kitchen with the associated decking and they therefore have a residential use and not a use that is incidental to the residential use of the dwellinghouse of No 4. As the development is not incidental to the enjoyment of a dwellinghouse, it cannot be permitted development under Schedule 2, Part 1, Class E of the GPDO.
22. Since the development has taken place without planning permission it thereby constitutes a breach of planning control and I conclude that the appeal on ground (c) fails.

Appeal A on ground (a)

23. The ground of appeal is that planning permission should be granted for the matter alleged in the notice.

Main issue

24. The main issue is whether the development preserves or enhances the setting, character or appearance of the Countesthorpe Conservation Area and the nearby listed building.

⁴ Attorney-General ex rel. Sutcliffe and Others v Calderdale Borough Council (1983) 46 P. & C.R. 399

Reasons

25. The appeal development is situated within the Countesthorpe Conservation Area (CCA) and also within the curtilage of No 4 which is a Grade II listed building.
26. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. Also, in accordance with the duty imposed by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 I am required to pay special attention to the desirability of preserving or enhancing the character 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.
27. The CCA is described as a relatively clustered settlement with the historic core of the town in the east, surrounding the Grade II listed St Andrew's Church, with landmark buildings within the older core providing focal points and vistas. In my view the significance of the CCA is derived from the architectural character, design and style of the buildings collectively.
28. The Grade II listed building of No 4 is an early 19th Century farm house constructed of brick with Swithland slate roof. The property is three storied, three bays with central six panelled door with consoles supporting flat canopy and delicately wrought overhead. The listed building has historical and architectural significance within the area.
29. The development is visibly prominent in the surrounding area, particularly from surrounding neighbouring properties including No 4. The development is utilitarian in design which sits uncomfortably within the surrounding area and appears as an intrusive feature in the immediate built setting. The design and materials are not sympathetic and are at odds with the style and detailing of the surrounding properties including the adjacent listed building.
30. Physical and visual open space remains to the rear of the listed building, however, given the close proximity of the development to No 4 with its incongruous design and materials, it does have a detrimental effect on the setting of the listed building.
31. The development does not preserve or enhance the setting, character or appearance of the CCA or the adjacent listed building. The development is in conflict with Policies DM1 and DM12 of the Blaby District Council Local Plan (Delivery) Document 2019 and Policies CS2 and CS20 of the Blaby District Local Plan (Core Strategy) Document 2013 which seeks development to preserve and enhance heritage assets.
32. The development is harmful to the setting, character and appearance of the CCA and adjacent listed building, and thereby the significance of the heritage assets. Nevertheless, I consider the harm would be less than substantial and in accordance with paragraph 202 of the Framework, that harm should be weighed against any public benefits of the proposal.

33. I have had regard to the document *Historic England: Historic Environment Good Practice Advice Planning Note 3* and note that the development provides accommodation for an ageing population as well as supporting a safe and inclusive community and freeing up other available housing stock. Given the development relates to a single residential unit I attribute minimal weight to these benefits. These matters do not amount to a public benefit that outweighs the cumulative harm to the CCA and the adjacent listed building.
34. The development, therefore, fails to sustain or enhance the setting, and thereby the significance of, the designated heritage assets. It does not accord with the policies of the Framework which seek to conserve and enhance the historic environment.

Other Matters

35. The approved certificate of proposed lawful development⁵ for a mobile home caravan is argued by the appellant as a fallback position. There are significant differences however, as I have found that the structure is a building this is permanent whereas a mobile home caravan is designed to be more easily moved. The appellant indicates that a personal planning condition could be used to restrict the use of the development to the appellant's father and then the development would only be temporary. However, a condition requiring the demolition after a stated period of a permanent building would fail the test of reasonableness. Given the significant differences in permanency between the building and a mobile home caravan, I attribute minimal weight to the fallback position of the certificate of proposed lawful development⁵.
36. The appellant's statement of case describes that the development is living accommodation for the appellants father, who has long term health problems. The enforcement notice provides a nine-month period for compliance which provides ample time for the appellant's father to find alternative living accommodation. There is no compelling justification to indicate that the appellants father's health warrants a specific need to reside in the building.

Conclusion

37. I recognise that the failure of this appeal could affect arrangements for the appellant and his father. Having regard to the circumstances drawn to my attention, this would represent an interference with their rights under Article 8 of the European Convention on Human Rights, as incorporated by the Human Rights Act 1998. However, having regard to the legitimate and well-established development plan policies which aim to preserve and enhance the setting, character and appearance of heritage assets, in this case I consider that greater weight is attached to these. Dismissal of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the appellant.
38. The development conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweighs this finding.
39. For the reasons given above, I conclude that appeal A on ground (a) fails.

⁵ Local Planning Authority ref number: 20/1246/CLP

Appeals on ground (f)

40. An appeal on ground (f) is that requirements of the notice exceed what is necessary in order to remedy the breach of planning control or, as the case may be, the injury to amenity that is caused by the breach.
41. The appellant re-iterates the arguments discussed under ground (c), that the outbuilding and alterations to land level is not operational development and that the decking is permitted development. The appellant considers the requirements are excessive and unnecessary.
42. Given that in respect of the breach of planning control the notice requirements are to remove the structures and reinstate the land to its previous state, it is clear that the requirements clearly go no further than remedying the breach. Anything less than removal of the structures and re-instating the land would not fully remedy the breach.
43. Accordingly, I conclude that the notice requirements are not excessive and the appeals on ground (f) fail.

Chris Baxter

INSPECTOR