



Appeal Decision

Site visit made on 3 October 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07th December 2023

Appeal Ref: APP/C2708/C/22/3311902

Land at 126 Main Street, Cononley, Keighley BD20 8NR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Christopher Osborne against an enforcement notice issued by Craven District Council.
- The notice was issued on 25 October 2022.
- The breach of planning control as alleged in the notice is 'Without planning permission, the installation of a black chimney on the side elevation of the property'.
- The requirements of the notice are to: permanently remove the chimney flue so that it is no longer installed on a wall which fronts a highway and forms the side elevation of the dwelling-house.
- The period for compliance with the requirement is: 8 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. It is directed that the enforcement notice is corrected by:

In Section 2 The Land to Which the Notice Relates, the bracketed clause 'the property' is deleted and replaced with 'the Land'.

In Section 3 The Matters Which Appear to Constitute the Breach of Planning Control, the word 'chimney' is deleted and replaced with 'flue pipe'.

In Section 4 What You Are Required To Do, the word 'chimney flue' are replaced by 'flue pipe'.

2. Subject to the corrections, the appeal is allowed, the enforcement notice is quashed 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 development already carried out, namely the installation of a black flue pipe at 126 Main Street, Cononley, Keighley, BD20 8NR as shown on the plan attached to the notice and subject to the following condition:
 - 1) The flue pipe hereby permitted shall be removed within 28 days of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 3 months of the date of this decision a scheme for the retention and maintenance of the ivy providing visual mitigation of the flue pipe shall have been submitted for the written approval of the local planning authority.
 - ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved details.

Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

The Notice

- 3. The corrections detailed in paragraph 1. above are made to provide consistency in the references to both the development subject of the Notice and to the description of the Land where it is located.
- 4. Section 173(10) requires that an enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an enforcement notice served under s172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under s174.
- 5. Regulation 4 of the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002/2682 (the Regulations) refers to additional matters to be specified in an enforcement notice. It states that an enforcement notice issued under s172 of the TCPA 1990 shall specify – (a) the reasons why the local planning authority consider it expedient to issue the notice; (b) all policies and proposals in the development plan which are relevant to the decision to issue the notice; and (c) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise.
- 6. Although the Notice accurately identifies the relevant land and explains that the Council considered it expedient to serve the Notice on the grounds that a breach of planning control had occurred, the stated reasons for issuing the Notice provide no more than the relevant time period under s171B of the TCPA 1990 and that the development does not accord with the provisions of Class G of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- 7. The reasons in Section 3 of the Notice also state that ‘the Council consider that planning permission should not be given, because planning conditions could not overcome these objections to the development’. However, as there is no reference to harm or policies contravened, the nature of those objections are unclear in the Notice. The reasoning is therefore incomplete and insufficient to allow the appellant to know exactly what the purpose of the Notice was – whether it sought only to remedy the breach and/or any injury to amenity caused by it.
- 8. Those matters were subsequently clarified by the Council in the early stages of the appeal. Prior to this, as made out by the appellant, the ability to mount an appeal under ground (f) was significantly prejudiced by the shortcomings in the

Notice. However, having regard to the fact that the appellant subsequently determined to withdraw any ground (f) appeal, it cannot be that that injustice has persisted. Accordingly, I have proceeded to determine the appeal on the remaining grounds without further correction to the Notice.

The ground (a) appeal - the deemed application for planning permission

Main Issue

9. The main issue is whether or not the development preserves or enhances the character and appearance of the Cononley Conservation Area (the CA).

Reasons

10. The site lies close to the junction of Skipton Road with Main Street. It consists of a 2-storey semi-detached stone cottage set behind a small enclosed front garden. The site lies within the CA.
11. The CA is characterised by vernacular stone buildings of various ages and designs with stone or slate roofs. The core buildings are said to date from the mid-C17 and include former industrial and textile workers cottages amongst farmhouses and traditional agricultural buildings (mostly now converted). The framing countryside lying beyond the houses fronting the main thoroughfare provides a rural feel to the locality.
12. The flue pipe emerges part way up the ground floor section of the gable facing Skipton Road. It extends to just above the roof verge. Whilst the 'H'-form cowl is constructed of slender piping of similar diameter to traditional soil pipes, the main body of the pipe appears weightier. Compared to some other local examples of flue pipes, it looks to have a larger diameter and has a more distinctive modern appearance on account of its sectioned construction and mounting.
13. Within the CA many of the buildings include black rainwater goods and soil pipes extending vertically on the outside of the buildings. Numerous examples exist on the terraced cottages close by on Netherghyll Lane and on the property directly opposite the gable of 126 Main Street. In that context, vertical utility pipework is commonplace. However, if direct views were available to the full length of the pipe, the larger scale and modern construction of the main section are sufficient to cause it to stand out as a discordant modern feature in a relatively prominent location.
14. However, at the time of my site inspection only part of the upper section of the flue pipe was clearly visible along with the cowl. The remainder was effectively screened by ivy growing about the western corner of the building from the front garden of the property. The mitigation offered by the ivy was largely successful in limiting the visual effect of the main section of the flue pipe. The remaining exposed part was sufficiently limited such that it did not constitute a visual detractor in the locality.
15. Pursuant to the requirement in Para.55 of the National Planning Policy Framework, providing that the ivy is retained to mitigate the visual impact of the flue, I find the effect on the character and appearance of the CA is neutral. The development as constructed and mitigated thereby aligns with the requirements in Policies ENV2 and ENV3 of the Craven Local Plan 2012-2032 [2019] as they seek good design that responds to its local context and require

new development to conserve Craven's historic environment and preserve or enhance the character or appearance of a Conservation Area.

Conditions

16. In the absence of conditions proposed by the main parties, they were approached for comment on the condition set out above. The Council expressed concerns in relation to the effectiveness of the condition should No126 be sold. However, as the planning permission and its terms would enure with the land, the requirement to maintain the ivy or remove the flue pipe would be secured.
17. In the event that removal of the ivy was necessary for building maintenance purposes, it would be open to the appellant (or other) to propose alternative mitigation, or for the Council to take enforcement action if it considered it expedient to do so. Accordingly, I find that the requirements of the condition would provide the necessary mitigation for the visual effects of the flue pipe. It would meet the legal tests for conditions and the requirements in the Framework in relation to the use of planning conditions.

Conclusion

18. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the flue pipe as described in the Notice as corrected.
19. The appeal on ground (g) does not therefore fall to be considered.

R Hitchcock

INSPECTOR