The Planning Inspectorate

Appeal Decisions

Site visit made on 11 January 2011

by Steven Fox BA MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 January 2011

Appeal A: APP/H0738/C/10/2128265
The Garth, 68 Darlington Back Lane, Stockton-on-Tees TS19 8TG

- 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 Mohammed Farook against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The Council's reference is 10/00015/ENF.
- The notice was issued on 9 April 2010.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos (02)(03)(06) and (08) of planning permission Ref 07/2319/ARC granted on 20 October 2008.
- The development to which the permission relates is to amend condition no. 2 of planning approval 06/0461/REV. The conditions in question state (in short) that:
  (02) development shall be carried out in accordance with the approved plans within six months
  (03) a landscaping scheme shall be submitted to and approved in writing by the LPA
  (06) all means of enclosure shall be agreed with the LPA and erected before the development is occupied
  (08) the precise position of the front boundary shall be agreed by the LPA prior to occupation and thereafter retained in position
- The notice alleges that the conditions have not been complied with in that:
  (02) the development has not been completed in accordance with the approved plans
  (03) an approved landscaping scheme has not been carried out
  (06) means of enclosure have been erected without prior approval
  (08) the front boundary enclosure has been erected without approval
- The requirements of the notice are (in short):
  (i) reduce the height of the eaves and ridge of the lower section and relocate the northern and eastern walls in accordance with the approved plans
  (ii) reduce the height of the southern eaves and ridge of the intermediate section in accordance with the approved plans
  (iii) erect all means of boundary enclosure as shown on Plan F attached to the notice
  (iv) implement all planting as specified in Plan G attached to the notice
- The periods for compliance with the requirements are 3 months for step (iii), 8 months for step (iv) and 12 months for steps (i) and (ii).
- The appeal is proceeding on the grounds set out in Section 174(2)(c) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Appeal B: APP/H0738/C/10/2128268
The Bishop, 66 Darlington Back Lane, Stockton-on-Tees TS19 8TG

- 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 Ms Rehana Farook against an enforcement notice issued by Stockton-on-Tees Borough Council.
- The Council's reference is 10/00016/ENF.
- The notice was issued on 9 April 2010.
- The breach of planning control alleged in the notice is failure to comply with conditions Nos (02) (03) (06) and (08) of planning permission Ref 07/2319/ARC granted on 20 October 2008.
- The development to which the permission relates is to amend condition no. 2 of planning approval 06/0461/REV. The conditions in question state (in short) that:
  (02) development shall be carried out in accordance with the approved plans within six months
  (03) a landscaping scheme shall be submitted to and approved in writing by the LPA
  (06) all means of enclosure shall be agreed with the LPA and erected before the development is occupied
  (08) the precise position of the front boundary shall be agreed by the LPA prior to occupation and thereafter retained in position
- The notice alleges that the conditions have not been complied with in that:
  (04) the development has not been completed in accordance with the approved plans
  (05) an approved landscaping scheme has not been carried out
  (06) means of enclosure have been erected without prior approval
  (08) the front boundary enclosure has been erected without approval
- The requirements of the notice are (in short):
  (i) reduce the ridge height of the rear section of the dwelling as identified on Plans B and C attached to the notice in accordance with the approved plans
  (ii) remove the concrete base and foundations adjacent to the eastern elevation identified on Plan D attached to the notice and reinstate the area
  (iii) remove the brick entrance feature identified on Plan D attached to the notice
  (iv) erect boundary enclosures as shown on Plan E attached to the notice
  (v) implement all planting shown on plan F attached to the notice
- The periods for compliance with the requirements are 3 months for steps (iii) and (iv), 8 months for steps (ii) and (v) and 12 months for step (i)
- The appeal is proceeding on the grounds set out in Section 174(2)(c)and (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Appeal C: APP/H0738/A/10/2133297
68 Darlington Back Lane, Stockton-on-Tees TS19 8TG

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Mohammed Farook against the decision of Stockton-on-Tees Borough Council.
- The application Ref 10/1167/FUL, dated 10 May 2010, was refused by notice dated 30 June 2010.
- The development proposed is revisions to existing garage to provide for lowering in height of ridge and eaves.

Application for Costs

1. An application for costs was made by the appellant against the Council in respect of Appeal C. This application is the subject of a separate Decision.

Decisions

Appeal A: APP/H0738/C/10/2128265

2. ***I dismiss the appeal and uphold the enforcement notice.***

Appeal B: APP/H0738/C/10/2128268

3. ***I dismiss the appeal and uphold the enforcement notice.***

Appeal C: APP/H0738/A/10/2133297

4. ***I dismiss the appeal.***

Inspector's Reasons

Appeals A and B - Ground (c)

5. Because both ground (c) appeals raise the same issues I shall deal with them together. The appellants argue that the boundary fences to the front of the properties do not lie adjacent to the highway and therefore comprise development permitted by Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, as amended.

6. Class A of Part 2 permits the erection of a fence provided that its height does not exceed 1m where it is erected adjacent to a highway or 2m in other cases. The fence fronting The Garth and The Bishop is some 2m high and is set back from the highway behind a grass verge in which stand a number of lighting columns. The issue here is whether the fence is adjacent to the highway for the purposes of Class A.

7. The term 'adjacent' is not defined in the Order but in view of the fact that 'adjacent' replaced 'abutting' in an amendment to a previous Order and the Courts have held that 'abutting' does not equate to touching I consider that it is not unreasonable to apply the same interpretation to both terms. The grass strip between the carriageway edge and the fence reduces in width from the access to The Garth to the eastern boundary of The Bishop. I have no information as to the status or ownership of this open land but it falls outside the areas defined on the notice plans and is not shown as being under the appellant's control on the plans submitted in connection with Appeal C. Consequently it is appropriate to describe the land as highway verge, a term that reflects both its appearance and function.

8. Small thorn whips have been planted close to the front of the fence but I do not consider that their presence affects the relationship between the fence and the highway. My conclusion is that, as a matter of fact and degree, the fence lies adjacent to the highway and therefore the provisions of Class A.1(a) apply. Consequently because its height exceeds 1m the fence in question has been erected in breach of planning control and therefore the ground (c) appeals are unsuccessful.

The Ground (f) Appeals

Preliminary Matters

9. Section 174(2)(f) the Act includes the words 'as the case may be' in order to distinguish between requirements derived from Sections 173(4) (a) and (b). Where the purpose of the notice is to remedy a breach of planning control by making development comply with the terms of any planning permission granted it is not appropriate to consider appeal submissions under the second part of ground (f); that the requirements exceed what is necessary to remedy any injury to amenity. In such cases the only submission that can reasonably be made is that, as a matter of fact, the requirements exceed what is necessary to remedy the breach.

10. It should be clear from the face of the notice what the Council is seeking to achieve by the wording of its allegation and requirements. Circular 10/97 advises that in instances where no appeal has been made under ground (a) it is not appropriate to introduce arguments on the planning merits under ground (f) when the purpose is to remedy a breach of planning control. However, in circumstances where the purpose of the requirement is to remedy an injury to amenity submissions about whether the requirements exceed what is necessary to achieve that aim would be appropriate, but arguments about wider planning matters would not.

11. With regard to the appeals before me there are several separate requirements. I shall look at each requirement in turn in the context of the approach outlined in the preceding paragraphs.

Appeal A - Ground (f)

12. The stated purpose of requirements 5.1 and 5.2 is to achieve compliance with plans approved as part of the previous planning permission. The appellant does not argue that these steps would not achieve compliance with the planning permission or that such compliance could be achieved by lesser steps. Consequently I consider that, as a matter of fact, requirements 5.1 and 5.2 do not exceed what is necessary to remedy the alleged breach of planning control.

13. Requirements 5.3 and 5.4 seek to remedy the breach in respect of failure to comply with conditions (03) (06) and (08). Because the notice could not require the submission and approval of schemes it sets out detailed steps relating to boundary enclosure and landscaping. The appellant considers that the requirements are excessive and because the objective (although not expressly stated) appears to be that of remedying the harm to amenity caused by unauthorised fencing and landscaping I shall consider whether the lesser steps suggested would remedy any harm caused.

14. The close boarded fence that has been erected on the frontage is, by virtue of its height and design, an unsightly feature that detracts from the appearance of the houses behind it and is jarring in this semi-rural setting. Consequently the requirement to replace it with a more appropriate and visually sympathetic post and rail fence is not excessive in terms of remedying the harm to amenity. Arguments relating to safety are not relevant to my consideration of amenity issues.

15. In my view planting and landscaping is necessary in order to soften the appearance of the built development and to achieve integration with its surroundings. I noted that trees have been planted and grass established

behind the front boundary fence, but the appellant says the requirement to plant a beech hedge should be removed as whips to establish a hawthorn hedge have already been planted. It seems to me that a beech hedge would better integrate with the surrounding area and provide a more substantial and robust feature. Consequently this requirement is not excessive.

16. My conclusion is that the requirements do not exceed what is necessary to remedy the breach of planning control or, as the case may be, the harm to amenity. Therefore the ground (f) appeal fails.

Appeal B – Ground (f)

17. Requirement 5.1 sets out works necessary to achieve compliance with the approved plans and thereby remedy the breach of planning control. The requirement accords with S173 (4)(a) and therefore, as a matter of fact, I conclude that it is not excessive.

18. Requirement 5.2 involves the removal of unauthorised operational development and reinstatement. The appellant says the Council is over-enforcing in relation to the concrete hard standing, in that it does not give rise to any harm. The notice is clearly concerned with removing unauthorised operational development and remedying that breach of planning control. I consider that, as a matter of fact, the requirement does not exceed what is necessary to remedy this alleged breach. Likewise, 5.3 relates to the removal of unauthorised works carried out in breach of planning control and requires the restoration of the land to its condition before the breach occurred. Again, this clearly falls within S173(4)(a) and as it is not argued that any lesser works would remedy the breach I conclude that, as a matter of fact, this requirement is not excessive.

19. Requirement 5.4 is couched in terms similar to 5.3 of the notice for The Garth and for the reasons given in relation to Appeal A I do not consider the steps to be excessive in terms of remedying the harm to amenity. The landscaping requirement (5.5) was partially implemented at the time of my visit but the remaining works are necessary in order to remedy the harm to amenity caused, particularly in respect of the planting of a beech hedge as opposed to the retention of the hawthorn whips as suggested by the appellant. Consequently this requirement is not excessive.

20. My conclusion is that the requirements do not exceed what is necessary to remedy the breach of planning control or, as the case may be, the harm to amenity. Therefore the ground (f) appeal fails.

Notice A – Ground (g)

21. This ground of appeal relates to requirement 5.1 concerning works to be carried out to the lower (garage) section of the building. It is argued that the demolition and rebuilding of the walls will require power to be cut off whilst the supply is re-routed and necessitate the appellant moving out of the property, and that this, together with what would be involved in arranging and carrying out the works, justifies a compliance period of 18 months.

22. Having gained some impression of the scale of works involved in complying with 5.1 during my visit it seems to me that the 12 month period specified in the notice is adequate. I have taken into account the position of the electricity meter and supply and the need to relocate it, the scale of building works involved and the need for these to be organised and carried out. I am not

persuaded that the specified period is unreasonable. Therefore the ground (g) appeal is unsuccessful.

Appeal C

23. The proposal involves lowering the ridge and eaves height and altering the footprint of the garage, utility room and store attached to The Garth at its eastern end. There is a long and involved planning history to this property and its neighbour, The Bishop. Enforcement notices have been served in terms set out above, and in respect of the linked S174 appeals against them my decision is that they should be upheld without variation. The planning application is prospective and not retrospective under the provisions of S73A of the Act. Essentially the appellant is seeking to vary requirement 5.1 of Notice A, a matter I have considered above in respect of the ground (f) appeal against the notice. The ground (f) appeal failed and the notice is upheld without variation. However, I am obliged to consider the planning merits of the S78 appeal before me.

24. A number of development plan policies have been referred to by the Council, but these relate to the principle of development within and outside development limits and to sustainable living and climate change. The appellant also sets out a policy that relates to new extensions but the proposal here is to modify part of an existing building rather than erect a new extension. Consequently these are not directly relevant to this appeal. Bearing in mind the presence of the extant enforcement notices I consider the main issue to be the effect of the proposed changes to this particular section of The Garth on the character and appearance of that property and on its relationship with its neighbour, The Bishop.

25. The garage is one element, albeit significant in terms of its scale and mass, of the existing built development, other parts of which do not accord with the approved plans and are required to be altered under the terms of the enforcement notices. Lowering the roof and eaves of the garage would reduce the visual impact of that section of the building. But I am concerned that the garage would be retained at its current (unauthorised) width, such that the relatively narrow gap between the properties would remain and have the effect of perpetuating the unacceptably cramped relationship of the two dwellings. This is evident in views from the south and along the road from the east. Also, the different eaves heights and stepping of the wall and roof proposed for the south elevation of the garage would unbalance the appearance of the overall frontage and appear disjointed, particularly when seen from the east. Consequently I conclude that the proposal would materially harm the character and appearance of The Garth and its relationship with its neighbour, The Bishop.

26. I have taken into account all other matters raised. The appellant owns a classic Mercedes car, which I saw on the site visit. The argument that the proposed alterations have been devised so that there is sufficient room to allow him to garage it carries very little weight as a planning consideration. It does not justify accepting a scheme that causes material harm. The appellant also argues that this proposal accords with an earlier approval, but the Council says that this development was not carried out in accordance with approved plans and conditions so that the permission has expired and is no longer capable of implementation. I have considered this appeal in relation to current

circumstances and in light of the extant enforcement notice and the planning permission to which that notice relates. The other matters raised do not override the compelling planning objection therefore the appeal is unsuccessful.

Steven Fox

Inspector

The Planning Inspectorate

Costs Decision

Site visit made on 11 January 2011

by Steven Fox BA MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 January 2011

Costs application in relation to Appeal Ref: APP/H0738/A/10/2133297
68 Darlington Back Lane, Stockton-on-Tees

- The application is made under the Town and Country Planning Act 1990, Sections 78, 322 and Schedule 6, and the Local Government Act 1972, Section 250(5).
- The application is made by Mr Mohammed Farook for a full award of costs against Stockton-on-Tees Borough Council.
- The appeal was against the refusal of planning permission for revisions to existing garage to provide for lowering in height of ridge and eaves.

Decision

1. ***I refuse the application for an award of costs.***

Inspector's Reasons

2. The gist of the appellant's case is that the appeal should not have been necessary in that the application is identical to one that had previously been approved, without any change in circumstances, and that inadequate reasons for refusal are given, quoting incorrect development plan policies.

3. Although the development plan policies referred to in the reasons for refusal are not directly relevant to the proposed development the wording of those reasons is sufficiently precise and unambiguous to make clear to the appellant why his planning application was refused. As far as reference to the previous approval is concerned I share the Council's view that because the dwelling that has been erected does not comply with the terms of any previous planning permission it is appropriate to consider this planning application in the context of the development as a whole. Otherwise the credibility of the planning process would be undermined by applicants attempting to make piecemeal changes to unauthorised development.

4. Consequently I conclude that an award of costs is not justified.

Steven Fox

Inspector