The Planning Inspectorate

Appeal Decision

Site visit made on 1 February 2012

by D R Cullingford BA MPhil MRTPI

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

Decision date: 22 February 2012

Appeal Ref: APP/H0738/A/11/2164005
76 Yarm Road, Stockton-on-Tees, TS18 3PQ

- 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 by Mr Jangeer Hussain against the decision of the Stockton-on-Tees Borough Council.
- The application (ref: 11/1247/FUL and dated 20 May 2011) was refused by notice dated 26 August 2011.
- The development is described as the 'erection of detached garage and store'.

Decision

1. For the reasons given below, and in exercise of the powers transferred to me, I dismiss the appeal.

Reasons

2. The proposed 'garage' would stand at the bottom of a fairly long back garden of a fairly large terraced house converted into 6 self-contained flats and currently undergoing extensive renovation. The building would be quite a substantial 2-storey structure with storage space above the garage; it would extend across the width of the back garden, be some 9m in length and reach about 6.3m at the ridge. (As drawn the revised plans indicate a larger building, though the annotated dimensions do not.) Vehicular access would be from the back lane, which is gated at either end. The Council are concerned that the scheme would represent the introduction of a relatively large building and a separate commercial use into a residential area with a primary access from an alley subject to a 'gating order', thereby compromising the character of the area and the provision for parking, as well as the amenity and security of residents. It us thus asserted that the scheme would contravene policy CS3 of the adopted Core Strategy and the advice in PPG24. Those are the issues on which this appeal turns.

3. The garage would be substantial. With its windows and doors it would look much like, and be roughly the size of, a modest house. And, although other 2-storey outbuildings stand towards the far end of this back lane, those are not only the exception amongst mainly single storey sheds and garages, they are also noticeably smaller structures. Indeed, the appeal building would be about twice as deep, projecting some 9m into the back garden and the dominating height of the flank gable would be accentuated by the length and height of the projecting ridge line. I think that the combination of those features would emphasise the incongruous size and scale of the structure. No doubt the first floor windows could be fitted with obscure glazing to prevent overlooking. But the oddly obtrusive impact of the building would be evident from the rear of the properties across the back lane and the looming presence of the blank flank

wall would dominate a substantial part of the adjacent garden to the north. (A large shed occupies the equivalent space to the south.) I consider, therefore, that the structure would appear incongruously dominating amongst these surroundings and impinge on the amenities that residents might reasonably expect to enjoy.

4. I understand that the intention is to use the building as a garage and as a place to store furniture in connection with the appellant's role as a non-resident landlord of the 6 self-contained flats in the appeal property. Although that would mean that the building could not be treated as being ancillary to a 'dwellinghouse' for the purposes of the Town and Country Planning (General Permitted Development) Order (due to the distinction between a 'flat' and a 'dwellinghouse' contained in the Order), it does not follow that it must engender a completely separate unconstrained commercial activity. In my view it would be possible, albeit cumbersome, to encase the structure in planning conditions (tying it to the business, or to the appellant and severely restricting the uses permitted there) to enable something akin to the indicated activity to take place. In those circumstances, many of the understandable worries envisaged by the Council (the instigation of car repairs or the noise and traffic generated by other commercial activities) need not necessarily materialise. Even so, I can find no cogent justification to warrant the erection of such an incongruously large structure here. The occasional need to store bits of furniture and belongings as tenants move into, or out of, their flats is not convincing.

5. Moreover, I consider that there would be other impediments to this scheme. In particular, the only vehicular access to the building would be from the back lane. This is subject to a Gating Order (under section 129A of the Highways Act 1980), which prevents primary access to a property enclosed within the alley gates. Although the building would have pedestrian entrances from the back garden, it would not be primarily associated with any of the flats and, given the position of the vehicular and pedestrian entrances, I consider that the back lane would inevitably serve as the 'primary access'. Indeed, it is far from obvious that the tenants of the flats would have any rights to use the building other than those bestowed on them, from time to time, by the landlord. And, it is in that sense that a degree of separation would remain between the use of the appeal building and the use of the flats at 76 Yarm Road. That situation reinforces my view that the back lane would be, in reality, the 'primary access' to the building. The proposal would thus undermine the control exercised through the Gating Order and compromise the sense of security the Order is intended to engender. And, although the absence of railings beside the car park behind the Queen Victoria Public House must, for the moment, open the back lane to all and sundry, I think that that is likely to be a temporary defect rather than a permanent impediment.

6. For those reasons, I consider that the proposal would result in an incongruously large structure that would compromise the character of the area as well as the amenity and security of residents, contrary to the requirements of policy CS3.

7. I have considered all the other matters raised. I accept that the garage could be slightly altered to easily accommodate a car or van and, although that might not always prevent the occasional parked vehicle from obstructing the back lane, a similar obstruction might well occur on occasions at other garages here. I also realise that the current scheme is a slightly smaller version amended

from a previous proposal. However, in my view the structure would still appear incongruously large and I find neither these nor any other matter raised sufficiently compelling to alter my conclusion that this appeal should be dismissed.

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 1 February 2012

by D R Cullingford BA MPhil MRTPI

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

Decision date: 22 February 2012

Costs application in relation to Appeal Ref: APP/H0738/A/11/2164005
76 Yarm Road, Stockton-on-Tees, TS18 3PQ

- This 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 on behalf of Mr Jangeer Hussain for a full award of costs against the decision of the Stockton-on-Tees Borough Council.
- The site visit was in connection with an appeal against the decision of the Council to refuse to grant planning permission for development described as the 'erection of detached garage and store'.

Reasons

1. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

2. The claim is that the Council have behaved unreasonably. First, although the proposal was intended to entail domestic storage associated with the appellant's role as landlord for the flats, the reasons for refusal assert that the scheme involved a separate commercial activity. That assertion was based on an assumption unsupported by evidence. Indeed, the Council had validated the proposal as a 'householder application'. Moreover, even if a commercial element had been involved, the scheme could have been restricted to 'domestic storage' by the imposition of a suitable condition or permission could have been granted subject to a Grampian condition facilitating the preparation of a subsequent section 106 Undertaking. It is evident that the assumption of 'commercial activity' resulted in consultees raising objections where none had previously been intimated.

3. Second, the appellant was specifically told by the case officer that the length of the garage was the only issue and that a suitable reduction would be likely to secure permission. Amended plans were submitted and the case officer stated that the scheme was acceptable and that, in agreement with her line manager, it was ready to be 'signed off'. On that basis Building Regulation plans were prepared and materials purchased, thus entailing wholly unnecessary expense.

4. In response, the Council explain that the proposal was initially validated as a householder application, but once that error was realised it did not seem appropriate to request additional forms and fees. Although it was explained that the garage and storage space would be for vehicles belonging to the owner of 76 Yarm Road and for the storage of furniture from his flats, it was realised that the appellant does not live at the appeal property and hence that the garage would not necessarily be used by residents there. Because a 'flat' does not benefit from permitted development rights, it is asserted that the proposed

storage of furniture would actually constitute 'commercial storage and distribution' under Class B8 of the Town and Country Planning (Use Classes) Order. Hence, it would not be possible to impose conditions insisting that such a use remain ancillary to the main dwelling, as the latter is now converted to flats. Nor would it be appropriate to restrict the use of the garage to 'domestic storage' because such a term would not be sufficiently precise and, given the size of the structure, it would be impracticable to monitor and enforce such an ill-defined restriction.

5. It is accepted that the appellant was advised that the originally submitted scheme was excessively large and that amended plans should be submitted to address that defect. However, it was made clear to the appellant that any recommendation would be subject to further consideration of the revised plans and to further consultation.

6. I have carefully considered those matters. I think that, taken as a whole, the reasons for refusal do rather focus on the consequences likely to emanate from some form of uncontrolled commercial activity being undertaken in the appeal building. In my view that does not properly reflect what was actually intended and, although I can appreciate the reasons for adopting that stance, it should be clear from my decision letter why I do not agree that an uncontrolled form of completely separate commercial activity must be the inevitable consequence of this scheme. And, although I rather agree that the restrictions envisaged by the Council (as indicated above), as well as the imposition of a Grampian condition, might well be inappropriate, I doubt that those particular limitations would constitute an exhaustive list or that all potential restrictions would be ineligible or prove impracticable to enforce. Indeed, the unauthorised operation of a commercial activity from an outbuilding in a residential area is just the sort of 'breach of planning control' that neighbours might be very likely to report. And, although the distinction between occasionally storing tenants' furniture and storing items to buy and sell elsewhere (for example) could well be a matter of 'fact and degree', the distinction with many of the other activities mooted by the Council would be all too obvious.

7. However, in my reading of the Decision Notice the spectre of a commercial use is not the sole reason for refusal. Clearly, the scale of the building also plays a part as does the role of the Gating Order imposed under section 129A of the Highways Act 1980, preventing primary access to a property enclosed within the alley gates. As I indicate in my decision letter, I consider that both those elements provide a sound reason for preventing this scheme, notwithstanding the stance adopted by the Council. It follows that a refusal of planning permission for the proposal is justified, albeit not quite for the reasons set out in the Decision Notice.

8. The Circular indicates that a Decision Notice should be carefully framed and that the failure to properly substantiate each reason for refusal can risk an award of costs. But, a crucial test is that the party applying for costs must have incurred unnecessary or wasted expense in the appeal process. Because I think that a refusal of planning permission is justified here, the costs incurred in undertaking some kind of appeal cannot have been unequivocally either wasted or unnecessary. Moreover, all impediments to the scheme could not have been overcome by the imposition of conditions or the submission of an Undertaking. I do not see how the need to explain the intention to use the building as a garage and for 'domestic storage' associated with the appellant's

role as landlord for the flats could have incurred unnecessary or wasted expense. The explanation is simple and limited. And, such an explanation should have been provided in submitting the application. As for the advice received from the case officer, it seems to me that it was properly proffered to overcome an obvious defect in the original scheme. I appreciate that there is room for misunderstanding here, but even though that advice might have encouraged the anticipation of success, I think that, taken as a whole with published guidance and procedures, it should have been reasonably apparent that any permission could not be 'promised' in such a way but would be subject to further consideration and consultation. The cost of preparing amended plans could not be 'unnecessary', since the submitted drawings allowed consideration of the scheme to be undertaken unencumbered by the initial defect properly identified by the case officer. The preparation of 'Building Regulation plans' and the purchase of materials may have been wasted. But the decision to embark on that course in advance of the Decision Notice being issued seems to me to be incautiously premature; such expense should not be borne by the Council.

9. Hence, I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has not been demonstrated.

Formal Decision

10. In exercise of the powers transferred to me, I refuse this application for an award of costs.

INSPECTOR