
Appeal Decisions

Site visit made on 8 October 2018

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 12 November 2018

Appeal Refs : APP/X0415/C/17/3187747 and 3187748

Land on the north side of Timberley Lane, Kings Ash, Buckinghamshire

- 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 appeals are made by Mr Peter Dolling and Mrs Julia Francis Dolling against an enforcement notice issued by Chiltern District Council.
- The notice was issued on 18 September 2017.
- The breach of planning control as alleged in the notice is without planning permission (i) the material change of use of the land from agriculture (sui generis) to equestrian (sui generis)(the unauthorised use) and (ii) the erection of a stable block (B1), a hay barn (B2) and two field shelters (B3 & B4) marked in the approximate positions on plan B attached to the notice and (iii) the construction of an associated concrete hardstanding and the formation of an associated hardcore hardstanding marked in the approximate position shown hatched and cross hatched on plan B attached to the notice.
- The requirements of the notice are (i) cease the unauthorised use of the land (ii) demolish/dismantle the stable building (B1), hay store (B2) and field shelters (B3 and B4) and remove all resulting debris and materials from the land (iii) remove the concrete hardstanding from the part of the land shown hatched on plan B attached to the notice and remove all resulting debris from the land, 'rip' the land from where the concrete was laid to alleviate compression of the ground and remove from the land all material arising from the ripping and (iv) take up and remove the hardcore hardstanding from that part of the land shown cross hatched on plan B attached to the notice, rip the soil from that part of the land where the hardcore has been removed to alleviate compression of the ground.
- The period for compliance with the requirements is eight months.
- 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.

Summary of Decision: the appeals are dismissed and the enforcement notice is upheld

Preliminary matter

1. The initial appeal form indicated an appeal on ground (a). But in the absence of payment of the requisite fee and as confirmed during the course of the appeal that ground of appeal has lapsed. Accordingly, I shall determine the appeal under grounds (c) and (f) only.

Ground (c) appeal

2. This ground of appeal is that the matters alleged do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of

development is set out in section 55 of the 1990 Act (as amended) and includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The onus of proof rests on the Appellants and the test of evidence is the balance of probabilities.

3. The Appellants' case is that the field shelters marked B3 and B4 on plan B attached to the notice are not development as they are not buildings. There is no dispute between the parties concerning the unauthorised use, stable block, hay barn and hardstanding and I therefore address the field shelters only in this ground of appeal.
4. In determining whether each field shelter constitutes a building (as defined in section 336 of the 1990 Act (as amended)) or a building operation or other operation within the meaning of section 55 I have assessed their size, degree of permanence and physical attachment.
5. The fields shelters are of not insignificant size. They are robust and solid and have the appearance of permanence. I note that the Appellant says that they are capable of being moved by a 4x4 vehicle or tractor but there is nothing before me to suggest that they have ever been moved from their current position. The photographic evidence produced by the Council strongly suggests that the shelters have been in place for some time and that in particular the shelter marked B4 has not been moved for a period of more than three years. I note that there are no physical foundations and that they rest upon the ground under their own weight. No one factor is conclusive and on balance on the facts of this case I find that the field shelters comprise buildings for the purposes of section 55 of the Act.
6. As a matter of fact and degree I find that each of the field shelters can reasonably be regarded as a building for the purposes of the 1990 Act (as amended). It follows that they comprise development requiring planning permission and that the matters alleged in the notice constitute a breach of planning control.
7. I note the Appellants' comments about the purpose of the stables for rescue and rehabilitation of horses and the character of the surrounding area but there is no ground (a) appeal before me and the planning merits of the development are not relevant to a ground (c) appeal.
8. For the reasons given above, I conclude that the appeal should not succeed on ground (c).

Ground (f) appeal

9. This ground of appeal is whether having regard to the purpose for which the notice was issued, the steps exceed what is necessary to meet that purpose.
10. There are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy any breach of planning control that has occurred. The second is to remedy any injury to amenity which has been caused by the breach. In this case the notice provides for cessation of the unauthorised use and demolition of the structures therefore its purpose is to remedy the breach and restore the land to its condition before the breach took place.

11. The Appellants say that the alleged breaches of planning control would be rectified by reduction in the hardstanding area and stables building. But such a proposal lacks detail and would not address the unauthorised use and hay barn. It is not the purpose of a ground (f) appeal to run planning merit arguments more appropriate to a ground (a) appeal and there are no obvious alternative steps before me that would meet the purpose of the notice or remedy the injury to amenity caused by the breach.
12. For the reasons given above, the ground (f) appeal does not succeed.

Formal Decision

13. The appeals are dismissed and the enforcement notice is upheld.

S. Prail

Inspector



Appeal Decision

Site visit made on 25 October 2018

by Lynne Evans BA MA MRTPI MRICS

an Inspector appointed by the Secretary of State

Decision date: 9 November 2018

Appeal Ref: APP/X0415/D/18/3209591

Grey Cottage, Nairdwood Lane, Prestwood, Great Missenden HP16 0QF

- 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 Mrs Helen Brown against the decision of Chiltern District Council.
 - The application Ref CH/2018/0850/FA dated 11 May 2018, was refused by notice dated 6 July 2018.
 - The development proposed is single storey detached building to form garaging and store.
-

Decision

1. The appeal is allowed and planning permission is granted for single storey detached building to form garaging and store at Grey Cottage, Nairdwood Lane, Prestwood, Great Missenden HP16 0QF in accordance with the terms of the application, Ref: CH/2018/0850/FA dated 11 May 2018, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 01; 02B; 03A and 04A.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall accord with those shown on Plan 04A.
 - 4) The existing trees, bushes and planting shown to be retained on Plan 02B shall be protected by strong fencing, the location and type to be first approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
 - 5) The garage and store building hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for domestic storage incidental to the enjoyment of the dwelling house and for no other purpose.

Preliminary Matters

2. The revised National Planning Policy Framework (Framework 2018) came into force on 24 July 2018 and from that date policies within the Framework 2018 are material considerations which should be taken into account in decision making. Although the Council's reason for refusal did not specifically refer to the National Planning Policy Framework 2012 extant at the time of the decision, the Council referred to it in the Officer's report. From reading all the information before me from the Appellant and the Council, I am satisfied that the revised Framework 2018 carries forward the main policy areas from the earlier Framework, as relevant to this appeal.

Main Issue

3. The main issue in this appeal is the effect of the proposal on the character and appearance of the local area and landscape, including with reference to the Chilterns Area of Outstanding Natural Beauty.

Reasons

4. The appeal property is a detached dwelling on a generous plot on the eastern side of Nairdwood Lane. It is set back from the frontage behind dense vegetation, including a large mature oak tree. Nairdwood Lane has a wide variety of mainly detached houses along its eastern side, with an irregular front building line. The site and surrounding area lie within the Chilterns Area of Outstanding Natural Beauty (AONB).
5. The proposed garage and store would sit forward of the main dwelling but in terms of its proposed dimensions, and in particular its width and height, it would appear modest and subservient in form to the scale of the existing dwelling. It would also be sited well away from the side and front boundaries of the plot and so would not appear cramped in its position in relation to the main dwelling and the plot. Some of the existing vegetation would need to be removed but this would be limited and would not materially affect the existing established and mature planting.
6. The proposed new structure would sit broadly in line with the neighbouring property at Yew Cottage and there would remain a generous area of front garden between the garage and the front boundary. It would be partly hidden from street views because of the existing planting. Where views of the proposal would be available, and even if the frontage planting were to be reduced in the future, I consider that the building would be seen as part of the varied street scene along this part of Nairdwood Road. It would be seen in the context of the surrounding varied built development and would, as a result, have minimal effect on the landscape and scenic beauty of the AONB.
7. I therefore conclude that the proposal would respect the character and appearance of the local area and would conserve the landscape and scenic beauty of the AONB. There would be no conflict with Policies H15 and H20 of the adopted Chiltern District Local Plan 1997 (including alterations adopted 29 May 2001) Consolidated September 2007 & November 2011, as well as the Framework 2018, all of which seek a high standard of design which respects the local context and conserves and enhances the landscape and scenic beauty of AONBs.

Conditions and Conclusion

8. In terms of conditions, the materials as set out on Plan 04A should be specified in the interests of protecting the character and appearance of the existing property and of the local area, as well as a condition to list the approved plans for the avoidance of doubt and in the interests of proper planning. I also consider that a condition should be imposed to protect the existing vegetation shown to be retained and a condition imposed to retain the building in its intended use; these conditions are required to protect the landscape beauty of the local area and to accord with the terms of the proposal.
9. In order to be effective, it is my view that the condition relating to the protection of the existing vegetation requires to be a pre-commencement condition. In accordance with Section 100ZA (5) of the Town and Country Planning Act 1990 and The Town and Country Planning (Pre-Commencement Conditions) Regulations 2018, I have therefore requested and received the Appellant's written agreement to the imposition of this condition.
10. For the reasons given above and having regard to all other matters raised, including in representations, I conclude that the appeal should be allowed.

L J Evans

INSPECTOR



Appeal Decision

Site visit made on 6 November 2018

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2018

Appeal Ref: APP/X0415/D/18/3211568

Endstead, Heath End Road, Little Kingshill, Bucks HP16 0EB

- 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 Peter Glen against the decision of Chiltern District Council.
 - The application Ref CH/2018/0904/FA, dated 14 May 2018, was refused by notice dated 9 July 2018.
 - The development proposed is double garage.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 24 July 2018. The content of the revised Framework has been considered but in light of the facts in this case it does not alter my conclusion.

Main Issue

3. While the Council's report refers to the proposal being inappropriate development in the Green Belt, this is not referred to in its reason for refusal and its principal assessment is of the effect on the character and appearance of the street scene as part of the Chilterns Area of Outstanding Natural Beauty (AONB). Accordingly, I have considered the appeal proposal on the same basis.
4. Therefore, the main issue is the effect of the proposal on the character and appearance of the street scene and this part of the Chilterns AONB.

Reasons

5. The appeal property is a detached chalet bungalow to the northern side of Heath End Road, within the village of Little Kingshill. The surrounding area is residential with various types and age of dwellings situated either side of the road frontage. The wider surrounding area is open countryside. As well as being in the AONB, the appeal property is located in the Green Belt.

6. The Framework requires that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs, amongst other designated areas. In this case the appeal property is within a village setting surrounded by other dwellings. Policy CS22 of the Core Strategy for Chiltern District concerns development in the Chilterns AONB and requires that all proposals must conserve and enhance the special landscape character, heritage and distinctiveness of the Area.
7. More generally, Policies GC1 of the Chiltern District Local Plan and CS20 of the Core Strategy require high standards of design in new development, including that it should respect and not harm the character of the surrounding area. These policies are broadly consistent with the Framework.
8. The Supplementary Planning Document *Residential Extensions and Householder Development* (the SPD) provides guidance in support of these policies, particularly with regard to features that contribute to local distinctiveness. It says that care needs to be taken in the siting of garages, particularly in areas characterised by open frontages which are clear of built form. In these areas it is unlikely to be acceptable to site a garage forward of a dwelling as this would disrupt the existing pattern of development.
9. Directly to east of the appeal property is a modern group of dwellings, while dwellings to the west, including the appeal property itself, are set on a broadly similar building line and layout. Properties on the opposite side of the road are positioned at more variable depths to the road frontage. However, none of these dwellings in the surrounding area have garages or other ancillary outbuildings to the front garden area close to the road.
10. In contrast to this general characteristic of this part of Heath End Road, the double garage would be positioned directly next to the front boundary. As such it would introduce substantive built development to the open and undeveloped setting to the front of the appeal property. Consequently, it would harmfully disrupt the existing pattern of development, contrary to the above policies and guidance.
11. While there is some planting to the front boundary, this would not fully screen views of the garage, particularly approaching from the east. Therefore, the garage would be prominent in views from the surrounding area from which its uncharacteristic and incongruous layout in relation to the surrounding area would be readily apparent. I agree with the Council that screening by vegetation should not be considered a mitigating factor to otherwise unacceptable development that will be permanent, particularly given the appeal property's location in an AONB where a high standard of protection is applied to avoid inappropriate development.
12. I acknowledge that there were no objections to the proposal. However, this does not overcome the harm that has been found and conflict with development plan policies and related guidance.
13. Accordingly, for the above reasons, I conclude that the proposed double garage would have an unacceptably harmful effect on the character and appearance of the street scene and this part of the Chilterns AONB. Consequently, it is contrary to the development plan policies and guidance referred to above.

Other policies referred to by the Council have not been provided as part of the appeal submissions.

Other Matters

14.I have had regard to an interested party's representation that the proposed garage would obstruct neighbours' sightlines. However, due to the separation distances involved and the fact that the garage would be positioned just behind the front boundary line, these concerns about the effect on highway safety would not be realised.

15.For the reasons given above it is concluded that the appeal should not succeed.

J Bell-Williamson

INSPECTOR

Appeal Decision

Site visit made on 6 November 2018

by J Bell-Williamson MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20th November 2018

Appeal Ref: APP/X0415/D/18/3210943

Penshurst, Lincoln Road, Chalfont St Peter SL9 9TQ

- 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 & Mrs van der Watt against the decision of Chiltern District Council.
 - The application Ref PL/18/2115/FA, dated 5 June 2018, was refused by notice dated 31 July 2018.
 - The development proposed is carport and new access and driveway.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the street scene; and, related to this, whether a precedent would be created for similar proposals in the surrounding area.

Reasons

3. The appeal property is a detached two storey dwelling set in a generous plot in a residential area of similar property types. It is one of three dwellings that form a small group along a short cul-de-sac spur off the main part of Lincoln Road. The site and surrounding area include mature planting and woodland, giving a verdant, semi-rural character and appearance.
 4. The three similar properties - Penshurst, Harthorpe and Holly House – are visually isolated from the properties along the main part of Lincoln Road. As such, they form a separate part of the overall street scene with its own particular characteristics. This is evident from the relatively large front gardens, which are open to the street with no boundary treatments. While the frontages include surfaced driveways there are no built structures in front of any of the three dwellings. The open aspect to the front of the small group of dwellings is an attractive feature of this separate part of Lincoln Road and, therefore, is an important element of its character and appearance.
 5. The proposed carport to accommodate two vehicles would be of a proportionate scale to the host dwelling and built from appropriate materials for its setting. Moreover, the open frontage would help to reduce its solidity and presence.
-

Despite these mitigating factors, it would introduce substantive built development to the open and undeveloped setting to the front of the group of dwellings. Consequently, it would be highly prominent seen from its immediate surrounds from which views it would harmfully undermine the otherwise open frontages across the group of three dwellings and so would harm the character and appearance of the street scene.

6. The appellants draw attention to other examples of similar development in the surrounding area. However, as already found, the three dwellings form a separate part of the street scene and there are differences to the main part of Lincoln Road and surrounding streets where many properties have enclosed frontages, particularly with hedges and fences. Therefore, these other examples of development are not directly comparable to the appeal proposal and they do not lead me to reach a different conclusion.
7. In reaching these findings, I have taken full account of the scale of the development, particularly the appellants' noting an incorrect reference to its height in another party's representations. I acknowledge also that the proposed structure would not be highly visible within the wider area, including from the main part of Lincoln Road. It would, however, be a prominent and incongruous feature to neighbouring occupiers and visitors due to its siting in the otherwise highly open setting as found above.
8. I acknowledge the Council's concern that allowing this proposal could set a precedent for further development. However, I am mindful of the principle that development proposals must be considered on their individual merits and I have no particular evidence to suggest that similar proposals might come forward were this appeal to succeed. Any future development proposals would need to be similarly considered on their merits against policies and circumstances pertaining at the time. However, current concerns about such proposals coming forward do not weight against the proposal.
9. Nonetheless, for the above reasons, I conclude that the proposed car port would have an unacceptably harmful effect on the character and appearance of the street scene. As such, it is contrary to the following development plan policies, which require high standards of design in new development, including that it should respect and not harm the character of the surrounding area: GC1, H13, H15 and H20 of the Chiltern District Local Plan; CS20 of the Core Strategy for Chiltern District; and H6 and H7 of the Chalfont St Peter Neighbourhood Plan 2013. These policies are broadly consistent with the National Planning Policy Framework.

Other Matters

10. I have had regard to a number of other matters raised by interested parties. I acknowledge the concerns raised about the accurate representation of property boundaries on the submitted plans and the contention that other development at the appeal property is not fully represented. I was, however, able to assess the effects of the proposal fully from the site inspection.
11. Highway safety does not have a direct bearing on the proposed carport, given the limited vehicle movements and slow speeds involved. Other matters about unrelated development at the appeal property or conjecture about future use of the proposed development are not relevant to the current appeal.

12. For the reasons given above it is concluded that the appeal should not succeed.

J Bell-Williamson

INSPECTOR