



Appeal Decisions

Hearing Held on 24 November 2020

Site visit made on 25 November 2020

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 22 December 2020

Appeal A: APP/C1760/C/20/3247781

Appeal B: APP/C1760/C/20/3247782

The land and premises at Dingwall, Little Ann Road, Little Ann, Andover, Hampshire SP11 7NW

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Appeal A is made by Mr Steve Pearce and Appeal B is made by Mrs Catherine Pearce against an enforcement notice issued by Test Valley Borough Council.
- The enforcement notice was issued on 28 January 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of a dwelling house on the land (within the area shown approximately hatched blue on the attached plan).
- The requirements of the notice are:
 - 1) To demolish the said dwelling house to ground level.
 - 2) To remove from the land all materials resulting from step 1) above.
- The period for compliance with the requirements is six (6) months.
- The appeals are proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals succeed to a limited degree on ground (g) only. Otherwise the appeals are dismissed and the enforcement notice is upheld as corrected and varied in the terms set out below in the formal decision.

Preliminary matters

1. The Appeal Notification letter, dated 22 May 2020, refers to the date of issue of a previously withdrawn enforcement notice. The Hearing Notification letter, dated 4 November 2020, identifies the correct enforcement notice. Given the number of written representations received and presence of interested parties at the Hearing, the appellant and the Council agreed that interested parties had not been prejudiced by the content of the Appeal Notification letter and I concur.
2. The Statement of Common Ground (SoCG), dated 18 November 2020, is not signed by either the appellant or the Council. The appellant and Council confirmed at the Hearing that its contents have been agreed.
3. The SoCG provides a list of relevant plans, which includes '15061 T/100 The Topographical Survey' and 'L.201 Location Plan'. These had not accompanied the submission documents and it was agreed that, while they added nothing further to what was shown on other submitted plans, they would be provided for completeness.
4. Planning permission (application reference: 15/02912/FULLN) was granted in July 2016 for the erection of a dwelling and associated site works (the 2016

PP). Relevant conditions were discharged, and development commenced in June 2018. There is no dispute that the development undertaken has not been carried out in accordance with the 2016 PP.

5. In January 2019, an application under s73 of the 1990 Act (reference: 19/00090/VARN) was submitted for the erection of a dwelling and associated works without complying with conditions imposed on the 2016 PP. This application sought to regularise the development being carried out. The application was refused on 8 March 2019 for 4 reasons, which were transposed into the reasons for issuing the enforcement notice.

The notice

6. The wording of the allegation forms the basis of the deemed planning application and the wording needs to be correct. The allegation as set out implies that the alleged development is a completed dwellinghouse. The appellant and Council however agree that 'the external shell of the building has been constructed to roof level including dormer windows (but no glazing) and Velux windows and roof tiling'¹. The building cannot be a dwellinghouse as it does not have the facilities required for day-to-day private domestic existence. It was therefore agreed by the appellant and Council that the allegation be corrected to read 'the partial erection of a building'. As this accurately reflects the development that has occurred, I am satisfied that no injustice would be caused by this correction.

Ground (a) and the deemed planning permission

7. The site is within the Abbots Ann Conservation Area, in reaching my decision I have paid special attention to the statutory duty arising from s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Council has also supplied development plan policies and supplementary guidance relating to design, landscape, character, appearance and heritage. Taking these matters together with my observations on site, I consider the main issues to be:
 - Whether the development preserves or enhances the character or appearance of the Abbots Ann Conservation Area, having particular regard to the development's bulk, mass, siting and design; and
 - What is being sought with regard to planning permission.

Character and appearance

8. The Abbots Ann Conservation Area was designated in 1981 in recognition of its special architectural and historic interest. A Conservation Area boundary review was carried out in 2004 and revised boundaries were adopted in 2005. No further review has taken place. The Conservation Area Appraisal (CAA) confirms the site to be located within Little Ann, outside the historic core. The CAA identifies the key characteristics of this part of the CA as 'a mixture of properties of varying ages and styles' and 'properties on the south side are less distinguished architecturally'. Having regard to the CAA Map, the nearest 'important view' to the site looks westwards along Little Ann Road, into the historic core and away from the site.

¹ Statement of Common Ground dated 18 November 2020

9. The CAA Map also identifies that there was a mature group of trees located adjacent to the northern and western (highway) boundaries. Over recent years many of the trees within the group have been felled and replacement planting has taken place. The trees were felled with appropriate consents in place. While the site may once have been well screened by mature trees, when viewed from the west, this is no longer the case. However, remaining mature trees on the site and within the wider locality continue to provide an element of screening. The replacement planting that has already been carried out will also make a positive contribution to screening the site as it matures.
10. When approaching the site from the east, along Little Ann Road other dwellings located on the southern side of the road obscure the development. While a number of the properties along the southern site have frontage boundary hedgerows, only a few properties, including Dingwall, have mature trees within their frontages. Approaching the left hand bend, the development becomes visible above the boundary fence and between the remaining tree cover. As the bend is turned the development is more readily visible, however so are the dwellings located on the opposite side of the road.
11. When approaching from the west, glimpses of the development are seen against a foreground and backdrop of existing residential development interspersed with trees and hedgerows. Having turned the left hand bend, the development is visible above the 2 m high close boarded fencing, but this again is seen against a backdrop of built development and tree cover.
12. While the development has changed the visual appearance of the street scene, the siting respects established patterns of separation between dwellings located along the southern side of Little Ann Road. The proximity of the development to the western highway boundary is somewhat closer than other properties, but they are fronting the highway and not side on to it. I saw that there are examples of built development located immediately behind side boundary treatments adjacent to the highway, albeit these were ancillary buildings rather than dwellings.
13. The proximity of the development to the western boundary has reduced the space available for supplementary tree planting. The removal of the trees on this site was however lawful and therefore the long-term visual impacts had been considered and accepted. The appellants have demonstrated that supplementary tree planting can be carried out and, while there may be dispute in respect of the suggested Cypress Oak, its shape and form would not be dissimilar to the tree species that were approved as part of the landscaping scheme for the 2016 PP.
14. Furthermore, the appellants suggest replacing the close boarded fencing with a native species hedgerow. There is a wide variety of boundary treatments along Little Ann Road and the site's close boarded fencing is prominent in the street scene, due to its elevated position above the carriageway. The replacement of this fencing with a native species hedgerow would complement the supplementary tree planting proposed, enhancing the appearance of this part of the CA.
15. Given the similarity in definitions of 'bulk' and 'mass', and the context in which the Council has used them, it is the size of the development which needs to be considered. There is no dispute that the development is wider and higher than the scheme approved by the 2016 PP. The widening of the rear outrigger and

introduction of the catslide roof also adds to that increase in size. However, I saw that there is a wide variety of dwelling sizes and types within the CA and the wider locality. The development does not appear unduly large for what would become a 3 bedroomed dwelling house, and its size is not out of keeping with nearby properties.

16. The development is reminiscent of the design of the host property and incorporates fenestration details that are common within the locality. I saw that few properties located around the site exhibit symmetry to their front elevations and that the roofscape is varied, with interconnecting roofs and varying roof pitches being common. The design of the development, including the catslide roof to the rear outrigger and use of materials, is in keeping with the key characteristics of properties located within this part of the CA.
17. For the reasons given above, the development does not harm the significance of the identified heritage asset. Replacing the close boarded screen fence with a native species hedgerow, along with the supplementary tree planting, which could be secured by condition, would positively enhance the character and appearance of the CA.

What is planning permission being sought for?

18. It is clear from the appearance of what has been constructed and the planning history relating to the land, that the building, if completed, would be used as a dwellinghouse. The appellant also confirmed that they are seeking to secure planning permission for the completed dwellinghouse.
19. The appeal on this ground is, however, that planning permission ought to be granted for the matters stated in the notice. S177(1)(a) of the 1990 Act states that planning permission may be granted 'in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates'. In this instance the matters stated in the corrected notice are 'the partial erection of a building'.
20. While all of the external walls and the roof of the building have been completed, it does not yet have the facilities required for it to be considered a dwellinghouse. Completing the building works necessary to provide those facilities would involve, amongst other things, the installation of doors, windows, kitchen, bathrooms, which would not form 'all or part' of the matters alleged in the notice.
21. It could be argued that the works required to complete the development as a dwellinghouse do not of themselves constitute development, having regard to s55 of the 1990 Act. The completion and fitting out of this partially erected building would however represent one building operation, for which there is no extant planning permission.
22. Planning permission under ground (a) could not be granted for works that would allow the partially constructed building to be completed as a dwellinghouse as those works go beyond the matters alleged in the notice. Success on ground (a) and the deemed planning permission could therefore only relate to the partial erection of the building. The granting of planning permission for a partially erected building would not be appropriate where there is no planning permission for it to be completed and brought into use.

Other matters

23. The separation distances between the development and properties located on the opposite side of Little Ann Road are such that it would have no impact in terms of overshadowing or loss of privacy. While it could be argued that dwellings located on the western side of Little Ann Road have suffered a loss of outlook, the depth of the development has reduced, and the catslide roof to the rear outrigger has reduced the expanse of brickwork to the side elevation, which adds visual interest. I find that the development as built would have no significant adverse impact on outlook for neighbouring properties.
24. Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 requires an Appropriate Assessment to be carried out where the competent authority is minded to give consent for the development. As I find that the development is unacceptable for the reasons set out above, there is no need for me, as the competent authority, to carry out an Appropriate Assessment.

Conclusion on ground (a)

25. For the reasons given above, the size, siting and design of the development complies with policies E1, E2 and E9, which amongst other things, seek to deliver high quality design that respects local distinctiveness, protects, conserves and enhances landscape quality and makes a positive contribution to sustaining or enhancing the significance of the heritage asset. However, in the absence of any mechanism to complete the building works and bring the completed development into use as a dwellinghouse, allowing the development on ground (a) would be futile.
26. The appeals on ground (a) fail.

Ground (f)

27. Given the substitution of the words 'partially erected building' for the words 'erection of a dwellinghouse' in the allegation, requirement (1) would need to be similarly corrected for consistency.
28. The ground of appeal is that the steps required by the notice to be taken are excessive.
29. In considering a ground (f) appeal, it is important to identify the purpose for which the notice was issued. S173 of the 1990 Act indicates that there are 2 purposes which the requirements of a notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (s173(a)), or to remedy any injury to amenity that has been caused by the breach (s173(b)). The Council says the intention was to remedy the breach, which is consistent with the corrected requirement to demolish the partially erected building to ground level.
30. The appellant claims that demolition is excessive and any harm to visual amenity can be addressed by alternative boundary treatment. While the appellant does not necessarily consider it to be necessary, they have offered to replace the high close boarded fence located on the western boundary with a native species hedgerow. They have also offered to relocate the fence line between the host dwelling and the development further east.

31. While I have found that the development does not cause harm to visual amenity, the ground (a) appeal has not been successful. In these circumstances the requirements need to address the breach of planning control, which is the partial erection of a building. Neither of the lesser steps suggested by the appellant would address the breach of planning control. The requirements are not therefore excessive.
32. The appeals on ground (f) fails.

Ground (g)

33. The issue is whether the time for compliance is reasonable.
34. It is the appellants case that this is a self-build project funded by savings, which have now been depleted. As with many individuals and businesses, the coronavirus pandemic has had significant economic impacts and has worsened the appellants financial situation. The appellant is also seeking to recover, and re-use building materials utilised in the development. A period of 12 months is requested for compliance.
35. The Council and objectors maintain that the matter has been going on long enough and the period of 6 months is more than adequate to demolish the development.
36. The appellants operate their own small business and details of the costs to demolish the development, in such away to allow materials to be re-used, is considerable. Given the impacts that the pandemic has had on small businesses and the constraints that local restrictions could still be having, demolishing the building in such a way to allow the materials to be recovered and re-used, I find that the appellants' request is not unreasonable.
37. The appeal on ground (g) succeeds to this limited extent.

Overall Conclusion

38. The appeals succeed to a limited extent on ground (g). But for the reasons set out above, I have found that the appeals cannot succeed on grounds (a) and (f). Nevertheless, the appellants are not precluded from submitting a further application.

Formal Decisions

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

The deletion of the words "erection of a dwelling house" and the substitution of the words "partial erection of a building" in paragraph 3 (the matters which appear to constitute the breach of planning control).

40. It is directed that the enforcement notice is varied by:

The deletion of the words "dwelling house" and the substitution of the words "partially erected building" in requirement 1 of paragraph 5 (What you are required to do).

The deletion of 6 months and the substitution of 12 months as the time for compliance.

41. Otherwise the appeals are dismissed, and the enforcement notice is upheld as corrected and varied. Planning permission is refused on the application(s) deemed to have been made under section 177(5) of the 1990 Act.

M Madge

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kerry Futter	KF Planning Consultancy
Andrew Sherlock	Barrell Tree Consultancy
Michael Heaton	Michael Heaton Heritage Consultants
Andrew Traves	Aquacallidus

FOR THE LOCAL PLANNING AUTHORITY:

Samantha Owen	Senior Planning Officer,
Andrew James	Planning Enforcement Officer
Michael Bullen	Design and Conservation Officer
Dermot Cox	Arboricultural Officer

INTERESTED PERSONS:

Cllr Maureen Flood	Ward Councillor and representing Mrs Jill Else
Patrick Roberts	Little Ann Parish Council
Gordon Howard	Little Ann Parish Council
Graham Platford	Local resident
Philip Jones	Local resident

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Drawing number 15061 T/100 Topographic Survey
2. Drawing number L.201 Location Plan