The Planning Inspectorate

Appeal Decision

Site visit made on 22 January 2024

by Jessica Graham BA (Hons) PgDipL

an Inspector appointed by the Secretary of State

Decision date: 19 February 2024

Appeal Ref: APP/R3325/C/22/3308600
Land at 64 Middle Path, Crewkerne, Somerset, TA18 8BG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mrs H M Palmer against an enforcement notice issued by South Somerset District Council.
- The notice was issued on 24 August 2022.
- The breach of planning control as alleged in the notice is: "Without planning permission, the erection of a garden building in the form of a summer house (oriental style)."
- The requirements of the notice are to:
  i. remove the unauthorised summer house from the land, and
  ii. remove from the land all materials associated with the removal of the summer house at (i) above including but not limited to, removal of bricks, wood, roofing, and
  iii. restore the land to its former condition before the summer house was erected.
- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (d), (e) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is dismissed and the Notice is upheld with correction.

Procedural matters

1. The appeal is proceeding on grounds (a),(c),(d), (e) and (f). I shall start with ground (e) because if the appeal succeeds on that ground, the Notice will be quashed and the rest of the grounds will not require determination. If the appeal on ground (e) fails I will then turn to grounds (c) and (d), because if there has been no breach of planning control (ground (c)) or if the period available to the Council for taking enforcement action has expired (ground (d)), the Notice will be quashed and the remaining grounds will fall away. Should the appeal on those grounds fail I will then turn to the questions of whether planning permission should be granted for the existing development (ground (a)) or, failing that, an altered form of that development (ground (f)).

The appeal on ground (e)

2. The ground of appeal is that copies of the Notice were not served as required by s.172 of the 1990 Act. That section of the Act sets out the persons on whom a copy of the Notice should be served, and s.173 addresses the contents and effect of the Notice, which (per subsection 10) shall include "such additional matters as shall be prescribed". The Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations 2002 prescribe a number of such additional matters, including (at Regulation 4(c)) "the precise boundaries of the land to which the Notice relates, whether by reference to a Plan or otherwise."

3. The Appellant rightly notes that the plan attached to the Notice did not correctly identify the boundaries of the land, or include incidental buildings within the curtilage of the dwelling. However, if a Notice is not so defective on its face that it is without legal effect, I have a duty to put it in order: s.176(1)(a) of the Act makes provision (in the context of an appeal against an Enforcement Notice) for the correction of any defect, error or misdescription it contains, provided the correction will not cause injustice to the Appellant or the local planning authority.

4. In this case, the land to which the allegation relates has been correctly identified at paragraph 2 of the Notice by reference to its postal address. The land is said to be edged red on the attached plan, and while that red edging is drawn incorrectly in relation to parts of the boundary and incidental buildings, it properly includes the dwelling at No. 64 and the summer house here at issue. The written submissions of the Appellant, the Council and the neighbouring resident show that none of the parties were in any doubt as to the extent and location of the allegedly unauthorised development, or the steps required by the Council to remedy the breach of planning control.

5. I shall therefore correct the misdescription in the Plan by replacing it with another which more accurately delineates the boundaries of No. 64. This will not cause injustice to the Appellant or the local planning authority. Subject to this correction, the appeal on ground (e) fails.

The appeal on ground (c)

6. The ground of appeal is that the matters alleged by the Notice do not constitute a breach of planning control. The Appellant's case, as I understand it, is that since the Council considered it would not be expedient to take enforcement action against the construction of a conservatory and raised patio at the neighbouring property of Bridge End, it ought to have taken the same approach to the development at her property.

7. It is important to be clear that enforcement action is discretionary, and there is no statutory requirement that breaches must be enforced against consistently. S.172(1) of the 1990 Act has two limbs: it provides that a Council may issue an Enforcement Notice where "it appears to them (a) that there has been a breach of planning control; and (b) that it is expedient to issue the Notice".

8. S.174 makes provision for appeals against the issue of a Notice, including (at ground (c)) the opportunity to contest the allegation that there has been a breach of planning control. But ground (c) does not extend to considerations of expediency. Caselaw has established that any challenge as to whether it was expedient for the Council to issue the Notice must be pursued by way of judicial review; Inspectors have no jurisdiction to determine whether the Council complied with s.172. Similarly, I do not have the jurisdiction (or the necessary evidence) to determine whether or not development which has taken place at a neighbouring property was in breach of planning control. My remit is limited to the development alleged by the Notice that has been issued.

9. Looking then at the development on the Appeal Site, "Permitted Development Rights" [1] allow householders to construct sheds, summer houses and certain other structures within the curtilage of their dwelling, without the need to apply

[1] The Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO")

for planning permission. However, some provisions attach to these Permitted Development Rights. One of these is that a building within 2 metres of the boundary of the curtilage must not exceed 2.5 metres in height.[2] The summer house has been constructed within 2 metres of the boundary, and is just under 4 metres in height. It does not, therefore, qualify as Permitted Development.

10. Since the summer house did not constitute Permitted Development, an express grant of planning permission was required for its construction. An application for an express grant of planning permission was made in 2019 but was refused by the Council,[3] and that refusal was subsequently upheld at appeal.[4] The summer house does not have planning permission, and so is in breach of planning control. The appeal on ground (c) must therefore fail.

The appeal on ground (d)

11. The ground of appeal is that by the date when the Notice was issued, the time available to the Council for taking enforcement action had expired. S.171B(1) of the 1990 Act provides that where a breach of planning control consists of carrying out building works without planning permission, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially completed. The Appellant's case is that the summer house has existed for over four years, and so is immune from enforcement. To succeed on this ground, the Appellant would need to demonstrate that the summer house was substantially completed by 23 August 2018; that is, four years prior to the issue of the Notice on 24 August 2022.

12. I have been provided with a copy of the planning application submitted by the Appellant on 22 January 2019, for development described as "The construction of a garden building in the form of a oriental style summer house". At section 3 the application form asked whether the work had already started, and if so on what date. The Appellant answered that it had, on 11 August 2016. The form then asked whether the work had already been completed, and if so on what date: the Appellant ticked the box to indicate that no, the work had not been completed. I have also been provided with a copy of the 2019 Appeal Decision. The Inspector noted, at paragraph 2: "On my visit I observed that work on the summerhouse has commenced, with the structure partially constructed."

13. The Appellant contends that the structure was capable of serving as a summer house by October 2016, but I have not been provided with any evidence to demonstrate that the building had in fact been substantially completed prior to the submission of the planning application in January 2019. Rather, the observation of the Inspector in the 2019 Appeal Decision confirms the statement made in the planning application that the development was not, at that time, complete. I therefore conclude that on the balance of probabilities, the summer house was only partially constructed by 23 August 2018, so when the Notice was issued on 24 August 2022 the four-year period for taking enforcement action had not expired. The appeal on ground (d) therefore fails.

The appeal on ground (a)

14. The ground of appeal is that planning permission ought to be granted for the matters stated in the Notice. The main issues are the effect on the character

[2] Paragraph E.1.(e)(ii) of Class E, Part 1 of Schedule 2 to the GPDO
[3] Ref 19/00352/HOU dated 12 April 2019
[4] Ref APP/R3325/D/19/3231882 dated 16 September 2019 ("the 2019 Appeal").

and appearance of the area, and the effect on living conditions at the neighbouring property known as Bridge End.

15. The Inspector who determined the 2019 Appeal assessed the summer house in the context of the surrounding neighbourhood, including the adjacent Conservation Area, and concluded that it would have an acceptable effect on the character and appearance of the area. I share that view, and am satisfied that the summer house complies with the requirements of national planning policies and the local Development Plan, insofar as they seek to achieve development of a design which respects local character.

16. However, I also agree with the previous Inspector's conclusion that the summer house unacceptably compromises the outlook of residents making use of the patio at Bridge End. This patio is raised above the ground level of both properties, such that while the summer house is 3.97m high when measured from the garden of No. 64, its perceived height from the patio is lower, at around 3.15m. Nevertheless this is still a considerable height for a structure in such close proximity to the boundary, and gives rise to significant and unpleasant enclosing and overbearing effects on the adjoining patio.

17. The previous Inspector observed that "Although it is indicated that Bridge End's patio is unauthorised, no substantive evidence has been supplied to support that conclusion." I have been provided with copies of extensive correspondence between the Appellant and the Council concerning the status of the patio and conservatory at Bridge End. The Council sets out what it describes as its "final position" and "final response" in its letter dated 18 June 2020. In summary, this was that while the conservatory qualifies as Permitted Development, the patio would have required planning permission when first built: but, having been there in excess of four years, is now immune from enforcement action. The Appellant disputes this, contending that the works were not completed until June 2021.

18. As noted above it is not for me, in the context of this appeal, to determine whether or not Bridge End's patio is unauthorised development against which enforcement action could still be taken. In any event, even if action could still be taken, the most an Enforcement Notice could require would be the return of the land to its condition prior to the unauthorised development[5], and I am not persuaded that this would be a consideration weighing in favour of granting permission for the summer house. For the reasons set out above I have found that with the land at its current level, the summer house is unacceptably overbearing. If the patio were removed and this part of the garden at Bridge End returned to its original level, the perceived height of the summerhouse would increase; it would appear more, rather than less, overbearing.

19. I recognise, as did the Inspector who determined the 2019 appeal, that the construction of the raised platform and conservatory at Bridge End changed the relationship between that property and the Appeal Site. But a desire to restore previous levels of privacy, while understandable, does not justify the construction of an overbearing building alongside the shared boundary. The summer house conflicts with the objectives of Policy EQ2 of the South Somerset Local Plan 2006-2028, in that it has a significant adverse impact on residential amenity at the neighbouring residence. I have not found any other material considerations of sufficient weight to overcome this conflict with the

[5] S.173(4) of the 1990 Act

adopted Development Plan. I therefore conclude that the appeal on ground (a) should fail, and planning permission should not be granted.

The appeal on ground (f)

20. The ground of appeal is that the steps required by the Notice exceed what is necessary to remedy any breach of planning control constituted by those matters, or to remedy any injury to amenity caused by that breach. The Appellant has suggested that as an alternative to removing the summer house, the height of its roof could be lowered to 3.65m, so that its perceived height from the patio at Bridge End would be around 2.85m.

21. This would be an improvement upon the existing situation, but since it is sited so close to the boundary a structure of this height would still appear unduly dominant and overbearing from the patio next door. I note the Appellant's point that the height of the fence that has been erected along the boundary wall is 2.85m above the ground level of her garden, such that the perceived height of the summer house from the patio would be comparable. However, the two forms of development are not equivalent: the fence consists largely of trellis work, so does not have the same overbearing impact as the bulk and mass of a building.

22. In my judgment, reducing the height of the summer house by 0.3m would not be sufficient to remedy the breach of planning control or the injury to the residential amenity of the neighbouring property. The building would still be simply too tall for its context. I conclude that in the absence of any lesser steps that would achieve the purposes of the Notice, the requirement to remove the summer house is not excessive. The appeal on ground (f) therefore fails.

Conclusion

23. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice, with correction, and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

24. It is directed that the Enforcement Notice is corrected by:

    the substitution of the plan annexed to this decision for the plan attached to the Enforcement Notice.

    Subject to this correction, the appeal is dismissed, the Enforcement Notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Jessica Graham

INSPECTOR

Plan

This is the plan referred to in my decision dated: 19 February 2024

by Jessica Graham BA (Hons) PgDipL

Land at: 64 Middle Path, Crewkerne, Somerset TA18 8BG

Reference: APP/R3325/C/22/3308600

Scale: Not to Scale