The Planning Inspectorate

Appeal Decision

Site visit made on 2 July 2018

by P N Jarratt BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 July 2018

Appeal Ref: APP/B9506/C/17/3183979
Ria House, Ringwood Road, Woodlands, Southampton, SO40 7GX

- 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 J Dent against an enforcement notice issued by New Forest National Park Authority.
- The enforcement notice was issued on 11 August 2017.
- The breach of planning control as alleged in the notice is 'without planning permission a building shown in the approximate position marked blue on the plan attached to the Notice'.
- The requirements of the notice are
  i) permanently remove (or dismantle or demolish) the building shown in the approximate position marked blue on the plan attached to the Notice from the land affected.
  ii) Remove any debris or materials arising from compliance with the aforementioned requirements from the land affected.
- The period for compliance with the requirements is 12 weeks.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
- **Summary of decision:** appeal dismissed, planning permission refused and notice upheld

Procedural matter

1. The alleged breach in the notice states 'Without planning permission a building shown in the approximate position marked blue on the plan attached to the Notice'. It appears that either the word 'erection' or 'siting' should be inserted before the words 'a building' for the allegation to make sense. I have power under s176 to correct the notice if I am satisfied that no injustice would be caused to the parties as a result. Following consultation with the parties I am satisfied that this would be the case. Accordingly I propose to correct the notice by making reference to the siting of a building in the allegation.

Applications for costs

2. Applications for costs have been made by the Authority against the appellant and by the appellant against the Authority. These applications are the subject of separate Decisions.

The site and relevant planning history

3. The appeal property is a detached house set in a large plot in a residential area although it has been unoccupied for some time. It is located in the Hythe and

Ashurst Farmlands Landscape Area type which is characterised as heath associated smallholdings and dwellings.

4. To the rear of the house and adjacent to the boundary with Regent House is the alleged unauthorised building which is a single storey flat-roof portacabin with a dwarf wall erected close to its elevation containing double doors. The portacabin was laid out with a kitchen, WC, and two rooms and at the time of my site inspection appeared not to be in use.

5. Planning permission was granted in April 2017 for a double garage (17/00105) incorporating storage above. A Lawful Development Certificate was issued in July 2016 for a proposed large outbuilding (16/00440) providing a gym and a store.

The appeal on ground (c)

6. An appeal on this ground is that there has not been a breach of planning control as the appellant considers it to meet the requirements of Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

7. Part 1, Class E of Schedule 2 allows for the provision of outbuildings, etc within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of a dwellinghouse, subject to certain limitations and conditions. One of these is a limitation that the height of the building should not exceed 2.5 metres within 2 metres of the boundary.

8. The Authority's records of measurements show that on 26/04/17 the height of the portacabin placed on a brick plinth was 3.0 metres against the boundary. On 28/6/17, the minimum height is shown as 2.55 metres and the maximum height as 2.75 metres[1].

9. The appellant accepts that the height of the building exceeded the limitation of the GPDO but was unable to reduce its height prior to the notice being served due to adverse weather conditions. The appellant says that the height has now been reduced and is within the GPDO tolerances. Whilst the height of the building has now been altered, my consideration of the appeal is based on the situation as it existed at the time the development took place.

10. I do not accept the appellant's argument that the difference in height between what is permissible under the GPDO and what existed at the time of the notice is *de minimis* as the maximum height exceeded the permissible height by 0.25 metre, which is significant. The fact that the GPDO allows for a higher roof had it been pitched is irrelevant.

11. The building appears to satisfy the other conditions and limitations in respect of Class E, other than whether its intended use is required for a purpose incidental to the enjoyment of a dwellinghouse.

12. The Authority considers that the building is intended for use as a classroom on the basis of information received from a builder and from an Ofsted Inspector. The file note of 4 April 2017 records a telephone conversation with Lucy Chapman of Ofsted relating to Mr Dent's application for a Children's Home in

[1] I note that the appellant in making his application for costs states that any measurements above 5cm greater than the permitted height can be explained by local changes in ground levels but as the site is relatively level, I find that this is not borne out in fact.

which Mr Dent had informed her that the portacabin was a classroom with tutors attending on a daily basis. Consequently the building would not be for purposes incidental to the residential use of the site and fail to comply with the requirements of Class E of the GPDO.

13. The appellant states, however, that the dwelling is within Use Class C3 and was purchased[2] with the intention to occupy it as a dwelling providing care for up to 6 people living as a single family which falls within Use Class C3(b). The appellant says that it will remain as a dwelling with all the permitted development rights afforded to it as a C3 dwelling. The cabin will be used as an activity room solely for residents of Ria House and will remain incidental to the primary C3 use of the site.

14. The appellant stresses that whether or not the use of the property for the care of children, the building has not been used for that purpose and the lawful use remains as a C3 dwelling. It is also pointed out that Ofsted is responsible for the inspection of childcare and the involvement of Ofsted does not support any conclusion in respect of the end use of the portacabin. However, the appellant states that his intention is now to occupy the house as a shared home for adults within Use Class C3(b). Notwithstanding this, the appellant asserts that providing tuition within the portacabin would not automatically take it out of an incidental use and the question of incidental use is not a matter of design.

15. The Court in *Emin v SSE* [1989] JPL 909 confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed buildings were genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

16. In this appeal I consider the appellant's position in respect of his intentions for the use of the portacabin to be confusing. The intention at one time to use the portacabin for purposes associated with a children's care home is borne out by the communication between the Authority and Ofsted and the evidence indicates that the portacabin was erected at that time based on the Authority's understanding of the situation. Now the intention is to use it for purposes associated with a shared home for adults. It is therefore not possible to establish whether the portacabin is genuinely and reasonably required on the basis of the evidence before me. In view of this uncertainty, I conclude that the portacabin would not be used for a purpose incidental to the enjoyment of the dwellinghouse and would therefore not accord with the conditions and limitations of Class E of the GDPO.

17. The appeal on this ground fails and express planning permission is required for the building at the time the notice was served.

The appeal on ground (a)

18. An appeal on this ground is that planning permission should be granted.

19. The main issues are the effect of the development on the character and appearance of the area and the intended use of the portacabin.

[2] Elsewhere in the submissions it is stated that the appellant is the leaseholder of the property.

20. The building is of significant size, flat roofed and of different materials and colour to the brick and tile characteristics of dwellings or to the timber appearance of outbuildings nearby. It has a functional and utilitarian appearance that looks out of place on a residential site within the National Park. Consequently it appears prominent and fails to enhance the built heritage of the New Forest as it is harmful to the character and appearance of the area. I acknowledge that there is a container situated in the grounds of Regent House but this is painted green and located between two timber outbuildings such that its visual impact is considerably less than that of the portacabin.

21. I also find that the portacabin would not be used for a purpose incidental to the enjoyment of the dwellinghouse and it would therefore be contrary to Policy DCP12 of the adopted New Forest National Park Core Strategy and Development Management Policies DPD regarding outbuildings.

22. The appellant cites the fall back position represented by the LDC for a larger building on the site and the planning permission for a double garage. The appellant states that the requirement to remove the cabin would result in the construction of one of the larger structures or potentially a further larger structure under permitted development rights, the appearance of which is not prescribed by the GPDO.

23. The LDC is for a building of different design and materials, which although of substantial size, would have a lesser impact than the appeal development. It is also for a purpose incidental to the enjoyment of the house. The double garage has the benefit of express planning permission subject to conditions and consequently has satisfied the development management policies of the Authority should it be constructed. Although the Authority has doubts whether the appellant would invest in substantial permanent buildings when the property is only leased, the appellant intends to construct the outbuilding if the appeal fails.

24. The appellant cites *R (oao Zurich Assurance Ltd) v North Lincolnshire Council [2012] EWHC 3708 (Admin)* that a fall back needs only to be a theoretical prospect. Whilst there may be a prospect of the appellant erecting one of the fall back buildings, I consider both of the fall back developments would be preferably in design and appearance terms to the building the subject of this appeal.

25. I have had regard to the representations received from the neighbour at Ringwood Villa regarding the intrusive nature of the building and its true purpose but there is unlikely to be any material impact on the privacy of the neighbour due to the separation distances involved.

26. I conclude that the erection of the portacabin is contrary the adopted New Forest National Park Core Strategy and Development Management Policies DPD in respect of Policy DP1 regarding general development principles, Policy DP6 regarding design principles and Policy DCP12 regarding outbuildings. It also fails to accord with section 7 of the National Planning Policy Framework which requires a good standard of design.

27. Having had regard to all material considerations I conclude that the appeal on this ground fails.

The appeal on ground (f)

28. An appeal on this ground is that the steps required to comply with the notice are excessive.

29. No substantive case is made by the appellant other than referring to the fall back position, which I have considered above, and questioning whether the portacabin constitutes development. In further comments the appellant asserts that the appropriate requirement would have been to secure the reduction in the overall height of the building to within the parameters of permitted development and this has already been done. However in view of my conclusion on the development not satisfying the limitation of Class E for the use to be required for a purpose incidental to the enjoyment of a dwellinghouse, the development would not satisfy the conditions and limitations of the GPDO even with a reduced height.

30. The purpose of the requirements of a notice is to remedy the breach by discontinuing any use of the land or by restoring the land to its condition before the breach took place or to remedy an injury to amenity which has been caused by the breach. It is necessary for the requirements to match the matters alleged and therefore I consider that the requirements of the notice in this case do not exceed what is necessary to remedy the breach. The requirements do not preclude the appellants doing what they are lawfully entitled to do in the future once the notice has been complied with.

31. The appeal on this ground fails.

Conclusions

32. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and refuse to grant planning permission on the deemed application.

Decision

33. It is directed that the enforcement notice be corrected by the deletion of the allegation in part 3 of the notice and its replacement with the words 'Without planning permission the siting of a building shown in the approximate position marked blue on the plan attached to the Notice'. Subject to this correction the appeal is dismissed and 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.

P N Jarratt

Inspector