The Planning Inspectorate

Appeal Decision

Site Inspection on 17 June 2019

by Graham Self MA MSc FRTPI

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

Decision date: 01 July 2019

Appeal Reference: APP/B9506/C/18/3215329
Site at: 229 Woodlands Road, Woodlands, Southampton SO40 7GJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended against an enforcement notice issued by the New Forest National Park Authority.
- The council's reference is EN/18/0091.
- The notice is dated 18 September 2018.
- The breach of planning control alleged in the notice is: "Without planning permission:
  i. the erection of a single storey rear extension;
  ii. the erection of a front porch;
  iii. the cladding of the dwelling; and
  iv. the formation of a vehicular access.
- The requirements of the notice are:
  1. "Remove the cladding and associated fixings from the dwelling and make-good all resultant elevations with brick work to match the original dwelling.
  2. Demolish the porch shown in the approximate position coloured blue on the plan attached to this Notice to ground level and make-good the front elevation of the dwelling with a door, and brick work to match the original dwelling.
  3. Remove all materials and debris arising from compliance with the aforementioned requirements from the land affected."
- The period for compliance is four months.
- The appeal is proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended. An application for planning permission is deemed to have been made under section 177(5) of the Act.

Costs

1. The New Forest National Park Authority has applied for an award of costs against what the authority refer to in their costs application as "the appellants". Normally, the application would be the subject of a separate decision issued at the same time as this appeal decision. For reasons explained later below, in this instance the decision on the costs application is being delayed.

Introduction - Procedural Matters and Identity of Appellant

2. This is an unusual case. I have already departed from normal practice by not naming the appellant in the summary details above, for reasons which will become apparent. A summary of the decision is also normally provided at the start, but is omitted because this decision can only be properly understood by reading the whole of it.

3. My site inspection was made unaccompanied, that is to say without any representatives of the planning authority or appellant being present. When the Planning Inspectorate tried to make arrangements for an accompanied site inspection, access to the site could not be arranged apparently because of a dispute between the appellant and the site owner. It soon became evident to me that this was not the only abnormality. Therefore before my inspection I sent an email through the Planning Inspectorate to both main parties, asking questions which sought to verify the identity of the appellant and site owner, and to clarify some other matters, including an application for planning permission made in 2018 (reference 18/00508). Both main parties have had an opportunity to comment on each other's responses, and I have considered all the responses.

4. I think the best way for me to introduce my assessment of the appeal is to set out the cast of main characters (individual and corporate) who seem to be involved, with information about their roles as I understand them from the available evidence.

   Mr N De Courtney-Collis: On the standard form lodging the appeal, a person of similar name (Mr N DeCourtenay-Collis) was named as the appellant, and at least four different versions of this person's name were specified elsewhere in documents submitted on his behalf. From the replies to my written questions the version I use here seems to be the correct one. Mr De Courtney-Collis is evidently a builder, who carried out the disputed building and other work at the appeal property. There is evidence that he was instructed to appeal against the enforcement notice by a Mr Le Sueur (see below) but no written confirmation of any such instruction has been supplied in response to my question on this point.

   Mr Philip Janaway: He describes himself as a "planning consultant".[1] He was evidently engaged by Mr De Courtney-Collis to act as the latter's agent for the appeal (although Mr Janaway's appointment was apparently not confirmed in writing, or at least not even an edited version of such confirmation has been supplied in response to my request). Mr Janaway completed and submitted the appeal form. Later he sent his invoice to a Mr Le Sueur in Jersey. According to Mr Janaway, the invoice was then paid by a company named Sportive Ltd (see below).

   Picador Ltd: This company is named in some of the documents and appears to be a company in effect operated by Mr De Courtney-Collis or of which he is a director. In paragraph 6.2 of its statement the planning authority refer to Picador Ltd as the appellant, and Picador Ltd's name appeared as the applicant for the planning application made in 2018 (application reference 18/00508),[2] together with yet another version of Mr De Courtney-Collis's name ("Mr Nick DeCourtenay Collis", with no hyphen).

[1] In written submissions Mr Janaway also refers to himself as "a planning professional" and also refers to his "professional statement", although he does not claim to have any professional planning qualifications.

[2] This application sought permission "to add cladding to all external walls, add porch to front elevation; to form new vehicle access".

Mr Michael Le Sueur: He is believed to be a resident of Jersey and a director of Sportive Ltd.

Sportive Ltd: A limited company based in Jersey, with an address (according to the planning authority) at 18 Albert Pier, St Helier. Land Registry records indicate that this company is the freehold owner of the appeal property (although Mr Janaway has stated that Mr Le Sueur is "the actual owner").

5. I have tried to simplify the list above by omitting others who appear to have had a lesser role. These include a Mr Barry Mills of Barry Mills Ltd and Mr Ian Forster of Union Architecture, both of whom have been agents for Sportive Ltd or Mr Le Sueur for planning applications, one in 2018 and the other recently in 2019 as mentioned below.

6. Other information obtained either from the submitted statements or through written answers to my questions is as follows. As noted above, it seems that Mr Le Sueur asked Mr De Courtney-Collis to lodge an appeal against the enforcement notice. There is conflicting evidence on this point - Mr Forster told the planning authority in an email in March 2019 that he had been told that: "My client Mr Le Sueur ….was not notified that the appeal was being submitted". Be that as it may, instead of submitting the appeal for or on behalf of Mr Le Sueur, Mr De Courtney-Collis engaged Mr Janaway as his (Mr De Courtney-Collis's) agent; Mr Janaway then named Mr De Courtney-Collis - although not using that spelling - as the appellant; and Mr Janaway specified when lodging the appeal that Mr De Courtney-Collis owned the appeal property. In fact Mr De Courtney-Collis was not and never has been the owner or had any financial interest in the property, either freehold or leasehold or through any other such rights. Mr Janaway discovered this after submitting the appeal on behalf of his client, which was apparently why he sent his invoice to Mr Le Sueur.

7. Nor has Mr De Courtney-Collis ever been a "relevant occupier" for the purposes of Section 174 of the 1990 Act - that is to say, he was not a tenant or other occupier by virtue of a licence in writing or an oral licence, either when the enforcement notice was issued or when the appeal was made.

8. Putting together all the above evidence it is apparent that Mr De Courtney-Collis never had a right of appeal. The planning authority say he was served with a copy of the enforcement notice, but not all recipients of enforcement notices have a right of appeal under Section 174 of the 1990 Act. Mr Janaway does not appear to have realised this, even after discovering he had supplied false ownership information on behalf of his client when lodging the appeal, even after sending his invoice to Mr Le Sueur despite the fact that he had not been engaged by Mr Le Sueur, and even after receiving an email from the planning authority (on 21 March 2019) telling him that "only the owner/occupier of the land has a right of appeal against the notice".

9. Despite the unreliable, conflicting nature of much of the evidence and the lack of supporting written confirmation, I am inclined to believe that Mr Le Sueur instructed Mr De Courtney-Collis to appeal. A limited company and a director of the company are different entities; but the High Court has held that the question of agency has to be considered.[3] As a director of Sportive Ltd, Mr Le Sueur can be regarded as agent for Sportive Ltd; and I have no reason to disbelieve that Sportive Ltd paid Mr Janaway's invoice.

[3] I refer here to the judgment in *R v SSETR Ex Parte Eauville Ltd* [2000] 80 P&CR 85. In *Bucks CC v SSE & Brown* QBD 19 December 1997, the court held that a director of a company had no right of appeal on the company's behalf, but the *Eauvill*e judgment is later.

10. Thus there has been a kind of chain, running from Sportive Ltd, to Mr Le Sueur as agent for Sportive Ltd, to Mr De Courtney-Collis as sub-agent, to Mr Janaway as sub-sub-agent. I think the role of Picador Ltd can be discounted as incidental - if included in the chain, it would make Mr Janaway a sub-sub-sub-agent for the appeal. However, none of the participants appear to have perceived their roles in that way or understood relevant planning law.[4] Despite queries by the planning authority and my own questions about ownership and occupation, Mr Janaway in particular does not seem to have seen any need to check the provisions of the Planning Act. Mr Janaway also seems to be confused about who is who - he has stated in an email: "I have been told by the appellant (builder of the site owner) that he has not been formally dismissed as agent for the site owner". So Mr Janaway seems to think that an appellant can at the same time be an agent.

11. The situation has been further complicated by events before and after the enforcement notice was issued. Earlier in 2018, Mr De Courtney-Collis as applicant (though with a different spelling) evidently employed a different agent (Mr Barry Mills or Barry J Mills Ltd.) for the purpose of application 18/00508. Mr Mills certified in this application that "Mr Nick DeCourtenay Collis" was the owner of the property. The certification was evidently wrong. More recently in May 2019 a new application has evidently been made (reference APP/19/00340) for planning permission, for which Mr Forster was the agent. Mr Le Sueur and Sportive Ltd are both named as applicant. The application specified: "Removal of existing porch, Cedral cladding and rear extension overhang. New render to garage, rear extension and front elevation".[5]

12. Discussions have evidently taken place between the planning authority and Mr Le Sueur or Mr Forster on behalf of Sportive Ltd, as a result of which it seems that Mr Le Sueur (or Sportive Ltd) is willing to withdraw the appeal. After receiving an email from Mr Forster, a case officer in the Planning Inspectorate wrote to Mr Janaway on 15 March 2019 asking for confirmation that the appeal was withdrawn and making clear that the Inspectorate needed Mr Janaway's or the appellant's confirmation before the case could be closed. Mr De Courtney-Collis has refused to withdraw the appeal, because he has allegedly not been paid for the work he carried out at the appeal property. Neither Sportive Ltd nor Mr Le Sueur has submitted anything in writing about any change of agent for the appeal, or about ending the appointment of Mr De Courtney-Collis as their agent for the appeal.[6] Meanwhile in response to my questions about ownership and occupation rights, Mr De Courtney-Collis (through his agent Mr Janaway) has continued to maintain that he is the appellant, though Mr Janaway has also

[4] The provisions on the right of appeal against an enforcement notice are in Section 174 of the 1990 Act.

[5] To add yet more potential confusion to what is happening at this site, the planning authority's website has described this application differently, as seeking planning permission for: "Retention of single storey rear extension and garage; new render; porch; fenestration and roof light alterations (demolition of existing porch". I do not know whether the applicant has agreed in writing with the authority's altered description, but I suspect not. Moreover, the "retention" of something is not development as defined by Section 55 of the 1990 Act, so this part of the application would have to be interpreted as referring to retrospective permission for the original operational development.

[6] If Sportive Ltd had wanted to accept responsibility for the appeal and to withdraw it, the company could have done so by direct written notification to the Planning Inspectorate confirming that the company had engaged Mr De Courtney-Collis as agent for the appeal and that Mr De Courtney-Collis's agency was rescinded, and then confirming withdrawal. The Planning Inspectorate cannot accept a claim from an agent for a planning application that they have been appointed as new agent for an earlier appeal, without the original client supplying direct written confirmation of the change; and the costs application creates a further complication regarding responsibility for the appeal.

described his client as "Mr Le Sueur's former agent and builder".

13. In summary, I have before me a tangled web of untruth and incompetence. I judge that there are two possible findings: one is that there has never been any valid appeal against the enforcement notice; the other is that the appeal was made by Sportive Ltd via the "agency chain" described above.

14. The fact that Sportive Ltd paid Mr Janaway's invoice is a key point in linking the chain of agent, sub-agent and sub-sub agent (or possibly sub-sub-sub-agent) which I have identified. At the very least, Mr Le Sueur and Sportive Ltd must have known that the appeal had been lodged and should have realised their responsibility for it when receiving and paying Mr Janaway's invoice. Otherwise, I cannot see why Mr Le Sueur or the company paid Mr Janaway. Bearing that in mind, I judge that this appeal should properly be treated as having been made by Sportive Ltd as owner of the property. Despite Sportive Ltd's (or at least, Mr Le Sueur's) apparent preparedness to withdraw the appeal, it has not been withdrawn,[7] so it remains to be decided.

Ground (a) and Deemed Application

15. The main issue arising from this part of the appeal is the effect of the development on the appearance and character of the area.

16. The appeal property lies within a designated conservation area and has been identified in a "conservation area character appraisal" as a building of local significance. The cottage was apparently poorly maintained for some time before being acquired by the current owner, and damp penetration has been a problem. Different types of brick on some walls, old pebble-dash on the front, and past repair work had also given the cottage a run-down appearance. But the pale brown coloured fibre-cement "Cedral" cladding board which has been attached to the external walls is out of keeping with the cottage and its setting. The cladding does not preserve or enhance the character or appearance of the conservation area, and the development enforced against conflicts with local and national planning policies.

17. Other dwellings in the neighbourhood have a variety of finishes, but none of them set such a precedent as to justify permitting what has happened at the appeal site. There is also a variety of porch designs along Woodlands Road. Nevertheless I agree with the planning authority that the porch is disproportionate in scale to the cottage, mainly because of its width. Its walls are also finished with mottled brown-blue tiles which do not blend well with any other feature or with the wider setting.

18. The enforcement notice does not require the removal of the rear extension, only the removal of the cladding from the dwelling (which must obviously include the extension as it is now part of the dwelling), plus making good with brickwork. Although the rear extension cannot readily be seen from the road, there are some public views of the side elevation, and the cottage would look odd if only the rear part were to be left clad with the Cedral boarding.

19. I have some concerns from a road safety viewpoint about the unauthorised access, because the position of the gate could cause the drivers of vehicles turning into or out of the site to have to stop in the road while opening or closing the gate. However, the enforcement notice does not contain requirements

[7] If Mr De Courtney-Collis is not the appellant he has to be treated as the appellant's agent for the appeal and he has insisted that the appeal is not withdrawn.

relating to the access, and I cannot extend the requirements of the notice without the possibility of causing injustice.

20. In considering those points, I have had regard to the fact that the May 2019 application mentioned above seems to be an opportunity for the owner and planning authority to agree alterations to the appeal property. I do not know the outcome of the application, but if it results in any conflict between the requirements of the enforcement notice and a new planning permission, the permission would override the notice.

21. I conclude that planning permission should not be granted. Therefore ground (a) of the appeal does not succeed.

Ground (f)

22. Under this ground of appeal it is argued that the requirements of the notice are excessive and that lesser requirements would be sufficient to remedy the breach of planning control. The main contention is that the front porch could be made smaller so that it would come within "permitted development" allowances. A smaller porch may be more acceptable; but it is not for me to re-design the porch or to try to specify new dimensions in a way which would be satisfactorily enforceable.

23. Removing the cladding and making good the brickwork are appropriate ways to remedy this aspect of the breach. In summary, I do not see anything excessive or unreasonable about the requirements of the notice. Ground (f) fails.

Ground (g)

24. This ground of appeal concerns the period for compliance. The appellant contends that six months would be a more reasonable compliance period, mainly to allow time for detailed evidence about the damp problem to be gathered and presented and to liaise with the case officer and conservation officer, with a view to achieving a good quality of living accommodation for future occupiers.

25. Some of the appellant's arguments on ground (g) are really aimed at other aspects of the appeal. For example, it is contended that the planning authority has got carried away with trying to restore the old building to its original appearance because of its conservation area location - that is a contention more appropriate to ground (a) than ground (g).

26. Although it is reasonable to allow time for a contractor to be selected and to carry out the requirements of the enforcement notice, the appellant has not claimed that there is any difficulty in obtaining the services of a local contractor. Nor has any real case been put forward to show why the tasks specified could not be carried out within the compliance period. If discussions between the planning authority and the owner result in agreement about a way forward, the authority has powers to relax the specified compliance period if they consider there is good reason to do so. Meanwhile on the information available to me, I do not see justification for extending the compliance period in response to ground (g).

Note on Costs Application

27. As recorded in paragraph 1 above, the planning authority's application for costs is expressed as being against "the appellants". The authority also write that "the owners" (plural) have confirmed their intention to comply with the notice.

28. Before deciding the costs application I need clarity about where it is directed. There appears to have been what for the time being I will describe as

unsatisfactory behaviour by several parties in this case. My provisional view is that more than one person or other body may be liable for costs. An appellant and an appellant's agent are normally regarded as one entity for the purposes of costs applications. The same applies to any other party and their agent. Persons or corporate bodies who are "third parties" in planning appeals (that is to say, not the planning authority or appellant) can be liable for costs if they behave unreasonably and cause another party to incur unnecessary expenditure.

29. I have referred to my "provisional view" because I have decided that in the interests of fairness, the assessment of the costs application (assuming it is not withdrawn) should be delayed so as to give all parties the opportunity to consider this appeal decision and then make further submissions on the matter of costs. A separate message setting out arrangements for this procedure is being sent from the Planning Inspectorate to those involved.

Formal Decision

30. I dismiss the appeal, uphold the enforcement notice, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector