The Planning Inspectorate

Appeal Decisions

Hearing held on 30 October 2012
Site visits made on 29 and 30 October 2012

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 6 November 2012

Appeal Refs: APP/N1350/C/12/2179512 & APP/N1350/C/12/2179513
Meadow House, Coatham Mundeville, Darlington, County Durham DL1 3LU

- These 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 Paul Martin and Carole Martin against an enforcement notice issued by Darlington Borough Council.
- The Council's reference is E/12/02.
- The notice was issued on 8 June 2012.
- The breaches of planning control as alleged in the notice are:
  1. The erection on the land of a timber chalet (the chalet) for use as living accommodation, the position of the chalet shown hatched red on the plan.
  2. The erection of fencing to screen the chalet (marked in blue and designated a-b on the plan).
  3. The change of use of the land from agricultural use to residential use.
- The requirements of the notice are as follows:
  a. Cease the use of the land for residential purposes.
  b. Restore the use of the land to agricultural use.
  c. Remove the chalet and all ancillary equipment, including the base, from the land.
  d. Remove the fence from the position shown on the plan (marked in blue and designated a-b)
- The period for compliance with the requirements is 6 months.
- The appeals are proceeding on grounds (a), (f) and (g) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Decision

1. The appeals succeed to a limited degree on ground (g) only. Otherwise the appeals are dismissed and the enforcement notice is upheld. (See formal decisions below).

Background information and matters of clarification

2. The chalet has been built in the north east corner of a paddock or field (agricultural land), which lies immediately to the south of the recognised and accepted domestic curtilage of Meadow House. The appeal fence has been reduced in height but is still in position. Some Laurel bushes had been planted adjacent to the fence. The appeal site was part of a larger open area of paddock between the house and the main road. Another fence is in position and this splits the appellants' land into two parts, with the northern third (or thereabouts) forming part of the residential curtilage to the house and the southern two thirds remaining as field or paddock.

3. The appellants initially intended to erect the chalet within the curtilage of Meadow House. However, they changed their minds because the appeal land (the agricultural land to the south of their property) became available to them when

their neighbour decided to sell. When the unauthorised works to erect the chalet commenced, the Council received an anonymous 'complaint' and, at one stage, the appellants offered to relocate the chalet to a position within the curtilage of Meadow House. However, following discussions with the authority and a planning consultant about the need for planning permission, a retrospective application was submitted. Despite what the appellants considered to be the authority's apparent 'encouragement' for this application, it was refused under delegated powers.

4. The application had referred to the specific needs of the family to have a separate unit, away from the house, for their son (a member of the armed forces). This need was expanded upon during the course of the hearing and I consider that it was a genuinely required need relating to the general well-being of the appellants' son, due to the pressures and personal traumas associated with his current military service.

5. Whilst acknowledging these specific personal circumstances, the authority concluded that the imposition of a personal condition was not appropriate and did not outweigh the facts that the chalet had been built outside of the 'development boundaries'; that it provided a separate living unit and that it was contrary to the relevant development plan policies.

6. Following an earlier misunderstanding about the status of the relevant policies, (particularly saved policy E2 of Darlington Local Plan), it was accepted by the appellants that the siting of the chalet was outside of the development limits. This did not, however, alter their view that there were sufficient other material considerations (particularly the personal circumstances) to allow a decision to be made other than in accordance with the relevant development plan policies.

The appeals under ground (a)

7. The main issue is the effect of the chalet, in this particular location, on the character and appearance of this part of the Coatham Mundeville Conservation Area, having regard to the relevant policies relating to development on agricultural land and outside of the development limits. A secondary issue relates to whether or not the chalet is ancillary to the use of Meadow House. The Council accepts, and I agree, that there are no issues relating to the effect of the chalet on residential amenity for either those living in Meadow House or for any neighbours.

8. Having viewed the chalet from both near and distant viewpoints, I share the authority's concerns about its visual impact in this particular location. Although relatively small, it is still distinctly noticeable from the main road and from the car park of the public house to the north. It lies outside of the 'development limits' on agricultural land and is clearly contrary to Policy E2 as well as to Policy CS1 of the Darlington Core Strategy DPD 2011. It is immediately to the south of the residential curtilage of Meadow House and is clearly noticeable as a stark new structure within a field or paddock that forms part of the open countryside in this part of the Borough. It is, therefore, contrary to the aims and objectives of the policies.

9. It is also within the conservation area, which is characterised by some open fields and other open areas, as well as the historic built form described in the Conservation Area Draft Character Appraisal. It is the variety and contrast of the buildings, fields and open areas that give the conservation area its quality, interest and its overall character and appearance. Whilst accepting that the appellants respect these qualities, it is my view that the chalet is perceived as an obtrusive and inappropriate feature within the conservation area. I disagree with them that the chalet 'promotes local character and distinctiveness' or that it 'complements

the existing built forms' or that it 'relates well to the Green infrastructure network'. I consider that it is contrary to Policies CS2 and CS14 of the Core Strategy. In my view, its specific appearance, which is inappropriately out of charcater, temporary looking and obtrusive, neither preserves nor enhances the character or appearance of the conservation area. I do not consider that additional landscaping or planting can overcome the visual harm.

10. With regard to the National Planning Policy Framework (the Framework) there is a general presumption in favour of sustainable development. However I do not consider that this chalet can be said to be sustainable in a location that is outside of any development limits and on agricultural land. Even if the harm to the countryside and the conservation area (the heritage asset) was considered to be 'less than substantial', there are no public benefits accruing from the development and nor can it be said that in this location the chalet results in the viable optimum use of the land. In fact the opposite seems to be the case and the optimum use of the appellants' land would be if the chalet had been sited within their domestic curtilage. The Council's development plan policies accord with those in the Framework and the chalet does not make a positive contribution to the identified significance (the character and appearance) of the conservation area. The development, therefore, does not accord with the relevant Framework policies.

11. Against these disadvantages and identified harm which are contrary to both national and local policy, I have considered all of the other material considerations and reasons as to why planning permission should be granted as an exception in this particular case. In particular, I have taken into account whether or not a personal condition and/or a temporary planning permission could outweigh policy and other material considerations; whether or not the removal of the kitchen could justify retention of the chalet and/or whether the re-positioning of the fence (which delineates the residential curtilage from the field) could justify retention.

12. On the personal condition point, the authority has correctly referred to the fact that such conditions can scarcely be justified on planning grounds. This is because planning permissions, as well as enforcement notices, are primarily related to specific sites, developments and land rather than to personal or private needs. In situations where personal conditions are allowed, the reasons must be quite exceptional; the need must be absolutely necessary and essential (for example on certified medical grounds) and there would not normally be any alternative solution or site for the proposed development. Whilst acknowledging that there could well be reasons on medical grounds for a separate living unit to be required, I am not convinced that a personal condition can be justified in this case.

13. The family requirements are evident and I do not question the reasons given. However, in this case, there was clearly an alternative location for the chalet within the curtilage of Meadow House. That remains the case today, and I was shown around the property during my visit. The reasons that the appeal land became available for the appellants to buy and that the authority might have been partly responsible for a retrospective application being made, cannot, in my view, justify the retention of this harmful chalet outside of any development limits in the countryside on agricultural land.

14. Nor do I consider that a temporary permission is appropriate. I have concluded above that the development is harmful and I do not consider that a personal condition or any other conditions can overcome that harm. A temporary permission for three or five years would still result in harm and, whilst accepting that the appellants' situation is unique to them, a temporary permission could still

set an unfortunate precedent for other personal permissions being applied for, outside of development boundaries, in this or any other part of the Borough.

15. With regard to the kitchen being removed, this might allay some of the authority's concerns about the chalet being used as a separate dwelling house. However, the chalet would still be outside of the development limits and would still have the same visual impact in this part of the countryside and the conservation area. It is not required for any genuine agricultural or forestry need and the suggestion of re-positioning the fence further to the south would mean extending the residential curtilage further into the agricultural land. I do not consider that this can be is an appropriate mitigating factor and, in any case, it would need a separate planning permission. As I indicated during the course of the hearing, I am only empowered to deal with this enforcement notice and the appeals against it and, considering the Council's case in these appeals, it is unlikely that such permission would be forthcoming.

16. I can understand why the appellants consider that the chalet is 'ancillary' to the main dwelling house and, in terms of their own specific use, I accept that it has not been used fully as a 'separate dwelling house'. However, the chalet still has all of the day-to-day requirements for separate living with a useable kitchen, a living area, two bedrooms and a shower room/wc. Irrespective therefore of the actual use of the chalet by the family, I do not consider that it can be classed as being simply an ancillary building to the main house. In any case it is not within the domestic curtilage of Meadow House, where any 'ancillary' buildings would need to be located.

17. In conclusion on the ground (a) appeals, therefore, I do not consider that either a permanent or temporary permission should be granted for the retention of the chalet. The building neither preserves nor enhances the character or appearance of the conservation area and neither can it be said to be within the domestic curtilage of Meadow House or ancillary to the dwelling house. Nor do I consider that any planning conditions (including personal, temporary permission and/or landscaping conditions) could overcome the policy considerations and the visual harm caused by the chalet in this particular location within the Coatham Mundeville Conservation Area. The appeals fail, therefore, on ground (a) and planning permission will not be granted.

The Appeals under ground (f)

18. It was accepted that the ground (f) appeal would turn on whether or not the chalet was considered to be acceptable and that, if that was not the case, then the requirement to remove it would not be excessive. I have concluded above that planning permission should not be granted and I also consider the requirements (including the removal of the already reduced height fence) are the minimum necessary to overcome the harm to amenity. The appeals also fail on ground (f).

The Appeals under ground (g)

19. During the hearing the question of an extended compliance period was discussed. This ranged from an extension of time initially up to 12 months and then 36 months. Having considered all of the factors relating to this case, it is my view that the 6 month period is insufficient. This is due to the particular pattern of usage by the family; their son's specific timetable and needs and the fact that it will be necessary for them to liaise with the authority to find an acceptable alternative site within the residential curtilage of Meadow House. I consider that in the overall circumstances a period of 12 months is appropriate and reasonable.

The appeals succeed to this limited degree, therefore, on ground (g) and the notice will be varied.

20. Although a longer compliance period was discussed, I do not consider that a period in excess of one year is appropriate or necessary. A local planning authority, having taken enforcement action (and where a notice is upheld), should be in a position to ensure that any requirements are carried out in a time that is reasonable and commensurate with the particular situation. The authority considered it expedient to take enforcement action and, in order to avoid any prolonged detrimental effect on the character and appearance of this part of the Borough, I consider it to be necessary and expedient that the requirements are carried out within 12 months.

Other matters

21. I have taken into account all of the other matters raised by the appellants. These include all of the points in their hearing statement; the detailed comments submitted with regard to the Council's statement and all of the comments made during the course of the hearing. However, none of these alters my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decisions

22. The appeals are allowed, in part, on ground (g) only. The enforcement notice is varied by the deletion of the words '*Six Months*' in Part 6 (Time for Compliance) of the notice and the substitution therefor, of the following words '*Twelve Months*'.

23. Subject to this variation the appeals are dismissed; the enforcement notice is upheld and planning permission is refused on the application(s) deemed to have been made under section 177(5) of the 1990 Act as amended.

Anthony J Wharton

Inspector

APPEARANCES

THE APPELLANTs:

Mrs Carole Martin Mr Paul Martin	Meadow House, Coatham Mundeville, Darlington DL1 3LU

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Harker	Darlington Borough Council Department of Development Town Hall Darlington DL1 5QT