Planning Inspectorate

Appeal Decisions

Site visit made on 15 April 2025

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 APRIL 2025

Appeal A Ref: APP/T2350/C/24/3346392
Appeal B Ref: APP/T2350/C/24/3346393
Land at Ashgreen House, 4B Wiswell Lane, Whalley, BB7 9AF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Mr Peter Bartlett Duckworth and Appeal B is made by Mrs Jean Ellen Duckworth against an enforcement notice issued by Ribble Valley Borough Council.
- The enforcement notice was issued on 9 May 2024.
- The breach of planning control as alleged in the notice is failure to comply with a condition imposed on planning permission ref 3/2021/0991 granted on 23 November 2021.
- The development to which the permission relates is *"revisions to the proposed single storey dwelling of the previously approved application (3/2020/006), amendments include roof overhang to south facing terrace/walkway and west facing patio, internal reconfigurations, inclusion of study, amendment to entrance lobby, additional rooflight to living room, solar panels located on the roof and inclusion of air source heat recovery system. The application boundary has been revised to exclude the existing bungalow. The proposal also includes the construction of one double garage".*
- The condition in question is no 2 which states that *"unless explicitly required by condition within this consent, the development hereby permitted shall be carried out in accordance with the proposals as detailed on drawings: 58-19 01 Location Plan, 58-19 02A Existing Site Plan (amended 22/11/21), 58-19 03A Proposed Site Plan Roof Level (amended 22/11/21), 58-19 04A Proposed Site Plan GF Level (amended 22/11/21), 58-19 05 Proposed Ground Floor Plan, 58-19 06 Proposed Elevations, 58-19 07 Proposed Garage, 58-19 08 Proposed Section".*
- The notice alleges that the condition has not been complied with in that the development has not been carried out in accordance with the approved plans.
- The requirements of the notice are to remove the development which has been carried out otherwise than in accordance with the approved plans or alter the development to comply with the terms and conditions of planning permission 3/2021/0991.
- The period for compliance with the requirements is twelve weeks.
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (b), (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a) for Appeal A, an application for planning permission is deemed to have been made under section 177(5) of the Act. Appeal B is proceeding on the grounds set out in section 174(2) (b) and (f) of the Town and Country Planning Act 1990 (as amended).

Decisions

Appeal A Ref: APP/T2350/C/24/3346392

1. 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.

Appeal B Ref: APP/T2350/C/24/3346393

2. The appeal is dismissed, and the enforcement notice is upheld.

Preliminary Matter

3. The National Planning Policy Framework was revised in December 2024 (the 2024 Framework). This replaces the previous version of the National Planning Policy Framework published in December 2023. The 2024 Framework has not materially changed in terms of considering the effect of development on the living conditions of occupiers of neighbouring properties. Given the ground (a) appeal main issue, it has not therefore been necessary for me to seek comments from the main parties about the implications of the 2024 Framework.

Reasons

Appeals on ground (b)

4. The ground (b) appeals are made on the basis that the matters comprising the alleged breach of planning control have not occurred.

5. Planning permission was approved for a dwellinghouse on the land on 23 November 2021[1] (2021 Planning Permission). This followed an earlier planning permission for a dwellinghouse on the land and included amendments to the design of the dwellinghouse, revisions to the application boundary and the construction of a double garage. The evidence is that the partly constructed dwellinghouse on the land relates to the claimed implementation of the more recent planning permission, i.e., the 2021 Planning Permission as referenced in paragraph 5 of the appellants' statement of case.

6. The matter in dispute between the main parties relates to whether the partly constructed dwellinghouse has been built in accordance with the approved plans in terms of its height and hence whether there has been a breach of condition No. 2 of the 2021 Planning Permission (i.e., the drawings condition). The 2021 Planning Permission did not include finished floor or site levels and, moreover, a condition was not imposed to control such details. This is despite the evidence indicating that the pre-existing site levels on the site sloped downwards from east to west. Nonetheless, condition No. 2 of the 2021 Planning Permission explicitly lists the plans by which the *'development hereby permitted shall be carried out'*. Such approved plans include the plan named '58-19 08 Proposed Section'.

7. It is noteworthy that the above plan refers specifically to 'proposed' section. In other words, it does not say that it is an indicative plan. It is most definitely a 'proposed' plan. The appellant asserts that land levels should not be implied from the approved section drawing and claims that it was solely prepared to demonstrate that the angled solar roof panels would not be within the sightline of those living in neighbouring residential properties in Deer Park Crescent. The plan is described as 'proposed section' and hence it must be interpreted as such. There is nothing in the 2021 Planning Permission to indicate that the proposed section plan should only be considered in terms of the angled solar panels.

8. I accept that the top right-hand side of the proposed section drawing includes a note which states *'do not scale off this drawing except for determination of basic layout – only figured dimensions to be used: all dimensions to be checked on site'*. Such a note is included on all the approved drawings. It is not therefore confined only to the proposed section plan. In any event, the note indicates that the

[1] Planning permission 3/2021/0991

proposed section plan can be scaled off for basic layout purposes and, in my judgement, matters relating to height and separation distances are part and parcel of the consideration of basic layout matters. I do not consider that the note means that the approved proposed section plan is of no relevance in terms of the consideration of what has been approved on the land from a land level and height of dwellinghouse point of view. Moreover, condition No. 2 of the 2021 Planning Permission requires the development to be carried out in accordance with listed approved plans. It does not state that certain elements of the approved plans should be ignored, or that they could not be enforced.

9. I have considered the photographs provided by the occupier of 15 Deer Park Crescent, which have not been disputed by the appellant (pre-build and post-build), and, in my judgement, they do lend support to my view that land levels appear to have been materially changed on the site.

10. In any event, and, as part of my site visit, I was able to consider the height of the walls of the partly constructed dwellinghouse relative to the height of the original party boundary fences, as well as the relative position of the ground floors of Nos. 15, 17 and 19 Deer Park Crescent which are the nearest neighbouring properties. There is a variation in estimates of the alleged increased height of the south facing walls of the approved dwellinghouse relative what has been approved. The Council refers to an increase of about 1.2 metres and some third parties refer to approximately 1.5 metres.

11. The approved proposed section plan shows a flat ground level and at the same ground level as the existing dwellinghouses and rear gardens at Deer Park Crescent. The appellant may consider that the 2021 Planning Permission authorises something different to this, but there are no other approved levels accompanying the planning permission for the site.

12. On my site visit, it was agreed by the main parties that the height of the original boundary wooden fence (the main parties agreed that it was the original fence that existed prior to planning permission being approved), when measured from the appeal site, was 1.8 metres above the adjacent ground level at the measuring points facing Nos. 15 and 19 Deer Park Close. The approved proposed section plan shows the approved dwellinghouse as being approximately 1.35 metres above the height of the top of the 1.8-metre-high original fence. The proposed section plan shows the fencing to the front and rear of the site as being 2.10 metres in height. These are proposed fences as distinct from what was agreed on site as being the original boundary fences to the front and rear of the site.

13. Based on the agreed site visit height calculations, the south facing elevation of the dwellinghouse extends 2.44 metres above the height of the top of the original 1.8-metre-high boundary fence when measured at its south-western corner and behind No. 15 Deer Park Close, and 1.00 metre above the height of the top of the original 1.8-metre-high boundary fence when measured at its south-eastern corner and behind No.19 Deer Park Close.

14. Based on the approved proposed section plan, the evidence therefore shows that the dwellinghouse has been built, in its south-west corner, about 1.09 metres higher than what has been approved. Based on the approved proposed section plan, the building should be about 1.35 metres in height above the top of the original 1.8-metre-high fence, and for its full length, and not 2.44 metres as it is in

one area. The evidence demonstrates that the building does not meet this requirement in all parts. Consequently, I find that the development has not been built in accordance with the approved plans (in particular the approved proposed section plan) and hence the alleged breach of planning control has occurred.

15. In reaching the above conclusion, I note the appellants' comment that some 'cut and fill' would normally be needed on a sloping site like this. I accept that there is an absence of finished floor and site levels on the approved plans and that either some 'cut' or 'fill' might be needed. However, this is a matter that must be considered in the context of the approved proposed section plan which shows that the proposed dwellinghouse should be built on land that is at the same level of the land for the adjacent Deer Park Crescent dwellings, i.e. effectively a flat site.

16. Even if I were to accept the point made by the appellants that part of the foundations would have to project slightly above ground level to satisfy construction requirements, the evidence is such that the degree to which either part of the pre-existing land level has been raised, or the land not properly excavated, is material when considered against the approved and scaled height dimensions on the approved plans. I find that the departure from the approved plans is not on any reasonable or objective basis de-minimis. Moreover, there is nothing on the approved plans or within the approval notice to indicate that there should be any sort of height tolerance to account for foundations over above the approved 3.150 metre eaves/parapet height when measured from the approved adjacent ground level shown on the approved plans.

17. I find that compliance with the proposed section plan would have been possible. I accept that some 'cut' would likely be needed to implement the planning permission, but I do not find that the 2021 Permission authorises 'fill' with reference to the approved proposed section plan. In my judgement, and when the proposed section plan and original boundary fence is considered, it is clear what has been approved in terms of the position and height of the dwellinghouse on the land.

18. The appellant refers to pre-existing and current site levels in terms of an overlaid topographical survey. However, and, notwithstanding the statement of truths, the point is that the evidence demonstrates that detailed existing and proposed levels were not before the Council when it made its decision to approve planning permission for the dwellinghouse on the site. It is the approved plans and the decision notice that need to be considered from the point of view of what has been approved on the land. In approving planning permission for a dwellinghouse on the land, I find that it was necessary for the dwellinghouse to be constructed in accordance with what is shown on the approved drawings and, in particular, drawing 58-19 08 'Proposed Section'. There are no other levels approved for the site/dwellinghouse and hence this provides the clarity needed in terms of the resultant land levels and the height of the building relative to the top of the original boundary fence (including also the original fence to the rear of the site), and the level of the properties in Deer Park Crescent.

19. Part of the constructed walls of the dwellinghouse are appreciated as being higher than what has been approved when considered against the top of the original 1.8-metre-high party boundary wooden fence. Indeed, they are higher than what was envisaged by the local planning authority (LPA) and occupiers of neighbouring residential properties when they considered the planning application proposal.

20. Furthermore, it is noteworthy that the occupiers of Nos. 15, 17 and 21 Deer Park Crescent did not object to the approved development having considered all the submitted plans and including the 'proposed section' plan. It is clear to me that neither the LPA, nor those residents that occupy dwellinghouses neighbouring the site, envisaged such a high dwellinghouse being positioned on land. Indeed, the proposed section plan did not authorise that.

21. The appellants are of the view that the dwellinghouse on the land has not been built on land that has been increased in height. While I do not find that the evidence suitably supports that claim, it is important to recognise, in any event, that the only approved plan that includes finished height parameters relative to surrounding land is that which relates to the approved proposed section plan. Moreover, there is no dispute between the parties about the height of the original boundary fences on the site. Irrespective of my findings about likely raised land levels, it is a requirement that the development is carried out in accordance with all approved plans given the wording of condition No. 2 of the 2021 Planning Permission. The evidence is that the dwellinghouse, as partly constructed, has not been built in accordance with all the approved plans. Namely, it has not been built in accordance with the height restrictions imposed in respect of the approved proposed section drawing.

22. The appellants raise a concern that the external walkway/patio area constructed at the dwellinghouse is referenced in the notice. The Council acknowledges that part of this was removed prior to the notice being issued. However, the appellants do not dispute that some of it had not been removed at this time. There is no objective evidence before me to support a view that part of the external walkway/patio area was not in place when the notice was issued. Indeed, I was able to see part of the external walkway/patio on my site visit. There is no external walkway/patio shown on the approved plans.

23. For the collective reasons outlined above, I conclude that when the notice was issued, there was a breach of condition No. 2 of the 2021 Planning Permission. Therefore, the ground (b) appeals fail.

Appeal on ground (a) and the deemed planning application

Main Issue

24. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the notice and the main issue is the effect of the unauthorised development on the living conditions of the occupiers of neighbouring residential properties in Deer Park Crescent in respect of outlook, privacy and light and whether the unauthorised development constitutes good design.

Reasons

25. As part of my site visit, I was able to consider the height and position of the development relative to the rear windows and garden areas of neighbouring dwellinghouses in Deer Park Crescent. I was able to view the development from the rear garden areas of Nos. 17 and 19 Deer Park Crescent after first seeking authorisation from the owners. I have also considered the photographs submitted by those that live in properties in Deer Park Crescent. I have also considered the 2021 Planning Permission approved by the Council which is a material planning

consideration for me to consider as part of the determination of this deemed planning application.

26. While in relative terms I cannot conclude that the unauthorised development has had a materially adverse impact on levels of light penetration into neighbouring gardens and properties (these properties are to the south of the unauthorised development), I find that owing to the overall height of the walls of the dwellinghouse under construction (particularly to the south-western part of the dwellinghouse), the unauthorised development has had an unacceptably dominant and enclosing impact when appreciated by some neighbouring residents to the detriment of what would otherwise be an acceptable level of outlook.

27. The enclosing harm is greatest in respect of the occupiers of Nos. 15 and 17 Deer Park Crescent. This is because the unauthorised building is at its highest point in its south-west corner. I reach this view even accounting for the fact that the occupiers of No. 17 Deer Park Crescent appear to have attempted to partly screen the partly constructed dwellinghouse by erecting a tall boundary fence.

28. On my site visit, I noticed that the higher element of the unauthorised development was noticeable from parts of the rear garden of No. 19 Deer Park Crescent. This was from both the level part of the rear garden, as well as from the raised patio, albeit at an angle. While the owner of this property has planted some trees on the side boundary of the garden, which offers some screening of the tallest part of the unauthorised dwellinghouse, this landscaping may not ensure forever and, in any event, even accounting for the landscaping I find that there has been some limited harm caused to the outlook enjoyed by the occupiers of this property.

29. Moreover, given the level of the patio/walkway and its relationship with the height of the boundary fence and the position of No. 17 Deer Park Crescent (including its garden), I find that its residential use would lead to a material loss of privacy for occupiers of this property either from direct or oblique angle views. Indeed, on my site visit I was able to look over the boundary fence and down into the rear window of the kitchen/diner when standing on the very edge of the raised patio/walkway. Given the separation distance involved, I find that this is an unacceptable arrangement from a privacy point of view.

30. The appellant has commented as part of his ground (f) appeal that, if necessary, he would be prepared to remove a course of breezeblock around the whole of the property. I have not been provided with a detailed scheme which fully depicts these changes, including sectional drawings, pre-existing site levels, existing site levels, and finished site and floor levels. In any event, removing a course of breezeblock would not, in my judgement, be sufficient to overcome the significant harm caused to the outlook of the occupiers of neighbouring properties arising from the breach of planning control. I find that the resultant development would still be too high and dominant. There is a close relationship with the boundary of the properties on Deer Park Crescent. I find that the relationship between such properties and the approved dwellinghouse, as depicted in the 2021 Planning Permission proposed section plan, is on the limit of acceptability from a living conditions point of view.

31. I have considered whether landscaping might be capable of softening the harmful development. I accept that landscaping on the boundary of the site with the properties in Deer Park Crescent may have the potential to screen the harmful

development to some extent. However, landscaping may take some time to mature and may not endure forever. Moreover, landscaping on the boundary of the site has the potential, when it matures, to also unacceptably enclose the outlook currently enjoyed by the occupiers of immediately adjacent properties in Deer Park Crescent. In this respect, I do not find that landscaping should be considered as an afterthought. It should be part and parcel of delivering a well-designed form of development on the land with neighbouring residents in mind.

32. For the above reasons, I conclude that the breach of planning control does not accord with the amenity requirements of policy DMG1 of the adopted 2014 Ribble Valley Core Strategy 2008-2028 (CS), and paragraph 135(f) of the 2024 Framework. Moreover, I find that part of the development sits unacceptably proud of the original boundary fence line, and it appears dominant and enclosing when experienced in this residential environment. In this regard, I do not find that the unauthorised development constitutes good design. I therefore conclude that there is also conflict with the design requirements of policy DMG1 of the CS, and paragraph 131 of the 2024 Framework which states that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve.

Other Matters

33. I acknowledge that a significant number of third parties support the erection of a dwellinghouse on the land. Some say that the land is ‘tucked way’, that there is a need for more bungalows in the area, and that approved development has good environmental credentials (e.g., ground source heat pump and solar roof panels). Comments are also made that planning permission has been approved for several housing estates in the area in recent years, some of which are causing problems in terms of their impact on infrastructure, including drainage. The inference is that the LPA should focus its efforts on the latter and not on the unauthorised development which is the subject of this appeal.

34. I do not know if there are other issues in the area associated with recently approved housing development. However, even if the claims were well founded, they would not justify quashing the notice and/or granting deemed planning permission. I acknowledge that some of the other interested parties support the construction of a dwellinghouse on the land. However, upholding the notice would not in itself mean that the appellant could not erect a dwellinghouse on the land in accordance with the 2021 Planning Permission. In fact, the requirements of the notice enable the appellant to rectify matters on the land to ensure compliance with the 2021 Planning Permission. In this regard, the social, economic and environmental benefits associated with the construction of the approved dwellinghouse on the land could still be realised.

35. None of the other matters raised alter or outweigh my conclusion on the main issue.

Ground (a) appeal conclusion

36. While I have not found that the unauthorised development has caused material harm to levels of light to neighbouring properties, I have nonetheless concluded that significant harm has been caused to the privacy and outlook enjoyed by the occupiers of identified neighbouring residential properties in Deer Park Crescent. In this case, I do not find that my concerns would be capable of being addressed

by means of the imposition of any landscaping or other conditions. I conclude that the unauthorised development does not accord with the development plan for the area when considered as a whole and there are no material considerations which outweigh the identified harm caused. Therefore, the ground (a) appeal fails.

Appeals on ground (f)

37. The appeals made under ground (f) are that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity which has been caused by any such a breach.

38. The appellant states that *'he would be prepared to reduce the height of the construction by a course of concrete block all the way round, if the Inspector felt it expedient to do so'*. I have considered this as part of the ground (a) appeal. The removal of a course of concrete block would not account for the overall increase in the height of the unauthorised development relative to the 2021 Planning Permission when experienced from identified neighbouring land and properties.

39. The purpose of the notice is either to remedy the breach of planning control by removing the unauthorised development or to require alternations to it so that there is compliance with the 2021 Planning Permission. These are not excessive steps to either remedy the breach of planning control or to remedy the injury to amenity which has been caused by the breach of planning control.

40. I therefore conclude that the ground (f) appeals fail.

Conclusions

Appeal A Ref: APP/T2350/C/24/3346392

41. For the reasons given above, I conclude that the appeal should not succeed. I shall 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 (as amended).

Appeal B Ref: APP/T2350/C/24/3346393

42. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice.

D Hartley

INSPECTOR