



Appeal Decision

Site visit made on 29 July 2013

by K Nield BSc(Econ) DipTP CDipAF MRTPI

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

Decision date: 23 August 2013

Appeal Ref: APP/G3110/C/13/2193371

73 Dene Road, Oxford, Oxfordshire, OX3 7EQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr K Singh against an enforcement notice issued by Oxford City Council.
- The Council's reference is 12/00635/ENF.
- The notice was issued on 30 January 2013.
- The breach of planning control as alleged in the notice is without planning permission the erection of a single storey outbuilding.
- The requirements of the notice are:
 - (i) Demolish the unauthorised outbuilding to the rear of 73 Dene Road; and
 - (ii) Remove all materials, rubble and hardstanding from the site of the unauthorised outbuilding at the rear of 73 Dene Road.
- The periods for compliance with the requirements are three months for step (i) and four months for step (ii) above.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld with correction as set out in the Formal Decision.

The enforcement notice

1. There are some minor typographical errors in the notice. I can make appropriate corrections to the notice in those regards without injustice to the parties.

The appeal on ground (a)

Main issues

2. I consider that the main issues are:
 - (i) the effect on the character and appearance of the locality, and
 - (ii) the effect on the living conditions of present and future occupants of the host dwelling through loss of rear amenity space and aspect and of occupants of nearby dwellings through dominance, actual and perceived overlooking and noise and disturbance.

Reasons

Character and appearance

3. The locality of the appeal site is of a suburban residential character comprising mainly pairs of semi-detached dwellings in generally deep but narrow plots. The appeal dwelling is the right hand dwelling of a pair fronting Dene Road.
4. A substantial single-storey outbuilding with a shallow pitched roof and which extends across almost the full width of the plot has been constructed towards the end of the rear garden of the host dwelling. The outbuilding has a footprint similar to that of the dwelling and occupies about 25% of the original rear garden.
5. I noted at my visit that a number of properties in the locality have outbuildings in their gardens but they are mainly small and utilitarian in form and appearance and functional in nature in contrast to the more obvious domestic form and design of the appeal scheme which has a patio door in its front elevation.
6. Two windows have been inserted in the rear elevation of the outbuilding. One faces, with a separation distance of about 0.8m, a block wall which, I am informed, has recently been constructed to the boundary with 30 Glebelands. The actual position of that wall in relation to various land ownerships is disputed by the parties. However, that is not a matter for me to determine in this appeal. The wall is not targeted by this enforcement notice and notwithstanding the Council's concerns regarding the position and longevity of the wall I have taken account of it as existing in my decision. I noted that the second window faces the rear elevation of a shed in the rear garden of 32 Glebelands.
7. The construction of the outbuilding was challenged by the Council at an early stage of its construction although at the time of my visit I noted that it was substantially completed and utilised. I observed that it has been finished internally to a high domestic standard. Internally it comprises three main parts. At the front, facing the rear of the host dwelling is a room containing a number of items of gym equipment and a table tennis table. There is a smaller room leading from that containing a shower, toilet and hand-wash basin. The rear room spans the full width of the building and contains a substantial amount of furniture including a desk, cupboard, TV and other electrical equipment and upholstered seating of the type more often found in a domestic lounge or living room.
8. The Council and an interested party indicate that ground levels in the vicinity of the building were raised as part of the development scheme, although the extent to which that occurred within the rear garden as a whole is disputed. Nevertheless, there is no dispute that the building is some 2.5m in height to the roof ridge from the current ground level although from the ground level of the neighbouring dwelling (71 Dene Road) it is nearer 3m in height. The Council informs me that it is a similar height above the level of the rear gardens of both 30 and 32 Glebelands although I was not able to confirm that at my visit.

9. CS¹ policy CS18 and LP² policies CP.1, CP.6 and CP.8 are all concerned with the design of development. Amongst other matters they require development to have a high quality of design and to relate to the context of its setting in order to form an appropriate visual relationship with the surrounding area.
10. Fences and shrubs along the plot boundaries provide some visual screening of the outbuilding from the public domain of Dene Road. In addition, due to the position of the outbuilding within the plot only the upper part is likely to be seen from the rear gardens of nearby dwellings above intervening boundary fences and shrubs.
11. Notwithstanding that, due to its substantial scale, size, footprint and siting in close proximity to the rear and side plot boundaries, the outbuilding appears as a dominant and incongruous feature within the rear garden of the host dwelling. It is significantly larger in scale and size and footprint than others I noted in the locality which do not dominate the rear garden and the rear aspect of their respective host dwellings in the way that this building does.
12. Taking all the above factors into account I conclude on this issue that the appeal scheme is materially harmful to the character and appearance of the locality and as such it does not accord with the aims of CS policy CS18 and LP policies CP.1, CP.6 and CP.8.

Living conditions

13. The outbuilding has a separation distance of about 17m from the rear of the host dwelling which, in my view, retains an adequate rear amenity space³ and aspect for present and future occupants of the host dwelling. In addition the building has reasonable separation from the windows at the rear elevation of 71 and 75 Dene Road and it is not an overbearing structure viewed from those.
14. Concerns are raised by the occupant of 30 Glebelands and the Lye Valley Residents Association, regarding the effect of the scheme on the rear garden area of that dwelling through overlooking. I have noted above that the outbuilding contains two windows in its rear elevation one of which faces the rear garden of 30 Glebelands and the other towards the rear of 32 Glebelands.
15. The block wall to the rear of part of the appeal building (referred to above) and a shed at the rear of 32 Glebelands are both of a height that restrict views from the clear glazed windows that have been installed in the outbuilding. However, the upper parts of those windows are likely to be seen from the rear of both 30 and 32 Glebelands above the present boundary treatments. Consequently, there is likely to be perceived, if not actual, overlooking of the rear elevations of 30 and 32 Glebelands and their respective rear gardens making them less pleasant to use by occupants of those dwellings.
16. The Council has raised concerns regarding potential noise and disturbance from the use of the building. However, on the basis of the indicated use of the building as being incidental to the enjoyment of the dwellinghouse I do not consider that such use would be materially harmful to the living conditions of nearby occupants of dwellings.

¹ Oxford Core Strategy 2026 Adopted March 2011 (CS)

² Oxford Local Plan 2001-2016 Adopted 11 November 2005 (LP)

³ Indicated by the Appellant to be in the order of 157m²

17. I conclude on this issue that notwithstanding my comments regarding the effect of the scheme on the living conditions of present or future occupants of the host dwelling through loss of rear amenity space and aspect or that of occupants of nearby dwellings through noise and disturbance there would be material harm to occupants of 30 and 32 Glebelands from perceived overlooking in conflict with SHP⁴ policy HP14 or CS policy CP.1, both of which require the amenities of adjoining land users to be safeguarded.

Other matters

18. I have considered whether conditions attached to a planning permission would reduce the harm I have identified such that the scheme would be acceptable. However, conditions to require a reduction in the height of the building or to remove part of the building (both matters suggested by the Appellant) would materially alter the design and appearance of the building without a detailed scheme being before me to assess.
19. I have also considered whether the harm to the living conditions of the occupants of 30 and 32 Glebelands from actual and perceived overlooking could be reduced to acceptable levels through the replacement of clear glazing with obscured glazing and the windows be made non-opening. Following consultation with the parties, I am of the view that whilst the possibility of actual overlooking would be reduced, if not removed, if those measures were implemented there would still be harm to occupants of both 30 and 32 Glebelands from perceived overlooking from the windows in close proximity to their rear gardens.
20. I have considered the potential fallback position contended by the Appellant that under Class E, Part 1, Schedule 2 of the GPDO⁵ a similar building could be erected within the plot which could, potentially, have a greater impact. However, no details of the type of building that might be constructed are provided for me to consider the effect such a scheme would have both to enable comparison with the appeal building as constructed and to enable me to assess whether it would be less desirable than that for which planning permission is sought. In addition, without further details it is not possible to assess the likelihood as to whether or not such a scheme would be implemented. Consequently, I attach little weight to the Appellant's suggestion in that regard.
21. The Council and some interested parties raise concerns regarding the potential use of the outbuilding, indicating that it would be used as primary living accommodation. However, I have dealt with the ground (a) appeal scheme on the basis put forward by the Appellant that its future use would be incidental to the residential use of the host dwelling as such. In any event, the use of the outbuilding could be controlled by a planning condition (as suggested by the Council) if all other matters were acceptable.
22. None of the other matters raised outweighs my conclusions on the main issues on which this appeal turns.

Conclusion on the ground (a) appeal

⁴ Oxford City Council: Sites and Housing Plan 2011-2026 Adopted February 2013

⁵ Town and Country Planning (General Permitted Development) Order 1995, as amended (GPDO)

23. I found that the disputed outbuilding would not be harmful to the living conditions of present or future occupants of the host dwelling through loss of rear amenity space and aspect or those of occupants of nearby dwellings through dominance, or noise and disturbance. However, those matters are outweighed by the material harm to the character and appearance of the locality and to the living conditions of occupants of 30 and 32 Glebelands from perceived overlooking.
24. I conclude that for the reasons given above and having regard to all other matters raised the appeal under ground (a) should not succeed.

The appeal on ground (f)

25. The Appellant argues that the requirements of the notice exceed what is necessary to remedy the breach of planning control in that modifications could be made that would reduce the harm.
26. The notice does not specify on its face whether its purpose is to remedy the breach (under s173(4)(a) of the Act) or to remedy any injury to amenity (under s173(4)(b) of the Act) although the purpose is clear from the way the requirements of the notice are expressed that it is to remedy the breach of planning control.
27. I considered in the ground (a) appeal whether suggested alterations to the disputed building to reduce its height or to remove part would make the scheme acceptable such that planning permission could be granted. The Appellant indicates that the height could be reduced "by approximately 0.25m to reduce its prominence" and part of the building could be removed. However no clear and specific details or drawings of the suggested alterations are before me for consideration. In addition, it is likely that such modifications would materially alter the design and appearance of the building. Consequently, I have not attached significant weight to those suggestions.
28. The requirements of the notice are not excessive as they are what are necessary to remedy the breach of planning control that has occurred and no lesser steps than the complete removal of the development targeted by the notice would achieve that purpose.
29. Notwithstanding the above the Council has power under s173A(1)(b) to waive or relax any requirement of the notice. The appeal under ground (f) fails.

The appeal on ground (g)

30. The appeal under ground (g), simply put, is that the period allowed for compliance with the notice is too short. No specified time is provided by the Appellant.
31. The Appellant argues that an extended period for compliance is required as he would undertake the works himself as he could not afford to employ a third party to do so. In addition, his job requires him to work long hours. I appreciate that the required works will take some time to organise and implement if he is to undertake them himself. Nevertheless, in the public interest, the unauthorized building should be removed within a reasonable period to overcome the harm identified by the Council in its reasons for issuing the notice.

32. In my view, the periods for compliance stated in the notice strike the appropriate balance between these conflicting interests so that there would not be a disproportionate burden placed on the Appellant. The appeal on ground (g) fails.

Formal decision

33. I direct that the enforcement notice be corrected by the following:

- (1) the substitution from paragraph 4(ii) of the word "curtailage" and the substitution therefor of the word "curtilage"
- (2) the deletion from paragraph 4(iii) of the word "neighboring" and the substitution therefor of the word "neighbouring"

Subject to the above corrections the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Kevin Nield

INSPECTOR