



Appeal Decisions

Site visit made on 20 March 2018

by **A A Phillips BA (Hons) DipTP MTP MRTPI**

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

Decision date: 20 July 2018

Appeal A: APP/U2370/C/17/3183886

Land lying to the north and west of 200 Park Lane, Preesall, Poulton-Le-Fylde FY6 0NW (also known as Edgey's View, The Old Car Park, Saracen's Head, Park Lane, Preesall, Poulton-Le-Fylde)

- 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 Stewart Edge against an enforcement notice issued by Wyre Borough Council.
- The enforcement notice was issued on 24 August 2017.
- The breach of planning control as alleged in the notice is:
 - (i) Construction of a detached dwelling on the Land not in compliance with approved plans. Planning permission (part retrospective) under reference number 17/00472/FUL was granted on 6 July 2017 for the erection of a detached dwelling on the Land in accordance with the approved plans to that application namely Plan Number 4530-4-02D which is attached hereto and marked A ("Plan A") and Plan Number 4530-4-01E which is attached hereto and marked B ("Plan B"). The aforesaid detached dwelling is operational development constructed not in compliance with the said approved plans constituting a material breach of planning control.
 - (ii) Installation of windows otherwise than in accordance with condition 4 of the planning permission 17/00472/FUL in the locations marked with a blue cross on Plan B.
- The requirements of the notice are:
 - (i) Alter the detached dwelling on the Land so that it complies with Plan A and Plan B including (for the avoidance of doubt) demolishing/removing in its entirety from the said attached dwelling all construction at first floor level highlighted pink on Plan C (aforementioned Gym and Cinema Room); and
 - (ii) Remove the three first floor windows in the north and south elevations marked with a blue cross on Plan B and install three non-opening obscure glazed units equivalent to Grade 5 level (most obscure) in the said locations shown marked with a blue cross on Plan B.
- The period for compliance with the requirements is three months.
- The appeal was made on the grounds set out in section 174(2) (a) of the Town and Country Planning Act 1990 as amended.

Summary of decision: The appeal is dismissed and the enforcement notice is upheld with variations.

Appeal B: APP/U2370/W/17/3180202

Land lying to the west and north of 200 Park Lane, Preesall, Poulton-Le-Fylde FY6 0NW (also known as Edgey's View, The Old Car Park, Saracen's Head, Park Lane, Preesall, Poulton-Le-Fylde)

- The appeal is made under section 78 of the Town and Country Planning Act 1990

against a refusal to grant planning permission.

- The appeal is made by Mr S Edge against the decision of Wyre Borough Council.
- The application Ref 17/00069/FUL, dated 20 January 2017, was refused by notice dated 5 April 2017.
- The development proposed is alterations to previously approved detached dwelling ref no 16/00356/FUL.

Summary of decision: The appeal is dismissed.

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 12 June 2017

Preliminary Matters

1. The enforcement notice alleges: at 3(i) the construction of a detached dwelling on the Land not in compliance with the approved plans" (i.e. plans approved in connection with planning permission ref 17/00472/FUL); and 3(ii) Installation of windows otherwise than in accordance with condition 4 of planning permission 17/00472/FUL...". The notice also indicates that the breaches of planning control fall within paragraphs (a) and (b) of s171A (1) of the 1990 Act, paragraph (a) relating to carrying out development without planning permission and (b) concerning the failure to comply with conditions.
2. Allegation 3(i) therefore appears to state that the dwelling does not have planning permission and, in relation to windows and 3(ii) indicates that the development was carried out in breach of condition 4. This is reinforced by the reference to the breaches having occurred within the last 4 years and 10 years respectively.
3. It also appears that there are two parts of the planning permission which are relevant to this appeal. Firstly, that the application is part-retrospective and secondly, that condition 1 requires that the development is carried out in accordance with the approved plans. In summary, the application is therefore partly retrospective and part prospective for the erection of a detached dwelling and under such terms planning permission may be granted including for development carried out before the date of the planning application. Therefore, in this case not all of the building is unlawful – parts approved by planning permission 17/00472/FUL are lawful and those not authorised by the permission are unlawful.
4. Under the current enforcement notice it is clear to me that the alleged breach relates to the issue of the difference between what was authorised and what has actually been built on site – and specifically operational development constructed not in compliance with the approved plans constitutes a material breach of planning control. However, if the appellant complied with the notice as originally drafted, he would obtain an unconditional planning permission for the resulting works by virtue of s173(1). Therefore, without causing injustice to the appellant and in order to ensure that the wording of the enforcement notice is clear that the breach is the difference between what was permitted and what was built on site paragraph 3(i) should be varied as follows:

3(i) The carrying out of building operations on the Land not in compliance with approved plans.

The construction at first floor level of elements identified as the "Gym" and "Cinema Room" and highlighted in pink on Plan Number 4530-04-01D which is attached hereto and marked C ("Plan C"), which first floor elements were not permitted by planning permission (part retrospective) granted under reference number 17/00472/FUL on 6 July 2017 for the erection of a detached dwelling on the Land in accordance with the approved plans to that application namely plan number 4530-4-02D which is attached hereto and marked A ("Plan A") and plan number 4530-4-01E which is attached hereto and marked B ("Plan B").

Appeal A on ground (a) and Appeal B

Main Issue

5. The main issue is the effect on the living conditions of the occupants of neighbouring properties with particular reference to outlook, privacy and overlooking.

Reasons

6. The appeal site comprises an area of land which formerly formed the car park of the Saracens Head Public House which has now been converted to a single dwellinghouse. A modern flat roof contemporary design two storey dwelling is being constructed on the site. At the time of my site visit the property was partially constructed, but apparently in accordance with plans previously refused by the Council under reference 17/00069/FUL rather than those approved under reference 17/00472 FUL (part retrospective). In particular, first floor elements identified as a gym and cinema room have been constructed and some windows have been installed otherwise than in accordance with condition 4 of 17/00472/FUL which requires all first floor windows on the south facing elevation and first floor windows on the north facing elevation adjacent to the northern boundary to be installed as non-opening and fitted with obscure glazing.
7. The separation between the dwelling and adjacent residential properties Nos 1 and 2 Back Lane (England's Cottages) is approximately 12 metres which is less than the requirement for such separation to be 13 metres where a rear elevation faces the side elevation of a two storey development according to Supplementary Guidance 4 Spacing Guidelines for New Housing Layouts (SPG4). The development is close to the shared boundary with No 2 and as a consequence of the additional overall height, scale, massing and design resulting from the unauthorised part of the development close to the boundary would have an overbearing effect. The development constitutes an over dominant and visually intrusive built form which is visually harmful and would result in significant material harm to the outlook from the closest property, No 2 Back Lane.
8. However, No 1 England's Cottage has a more angled relationship to the unauthorised development and consequently the effect on the property would not be as dominating or visually intrusive as the effect on No 2. Therefore, on balance I do not consider the development to be harmful in terms of the effect on outlook in relation to No 1. As a consequence of the separation distance and

change in levels in the locality I do not consider the unauthorised development would be harmful to the outlook from 200 Park Lane.

9. With respect to privacy and overlooking there are two first floor windows on the north elevation which are situated close to the appeal site's boundary with Village Farm, 194-198 Park Lane. Furthermore, there is a first floor window on the north side elevation which looks directly over the private amenity space of No 2 Back Lane. These openings to which the enforcement notice relate were installed as opening windows, but since have been screwed to the frame as a way of fixing them and have also been coated in order to prevent overlooking into neighbouring properties. Without a permanent method of fixing and properly fitted obscure glazed windows it is clear to me that the openings the subject of the enforcement notice could potentially cause unacceptable levels of overlooking and loss of privacy to the detriment of the living conditions of adjoining occupants.
10. Therefore, in order to provide a permanent solution to ensure that the living conditions of neighbouring properties are protected, with particular reference to privacy and overlooking, requirement 2 of the notice to install three non-opening obscure glazed units equivalent to Grade 5 level should be implemented.
11. Consequently, I conclude that the development is harmful to the living conditions of the occupants of neighbouring properties with particular reference to outlook, privacy and overlooking. As such it conflicts with Policy SP14 of the Wyre Borough Local Plan 1999 and advice in SPG4. Among other objectives these seek to ensure that proposals are compatible with adjacent existing land uses, residential amenity should be safeguarded and physical dominance avoided.

Formal Decision

12. I direct that the enforcement notice is varied by deleting from paragraph 3(i) the words

"Construction of a detached dwelling on the Land not in compliance with approved plans.

Planning permission (part retrospective) under reference number 17/00472/FUL was granted on 6 July 2017 for the erection of a detached dwelling on the Land in accordance with the approved plans to that application namely Plan Number 4530-4-02D which is attached hereto and marked A ("Plan A") and Plan Number 4530-4-01W which is attached hereto and marked B ("Plan B"). The aforesaid detached dwelling is operational development constructed not in compliance with the said approved plans constituting a material breach of planning control."

and the substitution therefor of the words

"The carrying out of building operations on the Land not in compliance with approved plans.

The construction at first floor level of elements identified as the "Gym" and "Cinema Room" and highlighted in pink on Plan Number 4530-04-01D which is attached hereto and marked C ("Plan C"), which first floor elements were not permitted by planning permission (part retrospective) granted under reference number 17/00472/FUL on 6 July 2017 for the erection of a detached dwelling on the Land in accordance with the approved plans to that application namely plan number 4530-4-02D which is attached hereto and marked A ("Plan A") and plan number 4530-4-01E which is attached hereto and marked B ("Plan B")."

13. Subject to this variation 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.

Alastair Phillips

INSPECTOR