The Planning Inspectorate

Appeal Decisions

Site visit made on 14 March 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 May 2022

Appeal A: APP/F4410/C/21/3287668
Appeal B: APP/F4410/C/21/3287669
6 Shires Close, Sprotbrough, Doncaster DN5 7RG

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr David Walton (Appeal A) and Mrs Amanda Walton (Appeal B) against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The notice was issued on 28 October 2021.
- The breach of planning control as alleged in the notice is without planning permission the installation of an air source heat pump to the front elevation of the property at first floor level, on a wall fronting the highway, on the land.
- The requirements of the notice are:
  (i) (a) Remove the air source heat pump from the property on the Land or (b) relocate the air source heat pump to a position which complies with the provisions of Schedule 2, Part 14, Class G of the Town and Country Planning (General Permitted Development) Order 2015 (as amended);
  (ii) Following compliance with step (i) (a) above permanently remove the resultant materials from the Land.
- The period for compliance with the requirements is 1 month
- Appeal A is proceeding on the grounds set out in section 174(2)(a), (c) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (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)(c) and (f) only.

Decision

1. It is directed that the enforcement notice be corrected by deleting the words 'the Town and Country Planning (General Permitted Development) Order 2015' from section 5 (What you are required to do) and replacing them with 'The Town and Country Planning (General Permitted Development) (England) Order 2015'.

2. Subject to that change, the appeals are 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.

Preliminary Matters

3. The word 'England' is missing from the reference to the General Permitted Development Order in the enforcement notice. However, the meaning is clear and this minor error can be corrected without causing injustice to either party.

4. The appellants have asked that I consider awarding some form of restitution to reflect the anxiety the case has caused them. I am also asked to 'instruct the Council to return the (deemed) planning application fee'. However, no formal application for costs has been made and, in any event, the matters raised would not be eligible for recompense through the planning costs regime.

Ground (c)

The basis of the dispute

5. Ground (c) is concerned with whether or not the matter alleged in the notice amounts to a breach of planning control. In this case it is argued that the air source heat pump ('ASHP' or 'pump' for short) is development permitted by *The Town and Country Planning (General Permitted Development) (England) Order 2015* (as amended) (the GPDO). Part 14 of Schedule 2 of the GPDO permits certain renewable energy developments, and Class G of Part 14 permits the installation, alteration or replacement of a microgeneration air source heat pump on a dwellinghouse. This, however, is subject to certain limitations and conditions. In this case the dispute centres on the limitations set out at paragraphs G.2(g) and G.2(k).

6. Paragraph G.2(g) establishes that development is not permitted by Class G if the ASHP would be installed on a flat roof where it would be within 1 metre of the external edge of that roof.

7. Paragraph G.2(k) establishes that development is not permitted by Class G if:

> *in the case of land, other than land within a conservation area or which is a World Heritage Site[1], the air source heat pump would be installed on a wall of a dwellinghouse or block of flats if—*
>
> *(i) that wall fronts a highway; and*
>
> *(ii) the air source heat pump would be installed on any part of that wall which is above the level of the ground floor storey.*

8. In this case, the ASHP has been installed above the ground floor storey. There is, however, disagreement as to whether it is installed on a wall and whether it fronts a highway.

Assessment

9. The appeal property is one of a handful of dwellings (I am told there are 9) on Shires Close, a cul-de-sac reached via Manor Gardens. The properties on the close are served by garages. The appeal property faces onto a part of the close which leads up to 2 garages and also provides access to the appeal property and its neighbours.

10. Is Shires Close a highway? It is plainly used by vehicles, since it provides access to the dwellings and garages. There is no definition of 'highway' specifically for Part 14 of Schedule 2 of the GPDO. However, Part 1, Paragraph I states that *"highway" includes an unadopted street or a private way*. I can see no reason to take a different view in relation to this proposal. Thus, while Shires Close is referred to as a private road, that does not mean that it is not a highway.

[1] In this case the site is not in a conservation area or a World Heritage Site

11. Although Shires Close does not carry through traffic, that does not prevent it from being a highway; roads can serve a significant number of properties and have all the characteristics of a highway without being a through-route, such arrangements being common enough in residential estates. While this cul-de-sac serves only a handful of dwellings, they are sufficient in number to ensure that it does not have the enclosed, private feel of a courtyard. It also has the physical attributes of a highway, being tarmacked with a raised footway in places. Overall, as a matter of fact and degree, I regard Shires Close, including the area in front of the appeal property, as a highway, having regard to its size, function, features and appearance.

12. The house has a fairly modest garden and driveway to the front and is set back only a short distance from the highway (Shires Close) and footway. It faces directly towards the highway and the frontage is open in nature. Consequently, the elevation can be properly said to 'front' the highway.

13. The appellants argue that the front wall of the property does not include the upper storey of the front elevation, since the ground floor projects further forward. However, the relevant consideration is not whether it is the closest wall to the highway but whether or not the wall fronts the highway. The modest set back of the first floor is not sufficient to alter my view that the whole of the front elevation, ground and first floor, fronts the highway. I have considered those parts of the Government publication *Permitted development rights for householders Technical Guidance* to which I have been referred, but can see nothing to lead to a different view. Thus, in accordance with Paragraph G.2(k), and since it is installed above the level of the ground floor storey, the pump cannot be permitted development if it is installed on the front wall.

14. The appellants argue that the unit is not, in fact, installed on the wall, but rather is installed on the flat roof of the projecting ground floor element at the front of the building. However, there is insufficient evidence to support this claim. The Council advises that the pump was initially installed on the wall but that a steel frame was subsequently inserted between the unit and the roof below. It is not, however, clear whether or not the fixings attaching the unit to the wall were removed as part of that process and I am unable to determine from the information before me the extent to which the weight of the unit is borne by the roof rather than the wall. Moreover, the appellant advises that the unit is linked to the wall by rigid hydraulic pipes and cables, which are essential to its functionality. I conclude, on the balance of probability, that the unit is installed on the wall, resulting in conflict with G.2(k). The burden of proof falls on the appellants in an appeal on ground (c) and nothing submitted leads me to any contrary view.

15. The appellants say that the ASHP is more than 1m from the external edge of the roof, as required by Paragraph G.2 (g). The Council does not appear to accept that figure and I have not been provided with any details of the specific measurements that have been taken to support the appellants' assertion. But even if the appellants are right on that point, my finding of conflict with G.2(k) means it is not development permitted under Class G in any event.

16. For these reasons, the appeals on ground (c) fail.

Ground (a)

Main Issue

17. The main issue is the effect of the development on the character and appearance of the area.

Reasons

18. The appeal property is a 2 storey house. Although there are commercial units nearby, the house clearly relates to the other dwellings within this small cul-de-sac. The ground floor of the property projects a little at the front, and this part of the building has a flat roof. The pump is located on the front wall above the projecting ground floor element. It is located between 2 first floor windows.

19. The pump is contained within a boxy casing. I do not have details of its construction but the casing appears to be metal and includes a grill at the front. The unit is coloured black and white. Cabling and metal brackets are attached to the unit. Overall it has a functional, rather industrial appearance, similar to an air-conditioning unit. It does not blend in with or complement the appearance of the house in any way. Rather, the casing contrasts starkly with the brickwork of the house. The bracketry and cable add to its unsympathetic, utilitarian appearance.

20. Of course, houses necessarily have functional items attached to them. Indeed, ASHPs are often permitted development. However, in this instance the pump has been located particularly prominently in the middle of the first floor of the front elevation. Consequently, in view of its size and appearance, and despite being set back in relation to the ground floor element of the front elevation, it has a profound, negative effect on the character and appearance of the house. Since the house is set only a modest distance back from the front boundary and has an open aspect, the pump unit is highly prominent and has a significant and harmful effect on the character and appearance of the area.

21. The visual harm arising from the unit brings it into conflict with Policy 41 of the Doncaster Local Plan 2015-2035, which is concerned with character and local distinctiveness, and with Policy 44, which seeks to secure high quality residential environments through good design. While Policy 58 is generally supportive of low carbon and renewable energy projects, that is subject to them having no unacceptable adverse effects on local amenity or the built environment, amongst other things. Consequently, that policy does not support this development, given the visual harm it causes and there is conflict with the development plan as a whole. There is conflict too with Paragraph 130 of the National Planning Policy Framework (the Framework), which seeks to ensure that developments are sympathetic to local character.

22. It is clear that relocating the unit to the ground floor is not an attractive option to the appellant. It is suggested that doing so would take it outside the curtilage of the building, impede access to the building and/or require additional external works.

23. Nevertheless, the appellant accepts that it would be possible to relocate the unit on the front wall of the ground floor element of the house, in compliance with the permitted development provisions. While it is argued that such a location would be more prominent, I do not have details of any specific alternative location to assist with that assessment. Nevertheless, in my

judgement, location at ground floor level is likely to be less prominent and less visually harmful than the current, first floor location. Even if additional pipework or ducting were needed, that is unlikely to be as intrusive as the bulky ASHP in its current, prominent location. While it may be that a ground floor location would result in a loss of garden space, the effect of this would be limited.

24. I appreciate that the Council has not raised concerns regarding the effect of the unit in terms of noise, but that does not alter the visual harm I have found.

25. I am told that the occupants have no alternative means of heating or obtaining hot water. However, I have no reason to suppose that the ASHP would not be replaced with an alternative source of heating if relocation did not proved to be feasible. Although the appellant says that gas is not available, the property must have an electricity supply and it is not credible to suggest that an ASHP is the only way of providing heating and hot water.

26. I have had regard to the personal circumstances of the occupiers of the property, as outlined in the grounds of appeal, which includes reference to characteristics which are 'protected characteristics' under section 149(7) of the Equality Act 2010. The Equality Act contains a 'Public Sector Equality Duty', which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. However, having considered the particular matters raised in this instance, I am not persuaded that they indicate a need to permit the development.

27. The appellant has raised concern about the Council's handling of the matter, but the Council's position is clearly stated and it is clear that it has had a dialogue with the appellants since the matter was first drawn to its attention. It appears to me that it has cooperated adequately with the appellants and I do not see that it was obliged to set out alternative locations for the unit at the property. Nor do I regard this as simply a trivial or technical breach, given the harm I have found. Overall, there is nothing about the Council's handling of the matter that would lead me to any different decision on the appeal.

28. I accept that there are environmental benefits associated with the ASHP and that emissions are reduced. However, the benefit arising from this single unit does not outweigh the harm I have found.

Conclusion

29. I conclude that the benefits of the development do not outweigh the harm arising from it and the conflict with the development plan. Consequently, planning permission should not be granted and the appeal on ground (a) fails.

Ground (f)

30. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case, the notice requires the removal of the pump or its relocation in compliance with the relevant permitted development provisions. This is consistent with the purpose of remedying the breach of

planning control in accordance with s173(4)(a). Consequently, I do not regard the requirements as excessive.

31. That said, the enforcement procedure is intended to be remedial rather than punitive, and it is therefore important to consider whether any lesser steps could address the Council's concerns.

32. The appellants suggest screening the unit, possibly by extending the wooden handrail on the adjacent property across the front of the appeal property. However, while that would break up the impression of the ASHP, it would not fully screen it, and the wooden railings themselves would be a significant and prominent feature on the house. I do not have details of any other screening proposal, but it seems to me that anything sufficient to screen the unit would have a significant visual effect and would need careful consideration. On the information before me, it has not been demonstrated that screening could address my concerns. It may be that recolouring the unit could give it a more sympathetic appearance, but it would remain a bulky, utilitarian addition to a prominent part of the house, and thus would still be visually harmful, albeit to a reduced extent.

33. As I have explained in relation to the appeal on ground (a), I am not persuaded that the appellants' concerns regarding the feasibility of relocating the unit have been adequately demonstrated. Also for reasons explained in relation to ground (a), I am not persuaded that the requirements of the notice should be changed due to the occupiers' circumstances and the effect of the notice on them.

34. I conclude that the steps specified in the notice do not exceed what is necessary to remedy the breach of planning control. Nor would the lesser steps suggested by the appellant adequately address the harm arising from the development. Accordingly, the appeals on ground (f) fail.

Conclusion

35. For the reasons given above, I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended

Peter Willows

INSPECTOR