



Appeal Decisions

Site visit made on 11 April 2022

by **J Whitfield BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 May 2022

Appeal A Ref: APP/F4410/C/22/3291829

Aberdeen Bungalow, Drake Head Lane, Conisbrough, Doncaster DN12 2AB

- 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 Paul Heath against an enforcement notice issued by Doncaster Metropolitan Borough Council.
- The enforcement notice was issued on 26 January 2022.
- The breach of planning control as alleged in the notice is, without planning permission, the installation of a flue to an outbuilding located in the position marked "A" on Plan B on the Land.
- The requirements of the notice are:
 1. Remove the flue located in the position marked "A" on Plan B; and
 2. Following compliance with step (i) above, to permanently remove the resultant materials from the Land.
- The period for compliance with the requirements is 1 month.
- 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. 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.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld.

Appeal B Ref: APP/F4410/D/22/3290747

Aberdeen Bungalow, Drake Head Lane, Conisbrough, Doncaster DN12 2AB

- 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 Paul Heath against the decision of Doncaster Metropolitan Borough Council.
- The application Ref 21/02309/FUL, dated 12 July 2021, was refused by notice dated 13 January 2022.
- The development proposed is installation of wood burning stove and flue to outbuilding.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. Appeal A was originally made on grounds (d), (a), (f) and (g) of section 174(2) of the 1990 Act. However, the appellant has since withdrawn the appeal on ground (d). Appeal A therefore proceeds on grounds (a), (f) and (g) only.

Appeal A on ground (a) and Appeal B

Main Issues

2. The Council's reasons for issuing the notice and refusing planning permission are the same. The main issues for both appeals are therefore:
 - the effect of the development on the living conditions of neighbouring occupiers with particular regard to outlook; and,
 - the effect of the development on the character and appearance of the area.

Living Conditions

3. The appeal relates to the construction of a flue an outbuilding upon the Land, adjacent to the rear garden of 1 Butterbusk and close to the rear garden of No 3.
4. The external finish of the flue gives it a shiny, metallic effect resulting in a high degree of reflectivity. This has the potential to cause sunlight to be harmfully reflected towards the gardens and rear windows of No 1 and No 3. Nevertheless, I accept that such harm can be mitigated through the imposition of a condition requiring the flue to be painted in a matt finish and retained as such throughout the lifetime of the development.
5. However, the flue extends to a height of around 4.7m and around 1m above the roof of the building. It is sited close to the rear gardens of both No 1 and No 3 such that it is clearly visible in the outlook from their rear windows and from within the rear gardens. Even if painted in a matt finish, the flue will still appear as an intrusive element of industrial character. As a result, I consider the flue will be an incongruous and obtrusive feature in the outlook of both properties.
6. I conclude, therefore, that the development will have a harmful effect on the living conditions of the occupiers of 1 and 3 Butterbusk with particular regard to outlook. Thus, the development fails to comply with Policy 44 of the Doncaster Local Plan 2015-2035 (2021) (the LP) which states that developments must protect existing amenity and not significantly impact on the living conditions of neighbours.

Character and Appearance

7. The appeal relates to a large, single storey outbuilding located on the boundary of the Land adjacent to the rear gardens of 1 and 3 Butterbusk. The surrounding area is characterised by residential properties which are predominately single storey albeit there are some two-storey properties which front Doncaster Road. The roofscape in the area is generally characterised by dual pitched roofs. I nevertheless saw from my site visit that there is a wide range of chimneys, flues and aerials throughout the area.
8. The development concerns the provision of a flue the outbuilding to accommodate a wood burner within. I note that the flue appears somewhat industrial in appearance and has a height of around 4.7m.
9. Nevertheless, views of the flue from within the public realm are limited due to the presence of the properties on Butterbusk. As such, the flue is only visible

in slight views from Archers Way or in glimpses between the properties on Butterbusk. Moreover, given the prevalence of other roof paraphernalia within the immediate area, the flue does not appear out of context. Consequently, it does not appear unduly obtrusive or dominant within the street scene.

10. I conclude, therefore that the development does not have an unduly harmful effect on the character and appearance of the area. As such, it does not conflict with Policy 41 of the LP which requires development to assimilate into the built environment.

Other Matters

11. I note that the Council's officers recommended approval of the planning application in respect of Appeal B. However, the Council's committee resolved to refuse planning permission for the reasons set out in the decision notice. The committee was entitled to come to an alternative view to its officers and the fact that it did so, does not carry weight in favour of the appeal.
12. The appellant states that they have complied with every requirement set out by the Council and inspections were made on site and approved. I also note that the wood burner was installed by a professional company and is DEFRA approved. However, such matters do not carry sufficient weight to overcome the harm I have identified above.

Conclusions – Appeal A

13. Whilst I have found that the development will not result in harm to the character and appearance of the area, I have found there is harm to the living conditions of neighbouring residents. That is the prevailing consideration. Consequently, for the reasons given above, I conclude that Appeal A on ground (a) should not succeed.

Conclusions – Appeal B

14. Whilst I have found that the development will not result in harm to the character and appearance of the area, I have found there is harm to the living conditions of neighbouring residents. That is the prevailing consideration. For the reasons given above I conclude that Appeal B should be dismissed.

Appeal A on ground (f)

15. An appeal on ground (f) is made on the basis that the requirements of the notice exceed what is necessary. Section 173(4) of the 1990 Act sets out the purposes which an enforcement notice may seek to achieve. They are either (a) remedying of the breach of planning control or (b) remedying any injury to amenity which has been caused by the breach.
16. The notice does not state which of the two purposes it seeks to achieve. Nevertheless, the requirements are to remove the flue and resultant materials from the land. On that basis, it seems to me that the purpose of the notice is to remedy the breach of planning control by restoring the land to its condition before the breach took place. The purpose of the notice therefore falls under section 173(4)(a) of the 1990 Act.
17. I am satisfied, as a result, that the requirements to remove the flue and restore the land to its former condition do not go beyond what is necessary to remedy the breach of planning control. Whilst it is open to me to consider

obvious alternatives that would overcome the planning harm at less cost and disruption to the appellant, there are no such alternatives before me.

18. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

19. The appeals on ground (g) are that the time limit given for compliance with the notice is too short. The time period given for compliance is 1 month.

20. The appellant says additional time should be given for compliance since Appeal B relating to the refusal of planning permission is ongoing. However, the appellant has exercised his right of appeal under ground (a) in respect of Appeal A. Moreover, the notice is not brought into effect since a timely appeal has been made against it. Thus, there is no reason to add additional time for compliance to await the outcome of Appeal B, particularly since the two appeals have been linked such that the outcome of both appeals is determined at the same time.

21. The appellant suggests a period of 6 months would be more reasonable. However, no substantive reasoning for such a period has been put forward. It seems to me that the removal of the flue on the face of it would be a reasonably straightforward task and I see no reason, on the evidence before me, why it could not be achieved with the 1 month timescale required by the notice.

22. The appeal on ground (g) therefore fails.

Formal Decisions

Appeal A

23. 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.

Appeal B

24. The appeal is dismissed.

J Whitfield

INSPECTOR