

Enforcement Appeal

**Site: LANGDON INDUSTRIES SITE, WALFORD CROSS, TAUNTON, TA2 8QP
Alleged Breach of planning control: ALLEGED UNAUTHORISED B2 (WOOD
CHIPPING) BUSINESS USE OF FORMER B1 / B8 INDUSTRIAL UNIT.**

Reference Number: E/0035/14/15

Appeal decision: DISMISSED

Appeal Decision

Site visit made on 10 August 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 21 September 2016

Appeal Ref: APP/D3315/C/15/3141203

Land at Walford Cross Units, Walford Cross, Taunton, Somerset TA2 8QP

- 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 Nigel Dunn of Chipmunk South West Limited against an enforcement notice issued by Taunton Deane Borough Council.
 - The Council's reference is E0035/14/15.
 - The notice was issued on 8 December 2015.
 - The breach of planning control as alleged in the notice is:
Without planning permission, change of use of the site from B1 Office and B8 Storage and Distribution Business Use to B2 General Industrial Use as a wood processing business'.
 - The requirements of the notice are:
 - (i) *Cease the unauthorised use of the site for wood processing and associated storage; and*
 - (ii) *Remove from the site all equipment and materials associated with the unauthorised use.*
 - The period for compliance with the requirements is one month from the date of the Notice in respect of (i) and two months from the date of the Notice in respect of (ii).
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (e) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. Since the notice is found to be a nullity no further action will be taken in connection with this appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under section 188 of the Act.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Procedural Matters

3. Although not specified in the appeal form, the appellant's submissions relate to ground (e) in addition to grounds (a), (c) and (f). As the Council has had an opportunity to respond to the appellant's case advanced on ground (e), no party would be prejudiced by my consideration of the appeal on this basis.

4. The appellant's appeal statement also refers to a ground (b) appeal. However, it has since been clarified that this reference was made in error and no ground (b) appeal is being made.
5. In addition, the appellant claims that the unsigned and undated Enforcement Notice ("the EN") as served did not provide a copy of a plan showing the precise boundaries of the land to which it related (albeit reference to the plan was made in the EN) contrary to the requirements of Regulation 4 of The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002 ("the ENAR"). The Council has not disputed this claim. Furthermore, the appellant states that as required by Regulation 5 of the ENAR, the accompanying note to the EN does not provide name and address details of parties on whom the EN was served. These matters raise the question of nullity, which I am bound to consider.
6. Following the serving of the EN, the appellant removed the wood chip processing equipment comprising of two driers and two biomass boilers from the site. The Council subsequently visited the site and wrote to the appellant on 15 February 2016 confirming that it considered that the B2 activities had been removed and the EN had been complied with.

Reasons

7. Section 173(10) of the Act states that '*An enforcement notice shall specify such additional matters as may be prescribed, and regulations may require every copy of an EN served under s172 to be accompanied by an explanatory note giving prescribed information as to the right of appeal under s174*'. The additional matters are prescribed in the ENAR.
8. Regulation 4(c) of the ENAR states that an EN shall specify the precise boundaries of the land to which the Notice relates, whether by reference to a plan or otherwise.
9. The EN describes the land to which it relates as 'Land at Walford Cross Units, Walford Cross, Taunton, Somerset TA2 8QP ("the site") as shown edged red and shaded pink on the attached plan.' However, no plan was attached to the EN as served and the recipient would therefore need to rely on the description to identify the boundaries of the land to which the EN relates.
10. The appeal site comprises two linked buildings, part of a separate building which is in use as office and welfare facilities and a partly covered external yard. It forms part of a larger group of units at Walford Cross, which I am told have established storage and distribution uses. The unit immediately to the south is attached whilst the other units in the group are detached from the appeal site. Merely describing the appeal site as 'Walford Cross Units' does not identify the number of units to which it relates, be it linked or otherwise, nor does it distinguish those the subject of the EN from the other units within the larger group. Hence the description is not sufficiently precise to be able to identify the boundaries of the land to which the Notice relates as required by Regulation 4(c). In failing to comply with Regulation 4(c) there is also a failure to comply with section 173(10).
11. Furthermore, Regulation 5(c) requires that an EN must be accompanied by an explanatory note that shall include a list of the names and addresses of the persons on whom a copy of the EN has been served.

12. The Council has supplied the names (or identified contacts within companies) and full addresses of those persons on which it served the Notices with a covering letter in its appeal submissions. However, the list of names and addresses which appeared in the note accompanying the EN's as served appears to be incomplete, listing only the company names and little other detail.
13. These errors cannot be corrected by the explanation given and a copy of the plan provided by the Council at the appeal stage. Neither does the Council's contention that the official EN containing all relevant information required by the Act held on its Enforcement Register suffice. Unfortunately it appears that the Council has prematurely issued a draft notice that was incomplete. However, that was the official notice to those concerned and it fails to meet the statutory requirements of section 173(10) of the Act and regulations 4 and 5 of the ENAR. Accordingly, I find it is defective on its face and therefore a nullity. As the EN is a nullity, it is not capable of correction.
14. The Council also failed to sign and date the copy of the EN it served on the appellant. Although I do not find the appellant to be substantially prejudiced by this omission given that the covering letter which accompanied the EN was signed and dated, and S176(5) of the Act gives me the power to disregard non-service, it nonetheless adds to my concern regarding the completeness of the Notice as served.
15. As I have found the EN to be a nullity, the appeal under grounds set out in sections 174(2)(a), (c) and (f) to the 1990 Act, as amended, and the application for planning permission deemed to have been made under section 177(5) of the Act as amended do not fall to be considered.

Conclusions

16. For the reasons given I conclude that the appeal should succeed. Since the Notice is a nullity it is of no worth as a document and no appeal can be founded on it.

Melissa Hall

Inspector

Costs Decision

Site visit made on 10 August 2016

by Melissa Hall BA (Hons), BTP, MSc, MRTPI

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

Decision date: 21 September 2016

Costs application in relation to Appeal Ref: APP/D3315/C/15/3141203 Land at Walford Cross Units, Walford Cross, Taunton, Somerset TA2 8QP

- The application is made under the Town and Country Planning Act 1990, sections 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Nigel Dunn of Chipmunk South West Limited for a full award of costs against Taunton Deane Borough Council.
 - The appeal was against an enforcement notice alleging the change of use of the site from B1 Office and B8 Storage and Distribution to B2 General Industrial Use as a wood processing business.
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Decision

1. The application for an award of costs is allowed in the terms set out below.

The Submissions for the appellant

2. The Council served an unsigned and undated Notice, and has subsequently accepted that they were at fault and that the EN was not properly served.
 3. The Council has not engaged in positive discussion or correspondence with the appellant following the serving of the Enforcement Notice ("the EN") to clarify its intentions. Correspondence in respect of compliance with the EN following the removal of the boilers and driers was not received until some 7 weeks after their removal and after the appeal had been significantly progressed.
 4. The Councillors rejected the Officer's recommendations without any substantive evidence to support their reasons for refusal. No professional or technical evidence has been provided to contradict the findings of the submitted professional technical reports which accompanied the planning application.
 5. The steps required to comply with the requirements of the EN were excessive. It did not take into account the permitted usage under the extant B1/B8 permission. The Notice should have identified precisely the nature of the equipment and its activity and its location on a plan that needed to be removed and ceased. The EN is unclear, failing to properly identify the activity which represented the breach and is therefore unreasonable.
 6. In light of the above, unnecessary and wasted expense has been incurred in professional fees to prepare and submit the enforcement appeal and associated documents.
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The response by the Council

7. The Council made its decision based on the information and evidence supplied by the appellant and comments received in accordance with the legislation and procedures. The decision was taken to issue an EN for an activity that had been refused planning permission and for which a number of complaints had been received.
8. The activity that is subject to the EN is unauthorised and the appellant has not pleaded ground (b) in making his appeal. Rather, he has relied on ground (a) that planning permission should be granted. Thus the expense of preparing this aspect of the appeal is not unnecessary.
9. The Council did communicate with the appellant during the course of the appeal, including a telephone conversation regarding the content of the EN. The activity is unauthorised and the appellant is seeking to regularise the activity through ground (a). It is not considered that any additional communication would have made any difference to the amount of resource expended by the appellant. Any perceived lack of communication has not put the appellant to any unnecessary expense.
10. It was the appellant's decision to comply with the EN despite pursuing the appeal against the Notice. Thus, it does not consider that the appellant has incurred any unnecessary or wasted expense.

The response by the appellant

11. In refuting the claims in the Council's response, and in addition to elaborating upon the points already made, the appellant adds that the Council is duty bound to prepare an EN which is clear and unambiguous. The plan which was submitted as part of the Council's appeal submissions identifies the entire site and not just the location of the boilers and driers. Not all the activity on the site is unauthorised; storage is authorised and should not therefore be referred to in the EN.

Reasons

12. The Government's Planning Practice Guidance ("the PPG") advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The appellant suggests that the Council's behaviour falls into several categories of unreasonableness as outlined above and set out in the PPG.
13. The shortcomings of the EN are such that I have found that it is a nullity. The Council has a duty to ensure that the Notices served and the accompanying note are clear, accurate, complete and correctly worded in all respects. The Council had the option of withdrawing the EN and issuing a second in light of the concerns regarding its completeness and accuracy. It did not. I therefore conclude that an EN which was defective on its face amounts to unreasonable behaviour causing the appellants to incur unnecessary expense in appealing. A full award of costs is therefore being made in this respect.

Costs Order

14. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and County Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Taunton Deane Borough Council shall pay to Chipmunk South West Limited, the costs of the appeal proceedings described in the heading of this decision.
15. The appellant is now invited to submit to the Council, to whom a copy of this decision has been sent, details of these costs with a view to reaching an agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for detailed assessment by the Senior Court Costs Office is enclosed.

Melissa Hall

Inspector

Appeal Decisions – 21 October 2016

Site: 10 TRISCOMBE ROAD, TAUNTON, TA2 7PG

Proposal: Erection of fence above front wall and raising of fence to side of 10 Triscombe Road, Taunton (retention of works already undertaken)

Application number: 38/16/0080

Reasons for refusal

The fence above the existing wall, by virtue of its, design, height and positioning, appears as an incongruous addition to the street scene, in a prominent corner position and does not relate well to the surroundings thus detracting from the character and visual amenity of the area and as such, it is considered contrary to policy DM1d (General Requirements) of the Taunton Deane Core Strategy.

Appeal decision: DISMISSED

Appeal Decision

Site visit made on 24 August 2016

by David Walker MA MRTPI

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

Decision date: 12th September 2016

Appeal Ref: APP/D3315/D/16/3153942

10 Triscombe Road, Taunton, Somerset TA2 7PG

- 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 Nick Wright against the decision of Taunton Deane Borough Council.
 - The application Ref 38/16/0080, dated 27 February 2016, was refused by notice dated 29 April 2016.
 - The development proposed is a fence above front wall and raising front fence to side of house.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the appeal is the effect of the proposal on the character and appearance of the area.

Reasons

3. Triscombe Road is a residential street with a range of house types, designs and external finishes along its length. On the appeal site side of the street, however, there is more architectural uniformity in a row of semi-detached houses of similar design. The appeal site being is last property of the row before Triscombe Road turns to link with Quantock Road.
 4. At my site inspection it was apparent that many of the properties along the street had been improved and so there was some variety in the appearance of individual houses. However, with the exception of the tall fence installed at the appeal site, front boundary enclosures were predominately less than one metre in height. I find these low height enclosures to be an important factor in retaining satisfactory openness between opposing properties along the otherwise narrow street.
 5. In this context, therefore, the height of the proposed fence stands out as a discordant feature that is out of character with the uniformity I have identified along this side of the street. I acknowledge the tall front boundary fence at a nearby corner property, but as I have nothing before me to explain the history of that fence I do not afford it significant weight.
 6. In reaching my findings, I acknowledge that a close neighbour raises no objection to the proposal. I am mindful, however, of the risk of precedent that
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would arise were the proposed fence be approved. Given the number of similar properties along the street a precedent would allow a proliferation of other tall fences that would give rise to significant harm to the visual qualities of the area.

7. Overall, therefore, the harm to the character and appearance of the area I have identified conflicts with criterion 'd.' of Policy DM1 of the Taunton Deane Borough Council Adopted Core Strategy 2011-2018 which requires that the appearance and character of a street scene is not unacceptably harmed by development.

Conclusion

8. For the reasons given above I conclude that the appeal should be dismissed.

David Walker

INSPECTOR

Appeal Decisions – 12 October 2016

Site: MOUNTLANDS SCHOOL, 103 SOUTH ROAD, TAUNTON, TA1 3EA

Proposal: Replacement of timber windows with double glazed white Upvc at Mountfields School, 103 South Road, Taunton

Application number: 38/16/0101

Reasons for refusal

The proposal would result in a poor appearance through the use of unsympathetic modern materials that would be at odds with the otherwise traditional character and appearance of the dwelling and surrounding Conservation Area. The proposal would therefore fail to enhance or maintain the character and appearance of the Conservation Area, contrary to Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. There would be no overriding public benefit to justify this harm and, therefore, the proposal will conflict with Taunton Deane Core Strategy Policies DM1(d) and CP8 and Paragraphs 132 and 134 of the National Planning Policy Framework.

Appeal decision: Dismissed

Appeal Decision

Site visit made on 5 September 2016

by Thomas Bristow BA MSc MRTPI

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

Decision date: 13 September 2016

Appeal Ref: APP/D3315/W/16/3152484

103 Mountlands School, South Road, Taunton, Somerset TA1 3EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Mr N Smy against the decision of Taunton Deane Borough Council.
 - The application Ref 38/16/0101, dated 16 March 2016, was refused by notice dated 24 May 2016.
 - The development proposed is the replacement of existing windows with double glazed white uPVC.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal follows two unsuccessful planning applications for the replacement of windows at No 103 with uPVC units.¹ The Council have explained that the proposal to which this appeal relates is the same as its predecessors, which accounts for the 2010 date given on the associated drawings.² However, as each proposal must be determined on its merits in the light of present circumstances, the planning background to this appeal is of limited significance.

Main Issue

3. The main issue is whether or not the proposal would preserve or enhance the character or appearance of the surrounding *South Road Conservation Area* (the 'Conservation Area').

Reasons

4. No 103 is a fine late Victorian semi-detached villa currently arranged and occupied as 6 flats. Whilst several mature trees partially screen views of the property, its principal elevation is nevertheless visible from various nearby public vantage points. Part of the late nineteenth century development of the area, No 103 typifies the largely consistent form, pattern and design of many nearby properties: grand houses set back from the highway constructed chiefly

¹ Applications Ref: 38/10/0351 and 38/14/0367.

² An untitled site plan, untitled block plan, and drawings entitled 'SR10/04 01' and 'SR10/04 02 Rev: B'.

of brick with accentuated courses which commonly host a variety of intricate design features commensurate with their historic origins including bay windows, turrets, oriel windows, stone quoins and ornate pilasters.

5. It appears that No 88 South Road, likewise an historic property, opposite the appeal site hosts modern windows. However it is the side elevation of this property that directly faces the highway which contains only two modest rectangular windows, meaning that the presence of non-original windows here is not readily apparent. Whilst occasionally uPVC windows are present within the Conservation Area, they are far from a common feature. Indeed, to the contrary, traditional timber framed windows of intricate design appeared to me to be a largely consistent unifying characteristic of the area: such windows are clearly visible at nearby Nos 91, 93, 95 and 97 South Road.
6. The Conservation Area hosts some modern development, notably what appeared to be relatively newly created outbuildings associated with nearby Nos 101 and 99, and No 84 itself which is of more modern appearance than the prevailing nature of properties in the area. The appellant has highlighted a number of such more recent developments. Nevertheless I have identified above that there is a strong consistency to the Conservation Area in respect of the form, pattern, design features and building materials of properties which includes timber framed windows of detailed design. There is furthermore limited information before me in respect of the planning considerations relevant to the other development within the Conservation Area that the appellant has mentioned, and, moreover, the presence of incongruous development does not justify unacceptable development in the present.
7. Windows within the principal elevation of No 103 facing South Road appeared to be universally timber framed sash or casement windows of classical design. Potentially original to the property, their timber frames are consistent with the historic palette of materials present. Most host a single delicate central mullion, with glazed panes and frames of curved form to match the arched stone window heads of the property. Whilst No 103 hosts some uPVC windows and non-original external doors, these relate to its side and rear elevations within the lower floors of the property, and as such are not readily apparent from public vantage points. No 103 as viewed from the public domain therefore retains its historical architectural coherence, an integral part of which are its windows both in respect of their traditional materials and delicate design. In turn No 103 reinforces the characteristics of the Conservation Area and contributes positively to it.
8. Policy CP8 '*Environment*' of the *Taunton Deane Borough Council Core Strategy 2011-2028* adopted on 11 September 2012 (the '*Core Strategy*') prevents development that would harm the historic environment, unless other factors outweigh this harm. More generally criterion (d) of policy DM1 '*General Requirements*' of the *Core Strategy* establishes that development must not unacceptably harm the character and appearance of its surroundings. Similarly, Section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* (the '*1990 Act*') requires that I pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas. Likewise the *National Planning Policy Framework* (the '*Framework*') sets out that great weight should be given to the conservation of designated heritage assets, including Conservation Areas. It further requires

that any harm that would result from development proposed is balanced against the public benefits that would arise.

9. The proposal is to replace the existing windows of No 103 with double-glazed uPVC units. There is, however, no substantive detail before me as to the proposed design of these units; the appellant indicates that they would be of 'similar appearance' to the existing units but there are no detailed drawings or specifications to demonstrate that this would be so. The Council sets out, however, that the curved form of the existing windows would not be reproduced, and the appellant appears not to dispute this point.
10. On this basis the proposal would result in the use of incongruous modern materials in what is presently a property with a clear historic integrity. The proposal would furthermore compromise the appearance of the windows by reducing the fine detailing currently present. This would, in my view, be highly detrimental to the character and appearance of the property and the Conservation Area given that classical timber-framed windows are an important characteristic feature of both. Although I acknowledge that the simultaneous replacement of all units would ensure their consistency, this would not obviate the harm that would arise.
11. I appreciate that it has been stated that this proposal has been made with the objective of improving the living conditions of the occupants of the property in respect of insulation and fuel efficiency.³ However there is no robust evidence before me in respect of the current state of repair of the windows, in respect of the benefits of the uPVC units proposed compared with alternative options for securing the same benefits, or that existing windows result in the property being inherently unsuitable for continued occupation. Moreover these stated benefits are chiefly private rather than public, with reference to paragraph 134 of the Framework.
12. For these reasons the proposal would significantly compromise the currently coherent traditional character of No 103. As the property is visible within and reinforces the largely consistent historic characteristics of the Conservation Area, the proposal would thereby harm the Conservation Area and fail to preserve or enhance its character and appearance. Although the proposal may entail some benefits to its occupants, these benefits have not been robustly justified, and there is no evidence before me to find that the public benefits of the proposal would outweigh the harm that would result. The proposal therefore conflicts with the relevant provisions of policies CP8 and DM1 of the Core Strategy, and with relevant elements of the Framework.

Other Matters

13. The appellant avers that the differential planning requirements for buildings containing one or more flats as opposed to dwellinghouses in respect of replacing windows is unreasonable, which may relate to permitted development

³ There is also mention within the appellant's *Design and Access Statement* supporting the original application of replacement windows providing a means of emergency escape for occupants, however this matter is not subsequently referred to in the appellant's appeal statement, nor is there evidence before me to indicate that the current access arrangements for the building are inadequate.

rights.⁴ However there is no explicit reference within legislation to the replacement of windows, and the Government's *Permitted development rights for householders, Technical Guidance*, dated April 2016, does not specifically establish that uPVC windows are appropriate replacements for existing units in all instances.⁵ Moreover the Council have explained in their appeal statement that they may consider using planning enforcement powers to address breaches of planning control where they consider it expedient to do so. Consequently neither this, nor any other matter, is so significant as to outweigh my finding on the main issue in this case.

Conclusion

14. For the above reasons, and taking all other matters into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. The proposal does not represent sustainable development, and I therefore conclude that the appeal should be dismissed.

Thomas Bristow

INSPECTOR

⁴ Buildings containing one or more flats do not benefit from permitted development rights under Schedule 2, Part 1, Class A of *The Town and Country Planning (General Permitted Development) (England) Order 2015* that otherwise apply to dwellinghouses.

⁵ Page 31 thereof states that '*it may be appropriate to replace existing windows with new uPVC double-glazed windows*', rather than that it is appropriate, given that this is essentially a matter of judgement based on the nature of the development proposed and its particular context.

APPEALS RECEIVED

Site: LAND TO THE SOUTH OF KNAPP LANE, NORTH CURRY

Proposal: Residential development with the erection of 20 No. dwellings (including 5 affordable dwellings) with provisions of public open space, children's play area and allotments on land to the south of Knapp Lane, North Curry

Application number: 24/16/0007

Appeal reference: APP/D3315/W/16/3155452

Enforcement Appeal

RE-START OF PREVIOUS APPEAL

Site: FAIRFIELD STABLES, MOOR LANE, CHURCHINFORD, TAUNTON, TA3 7RW

Alleged breach of planning control: UNAUTHORISED SITING OF MOBILE HOME AND CHAGE OF USE OF STABLE TO RESIDENTIAL OCCUPATION AT FAIRFIELD STABLES, MOOR LANE, CHURCHINFORD

Reference number: E/0196/10/15

Appeal reference: APP/D3315/C/16/3149290
