



## Appeal Decision

Hearing Held on 8 August 2018

Site visit made on 8 August 2018

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Decision date: 18 September 2018**

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**Appeal Ref: APP/X1925/C/16/3164458**

**Land at Plot B adjacent to Claypit Cottages, Luton Road, Offley SG5 3DN**

- 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 J J Kelly and Sons Limited against an enforcement notice issued by North Hertfordshire District Council.
  - The enforcement notice was issued on 13 September 2016.
  - The breach of planning control as alleged in the notice is the erection of an unauthorised detached house and associated garage both edged blue on the attached plan.
  - The requirements of the notice are (i) Demolish the dwelling and garage edged blue on the attached plan and remove any hard standing and foundations associated with the unauthorised development (excluding any block pavements in association with the driveway and access roads hatched on the attached plan); and (ii) Clear the site of all demolition materials, make good and set the area where the dwelling and garage were located with grass seed or turf.
  - The period for compliance with the requirements is (i) 3 months from 22 December 2016; and (ii) 4 months from 22 December 2016.
  - The appeal 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 (the Act).
  - This decision supersedes that issued on 9 August 2017. That decision on the appeal was remitted for re-hearing and determination by consent order of the High Court.
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### Decision

1. The enforcement notice is corrected by the deletion of 'from 22 December 2016' in both periods for compliance in section 6 of the notice.
2. The enforcement notice is varied by:
  1. the deletion of 'and garage' and 'hardstanding and' in requirement (i) in section 6 of the notice;
  2. the deletion of 'and garage were' in requirement (ii) in section 6 of the notice and the substitution instead of 'was'.
3. The appeal is dismissed with regard to the dwelling and planning permission is refused on the application deemed to have been made for the dwelling under section 177(5) of the Act.
4. The appeal is allowed with regard to the garage and planning permission is granted on the application deemed to have been made under section 177(5) of the Act for the development already carried out, namely the erection of a garage on

land at Plot B adjacent to Claypit Cottages, Luton Road, Offley, subject to the following condition:

1. The garage shall only be used for residential purposes and not for any commercial or business purpose.

5. Subject to the correction and the variations the enforcement notice is upheld.

### **Correction to the enforcement notice**

6. The periods for compliance in section 6 of the enforcement notice state the start date of the periods. The date became incorrect once an appeal had been submitted against the notice. The enforcement notice has therefore been corrected by the deletion of the date in both periods for compliance.

### **Site and planning history**

7. The appeal site is part of a plot of land for which planning permission 12/00256/1 was granted for the erection of three detached dwellings and detached garages (the first permission). This permission was implemented but the buildings have been erected in different positions and to different designs to those shown on approved drawings. Planning permission 12/02507/1 (the second permission) was granted for material amendments to the first scheme and, subsequently, having been alerted to the incorrect positioning of the dwellings, the Council granted planning permission 13/02910/1 (the third permission) to regularise the development, but only for Plots A and C. Planning permission was refused for Plot B and a subsequent appeal (the previous appeal) against that decision was dismissed. Two further applications seeking authorisation for the as built position of the dwelling on Plot B have also been refused.

### **Reasons**

8. The reasons for issuing the enforcement notice do not state the alleged harm caused by the unauthorised development or any conflict with the development plan by reference to plan policies. For this reason the Appellant maintains that the notice is a nullity. The reasons do refer, amongst other things, to the refusal of retrospective planning permission for the dwelling and garage, and to the dismissal of a previous appeal against that refusal of planning permission. The planning application number is stated as is the appeal reference number.

9. The planning application refusal notice, which the Appellant will have understood because he submitted an appeal against it, identifies the harm alleged to have been caused by the development, and relevant development plan policies are considered in the appeal decision. Reference to the two documents in the reasons for issue of the notice is sufficient for the requirements of section 173(10) of the Act to have been met. Furthermore, the Appellant makes no claim that he has been prejudiced. For these reasons the notice is not a nullity.

The ground (c) appeal

10. The Appellant has argued that the as built position of the dwelling on Plot 2 was shown on a drawing submitted with the second permitted application for material amendments to the first permission, and that therefore approval has been granted for its revised position. But the description of the development, either as made or as amended by the Council, makes no mention of the repositioning of the

dwelling on Plot B and nowhere else in the second application is there mention of the revised siting of the dwelling. The aforementioned drawing is a landscape drawing. It is not annotated to indicate that the position of the dwelling is different to that approved in the first permission, it does not show, importantly, the position of the dwelling relative to neighbouring properties, and there are discrepancies with the site plan approved in the first permission. For these reasons the landscape drawing does not alter the conclusion that the second permission did not authorise the revised position of the dwelling on Plot 2.

11. The Appellant has also argued that the differences between the approved and as built position of the dwelling on Plot 2 are *de minimis*, and that, therefore, the as built position is approved by the first permission. A report commissioned from a surveying consultant by the Appellant concludes that the dwelling as built on Plot B is 1.57 metres to the west and 1.79 metres to the south of the position approved by the first permission. Such siting differences might be *de minimis* when considering the siting of an agricultural building in a remote countryside location but they are not *de minimis*, as a matter of planning judgement, when considering the siting of a dwelling in a village location where dwellings and other buildings are sited in close proximity to each other. In such a location siting differences as set out above can have significant consequences for matters of acknowledged importance such as outlook from neighbouring properties.

12. The siting of the dwelling on Plot B is not approved by the first permission and the differences between the approved and the as built positions of the dwelling are not *de minimis*. The ground (c) appeal thus fails.

The ground (a) appeal

13. The main issue is the over dominance of the dwelling on Plot B as built in the outlook from, and therefore its effect on the living conditions of, the residents of 3-4 Claypit Cottages, a mid-terraced dwelling to the west of Plot B.

14. The Development Plan is saved policies of the North Hertfordshire District Local Plan No.2 (DLP). DLP policy 57 is a detailed twelve part policy concerning, amongst other things, design, layout and privacy. The policy states that site characteristics and topography are all factors which can affect layouts, and each housing site is unique and that each new development must relate to the site's physical shape and existing features.

15. 3-4 Claypit Cottages is a two storey dwelling with a garden area on its east side that is about 17 metres long and 9 metres wide. From the north-west corner of the garden a paved pathway about 22 metres long leads to the public highway. To the east of the garden and pathway is Plot 2 and along the boundary is a high fence. On the east elevation of the terraced dwelling is a small sun room, and a kitchen and bedrooms at first floor level overlook the garden. The property has an amenity area on its west side beyond which is an open field. Access to and from the dwelling for residents is via the pathway and through the garden, within which is play equipment, a garden house and paved sitting out areas.

16. The dwelling on Plot B has a south-west gable end and a steep roof of about 60 degrees. The drawing of the dwelling approved by the first permission shows the dwelling to have a ridge height of about 9.6 metres. The dwelling as built has a ridge height of about 9.1 metres, but evidence indicates that ground levels on Plot B were raised during the implementation of the development. This became apparent during the Hearing when a drawing (ID3) showing pre-development site

levels was compared with a drawing (ID5) showing post-development site levels. This raising of ground levels was also noted at the site visit. The consequence of the actual ridge height of the dwelling, compared to the approved height, and the raising of ground levels is that, in height terms relative to ground levels at 3-4 Claypit Cottages, the dwelling as built is about the same as the approved dwelling.

17. The appeal decision that was quashed by consent order of the High Court granted planning permission for the dwelling as built on Plot B subject to one condition. The condition required off-white horizontal cladding board to be installed to the top half of all the brick elevations of the house on Plot B. The Appellant complied with the condition and the house has off-white cladding above ground floor brick elevations. From the garden area at 3-4 Claypit Cottages the cladding on the gable end of the dwelling is stark, bright and visually intrusive. If planning permission was again to be granted it would be subject to a condition that the cladding is removed. Consequently, the impact of the dwelling will be considered as if the cladding had been removed.

18. The Appellant maintains that the dwelling as built should be compared against the fall-back position of a house erected on Plot B in the position as approved. The dwelling was 'moved' from its approved position, in part, to accommodate the installation of a drain around the north corner of the dwelling. A dwelling in its approved position would be over the drain but it is conceivable that the drain could be relocated and even that the drain could pass under the building subject to the approval of the statutory water authority. The local planning authority has indicated that approval for the erection of a replacement dwelling would be forthcoming. The fall-back position is realistic and the dwelling as built will be compared against the approved dwelling, though without reference, given the conclusion in paragraph 15, to ridge height.

19. The site plan approved under the first permission shows the south-west elevation of the dwelling on Plot B to be to the east of the pathway and between two and five metres from the boundary fence, with the associated garage about one metre from the boundary and to the east of the garden. The current residents of 3-4 Claypit Cottages have not expressed any substantive concern about the garage, despite its proximity to the boundary, because it is single story and because its roof slopes up away from the boundary. Because it is further to the south the dwelling has been built to the east of the pathway and the garden at 3-4 Claypit Cottages. It is this factor, above all others, that is critical.

20. The dwelling as built, given its location further to the south, intrudes into and is more prominent in the outlook from 3-4 Claypit Cottages than would be the approved dwelling. Furthermore, given its location further to the west, the dwelling as built is more dominant in the outlook from the neighbouring property than would be the approved dwelling. From the centre of the garden area at 3-4 Claypit Cottages the south-west gable end of the dwelling as built is at a distance of about 14 metres whereas the gable end of the approved dwelling would be about 15 metres away. As mentioned in consideration of the ground (c) appeal siting differences of even this nature can have significant consequences for the effect of a building on the outlook from a neighbouring property.

21. The removal of the cladding from the dwelling would not reduce the height, scale and bulk of the dwelling as built and would not alleviate any harm caused. There is a realistic fall-back position and the dwelling as built has been compared to that position. But, in the final analysis, the dwelling as built must be judged on

its individual merits. Taking into account its physical size and its proximity and relationship to the neighbouring property to the west, the dwelling as built on Plot B, as a matter of planning judgement, is prominent, dominant and intrusive in the outlook from 3-4 Claypit Cottages. The dwelling as built on Plot B has a significant adverse effect on the living conditions of the current residents, and would have on any future residents, of this neighbouring property.

22. It was suggested at the Hearing that the dwelling as built could be altered to have a hipped roof rather than a gable roof. Such a material alteration to the dwelling would significantly alter its appearance and would require a grant of planning permission. In any event, the dwelling has a steep pitched roof of about 60 degrees and altering the roof in this way would not reduce the ridge height of the dwelling, would not appreciably reduce the bulk of the building, and would not alleviate the harm that is caused to neighbouring living conditions.

23. The dwelling as built on Plot B has a significant adverse effect on the living conditions of the current residents, and would have on any future residents, of 3-4 Claypit Cottages. Removal of the off-white cladding would not alleviate the harm that is caused and there are no other conditions that would result in the development being acceptable in planning terms. The dwelling conflicts with DLP policy 57. The ground (a) appeal thus fails in relation to the dwelling.

24. The Council agreed at the Hearing that the garage, and associated hardstanding, could be retained. If the dwelling is demolished to comply with the terms of the corrected and varied enforcement notice, the garage would be unrelated to a dwelling and there would be the potential for its use for non-residential purposes. It is, however, sited in close proximity to dwellings on Plots A and C and is in a residential neighbourhood and the garage could serve a useful residential purpose subject to imposition of a condition to control its use. A condition to control use of, and activity on, the hardstanding associated with the garage fails the tests of necessity and enforceability.

25. The ground (a) appeal thus succeeds in relation to the garage and planning permission has been granted subject to the aforementioned condition. The enforcement notice has accordingly been varied by the deletion of references to the garage and hardstanding.

The ground (f) appeal

26. The Appellant argues that the requirements of the enforcement notice exceed what is necessary to remedy the breach of planning control, because the first planning permission granted approval for a dwelling and garage on Plot B. But varying the notice to require, in the alternative, the erection of a dwelling in accordance with the first permission would serve no purpose because the dwelling as built must first be demolished, which is the principal requirement of the notice. The possibility of altering the dwelling to have a pitched roof rather than a gable roof has been considered in the ground (a) appeal. No other matters mentioned in support of the ground (f) appeal alter the conclusion that the demolition of the garage does not exceed what is necessary to remedy the breach of planning control. A future use of Plot B must be determined through the submission of a planning application to the local planning authority. The ground (f) appeal fails.

*John Braithwaite*

Inspector

## **APPEARANCES**

### FOR THE APPELLANT:

Mr C Watts DMS MRTPI                      Planning Consultant

Mr Sanders

Mr T Cooper

### FOR THE LOCAL PLANNING AUTHORITY:

Mr A Ranatunga                              Barrister

Mr P Hughes                                 Planning Consultant

### INTERESTED PERSONS:

Mr A Jones                                  Neighbour

Mr D Edwards QC                         Representing Mr Jones

Mr A Evans                                 Planning Consultant representing Mr Jones

## **DOCUMENTS**

- 1     Site photographs
- 2     Construction Phase Plan
- 3     Existing Ground Level Survey and Trial Pit Locations
- 4     Location and Site Plans
- 5     Planning Permission Overlay – Drwg. No. GO-3.DWG
- 6     Topographical Survey – Drwg. No. 17525
- 7     Existing Site Plan – Drwg. No. 386-02-A