



Appeal Decisions

Hearing held on 18 October 2005

Site visit made on 18 October 2005

by **J G Roberts** BSc(Hons) DipTP MRTPI

an Inspector appointed by the First Secretary of State

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Date **16 DEC 2005**

Appeal A Ref: APP/L2820/C/05/2000768

Land rear of 10 Barlows Lane, Wilbarston, Market Harborough, Leicestershire LE16 8QY

- 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 Messrs W W Brown & Sons against an enforcement notice issued by Kettering Borough Council.
- The Council's reference is EN/04/0917.
- The notice was issued on 20 December 2004.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a brick built building measuring approximately 13.5m x 14.5m x 5m (height) in the approximate position marked with a green cross on the plan attached to the enforcement notice.
- The requirements of the notice are (1) cease any further operational development, engineering operations, or other works to the building other than in compliance with step (2); demolish the building and permanently remove from the land all building materials and rubble arising from the demolition.
- The period for compliance with the requirements is 1 week in respect of Requirement (1) and 3 months in respect of Requirement (2).
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of decision: the notice is corrected and the requirements are varied; subject thereto the appeal is dismissed, the notice is upheld and the deemed application is refused.

Appeal B Ref: APP/L2820/A/05/2001189

Land rear of 10 Barlows Lane, Wilbarston, Market Harborough, Leicestershire LE16 8QY

- 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 W W Brown & Sons against the decision of Kettering Borough Council.
- The application Ref KE/04/0984, dated 8 September 2004, was refused by notice dated 19 October 2004.
- The development proposed is: substitution of house type - erection of two storey detached dwelling with adjoining garage (Plot one).

Summary of decision: the appeal is allowed and planning permission is granted subject to conditions.

Procedural Matters

1. At the Hearing an application for costs was made by W W Brown & Son against Kettering Borough Council. This application is the subject of a separate decision.

Background

2. The appeal site, also known as Plot 1, fronts Orchard Close, a private drive off Barlows Lane within the Wilbarston Conservation Area. The drive serves 3 modern detached houses as well as the uncompleted dwelling before me. One of them is immediately to the east. Planning permission was granted for a house on this site (formerly known as Plot 2) in August 2000 subject to conditions (Ref: KE/00/0212). Some of the conditions required written approval of details before commencement of the development, including those of the external materials.
3. As prior approval was not obtained this house was built in breach of planning control. This did not come to the attention of the Council until after completion and occupation in June 2001. It decided to take no action. The house as built, faced in a combination of brick and stone very similar to those used on the appeal building, is now immune from enforcement action and hence lawful.
4. Planning permission was granted for a house on the appeal site in January 2001 subject to conditions (Ref: KE/00/0543). Also stamped as approved was Drawing No MMB/WWB 7a showing the elevations of the proposed house and a schedule defining the distribution of materials, which, for walling, included both stone and brick.
5. However, Condition 2 subject to which planning permission was granted states that notwithstanding the submitted details the precise arrangement of external walling and roofing materials is not approved. It also required representative samples or details of all facing materials to be submitted to and approved by the local planning authority prior to the commencement of the development. Some ambiguity arises because Condition 7 required all external walls to be constructed of natural local stone and a sample panel to be approved before work commenced.
6. In June 2002 the appellant wrote to the Council specifying the proposed materials. In September the Council replied, accepting in principle a combination of brick and stone but giving no specific approval to their distribution and drawing attention to the terms of Condition 2. However, the outstanding matters were not approved and construction began in the late Autumn of 2002. It therefore began in breach of planning control, and continued up to wall plate level with facing materials as shown on Drawing MMB/WWB 7a.
7. Subsequently a revised application was submitted (Ref: KE/04/0984). It differed from that approved in 2001 in 2 ways – the insertion of 2 additional ground floor windows and an altered roof form. It was recommended by officers for approval subject to conditions, again requiring details of external materials to be submitted to and approved by the local planning authority before development commenced (although prior approval was no longer possible), but planning permission was refused on 19 October 2004 for reasons relating to size, massing and form (but not the distribution or mixture of materials). This refusal is the subject of Appeal B.
8. Enforcement action (Appeal A) was then taken against the uncompleted building. The reasons for issue included reference to the mixture of brick and stone which, in the Council's view, did not preserve or enhance the character or appearance of the Conservation Area. Walls constructed entirely of natural local stone were suggested.

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Appeal A - ground (b)

9. The building is not built of brick. Internal walls are of blockwork and it is faced with a mixture of brick and stone. Indeed, the fact that it is so is one of the main points of dispute between the parties. The appeal on ground (b) succeeds and the notice is corrected to refer to a building faced in brick and stone.

Appeal A - ground (a) and the deemed application; Appeal B

Planning policy

10. The development plan includes the Northamptonshire County Structure Plan (NCSP) adopted in March 2001 and the Kettering Borough Local Plan (KBLP) adopted in January 1995. The former promotes high quality design in the context of the defining characteristics of the local area (Policy GS5) and requires proposals in conservation areas to conserve, and where appropriate enhance, their character, appearance and setting (AR6).
11. The KBLP requires all development to be appropriate in scale and design (Policy 30) and sets criteria for new residential development in Restricted Infill Villages such as Wilbarton (RA3), which should be appropriate in size, form and character. New buildings in conservation areas are permitted only if they would preserve or enhance the character or appearance of the area (Policy 22).

Main issues

12. The main issue is whether the building would preserve or enhance the character or appearance of the Conservation Area.

Reasons

The Council's objections

13. At the hearing the appellant sought clarification of the local planning authority's case, given the apparent inconsistency between the reasons for refusal and the reasons for issue of the enforcement notice. The Council's agreed position is now that the distribution of brick and stone that is the main issue, not the use of the 2 materials in principle or the size, massing or form of the building. The dominant parts of the building should, in the Council's view, be faced in stone; some subservient elements could be faced in brick.

The form of the roof

14. I turn first to the subsidiary issues. One relates essentially to the amended roof form, not to the insertion of 2 additional downstairs windows. The amended form was analysed by a Planning Officer in her report to a Committee meeting on 19 October 2004. The house, though large, would step down the slope and the use of more than one facing material would help to break down its apparent bulk. So far as the form of the building is concerned I agree with her conclusion that the result would be a more balanced and symmetrical building that would be an improvement on that previously approved.
15. It would be part of a distinct enclave of modern houses that is visually separate from the older frontage development of the village. The views of it from the east-west stretch of Barlows Lane would be restricted but not prevented by a cottage on the roadside immediately to the south (No 10) and by the high wall with trellis the east of it. It is

possible to identify the building from Stoke Albany but it does not appear over-dominant in the view of Wilbarston. Its size, massing and form would not harm the character or appearance of the Conservation Area but would preserve both. Whether it would enhance either is difficult to evaluate without further information on the previous condition of the land. However, I have no reason to dispute the officer's conclusion on 30 January 2000 that the previously approved scheme (on which the present one is an improvement in terms of form and massing) would be 'an asset to the appearance of the Conservation Area'.

A combination of brick and stone?

16. From my tour of the village, during which an interested person pointed out the use of materials on various buildings (including those where both brick and stone were used) and her views on their historical origins and evolution, I also conclude that the use of a combination of brick and stone on the appeal building would not be inappropriate in principle.
17. Two of the modern houses nearby are faced in a combination of brick and render. Similar materials feature on the houses either side of the entrance to Orchard Close. The adjoining house on Plot 2, faced in a combination of brick and stone very similar to that used on the uncompleted building on Plot 1, was not built in accordance with the planning permission granted in 2000 but is now lawful and forms part of the immediate context of the appeal site. Further, I agree that the use of more than one material can help to break down the apparent bulk of a large building. Finally the materials used to face the walls of the appeal building appear to be good quality brick and local ironstone of an acceptable colour, laid in an appropriate fashion and in a workmanlike manner.

The distribution of brick and stone

18. In general terms the local planning authority would prefer brick to be restricted to subsidiary elements of the building (possibly the double garage). An interested person suggested that the garage is not a subsidiary element and should therefore be faced in stone also. However, at the hearing I asked participants to state their preferences for each elevation separately. From their answers it seems to me that the main areas of concern are the north elevation (including the garage) and the south elevation facing Barlows Lane.
19. On the north elevation the gabled and middle sections have been faced in stone and the eastern, higher section in brick. The garage is intended to be faced in brick also. The use of the 2 materials in this way helps to reduce the apparent bulk of the building. Use of stone only would not. This elevation is closely related to the new houses on Orchard Close rather than to older buildings on the historic thoroughfares of the village. It includes the adjoining house on Plot 2, faced in a similar combination of materials. This house is now lawful and will remain as part of the context of the north elevation of the appeal building. In my opinion this elevation, as intended to be completed, would preserve the character and appearance of the Conservation Area.
20. The south elevation is of brick except for the small projecting section of the proposed kitchen. The south elevation of the adjoining house is also of brick. The expanse of brickwork that would be created would be uncharacteristic in the partial views of it from Barlows Lane. However, replacing the facing brickwork on the 2-storey gabled section with stone would break up this expanse of brick and reduce the apparent scale of the building. If completed in this way the building would not harm the views from Barlows

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Lane and would preserve or enhance the character and appearance of the Conservation Area.

Conclusion

21. Therefore I consider that, with a variation in the facing materials used on the gabled 2-storey section of the south elevation, the house as proposed to be completed would be consistent with NCSP Policies GS5 and AR6 and KBLP Policies 22, 30 and RA3. Appeal B is allowed and planning permission is granted subject to conditions. As the application was made for planning permission for the whole building as proposed to be completed, the permission relates to the whole of it also, effectively incorporating those parts of the existing structure that are consistent with its terms.
22. In order to protect the Conservation Area such conditions relate not only to the variation in walling materials but details of roof covering and boundary treatment, the withdrawal of permitted development rights for extension of the building and insertion of windows openings in the roof as suggested by the Council. There are no such rights in respect of roof extensions or the construction or alteration of buildings of greater than 10 cubic metres within the curtilage of dwelling houses in conservation areas. Conditions are not necessary in respect of such matters. The approval of boundary treatment and external finished ground levels is necessary to protect the living conditions of neighbours. Details of drainage are necessary in the interests of public and environmental health.
23. As to Appeal A, the deemed application relates to the uncompleted building enforced against. A planning permission granted on this application would relate to that. It would seriously harm the character and appearance of the Conservation Area and the living conditions of people living nearby. Therefore the appeal on ground (a) fails and the deemed application is refused.

Appeal A – ground (f)

24. The uncompleted building was constructed wholly in breach of planning control. Work ceased on receipt of the notice and requirement (i) has been complied with. The removal of the whole of the building is necessary to remedy the breach of planning control identified in the notice. However, in order to remedy the injury to amenity caused by the breach lesser steps might suffice.
25. When the notice was issued there may have been no approved details to which the building could be required to conform. That is no longer the case. All that is now necessary is to require the building to be altered to conform to the planning permission resulting from Appeal B. In effect that is the replacement of facing brickwork on one part of the building with stone. Therefore the appeal against the notice on ground (f) succeeds and the requirements of the notice are varied accordingly.

Appeal A – ground (g)

26. The notice requires compliance with requirement (2) within 3 months. The period for compliance does not start to run until the date on which the notice comes into effect (i.e. the date of this decision). The works involved in compliance with the requirements as varied are not great. The period of 3 months is not unreasonable for these, even though the winter months are often not ideal for external walling construction. It would be open to the

Council to defer further action if compliance is delayed by events outside the appellant's control.

Formal decisions

Appeal A Ref: APP/L2820/C/05/2000768

27. I direct that the notice be corrected by deletion from paragraph 3 of the notice of the words 'brick built' and the substitution therefor of the words 'brick and stone faced'; I also direct that the notice be varied by the deletion of subparagraphs (1) and (2) of paragraph 5 of the notice and the substitution therefor of the words 'remove the facing brickwork on the gabled 2-storey part of the south elevation of the building and replace it with natural local ironstone to match in type, coursing and bonding that used on the gabled section of the north elevation of the existing building within 3 months of the date on which the notice comes into effect'; subject thereto the appeal is dismissed, the enforcement notice is upheld and the application deemed to have been made under section 177(5) of the Act is refused.

Appeal B Ref: APP/L2820/A/05/2001189

28. The appeal is allowed and planning permission is granted for substitution of house type – erection of two storey detached dwelling with adjoining garage (Plot one) on land at the rear of 10 Barlows Lane, Wilbarston, Market Harborough, Leicestershire in accordance with the terms of the application No KE/04/0984 dated 8 September 2004 and the plans submitted therewith subject to the following conditions:
- 1) Notwithstanding the details shown on the approved plans, the external walls of the dwelling hereby permitted shall be faced in brick to match in type and bonding the brick used on the east elevation of the existing building and in natural local ironstone to match in type, coursing and bonding the stone used on the gabled section of the north elevation of the building.
 - 2) The distribution of brick and stone facing and other external materials shall be as shown on Drawing No MMB/WWB 7a marked as approved by Kettering Borough Council on 30 January 2001 excepting the walling below the gable of the two-storey part of the south elevation which shall be of natural local ironstone to match in type, coursing and bonding the stone used on the gabled section of the north elevation of the building.
 - 3) No development other than such development as is required to be undertaken in order to comply with an effective enforcement notice shall commence until details of the materials to be used on the external surfaces of the roof have been submitted to and approved in writing by the local planning authority.
 - 4) No development other than such development as is required to be undertaken in order to comply with an effective enforcement notice shall commence until details of final external ground levels, foul and surface water drainage and boundary walling, fencing and screening have been submitted to and approved in writing by the local planning authority.
 - 5) The building shall not be occupied until all final ground levels have been provided and all foul and surface water drainage, walling, fencing and screening has been completed in accordance with the details approved pursuant to Condition 4.

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement or alteration of the building or alteration to or insertion of windows in the roof of the building.

David Roberts

Inspector

PLANNING
DEVELOPMENT SERVICE

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APPEARANCES

FOR THE APPELLANT

Mr M Flood BA(Hons) DipTP MRTPI	Wilbraham Associates Ltd, 18a Regent Place, Rugby, Warks CV21 2PN.
Mr M Brown	Appellant.
Mr M Winklewski RIBA	44 Northampton Road, Market Harborough, Leics LE16 9HF.

FOR THE LOCAL PLANNING AUTHORITY

Mr M Harvey	Enforcement Officer, Kettering BC.
Mrs C Riley	Consultant Planning Officer, Kettering BC.

INTERESTED PERSONS

Miss R Willatts	2 Barlows Lane, Wilbarston, Market Harborough, Leics LE16 8QB.
Mrs C Adams	3 Orchard Close, Wilbarston, Market Harborough, Leics LE16 8QY.

DOCUMENTS

1. Attendance list.
2. Letter of notification and list of persons notified.
3. Documents attached to the appellant's statement.
4. Documents attached to the local planning authority's statement.
5. Letter from the Council dated 20 December 2004.
6. Letters from interested persons.

PLANS

- A. The plan attached to the enforcement notice.
- B. Drawing No WWB-01-1.
- C. Drawing No WWB-01-2.
- D. Drawing No WWB-01-3.
- E. Drawing No WWB-01-4.

F. Drawing No MMB/WWB 4b.

G. Location plan @ 1:1250.

NB: Other plans, and photographs, are included within the above documents.

