

**WRITTEN STATEMENT
OF
WINCHESTER CITY COUNCIL
APPEAL BY MR M CULHANE
BARCLAYS. MAIN ROAD, LITTLETON, WINCHESTER, SO22 5PT
PINS REFS: APP/L1765/C/18/3214144
WCC REF: 17/00271/USE**

PLANNING OFFICER'S STATEMENT

FEBRUARY 2020

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INTRODUCTION

This written statement relates to an enforcement notice issued on 18 September 2018 and the alleged erection of a detached building comprising two flats and a double garage.

The notice requires the cessation of the use of the flats as independent dwellings, the disconnection of services and the demolition of the building, including the removal of the resultant waste.

The appeal relates to grounds (a), (b), (f) and (g) only.

Three planning contravention notices were served; the last dated 28 September 2018. None were returned and consequently an Enforcement Notice was served on the basis on the evidence before the Council.

Barclays is not the appellant's main permanent residence or family home and is currently occupied by unrelated people. More recently the flats were made available as holiday accommodation (**Appendix A**) on booking.com.

SITE DESCRIPTION

Littleton is a rural linear settlement located within the open countryside and the site is located within the Littleton Conservation Area and is accessed off Main Road. To the north is St Swithun's Cottage, a grade II listed building, and to the south and east is a field. Partial views of the site can be seen from the public house which adjoins the field.

The building in question is located to the rear of Barclays and is accessed via the same driveway. The parking arrangements are shared and there is no private garden other than that serving the house. The building comprises a flat at first floor level (known as Paddock View) spanning the whole length of the roof space and a ground floor flat (known as Paddock Drive). The appellant has submitted drawings at their appendix G. Please note from the appendix G drawings the building was surveyed on 11 October 2018 after the submission of applications refs 18/01592/NMA and 18/01793/HOU dated 8 June 2018 and 25 July 2018 respectively (**Appendix B**) and after the issuing of the enforcement notice. At no point has the appellant allowed the Council to access the building for the planning applications.

GROUND (A) THAT PLANNING PERMISSION SHOULD BE GRANTED FOR WHAT IS ALLEGED IN THE NOTICE

PLANNING HISTORY

16/00850/FUL Extension and re-modelling of existing double garage to create a triple garage with home studio/office space above. Approved 16.06.16

18/01592/NMA Non material minor amendment to 16/00850/FUL Triple garage amended to double garage to make way for a gym, South West Elevation - 3no. garage doors replaced with a double garage door and a set of bi-fold doors. Side light added to door. North East Elevation - Additional high level window added. South East Elevation - Door removed. Rejected 18.07.2018

18/01793/HOU Alterations to existing garage. Refused 17.10.18

CONSULTATIONS

Conservation and Urban Design – No objection

I am writing to you with regard to the above case. I have discussed the issues in terms of both urban design and the impact of the existing building on the setting of the adjacent listed building and the character of the Conservation Area with Marta Oliveira our Urban Design officer and these comments should be taken as joint comments both in terms of Historic Environment and Urban Design.

- Last consultation on this particular site (*both in terms of Historic Environment and Urban Design*) was in 2014 (14/02296/FUL). Concerns had been raised at the pre-application stage that the initial proposals were contrary to policies HE4 and HE5 and would detract from both the overall character of the Conservation Area and the setting of the adjacent building., however, during the application process it was considered that although the overall design was quite clumsy and could be improved the level of harm caused was not enough to recommend refusal on Historic Environment or Urban Design ground and that the proposed extension would have a “Neutral” impact on the overall character of the Conservation Area.
- The 2014 application was recommended for conditional approval.
- During the consultation for the 2014 application the opinion on the architectural and historic interest of the building was that *“It is a modern house of mid-late 20th century date, constructed in brick and concrete tiles, and of no particular architectural interest. The site appears to have been undeveloped prior to the construction of this house. There is a garage building to the rear of the house in the north-east corner of the site.”* This also noted the existence of the garage that is the subject of the current appeal.
- A further application was submitted for an extension to the existing garage in 2016 (16/00850/FUL) for an *“Extension and re-modelling of existing double garage to create a triple garage with home studio / office space above”*. At this stage there was no consultation by the planning officer to either the Historic Environment or Urban Design teams.
- Section 3.1 of the Heritage Statement submitted in support of the application (20th April 2016) references the previous comments of the Historic Environment officer that the main house and garage had *“no architectural interest”* and *“does not sit comfortably as a design in the overall context of the Conservation Area.”*

- The application was recommended for conditional approval without any input from either the Historic Environment or Urban Design officers.
- Had we been consulted on the 2016 scheme, we would have commented that the materials should have been changed to more traditional materials (*i.e. un-rendered brickwork / timber weather boarding*) to better read as a vernacular outbuilding more suited to the semi-rural location, rather than borrowing the material palate (*i.e. white rendered walls*) from the main building.
- The garage building is not considered to be sufficiently harmful to the overall character of the Conservation Area that we would have recommended the refusal of the original application or would seek its removal.
- The garage building is located a sufficient distance from the adjacent Grade II listed St Swithuns Cottage and is sufficiently screened that it is not considered that the garage building has an adverse effect on the setting of the listed building. The landscaping for the main building (*i.e. the white rendered wall*) has a much greater visual impact on the setting of the listed building.

There are, obviously, other significant planning issues associated with the use of the garage building as a separate dwelling rather than it being ancillary to the use of the main building which is contrary to planning policy. However, it is not considered that the building is sufficiently harmful in either Historic Environment or Urban Design terms to sustain an objection.

If the inspector chooses to grant planning permission it is recommended to provide a reasonable amount of private amenity space for future users of the flats.

Highways Officer - Objection

See separate statement

REPRESENTATIONS

None received at the time of writing

CONSIDERATIONS

Principle, layout, impact on the listed building and conservation area

The National Planning Policy Framework (NPPF) is a material consideration in determining planning proposals together with up to date local plan policies and is guidance for the Local Planning Authority. At its heart is the presumption in favour of sustainable development (paragraph 11) and the need to assess a development proposal's economic, social and environmental role (paragraph 8). As such sustainable development involves seeking positive improvements in the quality of the built, natural and historic environment, as well as in people's quality of life (paragraph 10).

The site is located within the open countryside where there is a general presumption in favour of holiday accommodation under policy MTRA4 of the Winchester District Local Plan Part 1 providing it is low key, on a small scale site and is appropriately located in terms of character and the landscape of the area. Ideally rural business uses should be within existing buildings via a conversion as per the supporting text of MTRA4. It is also accepted that holiday accommodation uses can also be within well designed new buildings as per paragraph 83 of the National Planning Policy Framework (NPPF, 2019).

The provision of flats within the open countryside, i.e. what is alleged in the enforcement notice and the subject of the ground(a) appeal, however, is contrary to policy MTRA4 and the NPPF where there is no justification. The appellant claims that the outbuilding provides ancillary accommodation to Barclays by way of its occupation and extension/ conversion. However, it is used independently to Barclays, and is available to let. Moreover, the house is occupied by unrelated individuals and is not the appellant's main residence. As such the principle of development is unacceptable. This is also supported by the Highways Officer's objection.

The appellant has also not demonstrated that the appeal building can be used by the occupants of the house or the occupants of the flats have use of the house's garden given that it is physically separated by fencing. There may be shared parking arrangements within the grounds of the appeal building and the house, however, there is no ancillary connection between the two buildings and as such the resultant site layout is poorly designed as per the Council's consultee's comments and is contrary to policy DM16.

There is also a requirement to sustain and enhance the significance of heritage assets including the desirability to positively contribute to the conservation of those assets (paragraph 192); the site is located within a conservation area and neighbours a grade II listed building.

However, reluctantly the Conservation and Urban Design consultee accepts that there is no detrimental harm caused to the significance of the neighbouring listed building or to the conservation area. This is purely because of the retrospective choice of build materials and the approved 2016 scheme. The building would therefore meet policies DM15 and DM27 in this instance.

SUGGESTED CONDITIONS

The appellant has not suggested any planning conditions should the Inspector allow the appeal. However, there would be a requirement to control the use of the building, demarcate parking and to provide private amenity space.

1. The residential use of the building hereby approved shall be ancillary to the main property known as Barclays and shall not be used for commercial purposes/ gain or sold off separately.

2. Within one month of the date of this appeal decision, the parking spaces for the building hereby approved shall be demarcated and made available at all times.
3. Within one month of the date of this appeal decision details of the layout of the private amenity space including boundary treatments for the building hereby approved shall be submitted to and approved in writing by the local planning authority. The amenity space shall be laid out in accordance with the approved details.

Informative:

1 *Please note that the two flats are liable for CIL.*

2 *Please note that the flats will require their own domestic bin collection*

OTHER MATTERS

On 2nd June 2019 Natural England produced standing advice to local planning authorities on achieving nutrient neutrality for new development in the solent region. The property lies within the catchment of the Solent and provides for overnight accommodation. As such there is wastewater generated by the occupants of the units together with the house that may give rise to nitrogen loading. The appellant has not demonstrated that the accommodation use is either nitrogen neutral or generates a net loss.

The onus would be on the appellant to provide details of the drainage system used and the calculations to demonstrate that the development is nitrogen neutral or generates a net loss. This would be a matter for the Inspector to determine in light of Natural England's standing advice.

On 22 January 2020 the Council adopted its position statement on the matter. This is attached **Appendix C**.

CONCLUSION

The introduction of two flats in the open countryside where there is no justification is unacceptable in principle and is contrary to local plan policy and the NPPF and gives rise to a Highways Officer's objection which cannot be overcome. Moreover, the layout of the site provides for no private amenity space or any demarcation in parking arrangements resulting in a cramped, contrived and poorly designed layout.

The appellant has also not demonstrated that the development is nitrogen neutral or generates a net loss. As such the appeal should fail on ground (a).

GROUND (B) THAT THE BREACH OF PLANNING CONTROL HAS NOT OCCURRED AS A MATTER OF FACT

The definition of development under s55(1) of the Town and Country Planning Act 1990 (as amended) is the carrying out of building, engineering, mining or other

operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.

The appellant claims that the appeal building has not been erected (from scratch) and that the building was already in existence. It can be accepted that the current building is approximately in the same location as the original outbuilding to the house and that Google Earth images at **Appendix D** taken in 2008 and in 2017 show the site then and the location of the building as it is now. However, the appellant has not demonstrated in their submission that any of original building exists other than to provide planning drawings. Moreover, Stroma Building Control confirm that the building was part new and part existing with a new roof and that all of the construction was new to first floor (**Appendix E**). Given that the appeal building comprises a flat within the roof space, i.e. at first floor level, this is considered to be mainly a new construction despite section 4 of the Initial Notice dated 28 October 2016 (**Appendix F**) stating that the work did not concern two dwellings. It should also be noted that the building has not been completed by Stroma Building Control as two dwellings as they were under the impression that it was an extension to a garage with a room above i.e. an incidental building.

A comparison also needs to be made between the drawings submitted under ref 16/00850/FUL, i.e. the lawful consent and the photos taken dated 24 July 2018 (**Appendix G**). Given that the 2018 building does not even resemble the approved 2016 scheme, i.e. the only one that can be implemented, and the fact that the appellant admits that the building comprises residential accommodation at first floor level demonstrates that the building is a breach of planning control as a matter of fact. As such the appeal should fail on ground(b).

Nullity

The Appellant claims that the enforcement notice is a nullity in that it contains errors or defects which cannot be corrected without causing injustice.

It is well established (see e.g. *Harrogate Borough Council v Secretary of State for the Environment* [1987] J. P. L 288) that on appeal against an enforcement notice, the Inspector may correct or vary an enforcement notice to allow for considerable alteration pursuant to s.176 of the Town and Country Planning Act 1990 as amended as long as she or he is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority. Considerable alteration can therefore be made to the any part of the notice providing it can be interpreted as a whole.

GROUND (F) THE STEPS REQUIRED TO COMPLY WITH THE REQUIREMENTS ARE EXCESSIVE, AND LESSER STEPS WOULD OVERCOME THE OBJECTIONS

The appellant is under the impression that the appeal building already has planning permission for ancillary accommodation at first floor level; this was the 2016 application. However, what has been constructed is not the original permission. As

such it is reasonable to request the cessation of the use of an unauthorised building and the disconnection of services before its demolition.

GROUND (G) THE TIME GIVEN TO COMPLY WITH THE NOTICE IS TOO SHORT

The appellant requests an extension in the time for step 1 and is willing to honour the 6 months time period for steps 2 and 3. It is accepted that they would need to cancel bookings and remove from websites etc. However, realistically it would not take 6 months to do this and an additional 6 months to disconnect, demolish and remove. As a compromise the Council is willing to accept 2 months for step 1 and 6 months for steps 2 and 3.