Appeal Decision

Site visit made on 7 August 2009

by Simon Hill MRTPI

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

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Decision date:
26 August 2009

Appeal Ref: APP/M3835/A/09/2105190
6 Littlehampton Road, Worthing, West Sussex BN13 1QG

- 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 Andrew Smith against the decision of Worthing Borough Council.
- The application Ref WB/08/0888/FUL, dated 20 August 2008, was refused by notice dated 26 November 2008.
- The development proposed is the renewal of shopfronts and recladding of elevations above ground floor level, including replacement metal framed windows.

Decision

1. I dismiss the appeal.

Main issue

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

Reasons

Character and appearance of the area

3. The appeal building is part of a local centre of small shops and offices on two corners of the junction of major roads. Wrapping around the corners are 3-storey Mock Tudor terraces that dominate the junction and create its distinctive character and sense of place. They give way in Littlehampton Road to more recent buildings, including the appeal building, in a variety of styles. The appeal building is unsympathetic to the adjacent Mock Tudor buildings but is a coherent example of its time.

Recladding of elevations above ground floor level

4. Between the ground floor and 1st floor windows and the 1st floor and 2nd floor windows are two bands of lightish coloured brickwork, edged with concrete strips, that run the width of the building. Above the second floor windows is a strip of light grey (lead or similar) flashing across the full width of the building and about half the depth of the brick infills. It is unclear which of these elements is proposed to be reclad as the annotation on drawing no.0812/02 indicates the brick panel between the 1st and 2nd floor windows whereas written evidence suggests recladding also of the panel between the ground floor and the 1st floor windows. Neither source is explicit about whether a new cladding panel would cover the flashing above the 2nd floor windows, making three new panels in all.

5. From the drawings and the colour palette illustrating the proposal, I judge that the proposed anthracite coloured sheeting running across the full width of the building, whether there be 1, 2 or 3 panels, would accentuate the strong horizontal emphasis of the frontage and thus increase its discordance with the adjacent group of buildings. This effect would be very evident in the street scene from viewpoints afforded by the wide crossroads from Rectory Road as well as Littlehampton Road. Rather than complementing the Mock Tudor buildings, with their 'prominent colour pallette', the expanse of the proposed panels would dominate them and jar with their detailing and vertical emphasis. Although the existing brick panels are themselves not sympathetic to the adjacent Mock Tudor building, they are relatively recessive in colour and texture and thus detract less from their surroundings than would the proposal. There is no colour illustration of how the proposal would compare with the existing frontage in its surroundings to persuade me differently. The small black and white photograph of a generic example of similar cladding elsewhere serves only to increase my concerns about the appearance of the proposal.

Replacement of windows

6. The Council does not contest the replacement of the windows at 1st and 2nd floors with anthracite coloured aluminium frames. I agree this would improve the overall appearance of the building, particularly by the omission of existing panels to promote a vertical emphasis more in sympathy with its surroundings. This part of the current proposal has been granted permission as part of another application and its separate consideration through a split decision on the application subject of this appeal is therefore unnecessary.

Renewal of shopfronts

7. The proposed shop front replacement relates to 2 units making up half of the ground floor frontage. It involves significantly increasing the height of the existing shop signage fascias. This would make them over dominant and out of balance with those on the other part of the building and significantly deeper than all but a few fascias in the locality. They would thus harm the character and appearance of the area. The example cited to the west of the appeal building illustrates why such deep fascias that unbalance their building frontage over-dominate the area should not be repeated.

Conclusion on character and appearance of the area

8. Although the replacement windows would improve the appearance of the building, the proposed shopfronts would detract from the character and appearance of the appeal building and its surroundings. The proposal thus conflicts with policy BE1 of the *Worthing Local Plan*, which requires development to be of a good standard of design, with a form and character, in terms of height, massing, scale and proportions that are compatible with or enhances its surroundings. The proposal also conflicts with the advice in *Planning Policy Statement 1: Delivering Sustainable Development* that 'design that is inappropriate in its context or which fails to take opportunities for improving the character and quality of an area ... should not be accepted'. The document *'Design-Wise: Design Principles of Shopfronts and Signs'* carries little weight as there is no indication that it was adopted following public consultation.

Other matter

9. The appellant's desire to modernise and upgrade the premises both in terms of letting potential and insulation is understood, but it has not been demonstrated that this could not be achieved in other ways. This consideration is thus insufficient to outweigh the harm identified in relation to the main issue.

Overall conclusion

10. For the reasons given above and taking into account all other matters raised I conclude that the appeal should be dismissed.

Simon Hill

INSPECTOR

The Planning Inspectorate

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Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can ask for the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms.

We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

Who checks our work?

The Government has said that 99% of our decisions should be free from error. An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.

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Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You could contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or at www.apos.gov.uk

Contacting us

Complaints & Queries in England
Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252
E-mail: complaints@pins.gsi.gov.uk

Website www.planning-inspectorate.gov.uk

Enquiries
Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales
The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.

The Planning Inspectorate

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An Executive Agency in the Department for Communities & Local Government and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" – In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this – see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees – see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

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Complaints
Phone: 0117 372 8252
E-mail: complaints@pins.gsi.gov.uk

Cardiff Office
The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ
Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman
Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
Email:phso.enquiries@ombudsman.org.uk

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200;
website: http://www.ajtc.gov.uk/. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

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