

11/01562/FUL: CONSTRUCTION OF BUNGALOW (PART RETROSPECTIVE – PART AMENDMENT) INCLUDING REDUCTION OF RIDGE HEIGHT AND REPOSITIONING OF REAR WALL AT LAND REAR OF 78 WELLAND ROAD, DOGSTHORPE, PETERBOROUGH

VALID: 4 OCTOBER 2011

APPLICANT: MR P MILLER

AGENT: MR J DADGE (BARKER STOREY MATTHEWS)

REFERRED BY: HEAD OF PLANNING, TRANSPORT AND ENGINEERING SERVICES

REASON: DEVELOPER HAS NOT ADHERED TO ORIGINAL PLANNING PERMISSION, SIGNIFICANT NEIGHBOUR OBJECTION AND DETAILED PLANNING HISTORY

DEPARTURE: NO

CASE OFFICER: MISS L C LOVEGROVE

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1 SUMMARY/OUTLINE OF THE MAIN ISSUES

The main considerations are:

- Impact of the development on neighbour amenity

The Head of Planning, Transport and Engineering Services recommends that the application is APPROVED.

2 PLANNING POLICY

In order to comply with section 38(6) of the Planning and Compulsory Purchase Act 2004 decisions must be taken in accordance with the development plan policies set out below, unless material considerations indicate otherwise.

Peterborough Core Strategy DPD (2011)

CS2 Spatial Strategy for the Location of Residential Development: New residential development should be focused in and around the urban area, creating strong, sustainable, cohesive and inclusive mixed-use communities and making most effective use of previously developed land.

CS10 Environment Capital: Development proposals will only be supported where they make a clear contribution to the aspiration of the Peterborough Sustainable Community Strategy for Peterborough to become the Environment Capital of the UK.

CS12 Infrastructure: New development should be supported by, and have good access to infrastructure.

CS13 Developer Contributions to Infrastructure Provision: Where a planning obligation is required to meet the principles of Policy CS12, then this may be negotiated on a site-by-site basis however the City Council will encourage payments based on a standard charge set out in the Peterborough Planning Obligations Implementation Strategy SPD (2010).

CS14 Transport: New development in Peterborough will be required to ensure that appropriate provision is made and does not result in a danger to highways safety.

CS16 Urban Design and the Public Realm: New development should respond appropriately to the particular character of the site and its surroundings, using innovative design solutions where appropriate; make the most efficient use of land; enhance local distinctiveness through the size and arrangement of

development plots, the position, orientation, proportion, scale and massing of buildings and the arrangement of spaces between them; and make use of appropriate materials and architectural features.

Peterborough Local Plan (First Replacement) (2005)

H7 Housing Development on Unallocated Sites: Residential development in the Urban Area, not allocated for any other use, will be permitted where it would make efficient use of the site in terms of density; respects the character of the surrounding area; provides good quality living conditions; does not result in a danger to highways safety or traffic flow; would not unacceptably constrain development of adjoining land for an allocated use; and would not result in the loss of open space.

H16 Residential Design and Amenity: New residential development will be required to provide a satisfactory standard of daylight and natural sunlight; privacy of habitable rooms; noise attenuation; and private outdoor amenity space.

T10 Car and Motorcycle Parking Requirements: Planning Permission will only be granted for car and motorcycle parking outside the city centre if it is in accordance with standards set out in Appendix V.

DA6 Tandem, Backland and Piecemeal Development: Tandem, backland or other piecemeal development will be required to demonstrate that it can be satisfactorily accommodated on the site in terms of scale and density; would not harm the character of the area; would not harm the amenities of neighbouring residents; can be satisfactorily accessed from the public highway; and would not prejudice the comprehensive development of a larger area.

National Planning Policies

National Planning Policy Framework (NPPF) Consultation Draft (2011)

Planning Policy Statement 1 (PPS1): Delivering Sustainable Development (2005)

Planning Policy Statement 3 (PPS3): Housing (2010)

Circular 05/2005: Planning Obligations

ODPM Circular 05/2005 "Planning Obligations". Amongst other factors, the Secretary of State's policy requires planning obligations to be sought only where they meet the following tests:

- i) relevant to planning
- ii) necessary to make the proposed development acceptable in planning terms;
- iii) directly related to the proposed development; (in the Tesco/Witney case the House of Lords held that the planning obligation must at least have minimal connection with the development)
- iv) fairly and reasonably related in scale and kind to the proposed development;
- v) reasonable in all other respects.

In addition Circular 05/2005 states the following principles:

The use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold. It is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms.

Similarly, planning obligations should never be used purely as a means of securing for the local community a share in the profits of development.

3 DESCRIPTION OF PROPOSAL

The application relates to an existing 3 bedroom bungalow which has not been built in accordance with the approved plans. The as-built dwelling differs from the approved scheme (01/01585/FUL) in the following ways:

- Footprint of dwelling increased;
- Dwelling built 0.5 metres closer to the southern boundary;
- Dwelling built 1 metre closer to northern boundary;
- Garage built 1.5 metres closer to southern boundary;
- North-western corner of the dwelling 'filled out' and dwelling constructed 5 metres closer to the southern boundary;
- Arrangement of rooms internally altered to increase the number of primary habitable rooms facing Nos.46-50 Figtree Walk;
- Alterations to front elevation design;
- Number of windows to the southern elevation increased and size of windows increased also; and
- Ridge height increased by 0.7 metres.

Committee will recall that it recently refused permission for the bungalow that incorporated the following changes to the above described development:

- reduction of 0.75m in the ridge height to 4.75m
- the restriction to the outdoor lighting
- the replacement of all four no. double patio doors on the rear elevation with fixed standard glazed windows and insertion of a 400mm strip of obscure glazing

as it felt that:

- the reduced ridge height did not compensate enough for the fact that the bungalow was closer to adjacent dwellings than had been previously approved
- and as a consequence the bungalow had an overbearing appearance

This latest application includes all of the previously applied for changes PLUS the following additional change:

- the repositioning of the rear elevation, 1 metre back from its current position.

4 DESCRIPTION OF SITE AND SURROUNDINGS

The site was previously part of the rear private gardens to Nos. 78 and 80 Welland Road, a pair of semi-detached dwelling houses. The site is bound to the north east by part of the side wall and the rear garden to No.82 Welland Road and to the south east by the rear gardens of properties along Figtree Walk.

The dwelling itself is situated to the rear of the plot, at its narrowest approximately 2 metres from the rear boundary wall and at its widest 3.2 metres. The form is roughly 'L-shaped' with the main amenity area to the front of the dwelling. A detached garage is situated close to the boundary on the south-west side and access to the highway is provided via a driveway along side No.78 Welland Road. The driveway has not been completed.

5 PLANNING HISTORY

Application Number	Description	Date	Decision
01/01585/FUL	Erection of dwelling	26.02.2002	PERMITTED
08/00615/FUL	Amendments to bungalow design under application 01/01585/FUL – retrospective	30.06.2008	WITHDRAWN
08/01120/FUL	Erection of a 4 bedroom bungalow and single garage with rear boundary wall – retrospective revised scheme	23.12.2008	REFUSED
09/00170/FUL	Erection of a three bedroom bungalow and single garage with rear boundary wall – retrospective revised scheme (as built)	24.04.2009	REFUSED

09/00029/REFPP	Appeal A/09/2107626/WF in relation to application reference 09/00170/FUL	22.12.2009	DISMISSED
09/01266/FUL	Construction of a three bedroom bungalow and single garage with rear boundary wall and 2.2m reed fencing and part obscure glazing to rear windows and doors – retrospective revised scheme	19.01.2010	WITHDRAWN
10/00554/FUL	Retention of dwelling including alterations to rear boundary wall and window glazing	06.07.2010	REFUSED
10/00032/REFPP	Appeal A/10/2131460/WF in relation to application reference 10/00554/FUL and Enforcement Notice	06.12.2010	DISMISSED
11/01023/FUL	Construction of bungalow (part retrospective - part amendment)	12.09.2011	REFUSED

6 CONSULTATIONS/REPRESENTATIONS

INTERNAL

Archaeological Officer – No objections.

Transport and Engineering – No objections subject to conditions relating to the provision and retention of parking and turning.

EXTERNAL

None

NEIGHBOURS

Letters of objection have been received from 3 neighbours raising the following issues:

- The alterations fail to address the concerns of residents as the property will still be closer to the rear boundary due to the infill section
- The fence installed does not reduce the overbearing and overlooking impact of the dwellings along Figtree Walk
- Fear that approving this application would set a precedent and allow others to build contrary to planning permission
- Would a planning permission prevent properties on Figtree Walk from being extended?
- Concern that the applicant would not comply with the planning permission again
- How many times must a planning application be rightly refused and independent appeals dismissed before the property is removed?

COUNCILLORS

Councillor Ash – Comments as per application reference 11/01023/FUL – in light of previous history, the application should go to Committee for debate and decision.

Councillor Miners – Believe that a compromise is necessary and helpful to all involved.

Councillor Saltmarsh – Objections remain the same, the bungalow should be built as per the original plan which was approved. The modifications proposed do not alter the fact that the bungalow has been built without planning permission.

7 REASONING

a) Introduction

There is a long planning history on the site dating back to the implementation of the original planning permission (reference 01/01585/FUL). The current position is the result of an enforcement enquiry which established that the bungalow was not being built in accordance with the approved plans.

The first revised application (08/00615/FUL) was withdrawn due to inaccuracy of the submitted plans. The second application (08/01120/FUL) was refused by Members on 23 December 2008. A third application (reference 09/00170/FUL) was again refused by Members on 26 April 2009 and the subsequent appeal was dismissed. The reasons for dismissal related to the increased number of openings (and their size) in the rear elevation from that which was approved and the significant overlooking impact this caused to properties along Figtree Walk, the insufficient separation distance which conflicts with the aims and objectives of the Peterborough Residential Design Guide (SPG), and the overbearing impact upon residents along Figtree Walk of the proposed boundary wall. A revised scheme (09/01266/FUL) attempting to address the Inspectors concerns, was withdrawn on 19 January 2010. Following this, a further revised scheme (10/00554/FUL) was submitted again attempting to address the Inspectors concerns in April 2010. This was refused by Members against Officer recommendation on 6 July 2010. The reason for refusal related to a resultant overbearing impact due to the proposed rear boundary wall which itself would not overcome the overbearing impact of the constructed dwelling.

As a result of the refusal, an Enforcement Notice was served on the landowner and an appeal lodged relating to both the Enforcement Notice and refusal of application 10/00554/FUL. The appeal was dismissed on 6 December 2010 and the time limit for compliance varied until 6 December 2011. The Inspector's report stated:

'...in making his case on ground (f) the appellant's agent itemises a number of proposals which, in my judgement, may have the making of a potential planning permission, which could be capable of satisfying, as far as possible, the concerns of the various parties involved in these appeals. He suggests for instance a reduction in the overall height of the roof to equate to that approved. He also indicates that some repositioning of the back wall in part may be possible without demolishing the present bungalow in its entirety. Matters of this sort would need to be the subject of a fresh planning application. It is not my normal approach to indicate in an appeal decision what areas such a revised application should address. However, there have been various attempts at getting a form of development that would allow the new bungalow to co-exist with its well established neighbours in Figtree Walk and to my mind it seems counterproductive to try to replicate another Inspector's ideas only for another planning application to be rejected yet again. It would be far better if the parties to this dispute were to resolve this matter among themselves without involving The Planning Inspectorate anymore.'

In addition and more importantly the Inspector stated that it appeared to him that:

1. The loss of privacy and security by neighbours could be addressed by a solid timber fence
2. The loss of outlook of neighbours could be overcome by a reduction in the ridge height of the bungalow

A full copy of the Inspector's report can be found at Appendix 1. Following this decision, a further application was submitted under reference 11/01023/FUL which sought to amend the constructed bungalow by replacing the four no. patio doors to the rear elevation with standard glazed windows (including a 400mm obscure glazed strip), reduction of the ridge height to that approved under application reference 01/01585/FUL and construction of a 1.8 metre rear boundary fence. The application was refused against Officer recommendation on 12 September 2011 for the following reasons:

- R 1 The proposed reduction in the ridge height of the bungalow inadequately compensates for the fact that the property has been built closer to the boundary with the residential properties in Figtree Walk than was previously approved under 01/01585/FUL. The proximity is such that the bungalow will still have an overbearing appearance when viewed from those properties. The proposal is therefore contrary to Policy CS16 of the Peterborough Core Strategy DPD (2011).*
- R 2 A request has been made by the Local Planning Authority to secure a contribution towards infrastructure implications of the proposal however, no S106 Obligation has been completed*

and the proposal is therefore considered to be contrary to Policies CS12 and CS13 of the Peterborough Core Strategy DPD (2011).

This decision has been appealed by the applicant and the appeal process is currently ongoing. The current application has been submitted to overcome the above reasons for refusal and incorporate the Inspector's recommendation.

b) **Principle of development**

The principle of infill development in this location has already been established under application reference 01/01585/FUL. The site is capable of accommodating the level of development without appearing cramped and as such, is considered acceptable.

c) **Impact on the amenity of neighbouring properties**

As permission was previously granted for a bungalow on the site, the issue is not how much the impact on neighbours has changed from that approved under 01/01585/FUL, but whether the impact of what has been built and the changes proposed is unacceptable.

The impact on the amenity of neighbouring properties should be considered against No.82 Welland Road and the properties adjoining the site along Figtree Walk. Each of these will be discussed in turn.

No.82 Welland Road

The maximum ridge height of the dwelling constructed has not altered significantly in relation to No.82 Welland Road from the bungalow previously approved albeit the dwelling has been built approximately 0.7 metres closer to the shared boundary (eastern). It is considered that there is sufficient separation distance between the application dwelling and the neighbouring property to ensure that no overbearing or overshadowing impact will occur and as such, the impact on this property has not significantly changed.

Nos.46-50 Figtree Walk

The previously permitted bungalow had a smaller footprint and the ridge height was lower than that which has been built (ridge height is currently of 5.5 metres). In addition, the dwelling constructed is approximately 1 metre closer to the southern boundary which abuts the properties along Figtree Walk. These neighbouring properties have a lower site level to that of the application site and as such, the property has been considered to have an overbearing impact upon the amenities of occupants of these dwellings.

The application scheme currently under consideration, seeks to overcome this impact by reducing the overall ridge height of the as built dwelling by 0.75m metres, back to that which was previously approved under application reference 01/01585/FUL. In addition, the application seeks to move back the rear elevation of the constructed bungalow by 1 metre, in line with the previously approved application albeit the infill section will remain. It is considered that this increase in separation distance, in combination with the reduction in ridge height will reduce the overbearing impact upon the amenities of neighbouring residents to an acceptable level. Furthermore, the issue of loss of view is not a material planning consideration as there is no right in planning law to a private view.

With regards to the overlooking impact that was considered unacceptable in previous refusals and appeal dismissals, this scheme has sought to overcome these objections. The erected 1.8 metre boundary fence in combination with the proposed obscure glazing and alterations to the window form of the rear elevation will prevent any occupant of the application dwelling from looking into the gardens and primary habitable rooms of neighbouring properties. At present, there are four no. sets of double patio doors inserted into the rear elevation of the dwelling. It is proposed that all of these will be replaced with static standard glazed windows. In addition to these replacement windows, all windows in the southern elevation are proposed to have the top 400mm obscure glazed. This will ensure that any person standing in these rooms will not have a clear line of sight below the boundary fence.

In relation to the boundary fence and in line with the preferences expressed by surrounding neighbours at pre-application discussions, the fence has been erected at 1.8 metres in height when

measured from the application site. When measured from the rear gardens of Figtree Walk, this reaches a height of 2.3 metres. It is understood that the previous Appeal dismissal commented on the overbearing impact that a significant boundary wall would have upon the amenities of surrounding residents however the current fence has sought to reduce the height of the boundary whilst maintaining a height which will prevent overlooking. It had previously been requested by one resident that boundary planting in the form of trees be undertaken to further screen the dwelling. However, given the small area between the boundary and the dwelling constructed this is not considered appropriate or feasible. Such planting would result in a significantly overshadowing impact upon the occupants of the dwelling and would cause an unacceptably harmful impact upon amenity. In addition, maintenance of this landscaped area would be difficult and unachievable.

Further to this, concern has been raised regarding outside lighting that has been erected on the application property. The applicant has agreed that any external lighting be placed no higher than 1.6 metres above ground level when measured from the application site. This would ensure that any lights were behind the proposed boundary fence and as such, will not glare into the rear gardens and habitable rooms of the properties along Figtree Walk. This may be controlled by condition.

d) **Planning Obligations**

The original permission was granted without contribution and under the provisions of the Planning Obligation Implementation Scheme SPD adopted on 8 February 2010 a contribution of £6000 plus a monitoring fee of £120 is required. The applicant has agreed to enter into such an agreement and the process is currently ongoing.

e) **Other matters**

Imposition of Policy CS10

The provisions of Policy CS10 cannot realistically be applied as the dwelling is effectively completed and it would not be possible to retrofit features that would deliver a 10% betterment over building regulations.

In addition, the following comments have also been made:

Fear that approving this application would set a precedent and allow others to build contrary to planning permission

An Enforcement Notice has been served on the landowner which is still in force and must be complied with by 6th December 2011. However, the applicant has the right to submit a planning application during this time to try and overcome the reasons for its issue. The application must be assessed in light of all material planning considerations and each proposal is assessed on a case-by-case basis. Therefore, should planning permission be granted, it could not set a precedent for others to follow.

Would a planning permission prevent properties on Figtree Walk from being extended?

Any application submitted in the future would need to be assessed in light of the development plan policies in force at the time. As such, no definitive answer can be given at this time without a specific proposal being considered.

Concern that the applicant would not comply with the planning permission again

It is proposed to condition the period of compliance for the works to be carried out if planning permission is granted. This would be followed by the City Council's Enforcement Officer and should any breach of the condition or planning permission take place, further action would be taken.

How many times must a planning application be rightly refused and independent appeals be dismissed before the property is removed?

It is a function of the planning system and of Council's Planning Services to provide planning advice to applicants and to process, assess and formulate recommendations relating to applications made in accordance with the relevant legislation, regulations and guidance. These processes and procedures have been applied with regards to this application. The Enforcement Notice served on the site is still in force and, should this application be refused, must be complied with by 6th December 2011.

8 CONCLUSIONS/REASONS FOR RECOMMENDATION

Subject to the imposition of the attached conditions, the proposal is acceptable having been assessed in light of all material considerations, including weighing against relevant policies of the development plan and specifically:

- The bungalow is situated in a residential area on an unallocated site. Development is considered to be in keeping with the character of the area, providing adequate living conditions for residents and suitable highway access;
- The impact on occupiers of neighbouring properties is not substantially worse than the impact of the development permitted under 01/01585/FUL and the proposed mitigation measures will prevent any issues of overlooking or overbearing impact.

The proposal is therefore in accordance with Planning Policy Statement 1: Delivering Sustainable Development (2005), Planning Policy Statement 3: Housing (2010), Policies CS2, CS14 and CS16 of the Peterborough Core Strategy DPD (2011) and Policies H7, H16, and DA6 of the Peterborough Local Plan (First Replacement) (2005).

9 RECOMMENDATION

The Head of Planning Services recommends that this application is APPROVED subject to the following conditions:

C1 Within six months of the date of this permission, the alterations to the southern elevation and ridge height of the constructed dwelling shall be implemented in accordance with the details shown on drawing nos. 4125/1, 4125/2 and 4125/3.

Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).

C2 The dwelling hereby permitted shall be single storey only with no habitable accommodation in the roof space.

Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).

C3 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification),

C4 Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification):

1. no development shall take place that would result in the raising of existing or formation of any elevated platform at the rear of the property.

2. no windows shall be inserted into any roof slope of the dwelling other than those expressly authorised by this permission.

3. the top 400mm of any windows on the southern elevation of the dwelling shall be obscure glazed to a minimum of Level 3 Obscurity. These windows shall be maintained as such in perpetuity.

4. No extensions or alteration to the property or outbuildings shall be erected.

Reason: The property has been constructed in close proximity to the some of the boundary edges and occupies an elevated position. As a consequence it is necessary to remove permitted development right so that any development proposals can be assessed for their impact on

neighbouring properties. This accords with Policy CS16 of the Peterborough Core Strategy DPD (2011).

C5 Any external lighting installed on the southern elevation of the dwelling hereby permitted, shall be sited no higher than 1.6 metres above ground level.

Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).

C6 Within six months of the date of this permission, space shall be laid out for the parking and turning of vehicles within the site in accordance with details to be submitted to and approved in writing by the Local Planning Authority. Those areas shall not thereafter be used for any purpose other than the parking and turning of vehicles in connection with the dwelling.

Reason: In the interest of Highways safety, in accordance with Policy CS14 of the Peterborough Core Strategy DPD (2011).

C7 The floor slab that becomes exposed as a result of the rear elevation wall being moved shall be removed within 6 months of the date of this permission.

Reason: If the slab is not removed then the privacy of neighbours would be significantly compromised contrary to Policy CS16 of the Peterborough Core Strategy DPD (2011).

If the S106 has not been completed before the expiration of the application following this resolution without good cause, the Head of Planning, Transport and Engineering Services be authorised to refuse planning permission for the reason stated below:-

R1 A request has been made by the Local Planning Authority to secure a contribution towards infrastructure implications of the proposal however, no S106 Obligation has been completed and the proposal is therefore considered to be Reason: In the interests of the amenity of neighbouring residents in accordance with Policy CS16 of the Peterborough Core Strategy DPD (2011).contrary to Policies CS12 and CS13 of the Peterborough Core Strategy DPD (2011).

Copy to Councillors Ash, Miners, Saltmarsh



Appeal Decisions

Site visit made on 23 November 2010

by **Ian Currie BA MPhil MRICS MRTPI**

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

Decision date: 6 December 2010

Appeal Ref: APP/J0540/A/10/2131460

Land r/o 78-80 Welland Road, Dogsthorpe, Peterborough, PE1 3SG

- 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 Philip Miller against the decision of Peterborough City Council.
- The application (Ref:- 10/00554/10), dated 23 April 2010, was refused by notice dated 15 June 2010.
- The development proposed is retention of dwelling including alterations to rear boundary wall and window glazing.

Appeal Ref: APP/J0540/C/10/2135994

Land r/o 78-80 Welland Road, Dogsthorpe, Peterborough, PE1 3SG

- 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 Philip Miller against an enforcement notice issued by Peterborough City Council.
- The Council's reference is 08/00144/ENFACC.
- The notice was issued on 2 August 2010.
- The breach of planning control as alleged in the notice is without planning permission the erection of a dwelling.
- The requirements of the notice are:-
 - (i) dwelling to be rebuilt in accordance with approved planning permission 01/01585/FUL;
 - (ii) replace any boundary treatments to the side and rear of the dwelling that are not 1.8m high close-boarded fence with 1.8m high close boarded fence (re condition 3) of 01/01585/FUL;
 - (iii) remove from the land all rubble and debris resulting from the required works and dispose of it to a licenced (sic) landfill site.
- The period for compliance with the requirements is 24 weeks.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision on Section 78 Appeal Reference APP/J0540/A/10/2131460

1. I dismiss the appeal.

Decision on Section 174 Appeal Reference APP/J0540/C/10/2135994

2. I direct that the enforcement notice be varied in paragraph 6, "*TIME FOR COMPLIANCE*" by deleting the phrase "*24 Weeks*" and inserting the phrase "*12 calendar months*". Subject to this variation, I dismiss the appeal, I uphold the enforcement notice and I refuse to grant planning permission on the application, deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal against the Enforcement Notice on Ground (a), the Deemed Application and the Section 78 Appeal – Main Issue

3. In dismissing a section 78 appeal dated 23 November 2009 (Ref:- APP/J0540/A/09/2107626) for the erection of a single-storey dwelling and garage, the Inspector considered the main issue on that occasion to be the effect of that proposal on neighbours' living conditions by reason of loss of privacy and a reduction in their outlook. At paragraph 5 of the decision she said, *"I understand that this dwelling is approximately 0.5m higher and about 0.6m deeper than the approved dwelling and the number and size of the openings in the rear elevation are significantly greater. In addition, the rear elevation is no longer L-shaped and therefore a longer section of the rear wall is close to the rear boundary. The reason for some of these changes was I understand as a result of adverse ground conditions."*
4. She went on to say at paragraphs 6 and 7, *"The appeal site is located to the rear of 78-80 Welland Road... It is surrounded on all sides by residential development but the residents who are potentially most affected by the changes to the approved scheme are those living at the rear of the appeal site on Figtree Walk... On Figtree Walk the ground level is about 600mm lower than on the appeal site, according to the appellant. The rear boundary between these dwellings and the appeal site is formed by a wall, which is about 1.2m high, when measured from the appeal site. I saw that this permits direct views from the rear windows of the bungalow, and its rear amenity space, into the rear gardens and rear windows of the two storey dwellings on Figtree Walk."*
5. She continued at paragraph 8:- *"The approved bungalow contained a kitchen door and window and a utility room window in the rear elevation. I saw that there are now four pairs of French windows, with side windows, in this elevation. These serve a bedroom, a kitchen, a dining room and a lounge. Therefore, the loss of privacy... experienced by the nearby residents on Figtree Walk, as a result of overlooking, is significantly greater because of the increase in the number of openings (and their size), and the type of rooms that they serve, as well as the increase in height and depth of the bungalow. While these windows could be required by planning condition to contain frosted glass, this would, in my opinion, result in unsatisfactory living conditions for the occupants of the bungalow, because they are the only windows serving the lounge and dining room. Also, it is likely that the French windows would be opened up sometimes, thus allowing unrestricted overlooking and a loss of privacy."*
6. Paragraphs 9 and 10 say:- *"The separation distance between the back of the bungalow and the back of the nearest dwelling on Figtree Walk is about 18.5m and therefore well below the 21m recommended in the Council's adopted Supplementary Planning Guidance – Peterborough Residential Design Guide (SPG). I realise that this is a bungalow and not a two storey dwelling but given the difference in ground levels and the significant shortfall of 2.5m I consider that the proposal would conflict with the aims and objectives of the SPG in relation to the protection of privacy. It is proposed to increase the height of the rear boundary wall in an attempt to alleviate the issue of overlooking and the resultant loss of privacy. While this would prevent the harmful overlooking of Figtree Walk, it would result in a wall, which would be approximately 2.5m high (when measured from the rear gardens on Figtree Walk). In my opinion, because of the height of the wall and the modest size of the gardens on Figtree Walk, this would reduce their outlook to a significantly*

harmful degree. Moreover, it seems that, in trying to solve one unsatisfactory situation, another equally harmful one would be created."

7. The reasoning concludes at paragraphs 11 and 12 as follows:- *"The changes that have taken place result in significant harm to living conditions for the adjacent residents on Figtree Walk because of a significant loss of privacy. Moreover, the introduction of a 2.5m high wall would reduce their outlook to a harmful degree. As such, the proposal would conflict with adopted Peterborough Local Plan (First Replacement) Policy DA6 which seeks to ensure that tandem development, such as this, would not have an unacceptable adverse impact on the amenities of the occupiers of nearby properties. I realise that some of the changes to the bungalow have been necessary because of the poor ground conditions. However, it seems to me that this did not necessarily require the internal re-configuration of the bungalow, which has resulted in the major changes to the windows in the rear elevation and the use of the rooms at the rear of the bungalow. I also realise that the windows in the rear elevation of the approved bungalow could have been changed, once complete, without the need for planning permission. However, given the internal layout of the approved bungalow, it is unlikely that a rear elevation, similar to that which now exists, would have resulted and also any windows would have been further away from the adjacent dwellings by at least 0.6m."*
8. It has been necessary to repeat much of this document at some length, because it is difficult to identify the main issues in the appeals before me without reference back to this highly relevant appeal which is less than a year old. I concur with the vast majority of the previous Inspector's findings, and where I diverge from her views I identify those points of difference in my reasoning below. However, overall from my analysis of this decision I find that the main issue in the two appeals before me is whether the development, the subject of the current section 78 appeal, or the deemed application, the subject of the section 174 appeal, is capable of overcoming the loss of privacy and outlook to occupiers of adjoining residential property, identified as being unacceptable by planning appeal reference APP/J0540/A/09/2107626 dated 23 November 2009.

The Appeal against the Enforcement Notice on Ground (a), the Deemed Application and the Section 78 Appeal – Reasons

9. As a preliminary to the exercise identified in the preceding paragraph, the two applications for planning permission have to be compared with the situation at the time of the previous appeal decision. The bungalow currently on the site, and therefore the subject of the deemed planning application under the enforcement notice appeal, is essentially the same as the one considered unacceptable by the previous Inspector. The principal differences/changed circumstances since the previous decision are that the deemed application does not include frosted glass to the rear French windows and timber fence panels have been added to the 1.2m high breeze block boundary wall with the Figtree Walk rear gardens. In contrast, the rear French windows in the section 78 appeal have been reduced to more standard sizes with an orthodox cill height and only their top most opening portions obscure glazed. The boundary wall would be reduced to 1.7m in height, measured from the ground level on the appeal site.
10. Taking into account the previous appeal decision, in my professional opinion the deemed planning application cannot succeed. Even with timber panels

added to the low wall, the concerns that French windows serving habitable rooms could be readily fully opened in warm weather allowing for domestic activity in the bungalow to be readily heard in Figtree Walk rear gardens, render this development unacceptable in planning terms. Moreover, in the absence of any obscure glazing in those French windows, I am not convinced that the recent installation of fence panels would prevent overlooking of those rear gardens. Therefore, the deemed planning application should fail and planning permission will not be granted on the appeal made under ground (a) of section 174(2).

11. Turning to the section 78 appeal, the reduction of the height of the brick wall from 2.5m to 1.7m would have some beneficial impact on reducing loss of outlook. However, in my opinion an imperforate brick wall of whatever height is an alien feature in suburban rear gardens. The approved bungalow would be almost as obtrusive as the present building when seen from the first floor of houses in Figtree Walk as both would have the same eaves height. In that regard, I disagree with my predecessor that the breach of the 21m back-to-back distance between dwellings, as set out in the Peterborough Supplementary Design Guidance, is significant in this particular situation.
12. To my mind what is more important is the proposal to site another solid brick structure, in the form of a 1.7m high wall, much closer to the houses in Figtree Walk, at the bottom of their modest rear gardens and at a higher level, resulting in an overdominant and oppressive impact upon their residents' amenity. Whilst the proposed wall may, in conjunction with high level obscure glazing, overcome the possibility of overlooking from the section 78 appeal revised bungalow, the loss of outlook to its reduced size windows, resulting from unrelieved brickwork very close at hand, would, in my judgement, be even more overwhelming for occupiers of that proposed dwelling. For these reasons the section 78 appeal should also fail.

The Appeal against the Enforcement Notice on Ground (f)

13. Substantial demolition of the present bungalow on the site may seem a somewhat draconian requirement to secure compliance with the terms of the enforcement notice. However, it must not be forgotten that the present bungalow on the site is so far removed from that approved by planning permission 01/01585/FUL as to constitute an unauthorised structure in its own right. Therefore, compliance with that planning permission and its conditions are the minimum steps to be satisfied that would remedy the breach of planning control and the appeal on ground (f) fails.
14. Nevertheless, in making his case on ground (f) the appellant's agent itemises a number of proposals which, in my judgement, may have the making of a potential planning permission, which could be capable of satisfying, as far as possible, the concerns of the various parties involved in these appeals. He suggests for instance a reduction in the overall height of the roof to equate to that approved. He also indicates that some repositioning of the back wall in part may be possible without demolishing the present bungalow in its entirety. Matters of this sort would need to be the subject of a fresh planning application. It is not my normal approach to indicate in an appeal decision what areas such a revised application should address. However, there have been various attempts at getting a form of development that would allow the new bungalow to co-exist with its well established neighbours in Figtree Walk and to my mind it seems counterproductive to try to replicate another

Inspector's ideas only for another planning application to be rejected yet again. It would be far better if the parties to this dispute were to resolve this matter among themselves without involving The Planning Inspectorate anymore.

15. With this in mind, I gained the strong impression from reading the representations of the residents of Figtree Walk that they most objected to the loss of vegetation at the bottom of their gardens which had remained essentially undisturbed from the time that their own houses had been built almost 50 years ago until the present bungalow was constructed. The removal of the vegetation on the appeal site and the lack of protection, in terms of loss of both security and privacy, afforded by the flimsy nature of their remaining boundary fences, had been a cause of considerable distress to the residents of Figtree Walk.
16. It seems to me that this difficulty could be largely overcome if a solid timber boundary fence were erected jointly along the boundary. I see no need for a brick wall, which could be regarded as oppressive in amenity terms on both sides of the boundary. The fence could be of whatever height was considered appropriate to preclude overlooking from modest rear windows in the bungalow, rather than confined to a fixed height of 1.8m as required by condition 3 of planning permission 01/01585/FUL. Moreover, its potentially stark impact on the residents on both sides could be mitigated by planting as all of the parties adjoining the new fence saw fit. In addition, the principal cause of loss of outlook from the new development for Figtree Walk residents could be significantly reduced, in my opinion, if the overall ridge height of the present bungalow were reduced to that of the bungalow granted planning permission in 2001.

The Appeal against the Enforcement Notice on Ground (g)

17. The process of devising a satisfactory design solution encompassing the matters outlined in the preceding paragraphs, taking all of the views of those affected into consideration, obtaining planning permission, and implementing that permission, is likely to take a long time. In these circumstances, I am prepared to extend the period for compliance with the requirement of the notice from 24 weeks to 52 weeks as requested. The time for compliance in the requirements for the notice will be varied accordingly and the appeal on ground (g) succeeds.

Conclusions

18. For the reasons given above, I conclude that the enforcement notice appeal should not succeed on its planning merits and I uphold the notice, subject to a variation regarding the period for compliance with its requirements. Similarly, the section 78 appeal should also fail.

Ian Currie