



The Planning Inspectorate

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Mrs J Cavanagh
North York Moors National Park
Authority
Development Control Support
Officer
The Old Vicarage
Bondgate
Helmsley
York
YO62 5BP

Your Ref: NYM/2006/0848/FL
Our Ref: APP/W9500/A/07/2056036/WF
Date: 30 January 2008

Dear Mrs Cavanagh

**Town and Country Planning Act 1990
Appeal by S T & A Paxton
Site at Ravens Lodge, Thorpe Lane, Robin Hoods Bay, Whitby, YO22 4RN**

I enclose a copy of our Inspector's decision on the above appeal.

The attached leaflet explains the right of appeal to the High Court against the decision and how the documents can be inspected.

If you have any queries relating to the decision please send them to:

**Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN**

**Phone No. 0117 372 8252
Fax No. 0117 372 8139
E-mail: complaints@pins.gsi.gov.uk**

Yours sincerely

Amanda Baker

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You can now use the Internet to submit and view documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcsportal/casesearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



The Planning Inspectorate

An Executive Agency in the Department for Communities and
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 and advertisement appeals.). 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?" - A relatively small 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.

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.

Further information

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

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

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Website

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Cardiff Office

The Planning Inspectorate
Room 1-004
Cathays Park
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E-mail: wales@pins.gsi.gov.uk

The Parliamentary Ombudsman

Office of the Parliamentary
Commissioner for Administration
Millbank Tower, Millbank
London, SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

E-mail:

phso.enquiries@ombudsman.org.uk



The Planning Inspectorate

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

Our Complaints Procedures

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, we know that 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. Minor slips and errors may be corrected under Section 56 of the Planning & Compulsory Purchase Act 2004 provided we are notified within the relevant High Court challenge period, but we cannot amend or change in any way the substance of an Inspector's decision.

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.

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. 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 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.

"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 submitted.

"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. It can investigate and 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 on the ODPM website - www.communities.gov.uk

Contacting us

Complaints and Queries

Quality Assurance Unit
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Room 1-004
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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



Appeal Decision

Site visit made on 17 January 2008

by **John L Gray** DipArch MSc Registered
Architect

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

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Decision date:
30 January 2008

Appeal Ref. APP/W9500/A/07/2056036

Ravens Lodge, Thorpe Lane, Robin Hood's Bay, Whitby, YO22 4RN

- 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 S T & A Paxton against the decision of the North York Moors National Park Authority.
- The application, ref. NYM/2006/0848/FL, dated 14 June 2006, was refused by notice dated 30 March 2007.
- The development proposed is a garage.

Decision: I dismiss the appeal.

Clarification

1. Although the application is dated 14 June 2006, the Authority says it was received only on 19 October 2006 (which is the date stamped on the copy of the application submitted with the appeal).
2. There appears to be some confusion as to precisely what is proposed. The application specified a garage with timber shiplap walls and a black "onduline" roof. The Authority notes that amended drawings were submitted showing natural stone walls and a pantiled roof. Drawings for that scheme were provided with both the appeal itself and the Authority's questionnaire, although the grounds of appeal refer to the shiplap boarding of the original application. The appellants have subsequently said that the amended design was submitted in error. However, since that is what the Authority considered and refused, it would be wrong to deal with the appeal other than on the basis of that scheme.

Reasons

3. Ravens Lodge has an elongated garden extending well to the rear (east) of the house and in front of the south-facing façades of a vacant workshop (which I understand has permission for conversion to a dwelling) and a detached dwelling (Rookery Nook). The garage would stand directly south of Rookery Nook, which itself has only a very short rear garden. The shrubs along the boundary (which have more or less the effect of a boundary hedge) were about 2.1m high when I visited the site. It was evident that they had recently been pruned but it is not clear that they were substantially higher when the photographs submitted by the appellants were taken. The site slopes down from the boundary with Rookery Nook to the southern boundary with St Stephen's churchyard.
 4. The proposed garage would be about 2.5m high to its eaves and 5.0m to its ridge. It is not clear that the slight slope of the land would make a significant difference to the relationship of the proposed building with the boundary and
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the dwelling beyond. (The elevation of the shiplap boarded garage submitted with the appellants' final comments shows the floor level 600mm below the ground level along its northern side but my impression on the site was that the fall over the length of the garage was less than this.) At best, it seems to me that the eaves would be above the trimmed level of the boundary planting and the ridge would be more than twice as high.

5. The drawing of the revised garage design appears not to be to scale but there are dimensions clearly annotated on it. If the existing clear width of about 2.7m from the churchyard boundary wall (to both the existing garden shed and the garden fence adjoining it) were maintained, the northerly gable of the proposed 7.3m-long garage would, from the measurement I paced on site, stand no more than about 2.0m from the boundary with Rookery Nook and probably no more than about 7.5m from the dwelling itself. On that basis, I can only conclude that the amended design would have an unacceptably overbearing impact on the outlook from Rookery Nook, both from the garden and from the house itself. And, if greater clearance were required for access to the churchyard extension (though that may be difficult to demand when it is limited to 2.7m elsewhere), the position would be still worse.
6. The submitted plans do not assist. The application site plan is clearly reduced from the annotated 1:500 scale (the site is shown as less than 9.0m wide, the garage just 5.0m long and the access past the southern side of the garage less than 2.0m wide – all obviously wrong). The site plan with the Authority's statement is also annotated as 1:500. On it, however, the site scales just 10.0m wide and the proposed garage just 6.5m long; moreover, Rookery Nook is shown in a different position and with different dimensions to the application site plan. One other plan, apparently from the occupiers of Rookery Nook, shows the width of the appeal site more or less the same as I paced it – and it is that plan which gives me the estimate of about 7.5m between the house and the proposed garage. Standing on the site, however, it appeared to me to be less – and the Authority estimates the distance at about 5.0m.
7. Accordingly, based on my site inspection and to the extent that the submitted information permits a considered assessment, I conclude that the proposed garage would conflict with the intention of Local Plan Policy H9(1) in terms of its unacceptable height and position relative to the neighbouring dwelling. It is not otherwise clear how the proposal conflicts with Policies H9 and GP3 since neither makes specific reference to the amenities enjoyed by neighbouring residents. Nor do I consider that the proposal would automatically harm the setting of the listed St Stephen's Church and thus conflict with Policy BE4; in my opinion, a building which looked ancillary to one or other of the dwellings and was designed using materials and details appropriate to that function need have no harmful effect.

John L Gray

Inspector