

Appeal Decision

Site visit made on 20 July 2016

by Mr J P Sargent BA(Hons) MA MRTPI

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

Decision date: 6 September 2016

Appeal Ref: APP/W0340/C/15/3140008

Land at 1107 Oxford Road, Purley, Reading RG31 6YE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Richard McCarthy against an enforcement notice issued by West Berkshire Council.
- The notice was issued on 2 November 2015.
- The breach of planning control alleged in the notice is failure to comply with a condition on planning permission 14/00594/HOUSE granted on 6 August 2014.
- The development to which the permission relates is
a retrospective application for erection of a side and rear extension and alterations to the dwelling. Construction of a swimming pool. Erection of 2 detached outbuildings to the rear. New garage to the front. Change of use and extension to an existing garage to rear of the property to form a gym and pool house. Demolition of existing double garage and reconstruction of a triple garage with adjoining store. Erection of a new porch/veranda. Erection of 2 new sets of walls and gates to the front. Laying of hardstanding to the front of the property. Erection of plastic covered area/canopy to rear of the dwelling.
- The disputed condition is Condition 1 which states:
The garages (2) at the front and back of the site hereby permitted shall be used solely for purposes ancillary to the use of the existing dwelling. No trade, business or commercial enterprise of any kind whatsoever shall be carried on, in or from the garages, nor shall they be used for additional bedroom accommodation or for any form of human habitation.
Reason: In the interests of amenity the creation of a separate planning unit would be unacceptable and to protect the character of the area. This condition is imposed in accordance with the National Planning Policy Framework (March 2012), Policy CS14 of the West Berkshire Core Strategy (2006-2016), Policy HSG.1 of the West Berkshire District Local Plan 1991-2006 Saved Policies 2007, Supplementary Planning Document Quality Design (June 2006) and Supplementary Planning Guidance House Extensions.
- The notice alleges that the condition has not been complied with in that the garage to the north of the Land is being used by a person claimed to be the owner's housekeeper as residential accommodation.
- The requirements of the notice are:
 - 1) Cease to use the building marked X on the plan attached to the notice for the purpose of human habitation.
 - 2) Comply in full and at all times with condition 1 of planning permission 14/00594/HOUSE.
 - 3) Remove from the garage building marked X on the plan attached to the notice all fixtures and fittings associated with the unauthorised use of the building for human habitation.
- The period for compliance with the requirements is 2 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) & (f) of the Act as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended is also to be considered

Decision

1. The appeal is allowed and the enforcement notice is quashed. In accordance with section 177(1)(b) and section 177(4) of the Act as amended, Condition 1 attached to the planning permission Ref 14/00594/HOUSE dated 6 August 2014, is discharged and the following new condition is substituted:

- 1) The garage at the front of the site shall not be used other than for purposes ancillary to the residential use of 1107 Oxford Road. It shall not be used as a separate dwelling unit, nor shall it be sold, let, rented or otherwise separately occupied or disposed of, and no separate curtilage shall be created. The garage at the back of the site hereby permitted shall be used solely for purposes ancillary to the use of the existing dwelling. No trade, business or commercial enterprise of any kind whatsoever shall be carried on, in or from the garage, nor shall it be used for additional bedroom accommodation or for any form of human habitation.

2. Planning permission is granted on the application deemed to have been made under section 177(5) of the Act as amended for

Erection of a side and rear extension and alterations to the dwelling. Construction of a swimming pool. Erection of 2 detached outbuildings to the rear. New garage to the front. Change of use and extension to an existing garage to rear of the property to form a gym and pool house. Demolition of existing double garage and reconstruction of a triple garage with adjoining store. Erection of a new porch/veranda. Erection of 2 new sets of walls and gates to the front. Laying of hardstanding to the front of the property. Erection of plastic covered area/canopy to rear of the dwelling.

without complying with Condition 1 on planning permission Ref 14/00594/HOUSE, dated 6 August 2014 but subject to the other conditions attached to that permission (so far as those other conditions are still subsisting and capable of taking effect) and to the following new condition:

- 1) The garage at the front of the site shall not be used other than for purposes ancillary to the residential use of 1107 Oxford Road. It shall not be used as a separate dwelling unit, nor shall it be sold, let, rented or otherwise separately occupied or disposed of, and no separate curtilage shall be created. The garage at the back of the site hereby permitted shall be used solely for purposes ancillary to the use of the existing dwelling. No trade, business or commercial enterprise of any kind whatsoever shall be carried on, in or from the garage, nor shall it be used for additional bedroom accommodation or for any form of human habitation.
- 2) Within 2 months of the date of this decision the rear elevation of the garage at the back of the site shall be rendered in accordance with the details shown on drawing 8199-PL-4AS received on 1 April 2014.
- 3) This decision has been made in accordance with the details shown on the following drawings.
 - Location Plan: 8199-PL-1

- Existing block plan: 8199-PL-02e
 - As built site section and site plan: 8199-PL-02B rev B
 - Existing plans and elevations: 8199-PL-03
 - As built canopy to rear: 8496-PL-03
 - As built garage elevation: 8199-PL-4AS
 - As built front garage plans, elevation and section: 8199-PL-05AB
 - Existing garage plans and elevations: 8199-PL-08
 - As built pool house plans, elevations: 8199-PL-09AS
 - As built new front porch: 8199-PL-11AB rev B
 - As built soakaway detail and site plan: drawing 8199-SA-01A
- 4) Within 3 months of the date of this decision the soakaways and drainage measures as shown on drawing 8199-SA-01A shall be constructed fully in accordance with the approved details. Should it be found that during construction the ground is less permeable than demonstrated then details of revised drainage measures to accommodate this shall be submitted to the Local Planning Authority as a discharge of conditions application within the period of 3 months following the date of this decision. Following approval of any revised measures all works shall be fully completed in accordance with revised details within 3 months of the date of the discharge of conditions approval.

The notice

3. At the time of my visit the garage subject of this appeal had a kitchen and dining area on the ground floor with a bedroom and bathroom above in the roof space. The Appellant contended the person occupying it was his housekeeper.
4. Although not expressly stated on the notice, the Council confirmed it considered a separate unit of living accommodation had been formed in the garage and so the breach of planning control before me was a material change of use. It would have been open for the Council to issue a notice under section 171A(1)(a) of the Act as amended in which the breach of control was identified as the alleged material change of use but, for whatever reason, it did not take that approach. Rather, the notice was issued under section 171A(1)(b) of the Act as amended and is headed 'Enforcement Notice – Breach of Condition'. The contention that there has been non-compliance with a condition is then followed through in the stated breach of control, the reasons for the notice, and the required steps.
5. When assessing an alleged breach of condition I cannot consider a new use for a building if that would involve enlarging the true scope of the original permission. In this case the breach now alleged by the Council is, in fact, a material change of use comprising the creation of a separate unit of living accommodation, and that lies outside of permission 14/00594/HOUSE. As such, it is not for me to consider whether or not such a change has occurred or assess its merits.
6. In coming to this view I acknowledge that I have wide powers to make corrections to the notice provided that they do not cause injustice. To my mind

though the corrections that would be necessary to reflect the breach now alleged by the Council would alter both the notice itself and the ensuing direction of the appeal to such a degree as to mean I cannot be confident injustice would not be caused as a result.

7. However, I nonetheless accept that there is substance to the appeal as the use of the garage is in non-compliance with the disputed condition if for no other reason than the garage contains a bedroom. As such, there is a matter that can be validly addressed by this appeal, and so I shall proceed on that basis.

Ground (a) appeal and deemed planning application

Main Issue

8. In the light of the above, the main issue in this case is therefore whether the presence of living accommodation in the garage detracts from the character or appearance of the locality or the living conditions of adjacent residents.

Reasons

9. The Appellant's dwelling is in a line of individually designed houses in large plots that stand back from Oxford Road behind a service access and a relatively wide band of landscaping. The garage subject of the appeal is at the front of the plot, and is 2 storeys in height with the upper floor in the roof space.
10. I was not told that any alterations to the external fabric of the building have been undertaken as part of the works, and no such alterations are highlighted in the breach or the required steps in the notice. No 1107 currently has 2 sets of entrance gates, one at the back of the service road and the other between the garage and the main house, and it was said these created a garden for the residents of the garage. However, the limited area between the gates is mainly occupied by driveway or hardstanding and as I am not considering a change of use the creation of a separate garden is not before me. I am mindful too that the notice does not require this situation to change.
11. All the windows in the garage face towards Oxford Road and so allow no overlooking of neighbouring properties. Moreover, given the size of the Appellant's curtilage and those adjacent, and mindful too of the siting of the garage at the front of the plot, I have no reason to consider that any activity associated with what is before me causes unacceptable noise or disturbance, or that this activity would harm the character of the surroundings.
12. Having regard to a decision for a similar development elsewhere in the District both the Council and the Appellant have recommended a condition be imposed along the lines of

'the garage hereby approved shall not be used other than for purposes ancillary to the residential use of 1107 Oxford Road. It shall not be used as a separate dwelling unit, nor shall it be sold, let, rented or otherwise separately occupied or disposed of, and no separate curtilage shall be created'.

I consider such a condition would be appropriate in this instance. I am aware though that this appeal relates solely to the application of the disputed condition to the garage at the front. However, the disputed condition also concerns the rear garage but no arguments have been offered by either party

relating to that building. Therefore, a control in line with the disputed condition that concerns the rear garage only should also be imposed on the decision.

13. Accordingly I conclude that the presence of ancillary living accommodation in the front garage does not detract unacceptably from the character or appearance of the area or the living conditions of neighbouring residents, and so does not conflict with Policy CS14 of the *West Berkshire Core Strategy (2006-2016)*, Policy HSG.1 of the *West Berkshire District Local Plan 1991-2006* or the *National Planning Policy Framework*. The appeal therefore succeeds under ground (a) and planning permission is granted for the application deemed to have been made under section 177(5) of the Act as amended.

Ground (f) appeal

14. Given my findings in relation to the ground (a) appeal there is no need for me to address the appeal under ground (f).

J P Sargent

INSPECTOR