



Appeal Decision

Site visit made on 20 June 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 03 July 2017

Appeal Ref: APP/J1915/C/17/3167331

Land at Old Mead Barn, 64 Walkern Road, Benington, Herts SG2 7LS

- 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 D Carter against an enforcement notice issued by East Hertfordshire District Council.
 - The enforcement notice was issued on 16 December 2016.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of a double garage to the front of the dwelling.
 - The requirements of the notice are to remove the unauthorised garage.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (e) and (g) of the Town and Country Planning Act 1990 as amended.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected

Procedural Matter

1. The breach of planning control as alleged in the notice is, without planning permission, the construction of a double garage to the front of the dwelling. The requirements of the notice are to remove the unauthorised garage. There is, therefore, a slight mis-match between the breach of planning control as alleged in the notice and the requirements to comply with it, insofar as the former refers to a 'double garage' and the latter simply to a 'garage'. It is evident that the appellant has understood what is required of him to comply with the notice and the slight mis-match in the wording of the notice is therefore of no practical consequence.
2. Nevertheless, it is important that an enforcement notice is internally consistent. The term 'double' is purely descriptive and in that sense is also subjective in its interpretation. In the interest of consistency, I shall correct the breach of planning control alleged in the notice to simply refer to a 'garage'. I am satisfied that no injustice would be caused by doing so.

The appeal on ground (e)

3. The ground of appeal is that copies of the enforcement notice were not served as required by section 172 of the Town and Country Planning Act 1990. The appellant's case on this ground is that he has a mortgage with Virgin Money PLC but there is no mention of Virgin Money PLC at paragraph 6 of the Annex to the notice, where the names and addresses of the persons on whom a copy of the notice are listed. The appellant therefore contends that the notice has not been served correctly.

4. The Council explain that, at the time the enforcement notice was issued, a Land Registry search identified Lloyds Bank Plc as having an interest in the land. Accordingly, a copy of the notice was served on Lloyds Bank Plc. A copy of the notice was also served on a company known as Accolade Developments but, on the day following that on which the notice was issued, that company indicated to the Council that they no longer had an interest in the land.
5. On receiving that information, the Council requested a second Land Registry search. That search revealed that Virgin Money PLC now had an interest in the land and, accordingly, the Council then sent a copy of the notice to Virgin Money PLC. In the event, no response was received from Virgin Money PLC.
6. It seems to me that the Council acted properly in terms of requesting a Land Registry search before the notice was issued and again as soon as it became aware that Virgin Money PLC may also have had an interest in the land. I am therefore not persuaded that the notice was incorrectly served, having regard to the information available to the Council when the notice was issued and its subsequent response to the new information. Moreover, even if the notice was incorrectly served in the first instance, Virgin Money PLC did not take any action to protect its interest in the land. It follows that no injustice has been caused to any party. In these circumstances, it would not be in the wider public interest to quash the notice.
7. Accordingly, the appeal on ground (e) fails.

The appeal on ground (g)

8. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is three months.
9. The appellant explains that his son has been diagnosed with a rare condition, as a result of which his son has breathing difficulties. This means that the appellant's son cannot be exposed to dust, which would worsen his condition. As a consequence, the appellant explains that his family would have to move out of the house when works to demolish the garage were in progress, an exercise that requires forward planning and integration with normal family activities. On that basis, a period of compliance of nine months is sought.
10. I have great sympathy with the appellant's circumstances and accept entirely that these circumstances are a material consideration in this ground of appeal. But I must balance that consideration against the harm caused by retaining the garage for a longer period of time than that specified in the notice. In this respect, in dismissing an appeal to retain the garage, the Inspector described the structure as being an incongruous addition to the streetscene and causing significant harm to the character and appearance of the surrounding area (APP/J1916/D/16/3164324). I concur with that assessment.
11. The garage is not a substantial or complex structure, and could be physically demolished in a relatively short period of time. Consequently, whilst I accept that the appellant's family would need to temporarily move out of the house when demolition works were in progress, the duration of that stay away from home would be relatively short. This would simplify the planning and execution of that move, and also make accommodating the absence from the family home with normal family activities less of a difficulty.

12. In balancing the harm caused by the garage against the appellant's personal circumstances, I am not persuaded that the period of compliance of nine months sought by the appellant is necessary to comply with the requirements of the notice, even taking into account his personal circumstances. Indeed, I see no practical reason why the demolition of the garage could not be achieved in the three months stated in the notice. I therefore see no reason for extending the period of time in which the garage could remain in situ, given the significant harm that it causes to the character and appearance of the surrounding area.
13. Accordingly, the appeal on ground (g) fails.

Conclusion

14. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice as corrected.

Formal Decision

15. It is directed that the enforcement notice be corrected by deleting the word "double" in paragraph 3 of the notice. Subject to that correction, the appeal is dismissed and the enforcement notice is upheld.

Paul Freer

INSPECTOR