



Appeal Decision

Site visit made on 6 November 2019

by S Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/V3120/C/19/3222587

79a Oxford Road, Abingdon, Oxfordshire OX14 2AB

- 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 Mrs Janice Thomas against an enforcement notice issued by Vale of White Horse District Council.
 - The enforcement notice was issued on 7 January 2019.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a building on the land in the approximate location shown hatched blue on the Plan.
 - The requirements of the notice are:
 - (i) Demolish the building referred to in 3 above;
 - (ii) Remove from the Land any waste materials resulting from the works required by (i) above;
 - (iii) Reinstatement areas of the Land disturbed by the works required by (i) and (ii) above, by the depositing of clean top soil and the sowing of grass seed.
 - The period for compliance with the requirements is 12 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building on land at 79a Oxford Road, Abingdon, Oxfordshire OX14 2AB, as shown on the plan attached to the notice, subject to the following conditions:
 - 1) The building hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within three months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within three months of the date of this decision a scheme for external facing materials and soft landscaping shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

- ii) If within 6 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed in accordance with the approved timetable.

Upon implementation of the approved schemes specified in this condition, the facing materials and soft landscaping shall thereafter be maintained/retained.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- 2) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

The appeal on ground (c)

- 2. The ground of appeal is that the matters alleged do not constitute a breach of planning control. The onus of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probability.
- 3. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in s55(1) of the Act which defines the two limbs of development, namely operational development, which means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of a material change of use. There is a further definition of "building operations" as s55 (1A) includes demolition, rebuilding, structural alterations or additions, and other operations normally carried on by a person in business as a builder. "Building" is defined in s336 of the Act as including any structure or erection and any part of a building.
- 4. The appellant argues that the building is permitted development (PD) by virtue of Part 4, Class A of the Town and Country Planning (General Permitted Development) Order 2015, which would allow for the provision on land of building, moveable structures, works, plant or machinery required temporarily in connection with, and for the duration of, operations carried out on the site or adjoining land. The essence of the appellant's claim being that the building was constructed for a temporary purpose for the storage of domestic paraphernalia whilst building work progresses.

5. In the context of Part 4 Class A PD rights the term '*required*' means reasonably required. Whether a structure really is required '*temporarily*' in connection with operations is a matter of fact and degree. On any basis, factors such as size and means of construction of the building in question will be highly relevant. Whilst it was possible that a landowner would wish to erect a permanent building to serve a temporary purpose, as a matter of common sense, absent any other explanation, the larger and more permanent the building in question the less likely it was to be genuinely required temporarily in connection with the carrying out of the authorised development. In my opinion, the use of the building for the storage of domestic paraphernalia in connection with the construction of the new house on site would comply with the essence of Part 4 Class A of the GPDO. Nevertheless, the question is whether the building amounts to a temporary nature.
6. Based on all the evidence before me, the nature and scale of the building suggests that the work involved in its construction amounts to building operations firmly falling within the definition of "development". I am not persuaded that the building is required '*temporarily*'. The size and construction of the building, which is plumbed in to the sewer waste, is that of a permanent structure and its degree of permanency, goes above and beyond what is reasonably required for the building to be classed as being required '*temporarily*'.
7. In addition, the evidence indicates to me that the building was required for a significant period of time given its permanence. As a matter of fact and degree and on the balance of probability, the building is not a temporary building and its use is not intended as such. The development does not therefore fall within the ambit of Class A PD rights. Express planning permission is required for the development and it has not been obtained. The appeal on ground (c) must fail.

The appeal on ground (a) and the deemed planning application

Main Issue

8. The appeal made on ground (a) is that planning permission ought to be granted in respect of the breach of planning control alleged in the enforcement notice. The main issue is the effect of the development on the character and appearance of the area with particular regard to design, siting and landscaping.

Reasons

9. The appeal site is located within the suburbs of Abingdon with domestic properties to the side, front and rear. The character of the road on which the site is located is a busy residential thoroughfare with predominantly large detached houses of varying styles, well-spaced and set back from the road. The long frontages of these properties are given over to gardens and areas of parking. Many of the houses fill the width of their plots and where garages are not provided to the side, some have been constructed to the front of the properties. To demonstrate this, the appellant has referenced several examples of garages within the frontages of properties along Oxford Road.
10. The Council has, in its statement, considered these developments, providing reasoning for its acceptance of each scheme. However, I do not have the full details of these cases and direct comparison is of limited relevance to my considerations. Nevertheless, each case should be decided on its own merits

and I have considered this proposal with regard to the specific characteristics of the appeal site and its immediate surroundings.

11. To the front of the site, views along the road are affected by boundary walls, fences and mature planting, which limit the ability to see property frontages in a single vista. These features along this road form an important part of the character and appearance of the area. The building sits in the frontage of the appeal site behind a wall which bends around the building and into the site entrance. On top of the wall is a fence which is roughly level with the eaves of the building. In this respect, views of the building are limited and parts of the building are only noticeable when seen from some positions along the street within the immediacy of the site. I agree with the Council that in its current unfinished state, with exposed bare block work, its appearance is visually discordant. However, appropriate finishing materials would soften its appearance and help the building settle into its surroundings.
12. Nevertheless, given the screening provided by the front boundary wall and fence, and the addition of landscaping within the gap to provide natural screening, the view of the building is restricted to its roof which, with a shallow pitch, does not appear prominent. The side of the building is more visible, but with further planting the natural screening renders the views limited. Furthermore, what views remain are against the back drop of the row of properties which have a visibly dominant presence within the street scene. In this context, the building does not appear dominant or out of place. It therefore does not result in harm to the street scene or the wider urban environs.
13. The enforcement notice highlights the resultant damage to existing landscape features on the site; the excavation of the raised grassed area on which the appeal building is located and the root system of the adjacent sycamore tree. However, there is no evidence before me that suggests the development has compromised the health of the tree.
14. Regarding the provision for new landscaping, I acknowledge the concern about the limited space between the front boundary and the building, however, a row of trees/hedging has been planted which appears to be successfully growing and providing a natural screen. Additional planting has been undertaken to the side where there is more space for a natural boundary to establish.
15. For the above reasons I find no harm to the character and appearance of the area. Accordingly, I find no conflict with Policies CP37 and CP44 of the Vale of White Horse Local Plan 2031- Part 1 (2016) and Policies DC6 and DC9 of the Vale of White Horse Local Plan (2006) insofar as the development is not physically or visually dominant and new landscape features will enhance the character of the site and surrounding area.
16. The ground (a) appeal therefore succeeds.

The appeal on ground (f)

17. The appeal on ground (f) was brought because the appellants considered certain requirements of the notice that related to the works to be excessive. It no longer needs to be considered following the grant of planning permission for the works.

Conditions

18. The purpose of condition 1) is to require the appellant to comply with a strict timetable for dealing with the external facing materials and soft landscaping which need to be addressed in order to make the development acceptable. The condition is drafted in this form because, in the case of a retrospective grant of permission, it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matters. This is because the development has already taken place. The condition therefore provides for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the condition not be met in line with the strict timetable, then the planning permission falls away.

Overall conclusion

19. For the reasons given above I conclude that the appeal on ground (c) fails. I further conclude that the appeal on ground (a) and the deemed application for planning permission succeeds. Consequently, the enforcement notice is quashed, and planning permission granted on the deemed application subject to conditions above.

S Hanson

INSPECTOR