



Appeal Decision

Site visit made on 11 March 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 18 May 2020

Appeal Ref: APP/A2335/C/19/3232895

10 Willowfield Road, Heysham, Morecambe LA3 2HF

- 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 P Wolstenholme against an enforcement notice issued by Lancaster City Council.
 - The enforcement notice was issued on 20 June 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission, the erection of a side extension to the residential dwelling located on the land to form a car port on the part of the land hatched blue on the plan attached to the enforcement notice.
 - The requirements of the notice are: (a) Remove the unauthorised extension shown on the part of the land hatched blue on the plan attached to the enforcement notice from the land; and (b) Remove all the resultant building materials relating to the unauthorised extension from the land; and (c) Leave the land in a clean and tidy condition.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Decision

1. It is directed that the enforcement notice be amended by the deletion of the text '3 months' from the period for compliance and the substitution of it by the text '6 months'.
2. Subject to this amendment, the appeal is dismissed and the enforcement notice is upheld.

The appeal on ground (d)

3. The appeal is that, at the time the enforcement notice was issued, it was too late to take action. Section 171B(1) of the Act indicates that for operational development such as the car port extension, no action may be taken four years after the date of the substantial completion of the development. As the enforcement notice was issued on 20 June 2019, the development needs to have been substantially completed by 20 June 2015 in order to be immune from enforcement action.
4. The appellant's case in relation to ground (d) is supported by a significant amount of documentary evidence. In order for the appeal to succeed on this ground, the evidence needs to be precise and unambiguous.

The evidence from the appellant and his builder

5. In his statement of case, the appellant says the works to construct the car port started on site on 17 September 2014. He supplies a sworn affidavit to confirm this commencement date, and goes on to state within this document that the 'side garage extension (South Gable) was completed at the end of April 2015'. He also submits a signed witness statement from his builder, Mr Lee Maguire, who states that the works were completed by 15 May 2015. An invoice for the work from Mr Maguire is also included, and this is dated 25 May 2015. However, no explanation is given for the discrepancy between the two stated completion dates.
6. Moreover, the appellant has produced a photograph date stamped 29 May 2015. This photograph shows the open timber structure of the roof, but without the roof covering. The appellant states that the structure was finished within days of the photograph being taken. This photograph raises concerns as it directly contradicts the completion dates given above. In a further photograph dated 8 July 2015, a structure that resembles the finished car port can just be made out in the background. However, this evidence does not prove definitively that it was completed by the key date of 20 June 2015.

Evidence from the neighbour's LDC application

7. A neighbouring resident, Mr Kwiecinski, at 2 Burford Drive, states in his letter of 21 September 2019 that the canopy of the car port was built around May-June 2015. In his second letter of 28 December 2019, he says that the works took place around April-June 2015, and that they appeared to be largely complete no later than the end of June 2015. Mr Kwiecinski had constructed a fence on his property, making a subsequent LDC application for the work in July 2019 (ref: 19/00927/ELDC). He includes two photographs which he took on his camera whilst undertaking his work, and then transferred using Microsoft Office.
8. In section 5 of his LDC application form, the first two photographs were dated 19 May 2015 and 29 May 2015, showing ground preparation, materials, and the fence posts in place. The corner of No 10 is visible in the background of the photographs but the structure of the car port does not appear to be in place. However, Mr Kwiecinski explains that the photographs were taken prior to the dates given on the application form, and that they used the later Microsoft Office copy dates. The appellant's Appendix 23 suggests that the photograph dated 29 May 2015 was in fact taken on 8 May 2015.
9. The appellant contends that as, the photographs were taken prior to the dates given on the form, this left ample time from the actual date of the photographs for the car port roof to be built and completed before the end of June. However, this evidence does not actually confirm the completion date of the car port.

The aerial photo

10. The Council have supplied an aerial photograph from Lancashire County Council's mapping system of a flyover, said to be on 9 May 2016, which does not show the car port in place. The appellant disputes the validity of this photograph for a number of reasons. There is no date on the aerial photograph itself, and I have been unable to ascertain its date by right-clicking on the

photograph and selecting file information, as the Council suggests. Furthermore, this date does not tally with, for example, the appellant's date stamped images from 2015, which do appear to show the car port both partially and fully complete. However, even if I accept that there is some uncertainty over this image, it does not help the appellant as it does not pinpoint the completion date of the unauthorised development.

The third-party submissions

11. The appellant provides a number of other letters from neighbours. Mr Morton at 6 Burford Drive states in his letter of 23 September 2019 that the car port was put up around May 2015. His further letter of 30 December 2019 says that the structure was built 'early to mid 2015'. Other letters confirm support for the development, but offer no further substantiated information in terms of dates.

Other evidence

12. Various other pieces of evidence have been produced, including a number of receipts for materials from Cemex and Distinctive Group, and for the hire of plant from Hire-it. However, these documents do not assist with the confirmation of the completion date of the development, which is the key date. Also included is the appellant's 2018 application for planning permission (ref: 19/01392/FUL) to change the roof profile of the garage to a flat roof. According to this document, the work started on 10 October 2013. Conversely, planning application ref: 18/00062/FUL stated that the works commenced on 10 September 2017 and were completed by 30 October 2017.

Conclusion on ground (d)

13. In summation, the evidence before me is so vague and/or contradictory that I can have no certainty that the car port was substantially complete by 20 June 2015, and thus immune from enforcement action. Instead, it falls far short of the precise and unambiguous evidence that is needed. As a result, the appeal on ground (d) must fail.

The appeal on ground (a)

Main Issue

14. The main issue is the effect of the development on the character and appearance of the surrounding area.

Reasons

15. The appeal site at No 10 occupies a corner site on the junction between Willowfield Road and Burford Drive. The unauthorised development comprises a single storey car port with a monopitched roof on the side elevation of the dwelling. The Council object to the structure on the grounds of its scale, its proximity to the highway boundary and the junction, its materials, and its visual prominence.
16. The Lancaster City Council Householder Design Guide (HDG) sets out design principles for new development. In relation to garages and outbuildings, these should be well sited in relation to the dwelling and should be set back from the front elevation. If they are visible from the public domain, the roof design and

pitch should match that of the existing dwelling. Generally, significant extensions beyond the side elevation on corner plots are to be resisted.

17. On my site visit, I was able to see the car port clearly from the public realm. In terms of scale, it largely spans the width of the side elevation, with only a marginal set back from the front elevation of the house. By extending out to adjoin the boundary fence, it infills most of the side plot, reducing the sense of openness on the corner. When viewed from the front, its width is more than half the width of the front elevation of the dwelling. All these factors result in a structure that appears excessively large and disproportionate to the scale of the house and the plot.
18. The pitch of the car port roof is shallower than the main roof of the house, contrary to the HDG advice that roof pitches should match those existing. In terms of materials, the car port is covered with white profiled sheeting with clear panels in between, and white uPVC guttering which is readily visible above the fence. These materials are visually out of keeping with the weathered timber of the gate and fencing, the mellow red brick of the walls and the dark roof tiling at the property.
19. I accept that there are other instances of the use of uPVC cladding in the area. However, I did not see any examples that are directly comparable to the appeal scheme. I am therefore satisfied that the car port appears incongruous in the wider street scene, and conflicts with the HDG design guidelines.
20. I accept that a shed structure previously existed in the same location, which the appellant states was run down. Whilst it also spanned the side plot, its overall scale was smaller than the car port, with a lower roof. From the images the appellant has provided, it also had grey roofing that was similar in tone to the roof tiles of the main house. Taking these factors into account, I am satisfied that the visual impact of the shed on its surroundings was significantly less than that of the car port.
21. I note that hedge cover was present in the appellant's Images 2 and 3 of the car port. However, planting cannot be relied upon to mitigate the harmful impact of unsympathetic development as it can be cut back and removed at any time.
22. In the absence of any compelling reason to set aside the policy requirements, I conclude that the car port fails to meet the HDG design advice, and thus unacceptably harms the character and appearance of the surrounding area. It therefore conflicts with Policy DM35 of the Lancaster District Development Management DPD, which requires new development to make a positive contribution to the surrounding townscape.
23. My attention has been drawn to a small number of examples of extensions to dwellings in the area. However, none of these offer a direct parallel to the circumstances of the appeal before me, and I cannot be certain of their planning history. In any event, each case is to be considered on its individual merits. The representations of support have not led me to a different conclusion on this main issue.
24. The appeal on ground (a) therefore fails.

The appeal on ground (f)

25. The appeal on ground (f) is that the steps required to comply with the requirements of the notice are excessive, and that lesser steps would overcome the objections.
26. The appellant indicates that he was willing to create a flat roof to the car port to try and address the Council's concerns. However, whilst such a proposal would be less visible in side views from the street scene, it would still not comply with the design guidelines set out in the HDG above, particularly the requirement that new roof profiles should match those of the existing dwelling.
27. The appeal on ground (f) therefore fails.

The appeal on ground (g)

28. The appeal on ground (g) is that the time given to comply with the notice is too short. As the timing of the appeal process has coincided with the coronavirus pandemic, I have written to the parties for their further views on the period of compliance in the light of the crisis, and taken their responses into account.
29. The appellant argues that three months is insufficient for a number of reasons. Firstly, at the time of lodging the appeal, he anticipated that the notice might come into force during the winter months coming up to Christmas. However, due again to the timing of the appeal, this is no longer a critical issue.
30. I acknowledge that the appellant has been experiencing ill health, and has unfortunately been experiencing financial difficulties as a result. He states that, despite his poor health, he will have to remove the structure by himself. Additionally, he points to the current difficulty of hiring any necessary machinery and disposing of waste due to the restrictions brought about by the coronavirus situation. He suggests that an extension to next spring or summer is needed.
31. Whilst I take into account the appellant's personal circumstances, the fact remains that the car port is a relatively lightweight structure. There is little evidence before me to show that it should take any great time or expense for its removal. Nevertheless, the coronavirus situation clearly adds difficulties and uncertainties, even for relatively small undertakings of this kind. For that reason, I consider that an extension to six months is reasonable to reflect all these circumstances. To extend the time period to a year or more would be tantamount to granting a temporary permission for the structure, which to my mind would be untenable in view of the harm I have identified above.
32. To that limited extent, the appeal on ground (g) succeeds.

Conclusion

33. Subject to the variation outlined above, I conclude that the appeal should be dismissed, and the enforcement notice upheld.

Elaine Gray

INSPECTOR