
Appeal Decision

Site visit made on 16 March 2021

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/B2355/C/20/3262006

Land at 51 Bankside Lane, Bacup, Rossendale OL13 8HJ

- 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 Raymond Kay against an enforcement notice issued by Rossendale Borough Council.
 - The enforcement notice was issued on 2 October 2020.
 - The breach of planning control as alleged in the notice is without the benefit of planning permission, the erection of a garage.
 - The requirements of the notice are:
 - a. Demolish the garage shown in the photograph attached to the notice; and
 - b. Permanently remove all materials associated with the demolished garage from the Land.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice is corrected by deleting the site plan attached to the issued enforcement notice and by the deletion of the words "as outlined in red on the attached plan" in section two of the notice. Subject to these corrections, the appeal is dismissed, and the enforcement notice is upheld.

The Enforcement Notice

2. As established by caselaw, the recipient of an enforcement notice is entitled to say that he must find out from within the four corners of the document what he is required to do or abstain from doing.
3. The appellant pointed out that the plan attached to the notice outlines only part of the site to which the alleged breach relates. Be that as it may, there is no misunderstanding about the development to which the notice relates, indeed there are photographs of the garage attached to the notice, referenced in the requirements. Consequently, it is possible to establish from the notice read as a whole, what constitutes the breach of planning control; and what steps the local planning authority require to be taken, to remedy the breach.
4. I have a duty to get a notice in order if I can. Pursuant to section 176 of the Act I have power to correct any defect, error or mis-description provided I am satisfied there will be no injustice to either party. For the reasons given, I am satisfied that the notice can be corrected by deleting the site plan without causing injustice to either party.

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

5. The main issue is the effect of the garage on the character and appearance of the bungalow and area generally.
6. Bankside Lane is a residential road containing a variety of different types and ages of housing. The appeal site is located at the rear of 51 Bankside Lane, a brick-built bungalow which fronts Bankside Lane. The garage, subject of the appeal, abuts a gable projection to the rear of the bungalow.
7. The land to the rear of the bungalow slopes fairly steeply downwards, such that the garage occupies a lower ground level than the bungalow. Beyond the garage is an open field, in the appellant's ownership, which also borders the gardens of neighbouring houses. However, notwithstanding the open land beyond, the garage is viewed in a residential context.
8. Whilst there appears to be no in principle policy objection to erecting a garage, the garage has an appearance more commonly associated with agricultural or industrial type buildings. It relates neither in terms of scale, design or materials to the bungalow and combined with its siting, appears as an obtrusive and discordant feature.
9. The appellant suggests that a condition requiring the garage to be painted or clad to be similar in colour to the materials used on the bungalow, would render the building compatible in its surroundings. Whilst I consider these works could be secured by the imposition of a condition, they would not overcome the identified harm in respect of the scale and siting of the garage.
10. Irrespective of the architectural merits of the bungalow or the sensitivity of this context, the National Planning Policy Framework (the Framework) sets out that the creation of high-quality buildings and places is fundamental to what the planning and development process should achieve. Further, that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area.
11. Wider public views of the garage appear to be limited to distant views from across the valley however, the garage is visible from a number of neighbouring houses and their gardens. As such, whilst reasonably localised in its extent, the effect is to unacceptably harm the character and appearance of the bungalow and the surrounding area. The development therefore does not accord with Policies 1, 23 and 24 of the Core Strategy¹ which together require development to be of the highest standard of design, compatible with its surroundings in terms of style, siting, orientation, visual impact, local context, massing, height and materials. It also conflicts with the design aims of the Framework and the Council's SPD².

Other Matters

12. The appellant argues that the garage constitutes a freestanding building for the purposes of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) and suggests that should the ground (a) appeal be unsuccessful, the garage could be lowered in height to

¹ Rossendale Borough Council Core Strategy Development Plan Document: The Way Forward (2011-2026) Adopted 8 November 2011

² Alterations and Extensions to Residential Properties A Supplementary Planning Document (SPD)

- 2.5m. They consider that this would render the building permitted development, by virtue of Schedule 2 Part 1 Class E of the GPDO. The Council, however, argues that the garage would fall to be considered, under Part 1 Class A, as in their view it is attached to the bungalow.
13. Permitted development rights cannot be exercised retrospectively so the building cannot be altered in such a way that would make it lawful by virtue of permitted development rights. However, where permitted development rights would allow partial re-instatement of works prohibited by the enforcement notice it is a consideration that I must assess however, I must also have regard as to whether the fall-back position is a realistic possibility.
 14. In respect of Class E buildings, the Technical Guidance³ states that buildings which are attached to the house are not permitted under Class E (they would be subject to the rules in Class A).
 15. In this case, whilst there are no adjoining doors between the garage and bungalow, the garage abuts the bungalow such that there is no evident gap between the two and at my visit I observed what appeared to be sealant or filler type material between the front corner of the garage and bungalow. Whilst the garage may not appear as a typical extension it is and would appear to a casual observer to be, attached to the bungalow.
 16. Consequently, I find that the garage consists of an enlargement to the bungalow such that it would be considered against Class A of the GPDO. Therefore, I consider that there is no such fallback position and I afford this matter limited weight.
 17. The appellant referred to and provided details in respect of planning permissions for garages of similar dimensions elsewhere in the Borough. In the case of The Lodge, the garage would see the replacement of a flat roof concrete and asbestos garage, with a construction of a natural stone and slate building with hipped roof. In the Lower House Barn case it appears that the garage would be sited into the land with local stone walls to match the house and sedum roof to blend with the adjacent land. Finally, that at Knowl View, would be constructed from stone and natural slate to match the bungalow, the siting is straightforward and would follow the front and rear building line of the nearest elevation.
 18. Accordingly, whilst similar in scale, it appears to me that these examples are designed to complement the associated dwellings, in particular in terms of materials. Consequently, they would not have the same harmful effect as the appeal development and do not provide a precedent to justify the appeal scheme.
 19. I acknowledge the support of the nearest neighbour; however, this is a neutral matter which cannot outweigh my findings.
 20. Whilst I note third party comments regarding the alleged use of the garage for commercial purposes, since this did not form part of the Council's allegation this has no bearing on my decision.

³ Permitted development rights for householders Technical Guidance Ministry of Housing, Communities and Local Government September 2019

Conclusion

21. For the above reasons and with regard to all other matters raised, I conclude that the appeal on ground (a) should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

The appeal on ground (f)

22. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. The purposes of an enforcement notice are set out in Section 173 of the Act and are to remedy the breach of planning control (s173(4)(a) or to remedy injury to amenity (s173(4)(b)). As the enforcement notice requires the garage to be demolished and all resulting materials to be removed from the Land, I find the purpose is to remedy the breach of planning control. No lesser steps would achieve that purpose.
23. The appellant suggests that lowering the height of the garage would suffice to render the building lawful. I have considered this and the appellant's suggestion in respect of painting or cladding under ground (a) and come to the opposite conclusion.
24. In order to remedy the breach of planning control, it is not excessive to require the demolition of the garage and to permanently remove all resulting materials from the land. I conclude that no lesser steps would remedy the breach of planning control that has occurred. The appeal on ground (f) therefore fails.

The appeal on ground (g)

25. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable.
26. The appellant's case is that they would like to extend the compliance period to a minimum of nine months. This is for reasons related to the COVID-19 pandemic, including the implications if the appellant or his partner were to contract the virus, the availability of contractors given restrictions associated with the pandemic and that the appellant's work, given the onset of winter means that he would have limited opportunity to undertake the work in daylight hours. Additionally, the appellant stated that the three months given would be inadequate time to find alternative garaging for his high value motor vehicles.
27. The time period given for compliance within the enforcement notice is to allow for the physical works associated with the notice to be removed. Where an appeal is made against an enforcement notice, regardless of the grounds, the appeal 'stops the clock' and the period for compliance does not start until the date of the appeal decision.
28. Whilst I acknowledge the appellant's concerns, in the absence of substantive evidence regarding the availability of contractors and alternative storage, given the relatively straightforward nature of the construction, I consider the period of three months for the demolition of the garage and removal of materials and debris from the land, as specified in the notice, is proportionate to the breach of planning control that has occurred.

29. Consequently, on the basis of the above and given the time of year, I consider three months to be a reasonable period for compliance. The appeal on ground (g) therefore fails.

Conclusion

30. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections.

Felicity Thompson

INSPECTOR