



Appeal Decision

Site visit made on 10 August 2021

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/Q3115/C/21/3275521

Land at 26 Wheatley Road, Garsington, OX44 9ER

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Abdul Khuja against an enforcement notice issued by South Oxfordshire District Council.
 - The notice was issued on 20 April 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission the demolition of an existing garage building, retaining wall and parapet and the construction of various operations comprising 1) a concrete retaining wall on the alignment shown coloured blue on the Plan; 2) a concrete block parapet wall with metal railing inserts also on the alignment shown blue on the Plan; 3) a garage building in the approximate location shown edged green on the Plan; and 4) a carport in the approximate location shown edged orange on the Plan.
 - The requirements of the notice are:
 - (i) *demolish the unauthorised garage and carport referred to in Section 4 above including their foundations;*
 - (ii) *reinstate areas of hardstanding disturbed by the demolition works required by step (i) above, by the laying of pavers to match the size, colour, pattern and surface level of the adjoining hardstanding area;*
 - (iii) *demolish the concrete block parapet wall referred to in Section 4 above;*
 - (iv) *construct a new parapet above the existing retaining wall on the alignment shown coloured blue on the Plan, using face bricks to match the existing garage building, with a solid brick wall to a height not exceeding 1.2m and engaged brick piers to a height not exceeding 2.0m and open metal railing inserts fixed between the engaged piers above the height of the brick wall.*
 - (v) *apply a cement rendered finish to the south face of the concrete retaining wall referred to in Section 4 above;*
 - (vi) *remove from the Land all waste material resulting from steps (i),(ii),(iii),(iv) and (v) above.*
 - The period for compliance with the requirements is 12 months.
 - The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. 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 insofar as it relates to the parapet wall on the alignment of the land shown blue on the enforcement plan 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 parapet wall as shown on the alignment marked blue on the enforcement notice plan on land at 26 Wheatley Road, Garsington, OX44 9ER and subject to the following condition:

- 1) Within 3 months of the date of this decision, the parapet wall shall be finished in render and painted to match the pillars on top of the parapet wall.
2. The appeal is dismissed and the enforcement notice is upheld as insofar as it relates to the garage, car port, railings and retaining wall and planning permission is refused in respect of them on the applications deemed to have been made under section 177(5) of the 1990 Act as amended.

Main Issues

Ground (a) – that planning permission should be granted

3. The site lies within the Oxford Green Belt, and therefore the main issues are:
 - i) whether the development amounts to inappropriate development in the Green Belt;
 - ii) the effect of the development on the openness of the Green Belt;
 - iii) the effect of the development on the character and appearance of the surrounding area, and
 - iv) whether any harm from inappropriateness and any other harm is clearly outweighed by other considerations sufficient to amount to very special circumstances to justify the development.

Reasons

4. The site forms an area of land separated from the house and garden of a detached house at 26 Wheatley Road by a private drive and public footpath. The appellant concedes that the car port and metal railings on the parapet wall should be removed, and thus I shall not consider the planning merits of these aspects of the development enforced against.
5. The site has had two garages on it for many years. One of those garages, the easternmost of the two, has been removed and replaced, whilst the westernmost remains. Policy STRAT6 of the recently adopted South Oxfordshire Local Plan 2035 (LP) deals with the Green Belt and provides that within its boundaries development will be restricted to those limited types of development which are deemed appropriate by the National Planning Policy Framework, unless very special circumstances can be demonstrated.
6. The Framework says that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. It sets out a number of exceptions to this general principle, the only one of relevance here is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
7. Planning permission Ref: P05/W0591 for the removal of existing garages and erection of replacement garages at the appeal site was granted in 2005. The Council found that the garages were not being built in accordance with the approved plans, but concluded that, given the limited extent of the increase in size, it was not expedient to take enforcement action against the breach. Whether or not the permission has been implemented is of little significance as there is no question that the previous garage was lawful through the passage of time, if for no other reason. However, the extent of the departure from the

approved plans is not known, and therefore the plans are only of limited value in determining whether or not the current garage is materially larger than the one it replaced.

8. Of more value are the aerial photographs submitted by the Council, as well as the photographs showing the former garage as it underwent demolition. It is clear from these that the former garage was well set back from both the eastern and southern boundaries of the site, whereas the current garage extends up to them. In my estimation, the footprint of the current garage is about twice that of the previous garage, with a height that appears similar to the one it replaced. I regard this more or less doubling in size to be materially larger.
9. The appellant has referred to the effect of the enlargement on openness as a factor in assessing whether the new garage is materially larger than the one it replaced. However, the Courts have made it clear that such an assessment is primarily an objective one by reference to size, which should not include the consideration of the impact on visual appearance or on openness.
10. I therefore conclude on the first main issue that the garage is materially larger than the one it replaced and is therefore inappropriate development, which by definition is harmful.

The effect on openness

11. Openness has both a visual and spatial dimension. Dealing firstly with the visual dimension, the garage is constructed on land that has been raised in height above the surrounding fields to the east and south, on top of substantial concrete retaining walls. A public footpath runs along the northern boundary of the site, and the land levels fall away to the east. The garage is therefore a prominent feature when seen from the footpath to the east and has a clear effect on openness. It is also highly prominent from the south, and although there are no significant public viewpoints, it nevertheless has an adverse impact on openness when seen from this direction. It is also an obvious, if not an imposing feature when seen from the public footpath to the north.
12. In terms of the spatial dimension, the garage occupies a substantial part of the site where no building previously existed, about double the size of the previous building, and thus it has an adverse effect on the spatial dimension of openness.

Character and appearance

13. I have referred above to the extent to which the building can be seen from the public footpath to the east of the site. From there it is an imposing presence which makes a harsh juxtaposition between the countryside and the edge of Garsington. The eastern retaining wall has already been granted planning permission subject to conditions, which include the provision of a trellis and planting to soften the appearance of the wall. This condition has not yet been complied with, but even with such planting in place, the garage itself appears as an incongruous feature. The rear elevation of the garage is in bare blockwork, and has a particularly poor appearance, but I accept that it could be improved by being rendered, which, if the appeal were to have succeeded, could have been the subject of a condition. Even so, such a treatment would not overcome the harm caused by the siting so close to the site's boundary.

14. Turning to the southern elevation, there is a large fall in height between the top of the retaining wall and the ground below, which forms an access track to a sewage treatment plant. My findings in relation to the eastern elevation also apply to this one, although it is not as prominent in public views because on the other side of the access track is an arable field which gently rises to meet the hedge-lined boundary of the Garsington Memorial Playing Fields. This hedge provides a substantial screen to the views towards the appeal site, and thus, other than through a small gap in the hedge, the garage cannot be seen.
15. Even so, the building and retaining wall can be seen from private land, and the need for good design is not wholly dependent on whether public views are obtainable. The notice does not require the retaining wall to be demolished, merely for it to be rendered and I consider that this is appropriate to remedy the injury to amenity. The garage on the other hand is visually intrusive and harmful to local character and amenity.
16. The notice requires that the parapet wall be demolished and rebuilt in brick to match the garage. The pillars have already been rendered and painted and I consider that this results in an acceptable appearance. I shall therefore grant planning permission for the parapet wall, requiring the whole to be rendered and painted to match the pillars. However, this does not alter my overall conclusion on this issue that the garage results in material harm to the character and appearance of the area, and conflicts with LP Policies DES 1, DES 2 and ENV1, which respectively deal with high quality development, enhancing local character and landscape and countryside.

Balancing exercise and other material considerations

17. I have found that the garage represents inappropriate development in the Green Belt and that it harms openness, as well as the character and appearance of the area. It also conflicts with the development plan as a whole. There are no other material considerations sufficient to clearly outweigh the harm, to which significant weight must be attached. I therefore conclude that the planning permission should be refused, and that the appeal on ground (a) must be dismissed except insofar as it relates to the parapet wall, for which I shall grant planning permission. To this limited extent, the appeal succeeds.

Conditions

18. I shall impose a condition on the permission for the parapet wall to require it to be finished to match the pillars, as discussed above.

Conclusion

19. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the parapet wall, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the garage, car port, metal railings and retaining wall. By virtue of s.180 of the Act the requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant.

JP Roberts
INSPECTOR