
Appeal Decisions

Site visit made on 18 January 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 15 February 2022

Appeal A Ref: APP/J1860/C/21/3283211

Appeal B Ref: APP/J1860/C/21/3283212

Appeal C Ref: APP/J1860/C/21/3283213

Land at (OS 8594 4112), Holly Green, Upton Upon Severn WR8 0PD

- 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 Ms Julie Slater (Appeal A); Mrs Sheila Slater (Appeal B); Ms Sharon Slater (Appeal C) against an enforcement notice issued by Malvern Hills District Council.
- The enforcement notice was issued on 18 August 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the unauthorised erection of a garage building.
- The requirements of the notice are: Permanently remove the garage building approximately edged in blue on the attached plan and lawfully remove all resulting materials from the land edged in red on the attached plan.
- The period for compliance with the requirements is 6 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) (Appeal A only), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal is brought on ground (a), an application for planning permission is deemed to have been made under s177(5) of the Town and Country Planning Act 1990.

Appeal A Summary Decision: The appeal is dismissed and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeals B and C Summary Decisions: The appeals succeed in part and the enforcement notice is upheld with variations in the terms set out below in the Formal Decision.

Appeal D Ref: APP/J1860/W/21/3283210

Land off A4104, Holly Green, Upton-upon-Severn WR8 0PD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Ms J Slater against the decision of Malvern Hills District Council.
- The application Ref 21/01194/FUL, dated 18 June 2021, was refused by notice dated 16 August 2021.
- The development proposed is described as 'Proposed design change to plot 3 garage (Amendment to approved application 19/00955/RM)'.

Appeal D Summary Decision: The appeal is dismissed.

Preliminary Matters

1. I have taken the postcode for the appeal site in my banner headings above from the planning application form in respect of Appeal D since none was stated on the enforcement notice.

2. Appeals A, B and C are all against the same enforcement notice and I treat these together as regards the appeals under grounds (f) and (g). However, since the fee for the deemed planning application (DPA) under ground (a) can only be paid in respect of one appeal, the ground (a) appeals and DPAs fall away as regards Appeals B and C.

Application for costs

3. An application for costs was made by the appellants against the Council in respect of Appeals A to D. This application is the subject of a separate Decision.

Appeal A – the appeal on ground (a) and DPA; Appeal D

4. The development which is the subject of the Appeal A ground (a) appeal and DPA, and which was refused in the Appeal D planning application, is effectively the same, save that the Appeal D proposal included roof lights to the south elevation of the garage building. I shall therefore deal with these together, distinguishing between the two where appropriate.

Main Issue

5. The main issue is the effect on the character and appearance of the host property and surrounding area.

Reasons

6. The appeal site forms part of a development of six dwellings¹ and the garage building which is the subject of these appeals is within Plot 3 of this development. Plot 3 was permitted to have a garage building in broadly the same location as the building which is the subject of this appeal. However, the appeal building has been built larger than that which was permitted; the appellant has provided comparison plans showing the differences.
7. The measurements stated by the appellant for the approved garage are some 6.35m width, 6.3m depth and 5.112m to the ridge. As built, the measurements for the building are stated as 7.16m width, 7.15m depth, 2.6m to the eaves and a height to the ridge of 6.125m. The appellant advises that ridge heights are taken from the appeal building's ground level at the front gable since the ground has been dug in and levelled to the rear. The house at Plot 3 is stated as 8.3m in height.

Analysis

8. The site sits at the edge of the settlement of Ryall and Holly Green and on approach from the west, the surrounding area has a semi-rural character with the presence of fields, verges and varied established vegetation.
9. The height and massing of the garage building, relative to the fairly modest sized Plot 3 house, means that the host dwelling is significantly dominated by the garage. Its relative size and proximity to the front boundary results in a cramped and awkward relationship with the Plot 3 house, which unacceptably

¹ Refs: 15/00617/OUT, 19/00955/RM, 20/01608/NMA. A further application for proposed design changes to Plots 2 and 3 under ref 21/01043/FUL to is apparently pending decision but agreed in principle, subject to completion of a deed of variation.

urbanises the street scene. This visually discordant relationship is visible at a significant distance on approach from the west, notwithstanding the presence of the existing hedgerow, which the Council comments only provides transient screening dependent on the season

10. The appeal building has the same external materials and is in substantially the same position and orientation as approved, yet its increased massing and height results in a visually hard, over developed appearance. The garage building is lower in height and has less floorspace than the host dwelling, but it is of sufficient size as to appear harmfully dominant. Whilst there are tall buildings in the vicinity of the appeal site, over dominant outbuildings/garages to the front of dwellings are not characteristic. My concerns as to the overdominance would not be overcome by the timber boarding being stained a different colour since my concern is one of size and spatial relationship with the Plot 3 house.
11. I do not consider that further development on the appeal site or nearby housing developments would be enough to soften the visual discordance of the garage building, since this stems from the awkward visual relationship with the host dwelling, which would remain apparent even following the further construction outlined. Although proposed housing allocations and approvals nearby may well result in some change to the semi-rural character of the area, these do not justify the cramped and dominant appearance resulting from the appeal building.
12. Given the prominent location of the appeal building on approach from the west, I am not persuaded that additional landscaping or allowing the boundary hedge to grow taller would be enough to sufficiently conceal the visual harm resulting from the development from public view. The appellant argues that the landscaping scheme for the appeal site development does not require additional tree planting to the front of Plot 3, and that the Council has therefore accepted that there is no need to provide additional screening to the appeal garage from the south. However, plainly that scheme was approved on this basis only on the presumption that the appeal garage would be significantly smaller than it has been built.
13. I acknowledge that policies and guidance cited do not preclude garages being constructed to the front of dwellings. However, the South Worcestershire Design Guide SPD (2018) (DG) cautions that garages/outbuildings wholly located in front gardens, or those that extend in front of the established building line, can over-dominate the front of the property and detract from the street scene. I agree that there is nothing in the policies cited which prevents outbuildings changing to adapt to occupiers' changing needs, but I have found this change to be visually harmful.
14. A larger garage approved in the local area has been referred to² but this can be distinguished from the appeal building including because this is positioned to the rear of the host property and replaced a structure considered to be visually harmful. I am aware of the fall-back position for the appellant to build the garage as previously approved, which no doubt would be highly likely to be constructed if the appeal building is not permitted. However, in view of the

² Ref: 19/00711/HP

fall-back garage being significantly smaller in size, it would not be visually harmful as the appeal building would be. This fallback does not therefore offer any significant weight in favour of the appeal development.

15. I therefore conclude on the main issue that the development is materially harmful to the character and appearance of the host property and surrounding area. There is conflict in this regard with Policy SWDP 21 of the South Worcestershire Development Plan (2016) which expects all new development to be of high design quality and to integrate effectively with its surroundings. It also fails to accord with the DG which indicates that outbuildings and garages should be subordinate in scale to the host property and cautions that those located in front gardens require careful consideration to prevent them from over-dominating.

Other Matters

16. The appellant highlights that the DG emphasises the importance of new developments being adaptable and responding to occupants' needs over time including 'the need to run a business from home' and that, in view of the COVID-19 pandemic, the same principle should apply to adaptability for home working in general. The appellant cites benefits in terms of the reduced need to commute to work as regards traffic congestion and carbon emissions.
17. However, no indication is given as to why home working space could not be achieved in a less visually harmful manner. Thus, these matters offer no significant weight in support of the development. Small benefits would potentially arise though from biodiversity enhancements/additional planting if required by condition.
18. Some other concerns have been cited by neighbouring residents in relation to the appeal development but these have not led me to any different overall conclusion.

Appeal A: Conclusion on ground (a) and the DPA; Appeal D Conclusion

19. The appeal development results in material harm to the character and appearance of the host property and surrounding area, and I find that it conflicts with the development plan, read as a whole. Only very modest benefits are put forward in favour of the development and I find that there are thus no material considerations advanced which outweigh the development plan conflict and harm found. The appeal on ground (a) therefore fails and planning permission is refused on the DPA. Appeal D is also dismissed on the same basis.

Appeal A, B and C – the appeal on ground (f)

20. This ground of appeal is that the requirements of the notice exceed what is necessary.
21. Section 173 of the Town and Country Planning Act 1990 (1990 Act) indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first is to remedy the breach of planning control which has occurred; the second is to remedy an injury to amenity which has been caused by the breach. The fact that the notice in this case requires the removal of the garage building and all resulting materials suggests that its

purpose is to remedy the breach rather than to remedy any consequent injury to amenity.

22. As I understand it, the Appellant's case on this ground is that since planning permission has been granted for a smaller garage building in the same position, the requirements of the notice should be amended to include alternative requirements either: (a) removal of roof tiles and timbers and modification of the roof such that the overall ridge is no higher than 5.112m; or (b) modification of the garage building so as to comply with the terms of the planning permission previously granted.
23. The proposed alternative step under (a) above would not remedy the breach since it would only require the height of the garage building to be reduced. Since I have found that visual harm results from both the increased massing, as well as from the increase in height, it would not represent a proportionate alternative step to only require a reduction in height. There would be practical difficulties in any event in redrafting the requirements to stipulate how the building should be altered.
24. I agree though that, in view of the fall-back position available to build a smaller garage as previously approved, it is appropriate and proportionate that an alternative requirement is available to enable the appellant to alter the garage building so that it complies with the terms and conditions of the planning permission previously granted.
25. The Council accepts such an approach to be permissible save that it requests that any remaining resultant waste materials following alteration be removed on the basis these might cause harm to the amenity of the area. The appellant argues that building materials could legitimately be used elsewhere on site. I agree that it would represent a proportionate approach to only require removal of materials which are not to be used in the construction of the remainder of the development.
26. The appeal on ground (f) therefore succeeds to this extent and the notice shall be varied accordingly.

Appeals A, B and C – the appeal on ground (g)

27. The appeal on ground (g) is that the time for compliance with the notice falls short of what is reasonable.
28. The appellant's position on this ground is essentially that, if the requirements of the notice are varied under ground (f) to allow the garage building to be altered to comply with the terms and conditions of the permission granted, the period for compliance will need to be extended to allow for time to source building materials and supplies, in the light of a reported national shortage of construction materials and employees. A twelve month period is requested.
29. The Council highlights though effectively that the notice as drafted only required removal of the garage and that a six month period of compliance is reasonable to achieve this, bearing in mind that there would not then be any time constraint for the construction of the approved garage.
30. I agree that a period of six months represents a reasonable time in which to require demolition of the garage, bearing in mind that this is a relatively

straightforward task and would not require construction materials. This will remain therefore the compliance period for the alternate requirement stipulating demolition of the garage building.

31. However, as outlined under ground (f) above, I have found that it is proper that the enforcement notice also includes an alternate requirement that the garage building be altered to comply with the terms and conditions of the planning permission previously granted. Such alterations represent a more involved task and would also necessitate the sourcing of construction materials. As such, I consider that a satisfactory balance would in my view be achieved by stipulating a period of nine months for alteration of the building/removal of materials.
32. The appeal on ground (g) therefore succeeds to this extent and the notice shall accordingly be varied.

Appeal A Conclusion

33. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with variations and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal A Formal Decision

34. It is directed that the enforcement notice is varied by:

- In paragraph 5 of the notice, deletion of the wording 'Permanently remove the garage building approximately edged in blue on the attached plan and lawfully remove all resulting materials from the land edged in red on the attached plan' and substitution of:
 - '5.1 Permanently remove the garage building approximately edged in blue on the attached plan and lawfully remove all resulting materials which are not to be used in the construction of the development under planning permissions references 15/00617/OUT, 19/00955/RM, 20/01608/NMA from the land edged in red on the attached plan; or
 - 5.2 Alter the garage building approximately edged in blue on the attached plan to comply with the terms of planning permissions references 15/00617/OUT, 19/00955/RM, 20/01608/NMA including the conditions subject to which those permissions were granted and lawfully remove all resulting materials which are not to be used in the construction of the development under planning permissions references 15/00617/OUT, 19/00955/RM, 20/01608/NMA from the land edged in red on the attached plan.'
- In paragraph 6 of the notice, deletion of the wording '6 calendar months beginning with the date on which this notice takes effect' and substitution of:
 - '6.1 In respect of 5.1, 6 months.
 - 6.2 In respect of 5.2, 9 months.'

35. Subject to the variations, the appeal is dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeals B and C Conclusion

36. For the reasons given above, I conclude that the requirements of the notice are excessive to remedy the breach of planning control and the period for compliance with the notice falls short of what is reasonable. I shall vary the enforcement notice prior to upholding it. The appeals on grounds (f) and (g) succeed to that extent.

Appeal B and C Formal Decision

37. It is directed that the enforcement notice is varied by:

- In paragraph 5 of the notice, deletion of the wording 'Permanently remove the garage building approximately edged in blue on the attached plan and lawfully remove all resulting materials from the land edged in red on the attached plan' and substitution of:

'5.1 Permanently remove the garage building approximately edged in blue on the attached plan and lawfully remove all resulting materials which are not to be used in the construction of the development under planning permissions references 15/00617/OUT, 19/00955/RM, 20/01608/NMA from the land edged in red on the attached plan; or

5.2 Alter the garage building approximately edged in blue on the attached plan to comply with the terms of planning permissions references 15/00617/OUT, 19/00955/RM, 20/01608/NMA including the conditions subject to which those permissions were granted and lawfully remove all resulting materials which are not to be used in the construction of the development under planning permissions references 15/00617/OUT, 19/00955/RM, 20/01608/NMA from the land edged in red on the attached plan.'

- In paragraph 6 of the notice, deletion of the wording '6 calendar months beginning with the date on which this notice takes effect' and substitution of:

'6.1 In respect of 5.1, 6 months.

6.2 In respect of 5.2, 9 months.'

38. Subject to the variations, the enforcement notice is upheld.

Appeal D Conclusion

39. For the reasons above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Appeal D Formal Decision

40. The appeal is dismissed.

V Bond

INSPECTOR