The Planning Inspectorate

Appeal Decision

Site visit made on 11 October 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2022

Appeal Ref: APP/P1045/C/22/3294177
Land at Brookfield House, Main Street, Roston, Derbyshire DE6 2EH

- 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 Kevin Dean against an enforcement notice issued by Derbyshire Dales District Council.
- The enforcement notice was issued on 9 February 2022.
- The breach of planning control as alleged in the notice is: Building operations comprising the erection of a garage (outlined in blue on the plan at appendix 1 of this notice), not built in accordance with the plan, approved under planning permission ref. 19/00040/FUL (appendix 2 of this notice).
- The requirements of the notice are:
  a) Reduce the height of the building and carry out all necessary alterations so that the building's dimensions and external appearance comply fully with planning permission 19/00040/FUL, as approved 5th March 2019 to accord with the decision notice and approved plan (drawing no. FKD-04 A date stamped 10th January 2019 and attached as appendix 2 to this notice.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been made on ground (a) an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Decision

1. It is directed that the enforcement notice be corrected by deleting the wording, `, *not built in accordance with the plan, approved under planning permission ref. 19/00040/FUL (appendix 2 of this notice)'*, in paragraph 3 of the notice. Subject to this correction the appeal is dismissed and 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.

The Notice

2. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act, 1990 (the Act), or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.

3. Planning permission[1] for the extension and alterations to a garage was granted by the Council on 5 March 2019 subject to a single condition (the planning permission). The description of the alleged breach cites that the development has not been carried out in accordance with the approved plans of that planning permission. Where it is considered that the development differs materially from the scheme granted planning permission it is reasonable to consider that the development has been carried out without planning permission rather than a breach of condition.

4. As the enforcement notice cites section 171A(1)(a) of the Act and given the reasons for issuing the enforcement notice, the Council clearly consider that the development is materially different to that granted planning permission. Nevertheless, as there is a ground (a) appeal and a deemed planning application, I have to ensure that the breach of planning control as stated in the enforcement notice consists of an accurate description of the alleged breach as it is the basis for considering the deemed planning application.

5. In this case the description of the breach of planning control contained wording that does not relate to an act of development and is more akin to reasons for issuing the enforcement notice. Consequently, I intend to delete the words, *'not built in accordance with the plan, approved under planning permission ref. 19/00040/FUL (appendix 2 of this notice)'*, in paragraph 3 of the notice. Taking into account the evidence before me, the appellant clearly understands that the notice is directed at the erection of the garage as constructed. I consider that I can carry out this correction without injustice to either main party. I will therefore correct the enforcement notice in this respect, in order to clarify the terms of the deemed application under section 177(5) of the Act.

Appeal on ground (a), deemed planning application

Main Issue

6. The main issue is the effect of the development on the character of the host property and surrounding area.

Reasons

7. The appeal site comprises a substantial detached residential property which is situated within the countryside on the edge of the dispersed settlement of Roston. The unauthorised garage is located adjacent to the dwelling and takes access from the shared drive off Main Street.

8. Policy PD1 of Derbyshire Dales District Council's Local Plan, adopted 2017 (LP), requires all development to be of a high quality that respects the character, identity and context of the Derbyshire Dales townscapes and landscapes. Outbuildings incidental to the enjoyment of a dwelling are permitted under Policy SC4 and HC10 of the LP provided, amongst other criteria, the height, scale, form and design of the outbuilding is in keeping with the scale and character of the original dwelling (taking into account any cumulative additions), and the site's wider setting and location.

9. The unauthorised garage has a close visual relationship to the original dwelling and host property, Brookfield House. Their front facades generally align, and these buildings are viewed together when approaching the site from the shared

[1] Local Planning Authority Ref: 19/00040/FUL.

drive. The ridge line of the garage is similar in height to that of Brookfield House, and its overall height is accentuated by its steep roof pitch, first floor gable fenestration and the amount of brickwork between the ground floor openings and the roof eaves. Its form and design, including its roof and the arrangement of fenestration within the brickwork, gives the building a dominant and domestic appearance which visually competes with Brookfield House. The unauthorised building by reason of its form is not visually subordinate to the host building and its appearance does not reflect the character of Brookfield House.

10. Brookfield House is a substantial property. However, its traditional design and form, broken up by small gable additions, serves to visually reduce its scale and appearance. In contrast, the unauthorised garage has a dominant bulk form, large roofscape, and a strong vertical emphasis which gives this curtilage outbuilding an incongruous appearance which detracts from the character of the host property. Furthermore, its discordant appearance has a harmful effect on the visual qualities of the area, including views from the neighbouring public footpath and on the site's approach from the Main Street.

11. I noted on my site visit that there is another garage/outbuilding at Brookfield House which also has a steep pitched roof. However, in contrast to the unauthorised garage, that building has a simple utilitarian design and form. The lintels over its garage doors sit snuggly beneath the eaves which reduces the vertical scale and appearance of the building. Furthermore, it is positioned away from Brookfield House and does not compete visually with the host property, nor have a harmful effect on the character of the area.

12. I conclude that the unauthorised garage has a harmful effect on the character of the host property and surrounding area. It conflicts with the development plan and in particular with Policies SC4, HC10 and PD1 of the LP the aims of which are set out above. There is also conflict with the design aims of the National Planning Policy Framework.

Other Matters

13. Section 177(1)(a) allows permission to be given under an appeal on ground (a) to any part of the matters alleged in the notice. To that end, the appellant has advanced, largely under the appeal on ground (f), that alterations could be made to the garage to make it acceptable in planning terms. Those alterations include: removing the two rooflights on the northern elevation; centring the first floor window on the east elevation; removing the loft window on the east elevation; removing the first floor windows on the west elevation; and removing the two ground floor windows on the south elevation.

14. The alterations proposed to the fenestration of the building would form part of the matters stated in the notice and it is therefore open to me to grant planning permission for those alterations under the ground (a) appeal.

15. Nevertheless, whilst the alterations to the fenestration would result in a building that would have a less domestic and more utilitarian appearance, they would not alter the building's visual dominance and poor design brought about by its roof scale and the incongruous relationship between the roof eaves and ground floor openings. Consequently, the alterations proposed to the number and arrangement of window openings/rooflights would not outweigh the harm I

have identified by reason of the building's incongruous design, scale and proportions.

16. I appreciate that permission has been granted for extension and alterations to a garage in this location, and I recognise that the height of the approved garage would have been only marginally lower than the unauthorised building in this appeal case. However, the simple design details, including fenestration arrangement and the proportions of the approved garage, would have resulted in a building with a strong horizontal emphasis, and a more subservient and utilitarian appearance than the unauthorised garage that is being enforced against.

17. I conclude, therefore, that the alternative would not overcome the harm I have identified in respect of the effect of the development on the character of the host property and surrounding area.

Conclusion

18. For the reasons given above, and taking into account all other matters raised the appeal on ground (a) should not succeed.

Appeal on ground (f)

19. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.

20. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. In this case the purpose of the notice is to remedy the breach of planning control by removing the building or making the development comply with the terms of the planning permission granted in respect of the land.

21. Suggested alterations put forward by the Appellant as an alternative to the requirements set out in the notice were considered under ground (a), and I found them to be unacceptable. This approach would not therefore remedy the breach of planning control and there are no lesser steps which would achieve the statutory purpose of the notice.

22. In conclusion, the appeal on ground (f) does not succeed.

Overall Conclusion

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

Elizabeth Pleasant

INSPECTOR