



Appeal Decision

Site visit made on 2 November 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/H1840/C/21/3289183

Land known as Sunnycroft, Pebworth Road, Ullington, Pebworth, Evesham, Worcestershire WR11 8QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Russell Short against an enforcement notice issued by Wychavon District Council.
- The notice, numbered ENF/20/0501, was issued on 12 November 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the carrying out of operational development comprising the partial construction of a brick building and the siting of two static caravans for residential use.
- The requirements of the notice are to: 1. Permanently demolish the partially constructed brick building approximately edged blue on the attached plan and lawfully remove all resulting materials from the land edged red on the attached plan. 2. Permanently cease the residential use and permanently remove the two static caravans approximately edged green on the attached plan and remove any associated domestic paraphernalia from the land edged red on the attached plan.
- The periods for compliance with the requirements are: Step 1. 6 calendar months and Step 2. 12 calendar months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (g) 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.

Decision

1. It is directed that the enforcement notice is corrected and varied by:
Deleting the word 'brick' from the allegation and step 1 of the requirements.
2. Subject to the correction and variation, the appeal is dismissed, the enforcement notice upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Matters concerning the notice

3. The breach of planning as alleged refers to the partial construction of a brick building and siting of two static caravans for residential use. The building is partially constructed with stone rather than brick. Also, as there are two 'partially constructed buildings' on the land, for clarity I shall refer to the building which is the subject of the notice as 'the garage building'. This accords with the floor layout plan which has been provided by the appellant as part of the appeal documents and shows how the building would be used for the storage of cars/motorbikes and as a workshop and garden store. I shall correct

the notice accordingly and consider that by doing so there will be no injustice to either party.

Relevant planning history

4. Planning permission reference W/12/01027/PN was granted on 3 July 2012 for the demolition of a bungalow and outbuildings, erection of a replacement dwelling and alteration of existing access ("the original permission"). There is no dispute that the development has begun.
5. 20/02386/HP - Conversion of garage to annexe accommodation for a dependant relative. Alterations to facilitate conversion including alterations to roof and insertion of window and door openings. This was refused on 24 December 2020.

The appeal on Ground (c)

6. In an appeal on this ground the appellant must demonstrate on the balance of probability that the matters alleged, if they occurred, do not constitute a breach of planning control. The burden of proof in ground (c) is upon the appellant, and the test of the evidence is on the balance of probability.
7. The basis of the appellant's appeal on this ground is that the erection of a detached garage does not require express planning permission. They contend the development would be lawful because i.) there is no requirement in the GPDO for the dwellinghouse to be completed before PD rights are granted by Article 3, Schedule 2, Part 1 of the GPDO; and ii) the condition attached to the original permission did not preclude the erection of outbuildings under Class E of the Town and Country Planning (General Permitted development) Order 1995 as amended. Furthermore, they argue that the siting of two caravans for a residential purpose would not require permission because work has commenced on the original permission and the caravans are occupied by those undertaking the construction of the building.

Is there a requirement for the dwellinghouse to be completed before PD rights are granted?

8. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the order. Class E of Part 1 of Schedule 2 to the GPDO permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse.
9. The interpretation at E.4 provides that for the purposes of Class E, any building be 'required for a purpose incidental to the enjoyment of the dwellinghouse as such includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse'.
10. My attention has been drawn to *R (on the application of) Townsley v SSCLG* [2009] EWHC 3522 (Admin). The court held that, in a case involving PD rights in connection with a dwellinghouse, such rights are not available until a "building...has already been constructed and is...a dwellinghouse"; it is "not until it becomes a dwellinghouse that the GPDO can be used." While this requirement merges into the limitations on development under Class A, it is a freestanding requirement under the other classes.

11. Moreover, the underlying logic is that the dwellinghouse does not exist as such until it has been substantially completed. Applying recognised case law, the distinctive characteristic of a dwellinghouse is its ability to afford to those who use it the facilities required for day-to-day private domestic existence. This is clearly not the case here as the replacement dwelling is not substantially complete. Accordingly, there are no PD rights for development within the curtilage of a dwellinghouse when a dwellinghouse is under construction and they remain absent until the dwellinghouse has reached the stage of being substantially complete as a matter of fact and degree. Although I have concluded above that there are no PD rights, since it may have some relevance to other grounds, I will deal with the appellant's arguments on the matter of the condition.

Did the condition secure the removal of PD rights?

12. Condition 4 of the original permission:

Notwithstanding the provisions of the Town and Country Planning (General Permitted development) Order 1995 as amended, substituted, extended, consolidated and/or replaced, nothing in Article 3 and Schedule 2 to that Order shall operate so as to permit the enlargement of the replacement dwelling specified in Part 1 Class A, B and E of the said schedule and no such development shall be carried out at any time without an express grant of planning permission under Part III of the Town and Country Planning Act 1990.

13. The appellant argues that the condition seeks to control enlargements to the replacement dwelling only, and accordingly, the garage could be constructed under the provisions of Class E of the GPDO. However, it seems to me that the intention of the council is to manage the extent of additional development above that which was granted by the original permission and that this was precisely defined by reference to the relevant provisions of Classes A, B and E. Accordingly, I consider that the construction of the garage would be precluded by the condition and would require express planning permission.

Is the siting of the caravans for residential purposes permitted development?

14. The appellant argues that because the development approved by the original permission has commenced, the use of the land for the stationing of two caravans for permanent residential occupation is permitted development.
15. Schedule 2 Part 5 Class A of the GPDO states that the use of land as a caravan site in the circumstances referred to in paragraph A2 of the same section is permitted development.
16. Paragraph A2 states that the circumstances are those set out in paragraphs 2 to 10 of Schedule 1 to the 1960 Act (cases where a caravan site licence is not required). Paragraph 9 of the Caravan Act 1960 permits the use of land as a caravan site '*on which building or engineering operations are being carried out if that use is for the accommodation of a person or persons employed in connection with the said operations.*'
17. The site is currently occupied by two partially built structures: the replacement dwellinghouse; and the garage which is the subject of the notice. It appears that work on the garage building has taken precedence over the dwellinghouse due to the logistics of bringing materials onto the site. While the residential use of a caravan on the site may be permitted during building operations, those

works must be associated with lawful development. The garage, as considered above, is not lawful.

18. Nevertheless, although it is unclear regarding the extent of works being undertaken on the approved scheme, I have no reason to doubt that building works are being undertaken by the appellant. As such, the provision of the caravan on the land on which building operations are being carried out for the accommodation of a person or persons employed in connection with the said operations on the land would not require express permission. However, I consider that the second caravan which provides residential accommodation for another family member is not required in connection with the operations being carried out, and therefore is not permitted by Class A of Part 5 of the GPDO.
19. Accordingly, the appeal on ground (c) succeeds in part regarding the siting of one caravan for residential purposes in connection with the ongoing building operations.

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

Main Issue

20. This is the effect of the siting of one caravan for residential purposes and the partially constructed garage building on the character and appearance of the area and surrounding open landscape.

Reasons

21. The appeal site is located amid a small group of dwellings. The site is long and narrow with access onto Pebworth Road to the north. To the east is a dwelling within spacious grounds and directly to the west are three residential properties each benefitting from outbuildings. All properties share a boundary with the appeal site. The site adjoins a field to the south and the wider surrounding landscape consists of mostly open fields and country lanes.
22. To the front of the site, double wooden gates and vegetation mainly conceal the site from the public highway except for the caravan that is sited close to the gates. The second caravan is positioned behind the partially erected dwelling and towards the end of the plot is the partially constructed L shaped garage building. Once the replacement dwelling is completed, views from the front of the site to the rear will likely be obscured by the house. Wider views towards the site are limited from the public domain and neighbouring properties and this is aided in part by the close border boundary fence on one side and planting along the boundaries and within the site.
23. The appeal site is located in open countryside beyond any development boundary defined by Policy SWDP2 of the South Worcestershire Development Plan (February 2016) (the SWDP). Strategic Policy SWDP2C states that development in the open countryside will be strictly controlled and limited to: dwellings for rural workers; employment development in rural areas; rural exception sites; buildings for agriculture and forestry; replacement dwellings; house extensions; replacement building and renewable energy projects; and development specifically permitted by other SWDP policies.

The caravan

24. The use of land for the siting of residential caravans is not an exception to this strategic policy and there is no justification provided for the development. For these reasons, the use of the land for the siting of a caravan for residential purposes conflicts with Policy SWDP2 which directs development to appropriate locations. The development is contrary to the development plan as a whole and there are no other material considerations, including the provisions of the National Planning Policy Framework (the Framework) which outweigh this finding.

The partially constructed garage building

25. The council's concerns about the building relate to it being physically detached from what would be the host dwelling, which is approximately 55 metres away, with its own separate driveway and parking area. While it is not unusual for a garage building to be detached, it is some distance from the dwelling. However, the plot is very narrow and long and the distance between the two builds appears less of a disparity because of the dimensions of the site. Furthermore, the driveway is an extension to the driveway that leads to the house, and I see no reason why there should not be a parking area next to the garage.
26. Although Policy SWDP2 makes no specific mention of garages or outbuildings, South Worcestershire Design Guide Supplementary Planning Document, Overarching Design Principles, March 2018 (the SPD)¹ says: Buildings within the residential curtilage, such as, garages, sheds and greenhouses can often require as much care in siting and design as works to the existing residential property. They should be subordinate in scale and similar in style to the existing property, taking account of materials, the local character and the level of visibility of the building from surrounding public areas.
27. The floor area of the single storey garage building measures approximately 97sqm. The delegated officer report for the original permission reports the footprint of the replacement dwelling to be 137sqm (excluding 4 bay windows). The dwelling would be two storeys and would amount to 274sqm of floor area. Although the footprint is not significantly different, the overall floor area renders the garage building subordinate to the dwelling as proposed. The garage building is being constructed using blue limestone in a similar style to the proposed dwelling and its design is not dissimilar.
28. Taking account of the guidance contained within the SPD, I consider that the building for use as a garage and for domestic storage purposes is compliant with its requirements. The building is not unduly conspicuous and is not a particularly awkward feature in this predominantly rural area which is dotted with domestic properties and their associated outbuildings, some of which are large in scale. The building sits comfortably within the site on a ground level lower than the adjoining neighbouring land. This reduces the visual impact of the single storey building. Furthermore, it is positioned close to what appears to be an agricultural or equestrian building on the adjoining property to the west which is significantly taller.

¹ Document provided by the council as part of its appeal submissions

29. In this respect, the partially built garage would not have a substantial adverse effect on the character and appearance of the area. Furthermore, I have not been made aware of any policies within the SWDP which restrict the opportunities for householders to benefit from ancillary buildings within the curtilage of the dwellinghouse. I note that there is concern that the garage is potentially capable of being occupied as a self-contained dwelling which would be contrary to Policy SWDP2. However, the use of the building as such is not before me as part of the deemed planning application. Furthermore, use as a self-contained unit of accommodation would require express planning permission from the council.
30. On the basis of the submitted plans, I consider that, once finished, the building would be appropriate to, and integrate effectively within its surroundings in accordance with Policy SWDP21 and Policy SWDP25 of the SWDP. However, the matter which appears to constitute the breach of planning control refers to 'the partial construction of a brick building'.
31. If I were to grant the planning application deemed to have been made under section 177(5) of the Act that permission would only be for the partially constructed building and a further application for planning permission would need to be submitted to the council to enable the development to proceed to completion. I cannot direct that a further such application be made, and I consider that in its unfinished form the building introduces a degree of untidiness that materially detracts from the local character. For that reason, it would be inappropriate to grant permission for the unfinished building.

Conclusion on ground (a) and the deemed planning application

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

The appeal on Ground (g)

33. Under ground (g), the appellant suggests that more time should be allowed for compliance with the Step 1 of the notice and requests an additional 6 months to allow the appellant time to propose a new scheme to the council should the appeal fail. In consideration of my findings, 6 months should be sufficient time for the submission of a fresh planning application and for a decision to be taken by the council.
34. Accordingly, the appeal on ground (g) fails.

S A Hanson

INSPECTOR