



Appeal Decision

Site visit made on 10 July 2023

by Chris Baxter BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 September 2023

Appeal Ref: APP/V0510/C/22/3309751

Garage block 3-5 Perch Chase, Soham, Cambridgeshire, CB7 6AJ

- 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 Act).
- The appeal is made by Orbit Homes (2020) Limited against an enforcement notice issued by East Cambridgeshire District Council.
- The enforcement notice was issued on 27 September 2022.
- The breach of planning control as alleged in the notice is failure to comply with condition 1 imposed on a planning permission ref 19/01520/VARM granted on 11 May 2020.
- The development to which the permission relates is:
Variation of condition 2 (Approved plans), 7 (Surface Water Drainage Scheme), 16 (Acoustic Bund and living willow fence along Eastern Boundary), 19 (The service road serving plots 36-43), 20 (The road, footpath and verges of the highway between Plot 5 and FW PS to the south of Blackberry Lane) and 28 (Surface Water Drainage Scheme pursuant to Condition 18 of previously approved 17/00893/FUM for Hybrid Planning Application – Full Application for the erection of 160 dwellings and associated access, parking and open space; Outline Application for 8 Self-Build Dwellings).
- The condition in question is no 1 which states that:
Development shall be carried out in accordance with the drawings and documents listed below

Plan Reference	Version No	Date Received
SL16	Rev C	3rd March 2020
6867 G01 GARAGE TYPE	Rev B	31st January 2018
- The requirements of the notice are to:
 - Make alterations to the garage block for plots 2 and 3 to comply with approved plan references SL16 Rev C and 6867 G01 Garage Type Rev B
 - Remove all resulting debris and material from the land immediately adjacent to Blackberry Lane and on Blackberry Lane arising from compliance with requirement (i)
- The period for compliance with the requirement is:
 - Six (6) months
 - Six (6) months
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (g) of the Act. 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 varied by:

- in Section 5 the deletion of sub-paragraph 5ii. and substitute with:

“OR ii. Demolish the garage block

iii. Remove all resulting debris and material from the appeal site and the land immediately adjacent to Blackberry Lane and on Blackberry Lane arising from compliance with requirements (i) or (ii).”

- In Section 6 the inclusion of “iii. Six (6) months”.
2. 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 Act.

The Enforcement Notice

3. In accordance with my powers under s176(1) of the Act I have varied Section 5 of the notice to include an option in the requirements to remove the garage block in its entirety and for removal of all resulting debris and material from the appeal site, as this would also remedy the breach. Consequently, Section 6 is also varied to include a time for compliance for this optional requirement.
4. I am satisfied that the variations will not cause injustice to the appellant or the Council.

Appeal on ground (c)

5. An appeal on this ground is a claim that the matters alleged in the corrected notice, if they occurred, do not constitute a breach of planning control. The burden of proof falls on the appellant and the relevant test of the evidence is on the balance of probabilities.
6. The appellant contends that the garage building serving as a marketing suite falls under permitted development rights for temporary buildings, this being Schedule 2, Part 4, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
7. The appellant has stated that the garage building would be removed, and the land would be reinstated to the condition before the development was carried out. This is however, contradicted by earlier comments in the statement of case which state that the appellant has “constructed an elongated double garage at plots 2 and 3” which would “then serve as a larger garage for these plots”.
8. In *Wilsdon*¹, relating to temporary buildings, the Court found that whether or not a building was reasonably required for a particular purpose was very much a matter of fact and degree and that it was necessary to consider whether the professed intention to remove the building was or was not a realistic one. Given the ambiguous comments of the appellant, the size and permanent nature of the garage building as well as the scale of the works that would be needed to remove the building, I do not consider that the stated intention of taking the garage block away can reasonably be regarded as being realistic.
9. As a matter of fact and degree I find overall, on the balance of probabilities, that the garage block is not temporary and hence does not fall within Part 4, Class A of the GPDO. I have had regard to the appellants statement of cases including the definition of the words ‘require’ and ‘temporary’, and reference to the Maidstone appeal and Birdlip, Gloucestershire judgement. These matters however do not alter my findings above.
10. The garage building is not permitted development as described in the GPDO and does not accord with the approved plans required by condition 1 of

¹ Wilsdon v FSS & Tewkesbury BC 6/11/2006

permission ref 19/01520/VARM. It thereby constitutes a breach of planning control.

11. Therefore, the appeal on ground (c) fails.

Appeal on ground (a)

12. The ground of appeal is that planning permission ought to be granted for the matters alleged in the notice.

Main Issue

13. The main issue is the effect of the garage building on the character and appearance of the area.

Reasons

14. The area surrounding the appeal site is characterised predominantly by a modern residential estate (currently under construction) on the edge of the settlement with open fields to the north, south and east of the housing estate. Immediately north of the appeal site is Blackberry Lane (BL) which is lined either side by trees with built development (as detailed on approved plan reference SL16 Rev C) set back from BL.
15. Contrary to the appellants view I consider the garage building is a large and intrusive structure that has an overbearing appearance on the surrounding area, particularly when viewed from BL. The scale and design of the garage building given its close proximity to BL, introduces an incongruous feature that is prominent and has a detrimental effect on views in the immediate area. The introduction of hedgerow planting along BL would not screen the garage building given its height and prominence. The proposed hedgerow would not therefore adequately mitigate against the harm the garage causes to the character and appearance of the area.
16. The garage building is within the boundaries of existing plots, it does not necessitate removal of additional trees or hedgerows and it is not within any identified root protection areas. I note the appellant has requested variations to conditions 1, 3, 6, 7, 10, 12, 13 and 15. However, I have already found that alternative landscaping in the form of hedgerow would not adequately mitigate the harm I have identified. Other conditions referred to relate to matters which go beyond the deemed application in this appeal and in the first instance should be a matter to take up with the Council for approval.
17. For all these reasons, I find that the garage building is a discordant structure that is harmful to the character and appearance of the surrounding area. It is contrary to Policies ENV 1, ENV 2 and SOH 5 of the East Cambridgeshire Local Plan (ECLP), the East Cambridgeshire District Council Design Guide Supplementary Planning Document and the National Planning Policy Framework (the Framework) which seeks development to respect distinctive character areas, be designed to a high quality and have regard to scale, height, design and massing of buildings.
18. The appellant has indicated that the requirements of the notice would restrict the appellants ability to effectively market the housing site and would slow down sales which would affect the speed of housing delivery. There is no compelling evidence before me to suggest how the requirements of the notice

would result in a significant effect on speed of housing delivery. Nevertheless, the need for a marketing suite does not outweigh the identified harm to the character and appearance of the area.

19. The Council also consider the garage building to be contrary to Policies ENV 7 and SOH 16 of the ECLP. These Policies relate to biodiversity and geology, and green lanes and commons. I do not consider these Policies relevant in respect of the main issue.

Conclusion

20. The garage building conflicts with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweighs this finding.

21. The appeal on ground (a) therefore fails.

Appeal on ground (g)

22. Ground (g) is that the period for compliance with the notice requirements falls short of what should reasonably be allowed. In the notice, the time to comply with the requirements is 6 months.
23. The appellant is seeking the time compliance to be changed to within 6 months of the garage building no longer being required for use as a marketing suite. The periods for compliance with the notice starts to run from the date when the notice comes into effect. The appellants proposal for compliance to start when the marketing suite is no longer required does not give a specified compliance period which is required under section 173(9) of the Act.
24. The appellant's argument that the notice requirements would adversely affect marketing and slow down sales and the speed of housing delivery has already been addressed in ground (a). It is not relevant to this ground (g) appeal which only relates to the period of time reasonably required to comply with the notice requirements.
25. I consider a 6 month period to comply with the requirements does not fall short of what should reasonably be allowed to either remove the garage building or make necessary alterations so the building complies with the approved plans. The period for compliance would provide ample time for the appellant to make alternative arrangements for any marketing requirements of the housing site.
26. The appeal on ground (g) therefore fails.

Chris Baxter
INSPECTOR