



Appeal Decision

Site visit made on 13 November 2023

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/Q4625/C/23/3323955

47 Chester Road, Castle Bromwich, BIRMINGHAM B36 9DP

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Ian Graham King against an enforcement notice issued by Solihull Metropolitan Borough Council.
- The notice was issued on 17 May 2023.
- The breach of planning control as alleged in the notice is without planning permission, the construction of a single storey detached garage building.
- The requirements of the notice are to:
 - (i) Demolish and dismantle the unauthorised building in the approximate position marked blue on the attached plan, in its entirety; and
 - (ii) Remove all materials arising from step (i) from the land.
- The period for compliance with the requirements is 3 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.

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

Procedural Matters

1. A revised National Planning Policy Framework (the Framework) came into force in December 2022. This replaces the former version referred to in the submissions by the parties. Apart from a change in paragraph numbers, the revision does not materially alter the national planning policy approach in respect of the main issue raised in this appeal and therefore the main parties have not been prejudiced by its publication.
2. Planning permission reference PL/2023/00622/MINFHO was refused in May 2023 (the 2023 refusal). Three drawings were submitted with this application. Scheme 3¹ is the garage assessed and refused by the Council. It shows a garage set back 0.9m from the road with a pitched roof 4.8m in height.
3. I am informed that the garage under construction at the time of my site visit is scheme 1². Scheme 1 drawing shows a garage with a flat roof 3.6m in height, 0.9m from the road and of a smaller footprint than Scheme 3.

The Enforcement Notice

4. The allegation in the enforcement notice alleges “without planning permission, the construction of a single storey detached garage building in the approximate position marked in blue on the attached plan”. Whilst the parties agree that the appellant intends to build a garage, the building is only partially constructed.

¹ Drawing No: A205.3 Appendix E of the Council’s Statement.

² Drawing No: A205.1 Appendix D of the Council’s Statement.

5. Section 177(1) of the Town and Country Planning Act 1990 states "On the determination of an appeal under section 174, the Secretary of State may— (a) grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land to which the notice relates".
6. Whilst s177(5) ties the deemed planning application to "the matters stated in the enforcement notice as constituting the breach", I need to ensure the factual accuracy of the allegation. The notice should not allege something which has not yet occurred at the time of issue. Although it is the appellant's intention to build a single storey detached garage, the operational development that has occurred is 'the partial construction of a building'. Thus, under ground (a) the deemed planning permission cannot be granted for more than the partially constructed building.
7. S176 of the Town and Country Planning Act 1990 allows an Inspector to "(a) correct any defect, error or misdescription in the enforcement notice; or (b) vary the terms of the enforcement notice if the Inspector is satisfied that the correction or variation will not cause injustice to the appellant or local planning authority".
8. Having been invited by the Planning Inspectorate, the Council subsequently agree that the allegation could be changed. However, the Council consider that the ground (a) appeal should consider the plans submitted with the 2023 refusal. Whilst there is an appeal against the enforcement notice on ground (a) that planning permission should be granted, there is no s78 appeal against the 2023 refusal. Consequently, this decision relates solely to the appeal against the enforcement notice issued by the Council.
9. On the basis of the written representations, it appears that a more accurate allegation is "without planning permission, the partial construction of a single storey detached building in the approximate position marked in blue on the plan attached to the enforcement notice." I will change the allegation accordingly. Both parties have been given the opportunity to comment. Whilst my correction might be seen as depriving the appellant of the opportunity to obtain planning permission for a completed garage, this appeal never legitimately provided such an opportunity. The correction merely reflects reality, and I am satisfied it will not cause injustice to either party.

The appeal on ground (a)

Main Issue

10. The main issue is the effect of the development on the character and appearance of the area.

Reasons

11. The appeal property is a detached dwelling within a predominantly residential area. This stretch of Chester Road comprises a mix of properties of varying types and styles. Typically, the properties are set back from the highway beyond front gardens in a linear formation facing the road with a varied building line. Although the boundary treatments in the road vary, they are generally low in height.

12. The Council's House Extension Guidelines Supplementary Planning Document (2010) (SPD) states that "the construction of garages and other detached buildings between the house and the road are not normally acceptable unless the building can be accommodated in an unobtrusive position that will not form a prominent feature or impinge on neighbours' amenity."
13. The appeal development is large in scale sited in a prominent location in the front garden of the property. It is readily visible in the public realm. Due to its size and form it is an incongruous feature in the street scene. Thus, it fails to comply with the SPD guidelines.
14. The appellant has drawn my attention to other houses in the area which have a garage in the front garden. Whilst the full details are not before me, these garages are set back from the highway attached to the main house. Thus, the location and context in which each of these garages is seen are not directly comparable with the appeal development. Notwithstanding, I have determined the appeal before me on its own merits in relation to the development plan, the Framework and any other material considerations.
15. The appeal development is harmful to the character and appearance of the area. Thus, it is contrary to Policy P15 of the Solihull Local Plan, the SPD and the Framework which expects new development to conserve and enhance the local character, distinctiveness and streetscape quality.

Other Matters

16. I have considered the appellant's comments regarding vehicle security and the need for additional domestic storage. However, I am mindful that the identified harm will be permanent and is not outweighed by the appellant's particular circumstances. The use of energy efficient materials to match the main house does not overcome the identified harm. Moreover, comments expressed by the appellant in relation to the value of property and the Council's economic objective are noted but do not influence my decision.

Conclusion

17. 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.

Formal Decision

18. It is directed that the enforcement notice is corrected by deletion of the allegation as phrased in Part 3 'The Alleged Breach of Planning Control' and the insertion of the words "Without planning permission, the partial construction of a single storey detached building in the approximate position marked in blue on the plan attached to the enforcement notice."
19. Subject to this correction the appeal is dismissed, and the enforcement notice is upheld.

Elizabeth Jones

INSPECTOR