
Appeal Decisions

Site visit made on 22 February 2024

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 10 April 2024

Appeal Ref: APP/E2001/C/23/3331805 (Appeal A)

56 Butterfly Meadows, Beverley HU17 9GA

- 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 Ian Hall against an enforcement notice issued by East Riding of Yorkshire Council.
- The enforcement notice was issued on 11 October 2023.
- The breach of planning control as alleged in the notice is *Without planning permission, the erection of a carport to the side elevation of the property.*
- The requirements of the notice are to demolish the carport and remove all elements comprising the carport structure from the property, including supporting frame, side panels and roof panels.
- The period for compliance with the requirements is one month.
- The appeal is proceeding on the grounds set out in section 174(2)(c) and (f) of the Town and Country Planning Act 1990 as amended.

Summary Decision: the appeal is dismissed and the enforcement notice is upheld.

Appeal Ref: APP/E2001/W/23/3331249 (Appeal B)

56 Butterfly Meadows, Beverley HU17 9GA

- 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 Mr Ian Hall against the decision of East Riding of Yorkshire Council.
- The application Ref 23/01255/PLF, dated 21 April 2023, was refused by notice dated 7 August 2023.
- The development proposed is described in the application form as 'Erection of 1.8m fence to side of property. Connection of freestanding car port to side of house for additional stability. Driveway and rear gate'.

Summary Decision: the appeal succeeds in part and permission for that part is granted, but otherwise the appeal is dismissed.

Preliminary Matters

1. Two different car ports have been constructed at the appeal site, both of which have since been demolished. I understand from the timing of the notice and the application that the appeals relate to the second car port to have been constructed, the first having been demolished by around November 2022 (Council's enforcement appeal statement at paragraph 2.4) and replaced by the second one.
2. Both have now been replaced with a standalone garage building which the Council accepts benefits from permitted development rights (in the form of article 3 of and Class E of Part 1 of Schedule 2 to the relevant 2015 Order).

3. There has therefore been substantial compliance with the terms of the enforcement notice, and much of the application for planning permission is now otiose.
4. The Appeal B application was described slightly differently in the Council's notice of refusal; as 'erection of car port to side and erection of 1.8m high fencing and gates to front and side (retrospective)'. The appellant's application was expressed not to seek permission for the car port itself, but for its 'connection' to the side of the house; the appellant's contention then being that the car port itself was permitted development, although the application drawings did describe the erection and retention of the car port and new boundary treatments as forming the proposed development. That car port has now been replaced. I consider below what remains of the application for my consideration in this appeal.

Main Issues

5. The main issues in relation to the enforcement notice are whether the alleged development requires express planning permission, and (if so) whether the steps required to be taken by the notice exceed what is reasonably required.
6. In relation to the planning appeal the main issue in deciding whether permission should be given concerns the effects of the development on the character and appearance of the site and the local area.

Reasons

The enforcement notice

7. The parties are agreed that the carport alleged by the notice has since been demolished. The onus of proof, where legal grounds of appeal against a notice are brought, lies up on the appellant to demonstrate the case to the balance of probabilities.
8. Because the carport structure has been demolished, I am unable to ascertain from my own site observation whether or not it would have complied with permitted development tolerances. Having regard to all other documents before me, this remains the case. Therefore the appellant has not been able to discharge the burden of proof to demonstrate that the structure did not require an express grant of planning permission, and the appeal on ground (c) must accordingly fail.
9. As to the appeal on ground (f) it is not unreasonable to require all elements of the carport to be removed from the site upon demolition. The Council's statement contends that some elements of it remain in the property's garden, and I saw on my site visit that a few panels were neatly stacked adjacent to an existing garden shed. Technically, there has not been complete compliance with the notice although there is evidently no realistic prospect of the car port being rebuilt now that a garage building is in its place.
10. As the appeal on ground (c) has not succeeded, it follows that the notice will be upheld in some form. A notice may be issued for the purpose of remedying the alleged breach of planning control, or of remedying any injury to amenity caused by the alleged development. The allegation here was of the erection of a car port, and the steps required by the notice should go no further than to restore the land to its former condition. As it happens, the car port has been

replaced by another structure, so the land cannot be said to have returned to its former condition, although the existing structure is acknowledged to be lawful. Although elements of the former car port remain on the site, they are not there in the form of a car port but in the form of discrete panels that are stacked apparently in contemplation of some re-use.

11. There is no associated appeal on ground (a) against the notice, which would be to seek planning permission for some or all of the development alleged in the notice. In such circumstances I am unable to address the merits of retaining on site the remaining elements of the car port. The requirements of the notice go no further than requiring the removal from the site of the unauthorised development, and I am unable to say that these requirements are unreasonably excessive in meeting the objective of the notice. It follows that the appeal on ground (f) does not succeed.
12. The Council's concerns are said to relate to the position, design and appearance of the unauthorised development. Whether those concerns have been met by the demolition of the structure, and whether it is now in the public interest to insist on complete compliance with the requirements of the notice, is a matter for the Council's consideration.

The planning appeal

13. In the main, what the appellant now seeks is not depicted on the application plans. The garage that has been constructed is built very close to the property's boundary, and would not leave sufficient space to allow for the 1.8m high hedge with 1.8m high timber fence behind that are shown on the plans as located alongside the car port.
14. To the east of the garage, to the northern edge of the property, a laurel hedge has been installed marking the boundary and is now well established. I understand the appellant still to seek permission for the part of the fence, around six metres in length, that would lie between the rear of the garage and the rear gate on the inside of the laurel hedge. I shall therefore largely confine my considerations to this part of the application, the remainder having been superseded by events.
15. I understand the Council's concern to be that erecting a fence so close to the hedgerow would be likely to threaten the health of the hedgerow, although this concern was mainly expressed in relation to the part of the hedgerow to the west that would have lain between the car port and the fence.
16. The appeal site is in a prominent location within Butterfly Meadows, standing at a road junction within the estate and visible from beyond it. Boundary treatments are generally open with any solid boundary treatments set back from the edge of the highway. There are some exceptions, as the appellant points out, and I have had regard to these and particularly the fence at no. 80.
17. Permission was previously refused and dismissed on appeal for a garage and side boundary wall at the property, the Inspector then opining that the development would create a sense of enclosure unsympathetic to the openness of the surrounding area. The proposal here differs, in that what is sought beyond the garage wall is now a 1.8m high timber fence rather than the 2.3m part-bricked structure that formed the previous proposal. Additionally, the fence now proposed is to be set back some additional distance from the

highway, being located behind the existing hedge that is already at a height exceeding that of the proposed fence.

18. Although accepting that the health of the hedge might be made more vulnerable by the construction of a fence, I do not find that the fence itself would have the effect of unduly enclosing the property that was found to give rise to the harm of the previous proposal. The side fence would be some distance from the highway and in the context of the existing garage and rear boundary treatment its additional effects would be negligible. If the hedge does endure, the fence would not be readily visible beyond it.
19. Policy ENV1 of the Local Plan requires developments to achieve high quality design having regard to local characteristics. The other three of the four houses at the Butterfly Meadows road junction each have enclosing high fences, part-walled. Directly opposite the side of the appeal site this fence/wall is set back slightly from the highway so that vegetation grows in front of it adjacent to the highway, as is proposed here. The difference from those other three properties is that the enclosures there begin at points further back from the front of the properties, with none of them having side garages or car ports. Nonetheless in the context of these other enclosed rear gardens in the location I am unable to find that the proposed garden fence here would be particularly out of character. Generally it is a feature of the estate that those properties whose rear gardens abut the highway have enclosed them to some degree. Not all fences are close-boarded, and not all are as high as 1.8m. Given the overall pattern, however, I do not find that the proposed 1.8m high fence would be contrary to the design provisions of policy ENV1 or of the Local Plan overall.
20. Therefore I shall grant permission for this element, as well as, for the same reasons, the rear gate that has already been constructed.
21. The proposed development was described as a retrospective one by the Council's decision letter, and 'to include retention' in the appellant's application drawings. As those retrospective elements of the application have now been removed, I consider they necessarily fall away from the permission being sought. The rear timber gate is marked as 'new' on the application plans and I consider that it forms part of the proposal before me, albeit that retrospective permission is now sought for it.
22. That potentially leaves the issue of the part of the fence that was proposed alongside the former car port. I understand this not to have been constructed at all, and that there is now no proposal to construct it because the garage is built so close to the property boundary. Insofar as it does require a planning assessment, I would refuse permission for that element because it would be unnecessary development against the side of the garage resulting in an incongruous boundary appearance. Insofar as the now-demolished car port requires assessment, I would refuse permission for it. From the photographs I have seen of it, its materials were plainly incongruous with those used elsewhere on the estate to the unfortunate detriment of the area's character.
23. For the avoidance of doubt, and accounting for the Council's extended description of the proposal, I shall issue a 'split' decision, formally refusing planning permission for the retention of (what is described as) the existing car port and refusing permission for new boundary treatments alongside the (now) existing garage building, but allowing the appeal insofar as it relates to the retention of the new rear timber gate and as it relates to the proposed

construction of a fence between the rear boundary gate and the rear of the existing garage.

Conditions

24. The Council have suggested some planning conditions that ought to apply if permission is granted. As the permission I am granting is part-retrospective in nature, I see no reason to impose a time limiting permission because the development permitted has already commenced. A condition seeking to secure the retention of the hedgerow is desirable and I shall impose it. The materials condition is also necessary to secure the feather edge fence referred to in the application form, as is the 'plans' condition to secure the position of the rear fence. I shall combine the requirements of those proposed conditions below.

Conclusions

25. For the reasons given above I conclude that the enforcement appeal, Appeal A, should not succeed and the appeal will be dismissed.
26. For the reasons also given above I conclude that the planning appeal, Appeal B, should be allowed in part and dismissed in part.

Formal Decisions

Appeal A

27. The appeal is dismissed and the enforcement notice upheld.

Appeal B

28. The appeal is dismissed insofar as it relates to the retention of an existing car port and to the construction of a side boundary fence alongside that car port. The appeal is allowed insofar as it relates to an existing rear boundary gate and to a proposed side boundary fence between the rear boundary gate and the rear of the existing garage building. Planning permission is hereby granted, partly retrospectively, for that rear boundary gate and side boundary fence, as so described, in accordance with the terms of the application reference 23/01255/PLF dated 21 April 2023 so far as relevant to those parts of the development hereby permitted, subject to the following conditions:

- (i) The existing boundary hedgerow shall be retained and maintained at a height of not less than 2m. If within five years of the date of this permission any part of it (or any hedgerow or tree planted in replacement for it) is removed, uprooted, destroyed or dies or becomes seriously damaged or defective then that part shall within the next planting season be replaced with specimens of the same size and species.
- (ii) The boundary fence hereby permitted shall be constructed in accordance with the eastern section of the fence depicted as 'New 1.8m timber fence' on application drawing no. 2111N No. 2 Rev G and shall be constructed of materials as described in the application form.

Laura Renaudon

INSPECTOR