



Appeal Decisions

Site visit made on 25 June 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 July 2024

Appeal A Ref: APP/E2205/C/22/3298542

Appeal B Ref: APP/E2205/C/22/3298543

Land at 4 and 5 Worsenden, Sissinghurst Road, Biddenden, Ashford, Kent TN27 8EH

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). Appeal A is made by Ms Emily Carpenter and appeal B is made by Mr Alexander Dean against an enforcement notice issued by Ashford Borough Council.
- The notice was issued on 6 April 2022.
- The breach of planning control as alleged in the notice is without planning permission, the erection of a detached single garage ('the Building') (shown marked 'X' in the approximate position on the attached Plan).
- The requirements of the notice are to:
 - (i) Demolish and remove permanently from the Land the Building (shown marked 'X' in the approximate position on the attached plan).
 - (ii) Following compliance with step 5(i) (above), restore the surface of the Land which has been excavated beneath and around the Building (shown marked 'X' in the approximate position on the attached Plan) to the levels and contours that existed immediately prior to the carrying out the unauthorised development, that is to say to the natural slope and contours of the surrounding land.
 - (iii) Remove permanently from the Land all materials, waste and debris resulting from compliance with steps 5(i) and 5(ii) (above).
- The periods for compliance with the requirements are:
 - (i) Five months.
 - (ii) Six months.
 - (iii) Seven months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 (as amended) (the Act). Appeal B is proceeding on the ground set out in section 174(2) (f) 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.

Summary Decisions: The appeals are dismissed and the enforcement notice is upheld with a correction in the terms set out below in the Formal Decision.

Applications for Costs

1. An application for costs was made by Ashford Borough Council against Ms Emily Carpenter and Mr Alexander Dean. This application is the subject of a separate Decision.

Preliminary Matters

2. The requirement at 5.(ii) of the enforcement notice is missing the word "of". Section 176(1) of the Act allows me to correct any defect, error or misdescription in the enforcement notice. For certainty, I will correct the notice in this regard.

3. The garage subject of this appeal was subject of a previous planning application reference 18/00939/AS and appeal reference APP/E2205/D/18/3216206. That appeal was dismissed and I will take it into account in coming to my decision.

The Appeal on Ground (a) and the Deemed Planning Application

Main issue

4. The effect of the detached single garage on the character and appearance of the surrounding area.

Reasons

5. The garage is located to the front of the house, close to the road. The rear of the garage faces the road and is set at a lower level than the road with the rear and side walls largely screened by planting. That planting appears to have significantly matured since the previous appeal decision. The door faces toward the house and away from public vantage points. The roof, however, is visible above the planting in public views from the road.
6. Immediately surrounding development comprises the crescent of eight semi-detached dwellings of which 4 and 5 Worsenden form part. They are a distinct form of development, consistent in their character and appearance and facing over their gardens that are free from obstruction, other than planting, vehicle parking and this garage. There is a clear building line to the front of this crescent. This lends a distinctive character and appearance to the immediate area around the garage.
7. Other houses fronting Sissinghurst Road are predominantly detached and set back from the road. There are other buildings, such as garages, to the front of other houses, but these tend to be on the larger properties and have a different character to this distinctive crescent of houses.
8. For these reasons, I consider that this is an incongruous position for a building given the otherwise open aspect in front of the crescent of dwellings including nos. 4 and 5 Worsenden. The previous Inspector found that it interrupts public views from the road and the south and was visually intrusive and undermines the open nature of the immediate locality. The more mature planting appears to have reduced those effects but it has not wholly overcome the previous Inspector's conclusions. In any event, I can't be certain that it will be maintained. Taking account of this context, the garage is overly prominent and intrusive in this location.
9. On that basis, I conclude that the garage harms the character and appearance of the area. I note that the Ashford Local Plan 2030 (LP) appears to have been adopted shortly after that decision, such that I have considered the proposal against different policies. Nevertheless, it is contrary to Policies SP1, SP6 and ENV3a of the LP and the National Planning Policy Framework that seek a high quality design and a positive sense of place including the relationship of buildings with each other and the spaces around them. It also conflicts with Ashford Borough Council Supplementary Planning Guidance Note 9 Domestic Garages and Outbuildings in Urban and Rural Areas that seeks outbuildings to not be overly prominent or intrusive, resisting those forward of any clear and visually obvious building line if they disrupt a strong and established building

line. Whilst that is less of an issue in rural areas, outbuildings should not be overly prominent or intrusive.

Other matters

10. The appellant has suggested a number of other factors that appear not to have been drawn to the previous Inspector's attention in such detail. I will consider these and whether they would overcome the harm I have identified.
11. Limited details have been supplied as to how the garage is used, such as whether a car is normally parked within or it is used for storage. On that basis, it is unclear why it is reasonably necessary in association with the house.
12. The house is close to the boundary with the neighbouring property. As a result, there is limited space to allow provision of a garage other than in front of the house. I accept that the garage is likely to be in the least obtrusive location at the property for access by a car, especially taking account of surrounding planting. Nevertheless, this is not sufficient to overcome the conflict I have found with development plan policies.
13. The appellant suggests a fallback in the form of keeping a caravan or similar large vehicle at the property and draws my attention to the vehicles parked to the front of the crescent of dwellings at Worsenden. I note that a large vehicle was parked on the opposite side of the drive during my visit, although I did not notice the white caravan referred to in the appellants' evidence. Any vehicle parked or stored in front of the houses appears as temporary, rather than the permanent building of a garage, such that it would have a different effect on the character and appearance of the area. Most of the houses in this crescent have parking to the front, so vehicles in this location would not be unusual or incongruous. As a result, I consider these factors carry little weight in the planning balance.
14. I note support from neighbours due to the garage providing screening from car lights along the busy main road to the front of the houses. However, a similar effect may be achieved with substantial planting and does not outweigh the harm I have found to the character and appearance of the area.
15. It is suggested that I could use conditions to maintain the planted screening and limit use of the garage to incidental purposes to the dwellinghouse. It is unclear to what uses the garage could be put other than incidental to the dwellinghouse. Whilst I could condition the retention and reinforcing of the planted screen for a period, such a condition would not be enforceable or reasonable in the longer term, especially taking account of the need for maintenance of the building.
16. My attention has been drawn to a large number of other garages to the front of dwellings. A number of court judgements have been referred to setting out the importance of consistency in decision making. The citations weren't always clear or provided, but the judgements appear to include *Poundstretcher Ltd & Harris Queensway PLC v SSE & Liverpool CC* [1989] JPL 90, *North Wiltshire District Council v Clover* [1992] JPL (North Wiltshire), (1993) 65 P&CR 137, *DLA v Cumberlege* [2018] EWCA 1305, "St Albans City and District Council", *Butterworth v Secretary of State for Communities and Local Government* [2015] EWHC 108 (Admin), *R (oao Fox Strategic Land and Property Ltd) v Secretary of State for Communities and Local Government* [2012] EWCA Civ 1198,

"Dunster", J.J. Gallagher Ltd. v Secretary of State for Local Government, Transport and the Regions [2002] EWHC 1812 (Admin), South Bucks District Council and another v Porter (No.2) [2004] 1 WLR 1953 and Save Britain's Heritage v Number 1 Poultry Ltd. [1991] 1 W.L.R. 153. In North Wiltshire it was suggested that the Inspector should ask whether, if they decide the case in a particular way are they necessarily agreeing or disagreeing with some critical aspect of the decision in the previous case.

17. Consistent with the findings of the previous Inspector, I have concluded that there is a distinct character and appearance to this crescent of dwellings that is harmed by the presence of the garage in this location.
18. None of the other examples of garages to the front of dwellings that have been brought to my attention were determined at appeal. None are within the crescent at Worsenden or have that distinct character and appearance. As a result, this case is distinguishable in terms of the character and appearance of the immediate surroundings of the site. Nevertheless, I will briefly consider them.
19. I note planning permission has been granted for works to the dwelling and erection of detached car port at Swallows House that neighbours the crescent of which 4 and 5 Worsenden form part. The appellant suggests that the development has been implemented, although the car port has not been constructed. The car port would be located adjacent to the road and close to the boundary with 8 Worsenden with space for two cars, the opening facing toward the house. It would be similar in character and appearance to the garage subject of this appeal and have a similar relationship to the road. However, it is not within the crescent of dwellings such that, even despite being so close, the character of the property and its immediate surroundings differ.
20. Maclaren Barn also has an outbuilding forward of the house close to the boundary with 1 Worsenden. That is set further from the road but is a more substantial building, being a three bay garage. I note that the planning permission was approved by the Council after the previous appeal was dismissed, reference 19/01039/AS. However, it is also located outside the crescent of dwellings. Maclaren Barn is a detached dwelling that was designed to appear as a converted barn within substantial grounds, including large front garden. It is of a very different character and appearance to 4 and 5 Worsenden. As a result, that garage has a different effect on the character and appearance of the area to that subject of this appeal.
21. Green Hedges is located directly over the road from the appeal site and comprises a modest bungalow behind a modest garden. It has a double garage with low pitched roof set to the side and slightly further forward. Given the location on the inside of a slight bend in the road, it is less prominent and of different character and appearance to the crescent of houses of which 4 and 5 Worsenden form part.
22. The other examples provided are located further from the appeal site.
23. The 3 bay garage at Boundary Farm, Cranbrook Road, Tenterden, Kent TN30 6UR related to a replacement of a previous garage and concrete slab area under planning permission reference 20/01504/AS. It related to a dwelling within a large area of land, away from other dwellings. As such, that area had a different character and appearance to that around 4 and 5 Worsenden. As it was a

replacement building, it was a different form of development from the garage in this case, given there are no other buildings in front of this crescent of 8 dwellings.

24. The garage at Bracken, Cranbrook Road, Tenterden TN30 6UJ related to a second garage to be constructed next to an existing garage, according to planning permission reference 08/01058/AS. Hillside is the neighbouring dwelling for which permission was granted under reference 17/01082/AS for extensions and a detached double garage to the front. Neighbouring development is of individual houses behind deep front gardens. The character and appearance of the area differs from the distinct crescent at 4 and 5 Worsenden.
25. Planning permission reference 15/01230/AS at The Annexe, Durrant Green House, Ashford Road, High Halden, Ashford, Kent TN26 3BY related to conversion and extension as well as a detached garage. Durrant Green House is on the junction of Ashford Road and Biddenden Road. The garage was proposed close to Biddenden Road to the front of The Annexe and the plans show it in the position of what was a greenhouse. The plans show The Annexe to one side of a large plot, close to Durrant Green House with other detached dwellings beyond. The character of that immediate area differs from that of the crescent of which 4 and 5 Worsenden form part.
26. Two sheds were erected at Homestall Farm, Ashford Road, High Halden TN26 3BS with planning permission granted retrospectively under reference 07/00244/AS. Previously a double garage and tractor store had also been permitted under reference 03/00748/AS, that appears to be the same development permitted under reference 07/00244/AS. Homestall Farm is set some distance back from the road, on a large plot with the two sheds located further forward in the site, behind a pond. Another small building is located on the road frontage but details of its approval do not appear to have been provided. The surrounding area has a different character from that of the crescent of which 4 and 5 Worsenden form part.
27. Planning permission 16/01496/AS at Elm Tree Grange, Ashford Road, High Halden TN26 3BP related to the conversion of ground floor of garage to ancillary annexe accommodation. The site plan suggests that the approved garage is located beside the house. As such, the development does not compare with that at 4 and 5 Worsenden that is located between the house and road.
28. A chalet bungalow with detached double garage was granted planning permission at Melrose Cottage, Ashford Road, Bethersden, Kent TN26 3LF under reference 18/00641/AS. The garage is located in front of the dwelling and close to the road. However, the surrounding development differs in character from that around 4 and 5 Worsenden given the distance between properties.
29. The garage at Oak lodge, Ashford Road, Bethersden, Kent TN26 3AS is on the edge of the village of Bethersden, granted planning permission under reference 09/01404/AS. The dwellings along Ashford Road comprise individual detached dwellings. That differs from the character and appearance of the immediate surroundings of 4 and 5 Worsenden.
30. The garage/outbuilding at Kitsbridge Farm, Ashford Road, Bethersden, Kent TN26 3LF was subject of a Lawful Development Certificate for proposed development reference 19/0779/AS where the Council were unable to consider

the planning merits of the development. It appears to have been located behind another dwelling when viewed from the road and beside the dwelling at Kitsbridge Farm.

31. I have been provided with photographs of outbuildings at Millbank House, Cranbrook Road, Tenterden, Kent TN30 6UN, Golan Croft and other locations but limited further details. The context of those buildings is unclear. That at Millbank House is a single garage that appears to front the road, with close boarded fences to either side. That at Golan Croft appears to be a flat roofed car port in front of the house but surrounding development is unclear. The character and appearance of the surrounding area does not appear to reflect that at 4 and 5 Worsenden.

Alternative solutions

32. It is suggested that the roof of the garage could be replaced with a flat roof that would result in a less prominent building. Drawings have been provided that demonstrate how that would appear. In removing the roof to replace with a flat roof, the resulting building would constitute part of the matters stated within the enforcement notice. That is an obvious alternative to the complete removal of the building as required by the enforcement notice so needs to be taken into account under the appeal on ground (f).
33. Removal of the pitched roof to provide a flat roof would result in a lower building and that may be almost wholly obscured by surrounding planting from the road. However, for the reasons given above in relation to considerations of a condition attached to any planning permission, it would not be possible to require that planting to remain. If it were removed, the building would remain incongruous within the context of the crescent of houses at 1-8 Worsenden. There are a limited number of other buildings in the immediately surrounding area with flat roofs, particularly in such a prominent position, such that it would appear more incongruous if the planting were removed. In that context, removal of the roof would not overcome the harm to the character and appearance of the area. The development would remain in conflict with Policies SP1, SP6 and ENV3a of the LP.

Conclusion

34. For the reasons set out above, I conclude that on balance the development does not accord with the development plan and there are no material considerations that outweigh that harm. The appeal on ground (a) therefore fails.

The Appeals on Ground (f)

35. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to demolish the garage, restore the surface of the ground and remove all materials, waste and debris, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
36. I have considered whether there are obvious alternatives to the development completed that formed part of the development under the ground (a) appeal.

These include the replacement of the pitched roof with a flat roof and imposition of conditions that might overcome the harm to the character and appearance of the area. In this case, I have concluded that no obvious alternatives exist that would overcome the reasons for issuing the notice. As a result, such works would not remedy the breach of planning control.

37. No other lesser steps have been put forward that would remedy the breach of planning control.

38. For these reasons, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

Formal Decisions

39. It is directed that the enforcement notice is corrected by the deletion of the words "immediately prior to the carrying out the unauthorised" and their substitution with the words "immediately prior to the carrying out of the unauthorised" in section 5.(ii) What You Are Required To Do.

40. Subject to the correction, the appeals are 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 1990 Act as amended.

AJ Steen

INSPECTOR