



Appeal Decision

Site visit made on 30 July 2024

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 October 2024

Appeal Ref: APP/Y3615/C/22/3313287

Highfields, Wonham Way, Gomshall, Guildford GU5 9NZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mrs Jane Buglear against an enforcement notice issued by Guildford Borough Council.
 - The notice was issued on 7 December 2022.
 - The breach of planning control as alleged in the notice is the erection of a double car port.
 - The requirements of the notice are:
 - i) Remove the double car port hatched in black on the attached plan;
 - ii) Remove from the site all material and debris resulting from compliance with step i)
 - 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.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act for the development carried out, namely the erection of a double car port at Highfields, Wonham Way, Gomshall, Guildford GU5 9NZ, as shown on the plan attached to the notice.

Procedural Matter

2. Since the appeal was lodged, a revised version of the National Planning Policy Framework ("the Framework") was published in December 2023. However, the parts of the Framework most relevant to the appeal have not substantially changed from the previous iteration. Consequently, it has not been necessary for me to seek further comments from the main parties in this respect. I have determined the appeal accordingly.

Ground (a) – the deemed planning application

Main Issues

3. The appeal site is located within the Green Belt. The Framework states that inappropriate development is, by definition harmful to the Green Belt and should not be approved except in very special circumstances.
4. Paragraphs 154 and 155 of the Framework define different types of development that would be an exception to inappropriate development in the Green Belt. Policy P2 of the Guildford Borough Local Plan: Strategy and Sites 2015-2034 (adopted April 2019) (LP) requires the approach in the Framework

to be applied. There is no dispute between the main parties that the double car port does not comply with these exceptions and is therefore inappropriate development in the Green Belt. From the evidence before me, I see no reason to disagree with this conclusion.

5. Accordingly, the main issues are:

- The effect of the development on the openness of the Green Belt; and
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Openness

6. Paragraph 142 of the Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and that the essential characteristics of Green Belts are their openness and their permanence. Openness has a visual and spatial dimension.
7. Highfields is a detached dwelling which forms part of a linear form of residential development on the eastern side of Wonham Way. The property is set back from Wonham Way and occupies an elevated position due to the sloping gradient of the land which rises up away from the road. The double car port has been erected to the front of the property with access provided by an existing driveway.
8. Owing to its position, the sites topography, and screening from trees and other vegetation, the car port is not a prominent feature within the wider Green Belt and is not immediately visible when approaching along Wonham Way. Although views may be possible from the immediately adjacent dwellings, the car port is barely visible from public vantage points. As such, it does not have a detrimental impact on the visual aspect of openness. The car port adds built form where there previously was none, albeit in an existing residential plot and in a location very closely associated with the existing built form. Therefore, while the car port inevitably has an impact on the spatial aspect of the openness of this part of the Green Belt, due to the context, the level of that harm is minimal.
9. The development comprises inappropriate development in the Green Belt and has a minor harmful impact upon the openness of the Green Belt in spatial terms. Accordingly, the development conflicts with Policy P2 of the LP and the Framework. In accordance with the Framework, inappropriate development is, by definition, harmful to the Green Belt and substantial weight should be given to any harm to the Green Belt. I must therefore ascribe substantial weight to this minimal harm.

Any other harm

10. No other harm has been identified against the development that needs to be taken into consideration. On the basis of the evidence before me, I have no substantive reason to conclude otherwise.

Other Considerations

11. The appellant has put forward a fall-back position in the form of a Lawful Development Certificate¹ (LDC) which could be implemented. The LDC was granted on 10 November 2022 in relation to a proposed car port under Class E, Part 1, of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). The car port would be located beyond the rear elevation of the dwelling near the southern boundary of the site.
12. Although the Council do not dispute that the LDC has been granted, they raise concerns over the amount of earth works that would need to be undertaken to facilitate the development. It is the Council's view that these works would amount to an engineering operation which does not benefit from planning permission.
13. It was evident from my site visit that due to the change in ground levels, there would be an element of earth works required to construct the car port in that location. Nevertheless, these changes to ground levels are clearly shown on the drawings submitted with the LDC which show the car port built into the "graded ground". Consequently, I find that these works form part of the proposed development which was found to be lawful and which benefits from the LDC, and I find no reason to conclude that the works would represent a separate form of development requiring planning permission. I accept therefore that the fallback position is available and a material consideration.
14. For significant weight to be afforded to a fallback position, there needs not only to be a reasonable prospect of it being carried out in the event that planning permission were to be refused, but it would also need to be equally or more harmful than the appeal scheme.
15. The appellant states that since moving into the property with her husband, they have had a requirement for covered parking for two cars, and therefore should the enforcement notice be upheld there is a real likelihood that the fallback scheme will be constructed. The Council though do not consider that there is any evidence that the appellant genuinely intends to construct it, as it may be difficult to implement, and the LDC may instead be a strategic attempt to secure planning permission for the existing building.
16. There is no evidence before me to suggest that the fallback scheme would not be capable of being constructed, or that it would not provide the appellant with an acceptable alternative. Moreover, given the issuing of the LDC and the site's planning history which includes previous planning applications² that incorporated detached garages, there is a clear desire for covered parking to be provided at the property. I therefore consider that there is a greater than theoretical possibility that the fallback scheme would be constructed, so this constitutes a realistic fallback position. Consequently, it is necessary to compare the impact of the fallback scheme to that of the car port subject of this appeal.
17. The proposed car port which forms the fallback scheme would have a broadly similar footprint to the existing development. However, by virtue of its pyramidal roof it would be markedly greater in height. It would also involve

¹ Council Ref: 22/P/01626

² Council Ref: 17/P/00607 & 17/P/01145

the provision of additional paving or hardstanding to extend the driveway and provide access to the car port. The increase in both volume and height means that the fallback scheme would have a marginally greater impact on both the visual and spatial dimensions of openness than the existing car port. I therefore find that, in terms of its effect upon the openness of the Green Belt, the fallback position would be more harmful than the appeal scheme. As a result, I afford the fallback scheme significant weight in support of the development.

Whether very special circumstances exist

18. The car port is inappropriate development in the Green Belt, so I ascribe substantial weight to any harm. However, the level of harm to the Green Belt, by virtue of inappropriateness and impact on openness, is minimal. There are no other harms. The fallback position weighs substantially in favour of granting planning permission for the car port subject of this appeal. Consequently, I find that the other considerations in this case clearly outweigh the harm that I have identified. Overall, I consider that very special circumstances exist which justify the development.

Conclusion on ground (a) and the deemed planning application

19. I conclude that the car port is inappropriate development in the Green Belt, but very special circumstances exist to justify the development. Therefore, the development does not conflict with Green Belt policy set out in the Framework and the LP, and it complies with the development plan as a whole. The appeal on ground (a) therefore succeeds.

Conditions

20. I have considered the imposition of appropriate planning conditions, having regard to the six tests set out in the Framework. No suggested conditions have been put forward and given that the works have already been undertaken on site, I see no reason why any conditions would be necessary in this instance.

Conclusion

21. For the reasons given above, I conclude that the appeal succeeds on ground (a) and planning permission is granted in accordance with the application deemed to have been made under section 177(5) of the 1990 Act as amended.

David Jones

INSPECTOR