



## Appeal Decision

Site visit made on 30 September 2025

**by M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 February 2026

**Appeal Ref: APP/E2001/C/25/3368103**

**Land at Crab Apple House, Station Road, Foggathorpe, East Riding of Yorkshire YO8 6PS**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
- The appeal is made by Mr Justin Claybourn against an enforcement notice issued by East Riding of Yorkshire Council.
- The notice was issued on 13 May 2025.
- The breach of planning control as alleged in the notice is without planning permission: Construction of a two-storey detached outbuilding with associated steel staircase and platform and single storey timber pergola.
- The requirements of the notice are to:
  - 1) Demolish the two-storey outbuilding, metal staircase and platform and single storey timber pergola in their entirety, as identified in "Photographs "A" and "B"
  - AND
  - 2) Upon completion of Step 1 above remove all resultant waste materials and debris from the site.
- The period for compliance with the requirements is: Four months.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (c) and (f) 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 insofar as it relates to the pergola and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act (as amended), for the pergola at Crab Apple House, Station Road, Foggathorpe, East Riding of Yorkshire, YO8 6PS.
2. The appeal is dismissed and the enforcement notice is upheld in respect of the two-storey outbuilding and associated steel staircase and platform and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act (as amended).

### Applications for costs

3. Applications for costs have been made by Mr Justin Claybourn against East Riding of Yorkshire Council and by East Riding of Yorkshire Council against Mr Justin Claybourn. These applications are the subject of separate decisions.

### Ground (c)

4. An appeal under ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. The main thrust of the appellant's case is that there has not been a breach of planning control because the appellant erected the outbuilding in line with planning permission

20/01841/PLF and that the internal installation of a ceiling and changes to fenestration are not development by virtue of section 55(2)(a) of the Act.

5. In order to succeed under ground (c), the appellant will need to show that what is alleged complies with the terms and conditions of a planning permission and the planning permission is extant, with the development having been instigated or begun under section 56 of the Act during the relevant period and the development was not commenced in breach of a condition precedent. In an appeal under ground (c), the burden of proof is firmly on the appellant, on the balance of probabilities.
6. Planning permission was granted in January 2021 for the erection of a detached garage/store to the rear of Crab Apple House, reference 20/01841/PLF. The plans show that the building would comprise a single storey building constructed in brick, with a plasterboard ceiling and insulated void, garage door and two windows in the 'garden side view' elevation. The planning permission was granted subject to a number of conditions, including that the development shall be carried out in accordance with the approved plans, condition 4 (the 'plans condition').
7. Condition 1 of the planning permission requires that 'the development hereby permitted shall be begun before the expiration of three years from the date of this permission.' Section 56(2) of the Act sets out that development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Section 56(4) sets out the meaning of material operation, which includes any work of construction in the course of the erection of a building.
8. The main thrust of the Council's case is that the works, considered as a whole, serve to prevent the works from being 'comprised in the development' for the purposes of section 56(2) of the Act and that the permission has now lapsed. The Council has summarised the differences it believes there are between the approved building and the 'as built' building, which are:
  - A higher eaves level on both the northern and southern elevations;
  - A higher overall height;
  - Installation of double doors at first floor level on the eastern (rear gable) elevation, with associated external steel staircase to facilitate first floor access;
  - A different fenestration on its southern (garden side view) elevation with the installation of doors and full-length windows at ground floor level, and the installation of five Velux rooflights;
  - Installation of double door, alternatively, full-length window at ground floor level on the eastern (rear gable) elevation;
  - Office/habitable living space at first floor level;
  - Omission of parapet wall on the eastern (rear gable) elevation.
9. While there is dispute regarding the differences, whether they are material and whether some of them were carried out after substantial completion, it is clear from the evidence before me and my inspection of the site that the building has,

regardless of the appellant's motivation for the deviations, at no point at, or since completion, complied with condition 4 of the planning permission.

10. Nevertheless, it is possible to commence a development for the purpose of section 56 of the Act and thereby meet a deadline forming a condition of the planning permission, and then later to deviate from the permitted works in a manner that later became an enforcement issue because the subsequent works did not match the plans or the permissions. The difference between the plans and the development as built, may in some cases, lead to a conclusion that the material operations which took place were not material operations comprised in the development.
11. In support of their case, the appellant has drawn my attention to the case of *Southwood v Buckinghamshire Council* [2024] EWHC 71 (Admin), which concerned variations from a planning permission. In that case, it was concluded that, whilst the 'as built' building is not in full accordance with the approved plans externally and internally, it can nevertheless still function and be used as was originally intended in accordance with its lawful use and as such it is not materially different from the original permission in either appearance or function/use.
12. As was made clear from the *Southwood* judgement, whether differences between a building as constructed and as permitted render earlier works, themselves within the permission, from being 'implementation' for the purposes of section 56(2). It is a matter of fact and degree for the decision maker's assessment. It is necessary to consider not just the existence of differences between the plans and the operations relied on, but also to consider the significance of those differences.
13. The appellant asserts that the approved plans are small-scale and do not include an external datum point, existing or proposed ground levels or finished floor levels and, are therefore unreliable for taking detailed measurements. During the course of the appeal, I requested a hard copy of the plans, at the correct scale. The plans provided included:
  - Drawing number MC1, dated 9 June 202 at a scale of 1:50, with a scale bar. The plan shows the proposed ground floor plan.
  - Drawing number MC2, dated 9 June 2020 which showed proposed elevations of the building. The plan included a scale bar at 1:100.
  - Drawing number MC2/FL, which is not to scale, and shows ground floor detail and first floor detail, including details of a concrete slab and ground level. First floor details show a floor surface of timber or wood board.
14. Permissions should be interpreted as by a reasonable reader. The permission needs to be interpreted with common sense. While the application for the garage/store was not accompanied by a topographical survey the approved documents do, however, include ground floor details, which show the level of the proposed concrete slab and sand/cement screed of the building relative to the ground level. The drawing shows a 100mm thick concrete slab with 25mm sand/cement screed, sitting up to around 150mm above ground level. The diagram also provides details of the first floor.
15. Drawing number MC2 shows two horizontal lines beneath the building, either of which could be intended to show ground level. Cross hatching is shown on the

drawing, similar to that shown on drawing number MC2/FL, which may be indicative of ground level. The garage door is shown extending to the first horizontal line, which, given that the door is flush with the concrete slab/cement screed, supports the interpretation that the ground level is likely to be indicated by the second horizontal line and that ridge height should be measured from the lower of the two lines.

16. The officer report for 20/01841/PLF describes the building as sitting 6 metres above ground level, with an eaves height of 3 metres. The appellant suggests, using the scale bar on approved plan MC2, gives a ridge height of 6.1m and, given the above, I would agree with their conclusion in this respect. However, the appellant goes on to suggest that, in conjunction with the information from approved plan MC2.FL, the overall height is 6.250m. I respectfully do not agree. When taken together, my interpretation of the drawings is that the ridge height of the approved building is approximately 6.1m above ground level, with the gable ends measuring approximately 6.2m above ground level.
17. During my site visit, a series of measurements were taken by the appellant and the Council. The appellant used a digital measuring device, with a tripod and the Council used a physical measuring device. Taking the appellant's measurements, measurements taken during my visit, showed that, when measured from concrete floor level, the top of the building (front view, the gable end, facing towards the house) measured approximately 6.585m and 4.273m to the bottom of the coping stone (as an indication of eaves height, as the stone falls away and so it was not possible to measure to the top of the coping stone).
18. The side elevation, measured from the bottom of the render to the top of the ridge, was approximately 6.213m. The distance between the top of the concrete slab to the render was approximately 90mm, giving a total height above slab level of around 6.3m. Taking into account that the concrete slab (and 25mm sand/cement screed) was approved to sit approximately 150mm above ground level, this would give a ridge height of around 6.45m and a parapet wall height of around 6.735m.
19. While the appellant suggests that the surveyed ridge height of the building was 6.264m, this was above a base reference point located on the southern elevation of the building adjacent to the side door, rather than the concrete slab, which is unlikely to represent ground level. Furthermore, the appellant has provided a visual comparison of the building as constructed, against the approved plans, which shows the building as constructed exceeds the height of the approved building.
20. I recognise that difficulties can arise when seeking to scale off plans which may have been distorted by printing. However, while it is clear from my inspection of the site that the building is not 2 metres higher than the approved building, I do not agree that the differences are well within the tolerances of the limitations of the submitted drawings, nor are they *de minimis*. The gable end, which is clearly visible from the public domain, is significantly taller, with taller eaves and a greater massing overall compared with the approved building. When considered as a whole, the building which has been constructed is, in my view, materially taller than the building for which planning permission was granted.
21. It is suggested that the garage/store was 'substantially completed' in April 2022 when electric doors were delivered and fitted, which secured the building. It was

(the appellant states) thereafter used for the storage and maintenance of motor vehicles and related equipment. It is suggested that a ceiling to provide first floor accommodation was constructed after the building was secured/substantially complete.

22. The phrase 'substantially completed' means a fully detailed building of a certain character. In *Hillside Parks Ltd v Snowdonia National Park Authority* [2022] UKSC 3 it was clarified that, for the purpose of section 171B(1) of the 1990 Act, building operations carried out without planning permission are not substantially completed until construction of the whole building contemplated by the landowner is substantially completed. Substantial completion is of relevance where there has been a breach of planning control consisting in the carrying out without planning permission of building, engineering, mining or other operations in, on, over or under land because of the provisions of section 171B of the Act, which sets out time limits for enforcement action.
23. However, the appellant does not suggest that the building substantially completed 4 years before the enforcement notice was issued (which would have been the relevant immunity period in this case). Rather the appellant's case is made on the basis that planning permission was granted for the building and that the introduction of additional windows and a ceiling at first floor level is not development because it does not materially affect the external appearance of the building.
24. Section 55 (2) of the Act excludes certain operations or uses of land from development, including (a) the carrying out for the maintenance, improvement or other alteration of any building of works which (i) affect only the interior of the building, or (ii) do not materially affect the external appearance of the building. It was held in *Burroughs Day v Bristol CC* [1996] EGCS 126 that, for works to 'materially affect' external appearance, the changes must be visible from a number of vantage points and material to the appearance of the building as a whole.
25. However, as established in *Sage v SSETR & Maidstone BC* [2003] UKHL22, section 55(2)(a) applies where the building is completed and then altered or improved. The planning permission relied upon was subject to a 'plans condition'. While a 'plans condition' will not prevent – once the building is completed and occupied – the carrying out of works which are exempted from development under s55(2)(a) or which are permitted by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) (the GPDO), the evidence does not show that the building was completed in accordance with the planning permission.
26. As set out above, the building is materially taller than the approved building. There are also differences in terms of the layout of the building. The appellant suggests that, in respect of the use of the garage/store, the chronology is relevant. The building was constructed at a time when the country was affected by a pandemic, Covid-19, which necessitated many people working from home, including the appellant's wife. The appellant therefore decided to use the upper floor of the building as a home office.
27. It is stated that the ceiling was constructed to form the first floor accommodation in July 2022. The appellant advises that as facilities (telephone, computer access etc) were being installed, their daughter came home and used part of building. A

bathroom was installed. No mention is made of the kitchen facilities which have been installed, which include a sink, hob and oven. Nevertheless, it is stated that the use of the upper floor of the garage was preferred to their daughter living in Crab Apple House to give her a degree of privacy, but with support close by. The appellant states that since February 2023, their wife has been the sole occupant of the first floor accommodation, which she uses as her office.

28. The Council has provided me with a photograph of the building, dated 11 November 2021, when it was partially constructed. Joists are visible in the photograph, as are gaps where the double doors have been installed. The gaps visible in the 2021 photograph of the 'Garden Side View', with red brick detailing above, are consistent with the position of the double doors and double window which have been installed at ground level, suggesting that the building was not constructed in accordance with the approved plans. A gap is also evident at first floor level, which is consistent with the position of the doors to the first floor. It is stated that the appellant 'modified' the approved position and size of the ground floor windows during construction of the building and installed the window/access door at first floor level during 'initial construction'.
29. While drawing number MC2/FL shows that a ceiling would be installed in the building, the double doors at first floor level are not shown on the approved plans and facilitate access to the first floor. Email correspondence from the appellant's agent to the Council, dated 17 November 2021, advises that *'the gaps left in the construction at ground floor level are to enable additional windows to be introduced. We were both right in thinking Mr Claybourn may be preparing to provide an office at first floor level – hence the high level window in the gable. This is for his wife....(who) has recently been told that she will be working from home "for the foreseeable future".'*
30. The appellant states that they installed the external staircase in June 2022. Although the appellant purchased steps some time after they assert the building was substantially completed, the doors are clearly intended to function as a means of enabling an individual to utilise the first floor of the building. I saw no other means of access and, so it seems reasonable to me to conclude that the building would not have been completed (at least) until after the stairs had been installed. Furthermore, the approved ground floor plan sets out that internal faces are to have 15mm plaster and skim finish. At the time of my visit, the works to the ground floor of the building appeared unfinished, with blockwork and insulation exposed.
31. Planning permission is not granted for structures which are incomplete. If a building operation is not carried out, internally and externally, fully in accordance with the planning permission, the whole operation is likely to be unlawful. While the appellant's intentions may have changed during the course of constructing the building, it seems unlikely, from the evidence that the building was completed as a garage/store and then converted into an office. It therefore seems unlikely that the building was ever completed in accordance with the approved plans and so the appellant cannot rely on the provisions of section 55(2)(a)(ii) of the Act.
32. The application form describes the proposal as a 'detached domestic garage/store' and the materials proposed are identified as 'red brick'. On plan MC1, external walls are identified as '100mm brick outer skin'. However, the building has been finished with large sections of render, which is inconsistent with the details proposed. Five roof lights have been inserted into the roof, which are inconsistent

with the approved plans and a door has been inserted into the garden side view elevation, rather than a window.

33. There are also differences in the design of the end gables, with the parapet wall of the gable facing the dwelling constructed without corbelled brickwork at eaves level and the gable end facing away from the dwelling constructed without a parapet. While it may not be possible to construct corbels shown on the drawing using conventional brickwork, this is inconsistent with the detailing on the approved plans. Although there may be practical and design reasons<sup>1</sup> for deviating from the approved design, these are nonetheless, inconsistent with the approved design.
34. Planning permission was granted for a garage/store, not an office or living accommodation (whether part and parcel of the use of the main dwelling or not). Garages are not, in my experience, usually fitted with fully equipped kitchens or bathrooms. While fitting a bathroom may not be difficult for the appellant given their profession, it seems likely, from the evidence before me, that what has been constructed is a building of a different character to that which was approved.
35. Taking account of the differences between the building as approved and as built and the character of that building, as a matter of fact and degree, the differences between the building as constructed and as permitted lead me to conclude that the material operations which took place were not material operations comprised in the development. Since planning permission 20/01841/PLF was granted on 22 January 2021 subject to the condition that the development permitted be begun before the expiration of three years, the planning permission has, in my judgement lapsed.

### *The pergola*

36. The appellant states that they erected the pergola in June 2023 for their son's birthday and to provide privacy for the use of a hot tub, and that it is a stand-alone structure, which is not attached to the garage. The appellant states that a now-retired enforcement officer has previously confirmed to the appellant's agent that the pergola was permitted development. However, I do not have full details of the discussion which took place. Furthermore, a local planning authority cannot fetter its discretion to issue an enforcement notice through informal agreement. There is no suggestion that a certificate of lawful use has been issued in respect of the pergola.
37. The Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO), Schedule 2, Part 1, Class E permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...' subject to certain conditions and limitations. The main thrust of the Council's case is that the pergola is attached to the building, which exceeds the height limitations set out in Class E, whereas the appellant's case is that the pergola is a stand-alone structure which is not attached to the outbuilding.
38. A photograph attached to the enforcement notice shows the pergola projecting from the outbuilding. The structure appears physically connected to the outbuilding and visually, it appears as part of the outbuilding. During my visit I saw that the

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<sup>1</sup> Such as consistency with the design of the host dwelling.

pergola appears to be in the same place as it was when the enforcement notice photograph was taken.

39. The pergola is located towards the end of the outbuilding, and extends above the double doors, presumably so that users of the outbuilding can use the outside space without being exposed to the weather. The wood of the pergola physically touches the outbuilding and the flashing of the roof of the pergola extends a number of centimetres up and along the outbuilding. While I saw that the pergola is not physically bolted to the outbuilding, and so it was possible to move the pergola slightly (and may be possible to relocate the pergola away from the outbuilding), it appears physically and functionally to be part of the outbuilding.
40. As a matter of fact and degree, in my judgment, the pergola has been constructed as an extension or addition to the outbuilding and, since the outbuilding greatly exceeds the limitations set out in Class E, it is not permitted by the GPDO.
41. Thus, for the reasons set out above, I find that the appeal under ground (c) must fail.

### **Ground (a)**

42. An appeal under ground (a) is made on the basis that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted, or as the case may be, the condition or limitation concerned ought to be discharged.

### **Main Issues**

43. The main issues of the ground (a) appeal are:
  - The effect of the outbuilding on the character and appearance of the area; and
  - The effect of the outbuilding on the living condition of neighbouring occupants, having regard to privacy, outlook and noise and disturbance.

### **Reasons**

#### *Character and appearance*

44. Crab Apple House is a former church, which has been converted into a dwelling. The dwelling is a substantial brick built building, with interesting architectural features. The dwellings either side are of more modern construction, though the use of similar materials makes a positive contribution to the character of the area. To the rear of the adjacent dwelling, Peartree House, is a brick built garage of modest height, which appears subservient to its host dwelling.
45. Policy ENV1 of the East Riding Local Plan Update Strategy Document (the SD) seeks development of high quality design, with an appropriate scale and massing. Code C44 of the East Riding Design Code (2025)(ERDC) advises that garages and other outbuildings should relate sympathetically to the host building in terms of materials, style and proportion.
46. The appeal building comprises a substantial two storey building, which has been erected to the rear of the host dwelling. Although the building is located to the rear of the main dwelling, it is clearly visible from the public domain, as well as from

neighbouring dwellings. The metal staircase, although on the gable end facing away from Station Road, appears an odd feature, which is uncharacteristic of the area, and fails to relate to the host building.

47. While the appellant has incorporated design features intended to reflect design features of the host dwelling, the substantial height and massing of the building is such that it appears an overly dominant building which detracts from the host dwelling when viewed together from the public domain and appears an incongruous feature which harms the character and appearance of the area, contrary to policy ENV1 of the SD and the advice contained in Code C44 of the ERDC, the requirements of which are set out above.
48. The appellant suggests that the contrast between the adjacent garage and the higher gable tells an architectural story about its relationship to the host building. However, while the church may have historically been of importance, the outbuilding which has been erected fails to relate sympathetically to the host dwelling. In my view the significant difference in height and massing between the appeal outbuilding and the neighbouring outbuilding just serves to accentuate its incongruity.
49. The appellant suggests that it would be possible to reduce the vertical emphasis of the gable facing the dwelling by corbelling the eaves out to the extent shown on the approved drawings. However, this is unlikely to significantly reduce the visual effect of the building and would not address the concerns raised above. The appellant also suggests reducing the height of the parapet to reduce the vertical emphasis, however, as pointed out by the appellant, these options are likely to produce a building with unusual detailing, which is inconsistent with the host property and is likely to result in a design which is unsympathetic as a result.

#### *Living conditions*

50. The outbuilding comprises a shower room, fully equipped kitchen and sufficient space for a bed and living area at first floor level and a garage at ground floor level. The first floor is accessed by a set of metal stairs, the orientation of which had been altered by the time of my site visit so that the stairs face towards the rear garden of the host dwelling. A bamboo screen had also been erected around the platform at the top of the stairs, which significantly limited views of the adjoining garden.
51. While the appellant states that they wish to use the outbuilding as an office, as set out above, it is unusual for an office of this size to be equipped with a fully equipped kitchen and shower room. By the appellant's own admission, their daughter has used the upper floor of the building to stay in. Were I to grant planning permission for the building, this would include the kitchen and bathroom. Even if the appellant intends to use it as an office, it would be open to future occupants to use the building as living accommodation.
52. Policy ENV1 of the SD sets out that development will be supported where it has regard to the amenity of existing or proposed properties amongst other things. The National Planning Policy Framework(2024)(the Framework) seeks development with a high standard of amenity for existing and future users.
53. The outbuilding has been erected close to the boundary with Peartree House and extends a number of metres beyond the outbuilding to Peartree House. By virtue

of its substantial height, massing and proximity to the rear garden of Peartree House, I consider users of the garden of Peartree House are likely to find the building overbearing. Indeed, I note the occupants have raised concerns about the 'dominating effect' on their garden and outlook.

54. While the rear of properties face towards their rear gardens, resulting in a degree of mutual overlooking, the double doors and steps of the outbuilding enable views of the neighbouring garden, introducing overlooking to a part of the neighbouring garden which would have previously been private, with limited overlooking.
55. Whether the building is used as an office or living accommodation in association with the use of Crab Apple House, users of the first floor are likely to be able to peer into the rear garden of Peartree House, which users of the garden are likely to find intrusive and may deter them from using part of their garden. Even if the adjacent fence were to be increased in height, given the height of the stairs and platform, this would not sufficiently lessen the effect of overlooking and the resultant harm to privacy.
56. While I saw that Peartree House is a substantial building, this does not justify the introduction of harmful overlooking in this case. The bamboo screen which had been erected at the time of my visit appeared makeshift and, while it limits views of the neighbouring garden from the top of the stairs, it increases the overall massing of the outbuilding. It was erected after the notice was issued and does not, therefore form part of my consideration of the appeal.
57. Nevertheless, the appellant states they are willing to attach an opaque screen to the northern side of the platform and stairs to prevent any views from the stairs over the neighbours' garden. However, while a condition requiring the Council's approval of the materials, height and colour of a screen may be acceptable to the appellant, as with the bamboo screen, this would increase the overall massing of the outbuilding and so I consider there would still be harm to the living conditions of neighbouring occupants by virtue of the overall massing of the outbuilding.
58. The appellant also suggests that the stairs could be reconfigured, turning the platform through 90 degrees with the stairs running eastwards down into the appellant's garden, and could be secured by planning condition. During my visit, the stairs had already been rotated, so that they face towards the appellant's garden, rather than towards the garden of Peartree House. While this means that users of the stairs overlook the rear gardens of properties to the south of the premises, it, of itself introduces overlooking.
59. The Council raises concern regarding the impact on the residential amenity of neighbouring occupiers from noise and disturbance should it be occupied separately. The allegation is the erection of a building. While the building has been designed with all the facilities required for day to day living and so could be used as an independent dwellinghouse, were the appellant (or a future occupant) to do so, it would result in a material change of use, which would itself be development.
60. In the event the building is used as a self contained dwelling house separate to the use of the host dwelling, it would therefore be open to the Council to take enforcement action, should it consider it expedient to do so. Furthermore, the appellant has confirmed that they would support the imposition of a planning condition to ensure that the use of the outbuilding remains ancillary to (or part and

parcel of) the main dwelling house. This is likely to address the Council's concerns regarding the effect on living conditions of the occupants of Crab Apple House.

61. The appellant has drawn my attention to vegetation clearance at Chalk House, which, it is suggested, has opened up visibility between the rear gardens of the row of properties from the public house at the junction of Main Street and the A163 road, south up to and including the appeal site. However, this does not justify the introduction of harmful overlooking at the appeal site.
62. For the reasons set out above, I find that the outbuilding is an overbearing feature which results in an unacceptable loss of privacy for users of the rear garden of Peartree House, contrary to policy ENV1 of the SD and the relevant expectations of the Framework.

### *Fallback*

63. Planning permission 20/01841/PLF was granted on 22 January 2021. Condition 1 attached to that permission required that the development permitted shall be begun before the expiration of three years from the date of the permission. However, as set out above, I have found that later differences between the building as constructed and as permitted have the effect of rendering earlier works, themselves within the permission, from being implementation for the purposes of section 56(2) and so, I have found that the planning permission has lapsed.
64. I am mindful that planning permission has previously been granted for a building approximately 6m in height, of a similar footprint and length to the appeal building. The officer report comments, at paragraph 7.1, that 'there is an existing garage, of a similar height, sitting immediately to the north of the boundary treatment within the northern neighbour's site.' The officer goes on to state 'It (the garage) would sit 6 metres above ground level, with an eaves height of 3 metres'. However, the adjacent garage extends up to around 4.5m above ground level and in my view, would not be similar in height to a 6m tall building. It seems likely, therefore, that the author of the report did not appreciate the height of the proposed building and how it would be seen in its context.
65. Significantly, the building that was approved was materially different, being single storey, with no accommodation at first floor level and being more limited in height than the appeal building. Even if the Council was to grant planning permission for a building, as approved under 20/01841/PLF, this would have a less harmful effect on the character and appearance of the area and on living conditions of neighbouring occupants.
66. I recognise that, once the appellant has complied with the requirements of the notice, they would be able to exercise their permitted development rights. However, such a building would not, in my view, be comparable to the appeal building, because of the height limitations set out under Class E of Part 1, Schedule 2 of the GPDO. A building erected under permitted development rights, even if erected in the same position and to the same footprint as the appeal building, is likely to have a far lesser effect than the appeal building, because its height would be far more limited.
67. I also recognise that it may be possible for a homeowner to site a mobile home within the curtilage of a dwellinghouse, without the need for planning permission.

However, a mobile home is unlikely to be comparable to the outbuilding, either in height or massing and so it does not weigh in support of the appeal scheme.

68. While I have found under ground (c) that the pergola is not permitted by the GPDO because it forms part of the outbuilding, once the enforcement notice has been complied with, it is likely that the appellant would be able to erect a structure which is similar in size and design to the pergola. Furthermore, the pergola, by virtue of its modest height and position in the rear garden, appears a subordinate feature which, of itself, does not harm the character or appearance of the area, or the living conditions of neighbouring occupants and so there is no conflict with policy ENV1 of the SD or the Framework in this regard.
69. I note the Council's concern that the pergola has the potential to provide a separate amenity space for occupants of the outbuilding, however, there is no evidence to show that it would be used in this way. Under ground (a), I may grant planning permission for part of the matters. The pergola is part of the matters and so, given the lack of harm and the fallback position, I shall grant planning permission for that part only.

### **Other Matters**

70. An interested party has written in support of the appeal scheme and has raised concerns regarding the effect that removal of the building would have on their living conditions. While demolition of the building has the potential to cause noise and dust, any disturbance is likely to be limited in duration. Furthermore, the Council has powers to ensure that demolition does not cause a statutory nuisance.

### **Conclusion: Ground (a)**

71. For the reasons set out above, I find that the outbuilding and associated steel staircase and platform harms the character and appearance of the area and the living conditions of neighbouring occupants. I have found that the pergola does not harm the character and appearance of the area, or the living conditions of neighbouring occupants and, since it is severable from the outbuilding, I consider that a split decision would be appropriate in this case.

### **Ground (f)**

72. An appeal under ground (f) is made on the basis 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.
73. Section 173(4) of the Act sets out the purposes of a notice are (a) remedying the breach by making any development comply with the terms... of any planning permission..., by discontinuing any use of the land or by restoring the land to its condition before the breach took place; or (b) remedying any injury to amenity which has been caused by the breach. Since the requirements of the notice are to remove the outbuilding, staircase and platform and pergola, the purpose of the notice is, in my view to remedy the breach.
74. The appellant suggests an appeal under ground (f) allows me to consider the harm alleged by the alleged unauthorised development and whether this can be mitigated by means other than those set out in the enforcement notice. However,

the planning merits fall to be considered under ground (a), not ground (f) and as set out above, I have found that the harm, in respect of the outbuilding and associated staircase and platform, cannot be mitigated and that planning permission should be refused.

75. It is suggested that, given the Council accepts that the footprint and siting of the as-built garage/store are as approved, the ground floor windows can be reinstated as approved. However, as set out above, I have found that the planning permission has lapsed and so I cannot vary the notice to require the appellant to modify the building in accordance with the planning permission. Allowing the building to remain with modified fenestration and an altered staircase, would not remedy the breach.
76. As set out above, I intend to grant planning permission for the pergola under ground (a). The appellant can rely on the provisions of section 180 of the Act<sup>2</sup>, and so it is not necessary for me to vary the requirements in respect of the pergola.
77. There are no lesser steps and no obvious alternative which can be achieved with less cost and disruption than total removal. Consequently, the appeal under ground (f) must fail.

### **Conclusion**

78. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the pergola, but otherwise I will uphold the notice and refuse to grant planning permission in respect of the other part of the matters. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act (as amended).

*M Savage*

INSPECTOR

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<sup>2</sup> S180 provides that an enforcement notice shall cease to have effect so far as inconsistent with a planning permission granted after the service of that enforcement notice.