

REFERENCE NO - 15/510115/FULL			
APPLICATION PROPOSAL Retrospective application for garage.			
ADDRESS Roseann Saxon Avenue Minster-on-sea Kent ME12 2RP			
RECOMMENDATION Refuse			
SUMMARY OF REASONS FOR RECOMMENDATION The garage in isolation was found by the Inspector to be unacceptable and therefore, although Officers have previously been of the opinion that the garage would not cause significant harm to neighbouring amenities on its own, the Inspector, by reaching his decision has given a very clear indication that the impact of the garage is unacceptable. I therefore am of the opinion that due to this, the application should be refused by virtue of the increased sense of enclosure and significant harm to the outlook of the neighbouring occupiers of 'Pendower', as referenced by the Inspector.			
REASON FOR REFERRAL TO COMMITTEE Recommendation conflicts with Parish Council view			
WARD Minster Cliffs	PARISH/TOWN COUNCIL Minster On Sea	APPLICANT Mr David Gray AGENT	
DECISION DUE DATE 05/02/2016	PUBLICITY EXPIRY DATE 13/01/2016		
RELEVANT PLANNING HISTORY (including appeals and relevant history on adjoining sites):			
App No	Proposal	Decision	Date
APP/V2255/C/14/2 220485 (Appeal against an Enforcement Notice)	Requirements of the Enforcement Notice: (i) Demolish the rear extension and garage; (ii) Remove any materials or debris etc from the landscaped in complying with the requirements of (i) above.	Appeal dismissed and Enforcement Notice upheld	17/2/2015

1.0 DESCRIPTION OF SITE

- 1.01 'Roseann' Saxon Avenue is a detached bungalow with hardstanding to the front of the property and private amenity space to the rear.
- 1.02 The streetscene is made up of a mix of dwellings with bungalows, chalet bungalows and two storey properties present. The predominant dwelling type in the vicinity is detached.

2.0 PROPOSAL

- 2.01 This application seeks retrospective planning permission for the erection of an attached garage to the western side of the property, close to the neighbouring property known as 'Pendower.'

- 2.02 The garage measures 2.5m in width and 7.4m in depth. It has a pitched roof, the angle of which matches the main dwelling, it measures 2.5m to the eaves and 3.9m in overall height. The front facing elevation of the garage is set back from the L shaped front elevation of the main property.
- 2.03 The garage has been rendered to match the existing property and the tiles, grey slate, also match the main dwelling.

3.0 PLANNING CONSTRAINTS

- 3.01 None

4.0 POLICY AND OTHER CONSIDERATIONS

- 4.01 The National Planning Policy Framework (NPPF)
National Planning Practice Guidance (NPPG)
Development Plan: E1, E19 and E24 of the Swale Borough Local Plan 2008.
Supplementary Planning Documents: Designing an Extension – A Guide for Householders

(Adopted SPG entitled “Designing an Extension - A Guide for Householders”, was adopted by the Council in 1993 after a period of consultation with the public, local and national consultees, and is specifically referred to in the supporting text for saved Policy E24 of the Local Plan. It therefore remains a material consideration to be afforded substantial weight in the decision making process.

National Planning Policy Framework (NPPF)

The NPPF was released on 27th March 2012 with immediate effect, however, para 214 states “that for 12 months from this publication date, decision-makers may continue to give full weight to relevant policies adopted since 2004 even if there is a limited degree of conflict with this Framework.”

The 12 month period noted above has now expired, as such, it is necessary for a review of the consistency between the policies contained within the Swale Borough Local Plan 2008 and the NPPF.

This has been carried out in the form of a report agreed by the Local Development Framework Panel on 12 December 2012. Policies E1, E19 and E24 are considered to accord with the NPPF for the purposes of determining this application and as such, these policies can still be afforded significant weight in the decision-making process.

5.0 LOCAL REPRESENTATIONS

- 5.01 Adjoining neighbours have been notified by a consultation letter and one response has been received from the occupiers of the neighbouring dwelling, ‘Pendower’, raising an objection on the following grounds:
- The Enforcement Notice was upheld which gave the owner of the garage 6 months to remove it, this was over a year ago;
 - The garage now in situ is a further 4.6m to the rear of the previous garage and 4.1m to the apex which towers above the porch, bathroom and kitchen windows, causing the kitchen to be in darkness;
 - Would like the garage to be put back to its original position.

6.0 CONSULTATIONS

- 6.01 Minster on Sea Parish Council supports this proposal. They state that *“moving the garage has increased the on-site parking at the front of the property and removed any concerns about the proposal adding to parking in the street. This will benefit both residents and visitors. The proposal also improves the street scene.”*

7.0 BACKGROUND PAPERS AND PLANS

- 7.01 Application papers and correspondence relating to planning reference 15/510115/FULL and Enforcement Appeal reference APP/V2255/C/14/2220485.

8.0 APPLICANT'S SUPPORTING COMMENTS (summary)

- 8.01 *“Pendower's side door has privacy / frosted glass and so no viewpoint would be possible through this glazing from indoors – whether the garage was there or not.*

In relation to light, privacy glazing on the door would restrict this somewhat anyway. The garage is rendered white which does reflect the light. In addition, there is a wide path of 1300 / 1500mm (wall to wall) at this point between the two buildings and so the garage does not significantly restrict light. The door this room serves (kitchen?) clearly has windows to the rear and there is extensive glazing from the conservatory adjacent. The garage has not, therefore, impacted or restricted the only source of light (or viewpoint).

We think it important to mention that the garage at 'Roseann' in its original position sat entirely in front of the windows to the side (at the front) of the neighbouring property 'Pendower'.

Now that the rear extension at 'Roseann' has been removed to just leave the garage, we believe there is no 'overbearing structure making an increased sense of enclosure' and rather than the development 'denying light and impinging on their outlook', both are actually enhanced by having just the new garage along, positioned in the way it now is.”

9.0 APPRAISAL

- 9.01 At the outset it is important to set out the history at this site which will allow for a clearer explanation of the recommended decision. The garage which is the subject of this application was originally constructed along with a rearward projecting conservatory (which was attached to the garage) without the benefit of planning permission. The development was undertaken as one building operation and did not constitute permitted development. Members resolved to take enforcement action contrary to my recommendation, and an Enforcement Notice was served on 16th May 2014 and the breach of planning control as alleged in the notice read *‘the construction of a rear extension and garage, the approximate positions of which are highlighted on the plan, which in the opinion of the Council would require planning permission.’*

The requirements of the notice (as set out in paragraph 5) are:

- (i) Demolish the rear extension and the garage;
- (ii) Remove any materials or debris etc from the Land caused in complying with the requirements of 5(i)

- 9.02 An appeal was lodged against the Enforcement Notice and the decision is attached as an appendix. The appeal was dismissed, the enforcement notice was upheld and planning permission for the development refused. With specific regard to the garage, the Inspector commented:

“The enlargements to the side and rear of the bungalow appear to have resulted in a significant increase in the overall bulk and proximity of built development near the boundary with the adjacent bungalow, ‘Pendower’. The development appears to have resulted in an increased sense of enclosure to the occupiers of this property, to the extent that it significantly impinges upon their outlook. The oppressive impact of the garage is accentuated by its gabled flank wall, which is noticeable from some of the neighbours’ side windows and passageway..”

- 9.03 I appreciate that the conservatory to the rear of the development has now been removed, this has been confirmed by photographs submitted as part of the supporting documents and as witnessed by the case officer during his site visit. However, it is important to note in this case that the Inspector did have the opportunity to amend the Enforcement Notice and conclude that only part of the proposal, i.e. the conservatory or the garage on their own would constitute an acceptable form of development. This option was not taken. As such, I can only conclude that the Inspector found the development as a whole, and also crucially the garage in isolation, as unacceptable.

- 9.04 Therefore, although Officers have previously been of the opinion that the garage would not cause unacceptable harm to neighbouring amenities on its own, the Inspector, by reaching his decision has given a very clear indication that the impact of the garage is unacceptable. I therefore am of the opinion that due to this, the application should be refused by virtue of the increased sense of enclosure and significant harm to the outlook of the neighbouring occupiers, as referenced by the Inspector.

- 9.05 I have taken into consideration the comments received by the Parish Council but in this case, even though the parking and design of the proposal may be an improvement on the original arrangement, this does not override the Inspectors comments as set out above. I also recognise the objections received from the neighbouring occupiers but as these are largely in line with the conclusions of the Appeal decision I do not believe that they require further elaboration.

10.0 CONCLUSION

- 10.01 In overall terms the decision that has been reached in the Inspector’s appeal decision has heavily guided the recommendation that has been reached here. As such, it must be concluded that the garage as a single structure is unacceptable and causes significant harm to the residential amenities of the occupiers of the adjacent property, known as ‘Pendower.’ As such, I recommend that on this basis that planning permission be refused.

11.0 RECOMMENDATION – REFUSE for the following reasons:

As confirmed in the Inspector’s Appeal Decision (ref: APP/V2255/C/14/2220485) the garage, by virtue of its scale and proximity to the common boundary with the adjacent property known as ‘Pendower’ creates an unacceptable sense of enclosure and significantly impinges upon the outlook from this neighbouring property. The development is therefore contrary to policies E1 and E24 of the Swale Borough Local

Plan and the Council's adopted Supplementary Planning Guidance entitled "Designing an Extension: A Guide for Householders".

The Council's approach to this application:

In accordance with paragraphs 186 and 187 of the National Planning Policy Framework (NPPF), the Council takes a positive and proactive approach to development proposals focused on solutions. We work with applicants/agents in a positive and proactive manner by:

- Offering pre-application advice.
- Where possible, suggesting solutions to secure a successful outcome.
- As appropriate, updating applicants/agents of any issues that may arise in the processing of their application.

In this instance:

The application was considered by the Planning Committee where the applicant/agent had the opportunity to speak to the Committee and promote the application.

NB For full details of all papers submitted with this application please refer to the relevant Public Access pages on the council's website.
The conditions set out in the report may be subject to such reasonable change as is necessary to ensure accuracy and enforceability.

APPENDIX



Appeal Decision

Site visit made on 13 January 2015

by **Nigel Burrows BA MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 February 2015

Appeal Ref: APP/V2255/C/14/2220485

Roseann, Saxon Avenue, Minster, Kent, ME12 2RP

- 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 David Grey against an enforcement notice issued by Swale Borough Council.
- The Council's reference is ENF/MIN/13/013.
- The notice was issued on 16 May 2014.
- The breach of planning control as alleged in the notice is 'the construction of a rear extension and garage, the approximate positions of which are highlighted on the plan, which in the opinion of the Council would require planning permission.'
- The requirements of the notice (as set out in paragraph 5) are:-
 - (i) Demolish the rear extension and the garage;
 - (ii) Remove any materials or debris etc from the Land caused in complying with the requirements of 5(i) above.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a) and (c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld

Procedural Matters

1. The appeal against the enforcement notice was originally lodged on ground (a). However, the submissions lodged on the appellant's behalf also included arguments normally considered under ground (c), namely that the garage extension did not require planning permission. The appeal is therefore proceeding on grounds (a) and (c). The main parties were subsequently given the opportunity to make further ground (c) submissions, which have been taken into account in my consideration of the appeal.

The appeal on ground (c)

2. Ground (c) is known as one of the 'legal' grounds of appeal. The onus is on the appellant to make out the case that there has not been a breach of planning control.
3. The erection of the rear extension and garage constitute development for the purposes of section 55 of the 1990 Act. It is therefore necessary to consider whether these works are permitted development under the provisions of the Town and Country Planning (General Permitted Development) Order, as amended (i.e. the GPDO). Bearing in mind the rear extension and garage are attached to the dwelling, they should be assessed against the provisions of Class A, Part 1, Schedule 2 of the GPDO.
4. There is no firm evidence before me to indicate when the unauthorised development commenced. However, the Council's submissions include photographs of the construction works. A photograph apparently taken on 18 April 2013 indicates the

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works were well advanced at this time. On the balance of probability, I therefore consider the development falls to be considered against the amendments to Class A, Part 1, Schedule 2 of the 1995 GPDO which came into force on 1 October 2008¹.

5. The provisions of Class A allowed the enlargement of a dwellinghouse, subject to certain limitations. The appellant's stance is the single storey garage extension erected to the side of the bungalow did not require planning permission. The inference appears to be that it complied with all of the limitations and conditions set out within Class A, including paragraphs A.1 (a) to (i). However, according to the Council, the rear extension and garage were erected as a 'single building operation'. The Council's stance is the whole of the development therefore required planning permission.
6. The ground (c) submissions for the appellant appear to focus on the garage extension. These submissions state "... *in reality it is only the conservatory that does not meet permitted development criteria.*" However, the conservatory and garage are linked. The Council's photographs indicate they were under construction at the same time. The appellant has not provided any evidence to refute the Council's assertion that the building works involved one overall project to enlarge the bungalow, nor has any firm evidence been provided to demonstrate that the overall enlargement of the property met all the relevant limitations and conditions of Class A, or any other part of the GPDO.
7. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged in this instance. As matters stand, I conclude that building operations have taken place at the property without the necessary planning permission and a breach of planning control has occurred as alleged in the enforcement notice. The appeal on ground (c) fails.

The ground (a) appeal and deemed application

8. The main issue is this appeal is the effect of the development on the living conditions of neighbouring residents, with particular reference to their outlook and sunlight.
9. The enlargements to the side and rear of the bungalow appear to have resulted in a significant increase in the overall bulk and proximity of built development near the boundary with the adjacent bungalow, 'Pendower'. The development appears to have resulted in an increased sense of enclosure to the occupiers of this property, to the extent that it significantly impinges upon their outlook. The oppressive impact of the garage is accentuated by its gabled flank wall, which is noticeable from some of the neighbours' side windows and passageway. The additional rearward projection of the linked conservatory exacerbates this sense of enclosure, to the extent that the neighbours are likely to feel hemmed in by the cumulative effect of the enlargements.
10. The appellant indicates the depth of the conservatory does not exceed 3.0m - as recommended in the Council's SPG². It is also alleged the SPG is dated, as a 4.0m deep rear extension would not require planning permission. Be that as it may, given the cumulative effect of the current enlargements, they constitute an unneighbourly form of development. The appellant also argues the recent amendments to the GPDO would allow the provision of an 8.0m deep rear extension³. However, this would need to be the subject of the prior approval procedure. In any event, there is no firm evidence to demonstrate there is 'a greater than theoretical possibility' that such a development might take place. This argument cannot be given significant weight in this appeal.
11. Concerns have been expressed about additional overshadowing of 'Pendower'. However, this has not been quantified, for example by reference to any sunlight or daylight calculations. Bearing in mind that a garage previously existed alongside 'Roseann', it is

¹ S.I. 2008 No. 2362: The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008

² Supplementary Planning Guidance - 'Designing an Extension: A Guide for Householders'

³ S.I. 2013 No. 1101: The Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013

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not clear whether the new extensions have unacceptably diminished the levels of sunlight available to 'Pendower' (or daylight). In any event, the increased sense of enclosure and consequential harm to the outlook of the neighbours constitutes a decisive objection to the development. In this respect, I find it conflicts with the objectives of 'saved' policies E1 and E24 of the Council's Local Plan⁴ to ensure that residential amenity is protected.

12. The appellant is evidently willing to replace the high-level windows on the west side of the conservatory⁵ with obscure glazed, fixed lights. However, this step would not overcome the overbearing and dominating impact of the development. It is not obvious to me that the adverse impact of the scheme could be overcome by any other planning conditions.
13. Having said that, I recognise that it might be possible for the parties to explore whether or not a mutually acceptable solution could be found for some alternative form of enlargement to the property. I also note the Council has given the appellant a period of up to 6 months to comply with the notice. This should allow adequate time for the parties to explore the matter further or, alternatively, for the appellant to comply with the notice.
14. The Council's concern to protect residential amenity is generally consistent with the Government's objectives for the planning system. Paragraph 14 of the National Planning Policy Framework (March 2012) sets out the presumption in favour of sustainable development. The economic, social and environmental dimensions of sustainable development should be addressed. Paragraph 9 also makes it clear that pursuing sustainable development includes seeking positive improvements in the quality of the environment and improving people's quality of life. I conclude the existing development materially conflicts with the latter objectives. The appeal on ground (a) therefore fails.

Conclusions

15. I have taken into account all the other matters raised, including the personal and financial circumstances of the appellant, but I find they do not alter or outweigh the main considerations that have led to my decision. For the reasons given above, I shall uphold the enforcement notice and refuse to grant permission on the deemed application.

Formal Decision

16. The appeal is 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.

Nigel Burrows

INSPECTOR

⁴ Swale Borough Local Plan (2008)

⁵ Which appear to encroach across the boundary when open