



The Planning Inspectorate

Appeal Decisions

Site visit made on 23 November 2015

by **K R Seward Solicitor**

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

Decision date: 4 January 2016

2 Ruins Barn Road, Tunstall, Sittingbourne, Kent ME10 4HS

Appeal A: APP/V2255/C/15/3031335

- 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 Mrs Jennifer Zaluska against an enforcement notice issued by Swale Borough Council.
- The notice was issued on 15 April 2015.
- The breach of planning control as alleged in the notice is without planning permission a garage has been erected, the approximate position of which is highlighted on the plan, which in the opinion of the Council would require planning permission.
- The requirements of the notice are:-
 - (i) Remove the garage
 - (ii) Remove all materials and debris caused in complying with condition (i).
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds 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 s177(5) of the Act.

Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.

Appeal B: APP/V2255/W/15/3019443

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Jennifer Zaluska against the decision of Swale Borough Council.
- The application Ref 14/503907/FULL, dated 9 September 2014, was refused by notice dated 16 March 2015.
- The development is to construct a timber framed and timber clad garage/storage area to the rear boundary of the property. Access via track to rear of Ruins Barn Road.

Summary of Decision: The appeal is allowed, and planning permission granted.

Preliminary Matters

1. The allegation in Appeal A refers to the approximate position of the garage being highlighted on the plan attached to the enforcement notice. An arrow on the plan points towards the dwelling whereas the garage is a separate building at the end of the garden. At my site visit, both parties agreed that the plan requires correction and this has been confirmed in writing. The location of the garage is correctly shown on the site plan accompanying the application in Appeal B. I am satisfied that the correction can be made without injustice to

www.planningportal.gov.uk/planninginspectorate

Appeal Decisions APP/V2255/C/15/3031335, APP/V2255/W/15/3019443

either party by substituting the enforcement notice plan with another to correspond with the location plan in Appeal B.

2. Equally, no injustice would arise from the consequential minor amendment required to paragraph 3 of the notice to make reference to the building being shown hatched rather than highlighted on the plan. I will therefore correct the enforcement notice in those two respects in order to clarify the terms of the deemed application under section 177(5) of the 1990 Act, as amended.
3. The garage was already built at the time of the application for planning permission in Appeal B and so the application was retrospective. The garage, as built, appears to correspond with the submitted plans.
4. The red line site for the location plan in Appeal B encompasses an area of hard-standing in front of the garage which does not appear in the enforcement notice plan. This does not affect the clarity or validity of the notice which does not require correction in this respect.

Appeal A on ground (a) and the deemed planning application; and Appeal B

5. Ground (a) is 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. This ground is concerned with the planning merits of the case, and it raises the same issues as the deemed application for planning permission. The linked section 78 appeal also raises the same issues, and I shall therefore deal with them together.

Main Issues

6. The main issues in both appeals are the effect of the garage on the character and appearance of the surrounding area and the living conditions of neighbouring occupiers with particular regard to outlook and sunlight.

Reasons

Character and appearance

7. No 2 Ruins Barn Road is one half of a pair of semi-detached houses in a long row of properties in the same form and architectural style. Each property in the row has a long rear garden. Most have a garage or outbuilding of some description at the end of their rear garden. The building subject to this appeal is a large double detached garage with a storage area within its roof space built at the end of the rear garden of No 2. In common with other garages in the row, vehicular access is obtained to it via an unmade track behind the Ruins Barn Road properties. The Council acknowledges that there is no dispute concerning the principle of development and refers to the garage as a "marginal" case.
8. The far side of the track is lined with dense hedgerow providing screening from the fields beyond. Whilst the garages are visible from neighbouring gardens, they cannot be seen from the public domain.
9. The garage has a pitched roof with gable ends. There is a large window in one gable end with a smaller window above. At a ridge height of approximately 4m, it is larger than most others in the row but not excessively so. Moreover, there is a wide variance in size, height, form and roof styles among the structures.

Appeal Decisions APP/V2255/C/15/3031335, APP/V2255/W/15/3019443

The external finishes also vary considerably. Thus, there is no uniformity or fixed appearance with which the garage ought to accord.

10. Indeed, there is an example further along the row at No 28 where there is a notably larger garage building which has been approved by the Council. Not only does it have a higher ridge height than the appeal garage and is greater in scale, it features very large metal doors and painted render creating a very urban appearance and one that draws the eye from distance. In contrast, the appeal building has weatherboard cladding painted in a muted shade and a black corrugated roof. It is far more under-stated and befitting to its location surrounded by domestic gardens and close to open fields.
11. In addition, the appearance and finish is to my mind of superior quality than a good number of the other garages/outbuildings which are in varying states of repair. Given their condition and the wide assortment of outbuildings, the impression is somewhat haphazard. Against this backdrop, the garage is a positive addition. Although it fills a large part of the garden width, there is so much space behind the garage that it does not appear cramped in. I find no harm by reason of its size or design.
12. Consequently, there is no adverse effect on the character and appearance of the surrounding area contrary to Policies E19 and E1 of the Swale Borough Local Plan (LP) 2008 which, amongst other things, seek high quality design appropriate to the location. Nor does it conflict with the similar aims of Paragraphs 56 and 58 of the National Planning Policy Framework (the Framework).

Living conditions

13. Three large detached houses in Cromer Road share a rear boundary with No 1 Ruins Barn Road. They are sited perpendicular to the rear gardens of the Ruins Barn Road properties. High boundary fences separate the properties which, together with some foliage, will obstruct views of part of the garage for neighbours from downstairs rooms and rear gardens. However, there will be direct views of the garage roof behind the smaller garage at No 1 when viewed from first floor windows of No 4 Ruins Barn Road, in particular. There is no right to a view in law and so the fact the garage can be seen from neighbouring properties is not a material planning consideration. Instead, I have approached the question of outlook on the basis of any harm to the neighbouring occupiers' which is caused by an overbearing development rather than in the sense of a loss of view.
14. As a functional black coloured roof, it cannot be described as visually attractive. Nonetheless, the building is not close to neighbouring windows nor is it particularly close to the Cromer Road gardens. The rear garden for No 1 Ruins Barn Road provides separation. The roof also slopes away from the rear boundary of the Cromer Road properties which further reduces the likelihood of an enclosing effect occurring. It will still be possible to see around and above the garage albeit those views may have been more appealing before the roof was in place. Whilst neighbours may prefer the building to be flat roofed to reduce its visual impact, no material harm arises from the garage in its existing form. Its combined height, size and proximity are not of a level to give rise to an oppressive form of development for neighbouring residents whether from windows or gardens.

Appeal Decisions APP/V2255/C/15/3031335, APP/V2255/W/15/3019443

15. Moreover, the separation distance between the garage and neighbouring houses suffices to avoid any material adverse effect on sunlight to rooms. For the same reason and with other intervening structures and planting, the level of any increased shading of gardens would not be significant.
16. Thus, I find no adverse effect on the living conditions of neighbouring occupiers in terms of outlook or impact on sunlight for demonstrable harm to residential amenity to arise in conflict with LP Policy E1. Likewise, there would be no conflict with the core planning principle in Paragraph 17 of the Framework which seeks to promote a good standard of living conditions for occupants of land and buildings.

Other Matters

17. The parish council has raised concerns regarding the potential use of the garage for commercial purposes. At the time of my site visit, the garage was filled with items of domestic storage on the concrete base. A moveable staircase was positioned in one corner leading to an upper floor level with restricted headroom where further items were being stored. From my observations, there was no evidence of an existing commercial use. A commercial use would amount to a material change of use of the building requiring planning permission. Therefore, it is not necessary to impose a planning condition restricting the use to purposes incidental to the dwellinghouse, as suggested by the Council.
18. Whilst the garage was constructed without the benefit of planning permission, this does not affect my consideration of the planning merits.

Formal Decisions

Appeal A

19. It is directed that the enforcement notice be corrected: by the deletion of the word "highlighted" from paragraph 3 of the notice and the substitution thereof of the words "shown hatched black" and the substitution of the plan annexed to this decision for the plan attached to the enforcement notice. Subject to these corrections 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, as amended, for the development already carried out, namely the erection of a garage on the land shown hatched black on the plan annexed to this decision.

Appeal B

20. The appeal is allowed and planning permission is granted to construct a timber framed and timber clad garage/storage area to the rear boundary of the property, access via track to rear of Ruins Barn Road, at 2 Ruins Barn Road, Tunstall, Sittingbourne, Kent ME10 4HS in accordance with the terms of the application, Ref 14/503907/FULL, dated 9 September 2014 and the plans submitted with it.

KR Seward

INSPECTOR



The Planning Inspectorate

Plan

This is the plan referred to in my decision dated: 04.01.2016

by **K R Seward Solicitor**

Land at: 2 Ruins Barn Road, Tunstall, Sittingbourne, Kent ME10 4HS

Reference: APP/V2255/C/15/3031335

Scale: NOT TO SCALE

