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# Appeal Decision

Site visit made on 11 October 2022

**by Elizabeth Pleasant BSc (Hons), DipTP, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 October 2022**

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**Appeal Ref: APP/P1045/C/22/3292605**

**Land at Rosemount, Roston, Ashbourne, DE6 2EE**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr John Coxon against an enforcement notice issued by Derbyshire Dales District Council.
  - The notice was issued on 19 January 2022.
  - The breach of planning control as alleged in the notice is: The construction of a building not in accordance with the approved plans for permission 17/00376/FUL.
  - The requirements of the notice are:
    - a) Reduce the height of the building and carry out all necessary alterations so that buildings dimensions and external appearance comply fully with planning permission 17/00376/FUL, for a single storey garage as approved on 09 June 2017 to accord with the decision notice and approved plan (drawing no.1 Coxon) date stamped 27 Apr 2017 and attached as appendix 1 to this notice.
  - The period for compliance with the requirement is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (d) 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.
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## Decision

1. It is directed that the enforcement notice be corrected by the deletion of the wording, *'The construction of a building not in accordance with the approved plans for permission 17/00376/FUL'* in paragraph 3 and substitution with *'The erection of a garage.'*
2. Subject to this correction the appeal is allowed and the enforcement notice is quashed.

## The Notice

3. On an appeal any defect, error, or misdescription in an enforcement notice may be corrected using the powers available in section 176(1)(a) of the Town and Country Planning Act, 1990 (the Act), or the terms may be varied, where the correction or variation will not cause injustice to the appellant or local planning authority. It may be the case that defects are too fundamental to be corrected without causing injustice, leading to the notice being quashed.
4. Planning permission<sup>1</sup> for the erection of a garage was granted by the Council on 9 June 2017 subject to a number of conditions (the planning permission). The description of the alleged breach cites that the development has not been carried out in accordance with the approved plans of that planning permission. Where it is considered that the development differs materially from the scheme

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<sup>1</sup> Local Planning Authority Ref: 17/00376/FUL.

granted planning permission it is reasonable to consider that the development has been carried out without planning permission rather than a breach of condition.

5. As the enforcement notice cites section 171A(1)(a) of the Act and given the reasons for issuing the enforcement notice, the Council clearly consider that the development is materially different to that granted planning permission. Nevertheless, as there is a ground (a) appeal and a deemed planning application, I have to ensure that the breach of planning control as stated in the enforcement notice consists of an accurate description of the alleged breach as it is the basis for considering the deemed planning application.
6. In this case the description of the breach of planning control contained wording that does not relate to an act of development and is more akin to reasons for issuing the enforcement notice. Consequently, I intend to delete the wording '*The construction of a building not in accordance with the approved plans for permission 17/00376/FUL*' and substitute with '*The erection of a garage*'. Taking into account the evidence before me, the appellant clearly understands that the notice is directed at the erection of the garage as constructed. I consider that I can carry out this correction without injustice to either main party. I will therefore correct the enforcement notice in this respect, in order to clarify the terms of the deemed application under section 177(5) of the Act.

#### **Appeal on ground (d)**

7. In relation to a breach of planning control consisting of the carrying out without planning permission of building operations, no enforcement action may be taken after the end of the period of four years beginning with the date on which the operations were substantially complete.
8. The main issue is whether the construction of the building alleged in the notice, as corrected, was substantially completed on or before 19 January 2018. The onus of proof is on the appellant and the test is on the balance of probability.
9. The Appellant maintains that work commenced to construct the garage in July 2017 and was completed on 15 December 2017. It was immediately put to use for the parking of private cars in the garage space and the first floor roof space utilised as a cinema room and hobby room for personal use incidental to the enjoyment of Rosemount. In support of his appeal case the Appellant has provided Statutory Declarations (SD) from himself and from the building contractor who carried out the construction works, to testify that the building was completed on 15 December 2017.
10. The Council has not provided any evidence to refute the Appellant's nor his contractor's version of events, and accept that the SDs should be given significant weight. However, they do not consider that this evidence alone is sufficient, on the balance of probability, to demonstrate that the development is lawful.
11. It is established case law that an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted<sup>2</sup>.

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<sup>2</sup> *Gabbitas v SSE & Newham LBC* [1985] JPL 630.

12. No representations have been made in relation to the enforcement appeal in response to the Council's consultation exercise with neighbouring residents, the Parish Council or local Councillor.
13. The SDs are precise and unambiguous. They set out clearly when the building works were commenced and completed. In the absence of any evidence to contradict the details set out in the SDs then that evidence should be taken at face value.
14. Consequently, the circumstances of this case are such that I am satisfied that the Appellant's evidence is sufficiently precise and unambiguous to conclude, on the balance of probability, that the building operations in question are immune from enforcement action.
15. I conclude that the appeal on ground (d) succeeds.

### **Conclusion**

16. For the reasons given above, I conclude that the appeal should succeed on ground (d). The enforcement notice will be corrected and quashed.
17. In these circumstances, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act does not fall to be considered.

*Elizabeth Pleasant*

INSPECTOR