

EAST BUDLEIGH
(Budleigh)

No. 36/00027
(Enforcement)

Location: Land lying to the north of Oak Hill, East Budleigh
Property now called Brock House

Alleged Breach of
Planning Control:

1. Alterations to approved dwelling
2. Erection of boundary wall and fence
3. Erection of detached double garage

RELEVANT PLANNING HISTORY

App.No:	Year	Proposal	Decision	Date
P1127	2002	Renewal of permission for one dwelling	Approved	23.07.2002
P1721	2002	Erection of dwelling and garage (reserved matters)	Refused Granted on Appeal	03.12.2002 26.09.2003
0478/FUL	2005	Amendments to approved dwelling to allow re-siting, provisional sun room and 2 dormer windows, deletion of detached garage and changes to a driveway	Approved	14.04.2005

CONSULTATIONS

County Highway Authority

N/A

South West Water

N/A

Environment Agency

N/A

BACKGROUND

The site has been the subject of investigation by the Planning Enforcement Section for a number of years prior to the granting of planning permission. On 3 November 2005, the Enforcement Officer undertook a site visit and noted that work was in progress to construct the dwelling. It was noted that additional dormers and a conservatory were also under construction.

Concern was also raised regarding the felling of a horse chestnut tree in front of the new dwelling. The tree was the subject of a Tree Preservation Order. On further investigation, the Enforcement Officer obtained a letter from the Council's Arboricultural Section who had agreed to the felling of the horse chestnut tree due to disease.

On further investigation, the Enforcement Section located a planning permission (05/0476/FUL) which was granted in April 2004 for the dormers and conservatory. On further representation,

the Enforcement Officer visited the site in respect of the planning permission regarding the re-siting of the garage.

The owner was able to produce a copy of an apparently approved drawing confirming this. However, on further investigation, the plan that was shown by the applicant was not one of those listed on the approved drawings as quoted in the Decision Notice. This plan has the Local Authority approval stamp but does not have a date of receipt, similar to those plans received and stamped on the other drawings and application when it was submitted on 21 February 2005.

The owner was advised by letter dated 11 May 2006 of this discrepancy, also that in his application he refers to "deletion of attached garage". The applicant was therefore requested to apply for planning permission for the retention of the garage and dwelling currently under construction because there were major departures from the approved plans, and the garage did not have planning permission. A further letter was sent on 1 June 2006 in which the applicant was advised that a new application for planning permission should be submitted and to include the development of the house, the new garage and the construction of a boundary brick wall. A reminder letter was sent on 6 July 2006.

A letter of reply was received on 4 August 2006 in which the applicant enclosed a letter dated 17 February 2005 to the Planning Officer regarding this development. In that letter, the applicant pointed out he would like to omit the garage from its current position and move the bungalow the driveway width further away from the Hayes Wood boundary. He also stated that 'in some time' in the future he would like to replace the retained building with the garage when the tree has died. 'In the meantime, car parking and turning can be accommodated within the site at the entrance to the plot'.

A further letter of reply was sent by the Authority on 17 August 2006 in which the applicant was advised that the construction of this garage was still unauthorised and does not form part of the conditional planning permission and a new application was still required.

To date no such application has been received, although the Enforcement Officer has spoken at length with the applicant who remains of the opinion that he has a current planning permission and that it was agreed that the garage could be built in front of the dwelling once the tree had died and therefore he would not be submitting a new application for planning permission.

PLANNING VIEWPOINT

Whilst the number of departures from the approved drawings incorporated within the construction of the dwelling is recognised it is not considered that, collectively or individually, they materially detract from the character or appearance of the dwelling or result in significant harm to the living conditions of the occupiers of neighbouring residential properties.

Although it is recognised that the approved floor plan showed that only one level of accommodation would be housed within the building, the rooflights shown on the approved elevations and the height and pitch of the roof clearly suggested that further accommodation within the roofspace could be provided. Although the creation of additional accommodation at this level as part of the original building is contrary to the approved details, this in itself does not constitute 'development' and would ordinarily be therefore beyond the control of the Local Planning Authority. Moreover, the addition of rooflights constitutes permitted development in cases where rights are available upon completion of development. Although the additional rooflights were installed as part of the original build, a grant of planning permission would not have been required had the building been completed as approved and further rooflights added at a later stage. In such circumstances therefore it is not considered that it would be expedient to pursue legal action against the additional rooflights installed in the building.

Similarly, although the approved plan showed the retention of a hedge that previously existed around part of the site boundaries, its removal itself would have represented work exempt from the provisions of the Hedgerow Regulations as a 'domestic' boundary hedge. Furthermore, the approved site layout drawing indicates the provision of a 'new boundary wall and fence as a screen 2.0 m high' along part of the western boundary to the south of the dwelling, although no details as to its length, design or appearance would appear to have been shown on the approved plans or sought by condition.

In any event, although lengths of the new wall and fence are in excess of 2 metres in height (i.e. above that permitted under the General (Permitted Development Order), they are not significantly above this height. Moreover, a reduction in the overall height to 2 metres could open up an outlook both onto, and from, the site that could result in some loss of privacy to both the new dwelling and neighbouring properties. As such, there may be considered to be some benefit in allowing for its retention at the height as constructed. It should also be borne in mind that the new boundary replaced a substantial screening hedge which was appreciably greater in height. It is, therefore, likely that the hedge offered greater privacy. A reduction in the fence height could, by comparison, reduce mutual levels of privacy.

The double garage, as explained above, has never been shown in the position in which it has been constructed on any approved drawing relating to the development of the dwelling. As such, it is unauthorised.

However, it is considered that, had an application been made for its retention, objection would have been difficult to substantiate. The building is suitably subservient in height, scale and bulk in relation to the main dwelling and its pitched roof is finished in a small plain tile that matches that used on the roof of the dwelling. Its timber boarded walls are also considered to be coherent with a domestic outbuilding construction.

Moreover, although positioned adjacent to the western boundary of the site with The Acorn, the neighbouring property, it is not thought that it is of unduly overbearing, dominant or intrusive height or scale that materially detracts from the amenities of the adjacent residents. Indeed, it offers a screen between the gardens of The Acorn and Brock House to the mutual benefit of the privacy of the occupiers of both properties.

The support expressed by the Ward Members for legal action is acknowledged, along with the view that the above breaches add up to what may be regarded as being a significant overall departure from the approved details. However, it is only expedient to pursue action where unauthorised development causes material harm to material Planning interests. For the reasons set out above, it is not considered in this case that objection would have been likely to have been forthcoming had an application for planning permission been made to regularise the various breaches of the approved details. The fact that such application has not been made does not in itself justify further action. This needs to be considered having regard to matters of Planning merit and, on the merits of this particular case, it is not thought that further action could reasonably be justified.

PLANNING POLICY

East Devon Local Plan 1995 – 2011

Policy D1 – Design and Local Distinctiveness

Policy EN1 – Developments Affecting Areas of Outstanding Natural Beauty

CONCLUSION/SUMMARY

It is considered that the nature of the unauthorised works, having regard to their limited impact upon the character and appearance of the dwelling and surrounding area taken together with the fall back position in terms of the permitted development rights available with the dwelling in respect of alterations, is such that legal action would not be justified in this case.

RECOMMENDATION

That no further action be taken.

List of Background Papers

Application file, consultations and policy documents referred to in the report.