
Appeal Decision

Inquiry opened on 25 May 2016

Site visit made on 10 August 2016

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 28 October 2016

Appeal Ref: APP/A1910/C/16/3142948

Land at Woodlands, Noake Mill Lane, Water End, Hemel Hempstead, Hertfordshire

- 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 N Martin against an enforcement notice issued by Dacorum Borough Council.
 - The notice was issued on 23 December 2015.
 - The breach of planning control as alleged in the notice is, without planning permission, the construction of an outbuilding (Building 'A') on the north-eastern boundary as shown in the approximate position in the land edged red on the plan attached to the notice and, also without planning permission, the construction of an outbuilding (Building 'B'), concrete base and block retaining walls on the north-western boundary as shown in the approximate position in the land edged red on the plan attached to the notice.
 - The requirements of the notice are:
 1. Demolish/Dismantle Building 'A' and remove all materials arising from the demolition/dismantling from the land.
 2. Demolish/Dismantling Building 'B' and the surrounding breeze block retaining walls and remove all materials arising from the demolition/dismantling from the land.
 3. Break up the concrete base by the northern boundary and remove all the concrete arising from these works from the land.
 4. Regrade the land with soil so that the land levels return to those that existed prior to the excavation of the land by the north-western boundary.
 5. Re-seed (grass) the regraded land.
 - The period for compliance with the requirements are:

Requirements 1 and 2: One month after the date the notice takes effect.
Requirements 3 and 4: Two months after the date the notice takes effect.
Requirement 5: Six months after the date the notice takes effect.
 - 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.
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Summary Decision: The appeal is dismissed and the enforcement notice is upheld as corrected.

Procedural Matters

1. This appeal is one of two enforcement appeals heard at the Inquiry (APP/A1910/C/16/3142602 and APP/A1910/C/16/3142948). Although the two appeals relate to the same property, they relate to different parts of that property, to different breaches of planning control, are largely made on different grounds and raise different issues. Accordingly, I have determined these appeals in two separate Decisions.
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2. Because the grounds of appeal involved matters of fact, the evidence of all witnesses was taken on oath by way of affirmation.
3. The breach of planning control alleges, amongst other things, the construction of block retaining walls on the north-western boundary. The requirements at paragraph 5.2 of the notice include the demolition or dismantling of the surrounding breeze block retaining walls. Although I am satisfied that the inclusion of the word 'breeze' in the requirements does not alter the meaning of the notice, in the interest of consistency I shall nevertheless delete that word. I am satisfied that neither the appellant nor the Council would be caused injustice by me doing so.
4. Although the appeal was initially made on grounds (a) and (f) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended, the appellant also contends in his written evidence that the block retaining walls on the north-western boundary alleged in the notice are *de minimis* and a matter that ordinarily would not require planning permission. This amounts to an appeal under ground (c) as set out in section 174(2) and I will deal with that as such. The Council have responded to this argument and I am therefore satisfied that the Council would not be caused injustice by me doing so.

The appeal on ground (c)

5. The ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control.
6. The retaining wall is constructed of breeze blocks that are fixed into place. The height of the retaining wall was measured during my site visit and was agreed by both parties as being 1.14 metres. The retaining wall extends directly behind the side and rear elevations of Building 'B', such that it was not practical to measure the length of the wall. Nevertheless, the retaining wall is marginally in excess of the length of the side and rear elevations of Building 'B'. The latter were measured during my site visit as being 4.8 metres and 8.35 metres respectively. This therefore gives a reasonable indication of the length of this retaining wall.
7. Having regard to its height, length and method of construction, I do not consider that the retaining wall can be considered to be *de minimis*. In my view, the retaining wall is an engineering operation and amounts to development under Section 55(1) of the Act.
8. Moreover, although the appellant states that the retaining wall is required for land stabilisation purposes, no evidence has been provided to show that the land was unstable in its previous form. The appellant has therefore not provided any compelling explanation as to why the retaining wall was constructed as a separate development. In the absence of such an explanation, I favour the Council's interpretation, which is that the retaining wall and the hardstanding appear to have been constructed for the specific purpose of providing a level platform on which Building 'B' was to stand. As such, it seems likely to me that the retaining wall, the hardstanding and the erection of Building 'B' all form part of one development. This is a building for the purposes of Section 55(1) of the Act and therefore development that requires planning permission.
9. For these reasons, the appeal on ground (c) fails.

The appeal on ground (a) and the deemed planning application

10. The appeal site is a parcel of land located within the hamlet of Water End. The land sits to the south of a residential property known as 'Woodlands' and, I am advised, is in the same ownership as that property. The appeal site is separated from Woodlands by Noake Mill Lane, this section of which is also in the ownership of that property but over which the occupiers of adjoining residential properties enjoy a right of way. The site, which covers an area of just over half an acre, is now largely overgrown and is partly enclosed by a close-boarded fence. The site is within the Green Belt. Beyond the hamlet of Water End, the surrounding area is mostly comprised of fields and isolated patches of woodland, and is essentially rural in character.
11. Having regard to the reasons for issuing the enforcement notice, I consider that the main issues raised by this appeals are:
- whether the development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (Framework)
 - the effect of the development on the openness of the Green Belt
 - the effect of the development on the character and appearance of the area, and
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework

12. Paragraph 89 of the Framework indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. One of these exceptions is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. A further exception identified in paragraph 89 is buildings for agriculture and forestry.
13. Policy CS5 of the Dacorum Core Strategy 2013 (Core Strategy) indicates that the Council will apply national Green Belt policy to protect the openness and character of the Green Belt. This policy indicates that within the Green Belt small scale development will be permitted, including for the replacement of existing buildings of the same use, subject to the proviso that the development has no significant impact on the character and appearance of the countryside. This policy is underpinned by Policy CS1 of the Core Strategy which, amongst other things, indicates that development that is compatible with policies protecting and enhancing the Green Belt will be supported.
14. The appellant contends that Building A is a replacement building for the purposes of paragraph 89 of the Framework. This exception has three components: the building must be a replacement for an existing building; it must be in the same use; and it must not be materially larger than the one it replaces. In order qualify under this exception, the building must accord with all three of these components. I shall assess Building A against each of these three components.

15. The appellant explains that the appeal site was previously occupied in part by a tennis court for use in association with Woodlands. This is supported by the recollections of Ms Cheryl Stead, who in a written representation describes the tennis court in some detail and recalls playing tennis on it during the late 1970's. The appellant further explains that the structure now identified as Building 'A' in the enforcement notice was at one time located in the south-west corner of the site and was used in connection with the tennis court. The appellant therefore contends that Building 'A' is a relocation of that building to its current position towards the north-east corner of the site, and as such qualifies as a replacement building for the purposes of paragraph 89 of the Framework.
16. In her representation, Ms Stead describes two outbuildings that stood on the appeal site at the time she played tennis on the court there. One is described as an open fronted stable/shed located on the western boundary close to the barn that still stands on the adjoining property. This description does not match the appearance of Building 'A' and, in my view, is likely to have been a different structure. The other building is described as an "attractive shed" used as a changing room and for the storage of tennis equipment. This building is described as being located at the end of the site furthest from the house, which would be the southern end of the site. This is consistent with the description of Building 'A' given by the appellant and, I accept, it is possible that this is the same building that Ms Stead describes.
17. However, the building described by Ms Stead was on site in the late 1970's, now nearly forty years ago. Whilst accepting that the building could have been refurbished, as it currently stands Building 'A' does not have the appearance of a building of that age. Moreover, unlike the building described by Ms Stead, Building 'A' is of utilitarian design and displays no features that may be described as being attractive. It is also a modest structure and it is difficult to envisage that it could be used for the purposes described by Ms Stead. The appellant has provided no documentary or photographic evidence to demonstrate Building 'A' is the same building that is described Ms Stead as being on the site previously, and relies on his own recollection and the evidence provided by Ms Stead.
18. I recognise that the Council has provided no evidence to contradict the evidence provided by the appellant. However, I am not persuaded that the appellant's evidence is sufficiently precise and unambiguous to demonstrate, on the balance of probability, that Building 'A' was positioned on the site previously. The Oxford English Dictionary (OED) defines 'replacement' as the act of replacing someone or something, or a person or thing that takes the place of another. The OED defines 'replacing' as being a substitute for something or putting something back in its previous position. It follows that for Building 'A' to be a replacement building for the purposes of paragraph 89 of the Framework, it would first have to be shown that there was a building for it to replace. The appellant's evidence does not demonstrate that.
19. Furthermore, even if the appellant could demonstrate that Building 'A' was previously located elsewhere on the site, by the appellant's own description and that provided by Ms Stead, the building is likely to have been located in the south-west corner of the site, diametrically opposite to the position it is now in. The building has therefore not been put back in its previous position in the meaning of the word 'replacing' as defined in the OED. Given the

significant distance between these two points, I am not persuaded that Building 'A' can justifiably be considered as replacing a building that stood at the opposite end of the site and, as such, does not constitute a replacement of that building for the purposes of paragraph 89 of the Framework.

20. Assuming that Building 'A' did previously stand on the site and was relocated to its present position as suggested by the appellant, it would be of exactly the same dimensions now as then. It follows that it would not be materially larger.
21. The other component of the exception under paragraph 89 of the Framework is that the building must be in the same use as the one that it replaces. In this context, whilst the tennis court is no longer in use, I do not consider that the use of Building 'A' would need to be for changing rooms and the storage of tennis equipment for it to be considered in the same use. On the basis of the evidence of Ms Stead, it appears that the use was at one time associated with the residential use of Woodlands, such that any use of the building that was ancillary to use of Woodlands as a dwellinghouse would meet that requirement. However, I have no evidence that Building 'A' is currently used for purposes ancillary to that dwellinghouse. I am therefore not persuaded that Building 'A' is in the same use as any building that may have previously stood on the site.
22. For all these reasons, I consider that Building 'A' does not accord with the three components within the exception to inappropriate development set out in paragraph 89 in relation to replacement buildings. I therefore consider that Building 'A' does not benefit from that exception.
23. I have also given consideration as to whether Building 'A' would benefit from exception at paragraph 90 of the Framework in terms of the reuse of a building. However, whilst of permanent and substantial construction, on the evidence available to me and which I set out above I am not convinced that Building 'A' is a pre-existing building that has been re-used.
24. Turning to Building 'B' as identified in the enforcement notice, the appellant's position is expressed in the alternative. If the land is considered to be residential in use, the appellant acknowledges that this building does not fall within any of the closed list of exceptions within the Framework. The appellant therefore accepts that in this scenario Building 'B' constitutes inappropriate development within the Green Belt.
25. Alternatively, if the land is in agricultural use, the appellant contends that Building 'B' is a building for agriculture or forestry and therefore not inappropriate development in the Green Belt for the purposes of paragraph 89 of the Framework. However, the appellant explains that whilst Building 'B' is intended to accommodate goats and chickens, which are yet to be acquired, these animals would be pets and that the use of the building would be ancillary to the dwellinghouse at Woodlands. This was confirmed in evidence by Mr Crook, who confirmed that the building was not intended for agricultural use and that the keeping of goats and chickens would be akin to a hobby farm.
26. I am mindful that the appellant previously indicated to the Council that Building 'B' was intended for the storage of building tools, scaffolding and residential storage, purposes for which I concur with the Council the design of the building is more suited. Nevertheless, the clear evidence at the Inquiry was that the building is now intended to house pet animals. It follows that irrespective of whether it is intended to provide residential storage or for the keeping of pet

animals, Building 'B' is not intended for agricultural or forestry use, such that Building 'B' does not fall within the exception in paragraph 89 of the Framework in that respect either.

27. Consequently, it is not necessary for me to arrive at a definite conclusion regarding the use of the appeal site. Irrespective of whether the appeal site is within agricultural use or residential use, Building 'B' is inappropriate development in the Green Belt for the purposes of the Framework.
28. Although included separately in the breach of planning control alleged in the notice, the appellant indicates that the concrete base upon which Building 'B' is part of that structure. I concur, and take the same view in relation to the retaining wall. It follows that both are similarly inappropriate development in the Green Belt for the purposes of the Framework.
29. I therefore conclude that both Building 'A' and Building 'B' constitute inappropriate development in the Green Belt for the purposes of the Framework, as well as Policies CS1 and CS5 of the Core Strategy. Paragraph 87 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

The effect of the development on the openness of the Green Belt

30. Both Building 'A' and Building 'B' were measured during my site visit, and the measurements agreed by the main parties. The smaller of the two structures, Building 'A', has a footprint of some 9.7 square metres and a maximum height of some 2.15 metres. Building 'B' has a footprint of some 40 square metres and a maximum height of some 2.65 metres. I acknowledge that neither building is prominent from outside of the site, being largely obscured by the close-boarded fence that partly surrounds the site. Nevertheless, openness has a spatial aspect as well as a visual aspect, and by reason of their size and height, both buildings significantly detract from the openness of the Green Belt in a spatial context.

Character and appearance

31. The hamlet of Water End comprises a number of detached dwellings set in relatively large plots, some with outbuildings, and therefore exhibits some elements of a residential character. However, the hamlet is surrounded by countryside, with the appeal site itself adjoining open countryside on its southern and western boundaries. Furthermore, to the east of the site and separated from it only by Noake Mill Lane, is a further open field. In my view, the character of the appeal site is derived largely from the surrounding open fields rather than from the settlement of Water End, and is therefore essentially rural. In reaching this view, I am mindful that the site was, on the balance of probability, at one time used for purposes associated with Woodlands. Nevertheless, the site is now heavily overgrown and any evidence of structures or infrastructure associated with that use has now blended into the landscape.
32. The two outbuildings are largely obscured from public view by the close-boarded fence, with only the upper parts of the structures visible from the road. I am mindful that Building 'B' is not finished but, in my view, both outbuildings have a design and appearance consistent with a residential outbuilding. Furthermore, whilst Building 'A' is a modest structure,

Building 'B' is more substantial and consequently is visually intrusive. By reason of their design and, in relation to Building 'B' its size, I consider that both outbuildings are out of keeping with the essentially rural character and appearance of the appeal site.

33. I conclude that the two outbuildings unacceptably harm the character and appearance of the area. I therefore conclude that the development is contrary to Policies CS1 and CS5 of the Core Strategy which, amongst other things indicate that small buildings in the Green Belt will only be permitted where they have no significant impact on the character and appearance of the countryside.

Other considerations

34. The appellant intends to demolish Building 'A' and is prepared to accept a condition to that effect. The appellant suggests that the demolition of Building 'A' will offset any loss of openness resulting from the erection of Building 'B'. However, in the absence of evidence to demonstrate that Building 'A' is a replacement building or comprises the re-use of an existing building, Building 'A' is a new building that itself detracts from the openness of the Green Belt. Moreover, Building 'B' is materially larger than Building 'A' both in terms of footprint and maximum height. The demolition of Building 'A' would therefore only result in a reduction in the openness of the Green Belt to the extent that it causes in itself and would not offset the loss of openness resulting from the erection of Building 'B'.
35. The clear statements of intent in terms of using Building 'B' to house pet animals are sufficient, in my view, to establish that the appeal site is not intended to be used for agriculture. It follows that the erection of Building 'B' does not derive any benefit for the support for agriculture in the Framework and local planning policy.
36. I have given consideration as to whether there is any fallback position available to the appellant in terms of permitted development rights granted under the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The provision within the curtilage of a dwellinghouse of any building incidental to the enjoyment of the dwellinghouse as such is provided under Schedule 2, Part 1, Class E of the GPDO. Setting aside the question as to whether the appeal site is within the curtilage of Woodlands, development is not permitted under Class E if any part of the building would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. Given that the whole of the appeal site is forward of the principal elevation of Woodlands, which in this case is the original dwellinghouse for the purposes of Class E, it follows that the appellant has no permitted development rights for the erection of buildings on the appeal site, irrespective of whether or not the appeal site forms part of the curtilage of Woodlands.
37. The provision within the curtilage of a dwellinghouse of a hard surface incidental to the enjoyment of the dwellinghouse as such is provided under Schedule 2, Part 1, Class F of the GPDO. Development is not permitted by Class F for an area of hard surface in excess 5 square metres unless the hard surface is made of porous materials or provision is made to direct run-off to a permeable or porous area within the curtilage of the dwellinghouse. This represents the extent of hard surface that could be provided on the site, again assuming for this purpose that this land falls within the curtilage of Woodlands.

38. The appeal site is not agricultural land and the development subject to the notice is not been shown to be reasonably necessary for purpose of an agricultural unit. Accordingly, the appellant does benefit from of the permitted development rights provided in Schedule 2, Part 6 of the GPDO.
39. Having regard to the above, the permitted development rights available to the appellant in respect of the appeal site are somewhat limited. I therefore attach only minimal weight to this fallback position.

Conclusion on the ground (a) appeal

40. In accordance with the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of the development. I attach significant weight to the harm to the character and appearance of the area. The harm caused in these respects cannot be overcome by the imposition of suitably worded conditions, including those discussed at the Inquiry.
41. Against this, I attach minimal weight to the fall back position available to the appellant. I attach no weight to the demolition of Building 'A' in terms of offsetting any loss of openness resulting from the erection of Building 'B' or to the purpose for which Building 'B' is intended to be put.
42. Consequently, in relation to both Building A and Building B, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.
43. Accordingly, I conclude that the appeal on ground (a) should be dismissed.

The appeal on ground (f)

44. The ground of appeal is that the steps required by the notice to be taken 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. When an appeal is made on ground (f), it is essential to understand the purpose of the notice. Section 173(4) of the Town and Country Planning Act 1990 sets out the purposes which an enforcement notice may seek to achieve, either wholly or in part. These purposes are, in summary, (a) the remedying of the breach of planning control 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. In this case, the requirements of the notice includes the demolition or dismantling of both Building 'A' and Building 'B', as well as the demolition or dismantling of the surrounding block retaining walls and breaking up the concrete base. The purpose of the notices must therefore be to remedy the breach of planning control.
45. No parts of either Building 'A' or Building 'B' are permitted by any class of development permitted by the GPDO. Similarly, the retaining wall is an engineering operation and no part of it is permitted by any class of development permitted by the GPDO. Consequently, there are no obvious alternatives to the steps required by the notice in respect of these breaches of planning control. This leaves the hardstanding to consider.

46. Under Schedule 2, Part 1, Class F of the GPDO, the provision within the curtilage of a dwellinghouse of a non-porous hard surface is limited to a maximum of 5 square metres. The hard surface subject to the notice is non-porous and considerably exceeds 5 square metres in area. Even if the land could be considered to be in the curtilage of Woodlands, no part of the hardstanding has the benefit of planning permission by reason of the GPDO. I have been provided with no evidence to show that there are any alternatives to the complete breaking up of the hardstanding as required by the notice, and none are obvious to me.
47. I consider that there no lesser steps that would achieve the purpose of the notice and that the requirements of the notice are not excessive. Accordingly, the appeal on ground (f) fails.

Conclusion

48. For the reasons given above I conclude that this appeal should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the deemed application.

Formal Decision

49. It is directed that the notice is corrected by deleting the word 'breeze' in paragraph 5.2 of the notice. Subject to that correction, the appeal is dismissed and 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.

Paul Freer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Daniel Stedman Jones, of Counsel

Instructed by Mr Martin Crook
of MSC Planning Consultants
Ltd

He called

Mr Neil Martin

Appellant

Mr Martin Crook

MSC Planning Consultants Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jack Parker, of Counsel

Instructed by Mr Christopher
Gaunt, Solicitor, Dacorum
Borough Council

He called

Ms Philip Stanley MRTPI

Team Leader – Planning
Enforcement

INTERSTED PERSONS

Ms Nicole Ferguson

Occupier, Littlehill, Noake Mill
Lane, Water End

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1/ Opening Statement on behalf of the Appellant.
- 2/ Opening Statement on behalf of the Council.
- 3/ List of conditions favoured by the Council in the event that permission is granted under the deemed planning application.
- 4/ Closing Submissions on behalf of the Council.
- 5/ Closing Submissions on behalf of the Appellant.