
Appeal Decisions

Hearing held on 17 January 2017

Site visit made on 17 January 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 13 February 2017

Appeal A: APP/X0360/C/16/3156745

Land at Bird Place Cottage, Henley Bridge, Remenham, Henley on Thames, Berkshire RG9 2LN

- 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 Grahame Bryant against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 22 July 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of two single storey extensions to the dwellinghouse.
 - The requirements of the notice are: 1. Demolish the extensions annotated EXTENSION A and EXTENSION B on PLAN 2. 2. Excavate the slabs. 3. Remove all resultant materials arising from 1 and 2 above from the Land. 4. Make good the elevations as shown in the attached photographs numbered 1 and 2 attached to this notice.
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/X0360/C/16/3156742

Land at Bird Place Cottage, Henley Bridge, Remenham, Henley on Thames, Berkshire RG9 2LN

- 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 Grahame Bryant against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 22 July 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of an outbuilding, brick wall, gates and gate posts ('the Building').
 - The requirements of the notice are: 1. Demolish the building and the attached brick wall, gates and gateposts 2. Excavate the slab. 3. Remove all resultant materials arising from 1 and 2 above from the Land
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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Appeal C: APP/X0360/C/16/3156738

Land at Bird Place Cottage, Henley Bridge, Remenham, Henley on Thames, Berkshire RG9 2LN

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
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- The appeal is made by Mr Grahame Bryant (Chesterton Commercial) against an enforcement notice issued by Wokingham Borough Council.
 - The enforcement notice was issued on 22 July 2016.
 - The breach of planning control as alleged in the notice is: Without planning permission the construction of a wet dock, associated posts and steps, hard surfaced landing area and wooden sleeper retaining wall.
 - The requirements of the notice are: 1. Remove the piling from the north side of the dock but not from the south and east sides closest to the historic brick wall. 2. Remove the steps and posts associated with the wet dock. 3. Break out the hard surfaced landing area and wooden sleeper retaining wall. 4. Remove all resultant materials from the Land as a result of compliance with 1, 2 and 3 above. 5. Install piling along the river bank between the end of the existing piling and the end of the historic brick wall at the south west corner of the site. 6. Infill the wet dock.
 - The period for compliance with the requirements is three months from the date the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Appeal D: APP/X0360/W/16/3156792

Land at Bird Place Cottage, Henley Bridge, Remenham, Henley on Thames, Berkshire RG9 2LN

- 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 Mr Grahame Bryant against the decision of Wokingham Borough Council.
 - The application Ref 161417, dated 23 May, was refused by notice dated 25 July 2016.
 - The development proposed is the erection of boat house, garage and store.
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Appeal E: APP/X0360/W/16/3156787

Land at Bird Place Cottage, Henley Bridge, Remenham, Henley on Thames, Berkshire RG9 2LN

- 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 Mr Grahame Bryant (Mulberry Estates) against the decision of Wokingham Borough Council.
 - The application Ref 161419, dated 23 May 2016, was refused by notice dated 25 July 2016.
 - The development proposed is the development of a wet dock.
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Decisions

Appeal A:

1. The enforcement notice is varied by the deletion of the word "three" from section 6 of the notice and its substitution with the word "six". Subject to that variation the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B:

2. The enforcement notice is varied by:
 - i) The insertion of the following words "**OR** – 4. Demolish the store room that links the garage to the boathouse and modify the outbuilding so as
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to comply with the terms of planning permission reference F/2015/0863, granted on 09 October 2015 (relating to the boathouse), including its conditions and limitations, and planning permission reference 152082, granted on 21 October 2015 (with regard to the garage with habitable accommodation in roof space, with walls and gates and erection of close boarded fencing to side boundary), including its conditions and limitations”, immediately following the end of the third requirement within section 5 ‘What You Are Required To Do’; and

- ii) The deletion of the word “three” from section 6 of the notice and its substitution by the word “six”.
3. Subject to these variations 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.

Appeal C:

4. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal D:

5. The appeal is dismissed.

Appeal E:

6. The appeal is dismissed.

Preliminary Matters

7. Mr Grahame Bryant was named as the appellant in all five appeals, as an individual in relation to Appeals A, B and D, in association with a company named Chesterton Commercial in relation to Appeal C and another company named Mulberry Estates in relation to Appeal E. Whilst I note the distinction I have referred to “the appellant” in singular form throughout my decision for ease of reference.
8. The planning application submitted in relation to Appeal D described the proposal as “erection of boathouse, garage and store” but the plans submitted with the application included details of a wall and gates at the entrance to the site. The Council’s decision notice refers to the wall and gate and it is clear, from the information before me, that the proposal included those elements. I have determined the appeal on that basis.
9. In essence, the five appeals cover three elements; the extensions to the dwelling; the creation of the wet dock; and the outbuilding, which includes a wet dock with living accommodation above, a garage with accommodation above, a flat roofed store room which links those two elements, plus the attached wall and entrance gates. The flat roof of the store also serves as a raised platform/ outdoor seating area. Appeal A relates to the extensions, Appeals B and D to the outbuilding and Appeals C and E to the wet dock. I shall deal with each element in turn.

Appeal A – The Extensions to the Dwellinghouse

Appeal A on Ground (a)

10. The main issues in respect of the appeal on ground (a) are:

- i) The effect of the extensions on designated heritage assets, including:
 - the effect on the special architectural and historic interest of Bird Place Cottage; a Grade II listed building; and
 - The effect of the development on the character and appearance of the Remenham Henley Bridge Conservation Area;
- ii) Whether the development represents inappropriate development within the Green Belt and, if so, whether any harm caused by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify the development.

i) Heritage Assets

The Effect on the Listed Building

- 11. Bird Place Cottage is a Grade II listed cottage which is described on the statutory list as a late 17th century, 5 bay, timber framed cottage. Mr Stephens, the Conservation Officer for the Council, suggested that details uncovered during recent renovation indicate that the building may have originated as a service wing to the much larger attached house known as Bird Place, as opposed to a separate cottage. I have no reason to doubt that and there is clearly a close historical relationship between the two.
- 12. The list entry also identifies that the building is much altered, with reference to twentieth century casements, a twentieth century square bay and nineteenth century chimney. The appellant's evidence points to a number of unsympathetic internal alterations that had been carried out at some point in the twentieth century and Mr Stephens also noted the extent of previous alterations to the gable end where the side extension has been constructed. In his view, the front elevation of the cottage retained the greatest historic significance, including the timber frame and painted brick infill and it was that assessment that led the Council to accept the principal of a single storey extension on the gable facing towards the river. The approved front extension in the easternmost bay was intended to replace an earlier extension that had been in roughly the same position.
- 13. The design of the approved extensions incorporated a lightweight frame, with extensive glazing and a flat roof with limited fascia depth. A glazed link from the cottage through to the side extension was designed to cut through a previously altered section of wall and the modern design of the extensions was intentionally at odds with the timber framed building such that the historic fabric could be viewed or read as a separate entity from the extensions. The extensive glazed sections would provide transparency through which the building could be viewed, particularly from the riverside. On the evidence before me, I see no reason to disagree that the approved extensions were

developed on good design principles to ensure that the special historic and architectural interest of the building would be preserved.

14. In many respects, the extensions, as constructed, conform to the principles established through the approved schemes but there are also substantial differences. The Council estimate that the side extension projects by 0.85m more than the approved scheme (i.e. closer to the river) and that it is 0.25m deeper. The appellant does not dispute those measurements but I note that there is a discrepancy in the approved plans between the elevations and floor plans. The approved elevations depict that the northernmost elevation would be roughly flush with the northern elevation of the cottage but the floorplans show that the building would be wider, projecting beyond the front elevation of the existing dwelling. That is how the extension has been constructed and the depth is not significantly different than that shown on the approved floorplan but the length is greater, as noted by the Council.
15. However, the difference in footprint between what has been constructed and what was approved is not substantial and the increased size does not, of itself, have any greater impact in terms of the effect on the significance of the listed building. To my mind, the most significant departure from the approved scheme is in the design of the roof. The approved scheme for the side extension indicated that the roof would step down in height towards the river and that the projecting eaves would be relatively slender in profile. The extension, as constructed, omits the step down in height and has a single fascia with a depth of 0.5m facing towards the river. The depth of the overhanging fascia gives the structure a 'top heavy' appearance, in contrast to the relatively slender proportions of the staggered roofline that was previously approved.
16. Consequently, the aim of achieving a lightweight addition to the listed building has not been achieved. The scale and bulk of the roof structure is such that the roof appears out of proportion to the lightweight body below. In my view, that amounts to poor design, of itself, but it also results in a bulkier structure that competes in terms of scale with the listed cottage, thereby detracting from the ability to read the historic fabric. In that sense, I find that the roof structure of the side extension has caused harm to the special character of the building.
17. The same can be said of the single storey front extension. Although the Council allege that it is 0.2m deeper than approved, the difference in size is marginal but the roof structure has been designed in the same manner as the side extension, resulting in an extremely bulky fascia that is out of proportion to the extension itself resulting in an unsympathetic addition to the listed building.
18. Therefore, for the reasons given, I find that the extensions have caused harm to the special architectural and historic interest of the listed building, contrary to the aims of policy TB24 of the Wokingham Borough Council Managing Development Delivery Local Plan (2014) (the MDDLDP).

The Effect on the Character and Appearance of the Conservation Area

19. The boundary of the Remenham and Henley Bridge Conservation Area encompasses a linear area on the eastern side of the Thames, directly opposite

from the more intensely developed western bank where the town of Henley is situated. The boundary takes in the eastern side of the river itself, the eastern section of Henley Bridge and associated land and buildings that have a close relationship with the riverine environment, including the headquarters of the Henley Royal Regatta (HRR) and the Leander Club. Thus, the character of the Conservation Area is dominated by its association with the river and the activities that take place upon it.

20. The relative sense of openness on the eastern bank provides a tranquil setting to the town and the link between the buildings within the Conservation Area and the river is an essential ingredient in the riverside character of the area. Most buildings have a direct relationship with the river, either in terms of their use, in the case of rowing clubs, or in the physical relationship, with many dwellings benefitting from gardens that have a river frontage. Bird Place Cottage is no exception and the garden terminates at the river's edge in a prominent location, close to Henley Bridge. As a prominent 17th century listed building the cottage, and its associated garden, make a positive contribution to the Conservation Area by virtue of historical association and the functional relationship with the river. The house, and the extensions, are readily visible from the western bank and from within the well-used river channel.
21. I have concluded that the extensions have caused harm to the character of the listed building and, for similar reasons, I find that harm has been caused to the character and appearance of the Conservation Area. The bulky roof profile is particularly noticeable when viewed from the opposite river bank and would no doubt be even more prominent if viewed from a boat passing along the river itself. The unsympathetic design of the roof of both extensions not only causes harm to the building itself but it detracts from the ability to appreciate the listed building in its setting, particularly the extension closest to the river. The bulky roof profile draws the eye, appearing as a poorly detailed addition to the building and one that fails to preserve the character of the structure.
22. Consequently, I consider that the extensions cause harm to the character and appearance of the Conservation Area, contrary to the requirements of policy TB24(2)(a) of the MDDL and the aims of the Framework, particularly paragraph 132, which states that great weight should be given to the conservation of designated heritage assets.
23. Where a development will lead to less than substantial harm to a heritage asset, paragraph 134 of the Framework requires that harm to be weighed against any public benefits of the proposal, including securing its optimum use. In this case, the development affects a small part of the listed building and the main historic fabric has been largely unaffected as a result of the works. Similarly, the development affects a small part of the Conservation Area. Accordingly, the harm to the heritage assets is less than substantial.
24. The appellant has not identified any public benefits that arise from the extensions and there is no reason to suppose that the development was necessary to secure the optimum use of the property; the additional space may well be of benefit to any residents but I have no doubt that the dwelling would provide an attractive home in the absence of the extensions. Thus, in the absence of any public benefits, the harm to the listed building and the Conservation Area is a matter that attracts substantial weight, having regard to paragraph 134 of the Framework and the statutory duty imposed by sections

66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act).

Whether the Development Represents Inappropriate Development Within the Green Belt

25. Paragraph 87 of the Framework identifies that 'inappropriate development' is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. New buildings and development will be inappropriate within the Green Belt unless they fall within a specific list of exceptions, as set out at paragraphs 89 and 90 of the Framework. One of those exceptions relates to the extension and alteration of a building, providing that it does not result in disproportionate additions over and above the size of the original building.
26. The terms of policy TB01 of the MDDLDP closely follow those of the Framework and subsection 3 of the policy states: *The alteration and/or extension of a dwelling and the construction, alteration or extension of buildings ancillary to a dwelling in the Green Belt over and above the size of the original building(s) shall be limited in scale.* 'Limited' is defined in the sub-text as no more than a 35% increase in the volume of the original dwelling. The officer report regarding the extensions, as approved, stated that the combined volume of the two extensions was a 23.75% increase over and above the original building. The extensions, as built, are slightly larger than approved but not to any significant extent and I am satisfied that they fall within the 35% limit of policy TB01 and that they are not 'disproportionate' in the terms expressed by the Framework. Accordingly, the extensions do not represent inappropriate development within the Green Belt.
27. Having found that the extensions are 'not inappropriate' I need not carry out a stand-alone assessment of their impact on openness. The courts have held that the scale of extensions, and their subsequent effect on the openness of the Green Belt, is implicitly included within the assessment of whether a proposal would amount to inappropriate development and a further assessment of that matter is not necessary¹.

Conditions

28. I have considered whether it would be possible to grant planning permission subject to a condition to secure an alternative roof design. However, it seems to me that substantial changes would be required in order to provide an acceptable solution and those changes would, in effect, amount to a different development and not a minor material amendment to the proposal that is before me. Moreover, in the absence of any technical details of how the roof has been constructed it is not clear whether it could be redesigned without the need to remove the glazed panels beneath which attach directly to the underside of the flat roof. The agent at the hearing was unable to advise on that point and the removal or alteration of the roof may require the large scale demolition of the walls and glazing beneath. Therefore, I am not satisfied that it would be appropriate to seek to remedy the harm to designated heritage assets by granting planning permission subject to the imposition of conditions.

¹ Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404

Conclusions on Ground (a)

29. The extensions have caused harm to the special architectural and historic interest of the listed building and to the character and appearance of the Conservation Area. For the reasons given, I attach substantial weight to the harm to designated heritage assets. Whilst the harm to those assets is less than substantial, no public benefits or other material considerations have been put forward that would outweigh the harm that I have identified. Moreover, I am not satisfied that the harm could be mitigated through the imposition of conditions.
30. Accordingly, I shall refuse to grant planning permission for the development and the appeal on ground (a) fails.

Appeal A on Ground (f)

31. Subsections (3) and (4) of Section 173 of the Act identify that an enforcement notice shall specify the steps that are required to be taken in order to achieve, wholly or partly, specified purposes. Those purposes are to remedy the breach of planning control by making any development comply with the terms of any planning permission which has been granted in respect of the land, by discontinuing the use of the land, by restoring the land to its former condition before the breach took place, or by remedying the injury to amenity which has been caused by the breach. In this case, the notice does not specify explicitly which purpose it seeks to achieve but, given that complete demolition is required I consider that it is aimed at remedying the breach of planning control and the Council confirmed that was the case at the Hearing.
32. As set out above, the footprint and size of the extensions are different from the approved extensions and the roof structures are significantly more bulky. No details are before me as to how the roof structure is put together but it seems likely that the roof would need to be removed in order for it to comply with the approved design. Given that the glass panels have been designed to fit floorplans which do not comply with the approved details, and that the panels connect directly into the roof structure, which also fails to conform to approved details, it is difficult to see how the extensions could be amended in a way that would bring them into line with the approved details. In other words, if the roof was removed and redesigned to fit with the approved scheme, it is probable that the glazing panels and walls beneath would also need to be removed and redesigned. Thus, it seems to me that the extensions would largely need to be demolished and rebuilt if they were to comply with the terms of the planning permission.
33. I explored those matters at the Hearing but in the absence of details as to how the extensions have been constructed, the agent for the appellant was unable to specify a way in which the extensions could be moderated to make them comply with the approved scheme. Consequently, no obvious alternative has been presented that would remedy the breach of planning control and Appeal A in relation to ground (f) must fail.

Appeal A on Ground (g)

34. The appellant has requested that six months be given to undertake the steps required by the notice, as opposed to the three months required by the

Council. No particular justification has been provided and I concur with the Council that three months would be sufficient time to remove the extensions, given their relatively lightweight form and method of construction. Consequently, viewed in isolation, three months would be sufficient. However, I am mindful that two other enforcement notices require work to be undertaken at the property and that works will be required in relation to Appeals B and C as a result of my decisions in those respects.

35. At the Hearing, the agent for the appellant indicated that the same contractors were likely to be used to undertake the various elements of work and that does not seem unlikely or unreasonable. It is likely that the contractors would undertake one element of work before moving onto the other and it may be difficult to complete all the necessary work within a three month period. Therefore, having regard to the wider requirements relating to all of the enforcement notices that have been served, I consider that a six month period is reasonable, as requested by the appellant. The appeal on ground (g) succeeds to that extent and I shall vary the terms of the notice accordingly.

Appeals B and D – The Outbuilding (Boat House, Garage and Store), Brick Wall and Gates

Appeal B on Ground (a) and Appeal D

36. Appeal D was made against the refusal to grant planning permission for the building, walls and gate, as erected, and the ground (a) appeal in relation to Appeal B seeks planning permission for the development that has taken place. Therefore, the main issues are the same in relation to both. They are:
- i) Whether the development represents inappropriate development within the Green Belt;
 - ii) The effect on the openness of the Green Belt;
 - iii) The effect of the development on the setting of Bird Place Cottage and on the character and appearance of the Remenham Henley Bridge Conservation Area;
 - iv) The effect on flood risk;
 - v) The effect on the Henley Royal Regatta building in terms of overlooking;
 - vi) If the development does represent inappropriate development within the Green Belt, whether any harm caused by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify the development.
- i) Whether the Development Represents Inappropriate Development Within the Green Belt*
37. As set out above, the Framework identifies that new buildings within the Green Belt are inappropriate development, subject to a number of exceptions, listed at paragraphs 89 and 90. The fourth bullet of paragraph 89 relates to extensions to existing buildings and the fifth relates to the replacement of buildings. Extensions to buildings are not to be considered as inappropriate provided that they do not result in disproportionate additions and replacement

- buildings are not inappropriate, providing that they are in the same use and not materially larger than the building that is replaced.
38. Prior to the construction of the outbuilding, a small boat house and detached garage were present. Those structures were substantially smaller than the outbuilding that has been constructed and, if the building were to be considered as a replacement building, in line with the fifth bullet of paragraph 89, it is clear that it is materially larger than the buildings that were replaced, such that it would amount to inappropriate development.
39. The supporting text of policy TB01 of the MDDLDP states that the construction, alteration or extension to buildings ancillary to a dwelling should not result in disproportionate additions to the original building or cause a detrimental alteration to the scale of the dwelling or the scale of development at the site. In that sense, the policy appears to treat ancillary residential buildings in a similar way to the way in which extensions to buildings are considered in the fourth bullet of paragraph 89 of the Framework.
40. It appears to me that the policy is somewhat less restrictive than the Framework which does not make a specific exception for residential outbuildings. Nonetheless, the policy post-dates the Framework, subsection 2 makes reference to paragraphs 89 and 90, and the exception relating to ancillary buildings within subsection 3 would appear to have been deliberately considered and subsequently adopted having regard to the Framework. In those circumstances, I attach substantial weight to policy.
41. The design and access statement submitted with the retrospective planning application for the outbuilding stated that the volume of the approved garage and boathouse, both with ancillary accommodation above, was 562m³ and that the flat roofed link that has been constructed between those two elements has a volume of 72.45m³. I have no reason to doubt the accuracy of those figures. The total volume of the outbuilding is therefore in the region of 630m³.
42. The appellant has referred to a delegated officer report relating to the single storey extensions to the building. That report identifies that the volume of the original dwelling is 630m³. Thus, the volume of the outbuilding represents approximately a 100% increase on the original volume of the dwelling. Having regard to its volume, footprint and scale, the building represents a substantial and disproportionate increase in the scale of built development at the site. Having regard to the terms of policy TB01 of the MDDLDP and the Framework, the development represents inappropriate development within the Green Belt.
- ii) The Effect on the Openness of the Green Belt*
43. The concept of openness has both a visual and physical aspect. In physical terms the substantial bulk and mass of the structure represents a significant expansion over and above the small boat house and garage that previously existed at the site. The footprint extends onto parts of the garden that did not previously house buildings and, by virtue of its height and overall proportions, the building has taken up space that was previously free from built development. Consequently, irrespective of any visual impact, the structure has resulted in the incursion of new development into the Green Belt with a consequential loss of openness.

44. That effect on openness is not merely physical but is readily noticeable from public vantage points, from the river and its western bank. From those aspects, the building appears as a substantial structure, being of a comparable scale to the existing dwelling at Bird Place Cottage. Whilst the land on the eastern bank of the river is not free from development it undoubtedly has a more open character than the western bank where the town is situated. The relative degree of openness forms part of the character of the area. In visual terms, the position of the building, directly next to the headquarters of the HRR results in two substantial buildings which sit side by side. That has resulted in a continuous frontage facing the river giving the outward impression of a denser, more tightly packed, built form. Therefore, in addition to its physical scale, the building has a significant visual impact which reduces the openness of the Green Belt in a prominent location.
45. I also note that the entrance wall and gates, as constructed, differ from those previously approved. In particular, the vehicular entrance gate appears higher than approved due to the fact that it has a convex rather than a concave profile along its top section. That does reduce the apparent openness from vantage points at the front of the site. Given the localised extent of the development the effect on the openness of the Green Belt is moderate but, nonetheless, that is a matter that weighs against the development.

iii) The Effect on the Setting of the Listed Building and on the Character and Appearance of the Conservation Area

46. The Council consider that the special interest of Bird Place Cottage derives from the survival of the historic fabric, its association with Bird Place as an ancillary service wing, and its contribution to the character of the Conservation Area, including views from the river. I concur with that assessment. The setting of the building is clearly influenced by the attached house at Bird Place, the associated garden and the historical relationship with the river.
47. The outbuilding has no impact upon the historic fabric of the listed building and is set some distance to the side such that the listed building can still be viewed within its associated garden. The building is set to the side of the HRR building and a mature willow tree provides a significant visual break between the building and Bird Place Cottage. Although of substantial size, the building is tucked towards the northern boundary of the garden. That arrangement is such that the building does not encroach significantly into the garden that surrounds the Cottage and does not impair the ability to read the listed cottage in its setting.
48. Moreover, an essential ingredient in the character of the property comes from its close association with the River. It is common for dwellings within the area to make use of the river frontage and the boathouse element does not appear incongruous in that context. The building is constructed in sympathetic materials and is undoubtedly finished to a high standard. Given the above, I am satisfied that the structure does not cause undue harm to the setting of the listed building.
49. For similar reasons, I consider that the outbuilding has preserved the character and appearance of the Conservation Area. It has resulted in a greater density in the built form but, setting aside issues relating to the openness of the Green Belt, that change does not cause particular harm to the character of the

Conservation Area. A number of buildings are clustered around Henley Bridge, most of which have a functional relationship with the river. When viewed from public vantage points the boathouse is the prominent feature of the outbuilding and the design of that aspect is consistent with the prevailing riverside theme.

50. Therefore, for the reasons given, I am satisfied that the development has preserved the setting of the listed building and the character and appearance of the Conservation Area, in compliance with the requirements of policy TB24 of the MDDL P and the aims of section 12 of the Framework with regard to the conservation of the historic environment.

iv) Flood Risk

51. The site is within flood zone 3 and directly adjacent to the river Thames. However, no consultation appears to have been undertaken with the Environment Agency and little information is before me in terms of the effect of the development on flood risk. The Council maintains that the constructed building increases the footprint of the built form, thereby resulting in the loss of flood plain storage. However, at the Hearing, it became apparent that their calculations in that regard had not taken account of the fact that a dry dock was in place prior to the construction of the outbuilding and the associated wet dock. Clearly, the wet dock has provided additional storage capacity and, from the evidence of the Council's drainage and flood risk engineer at the Hearing, that capacity is likely to be sufficient to off-set the loss of storage capacity for the remainder of the building such that there has been no net loss of capacity.
52. The ground floor of the building is intended for storage purposes and not habitable accommodation. Therefore, on the basis of the limited information presented I am satisfied that the building has not resulted in an increased flood risk. Policy CC09 of the MDDL P refers to flood risk guidance for minor developments within the Technical Guidance Note to the Framework. That guidance has been cancelled and replaced by the National Planning Policy Guidance (PPG). Having regard to paragraphs 46 and 47² of the PPG I consider that the proposal amounts to minor development and does not have an undue effect on flood risk.

v) The Effect on the Henley Royal Regatta Building

53. The building sits side by side with the HRR building, with a narrow gap in between the respective side elevations. The HRR building is a larger structure and occupies higher ground. Windows serving office accommodation were apparent on the side elevation facing the outbuilding. Given the respective height of the buildings and the gap between them, I am satisfied that the outbuilding has not caused undue harm to the adjacent building by way of overshadowing or overbearing impact.
54. The rooflights facing the HRR building are set well above head height and, when inside, it is not possible to view through the openings into the adjacent offices. A degree of mutual overlooking exists between the flat roofed balcony and the HRR building and its external space but that is screened to some extent by boundary treatments. In any event, the HRR building is not in residential use and, having regard to the limited extent of overlooking and the

² Paragraph: 046 Reference ID: 7-046-20140306 & Paragraph: 047 Reference ID: 7-047-20150415

way the respective buildings would be used I am satisfied that the relationship does not result in lower levels of privacy than could reasonably be expected.

- vi) *If the development does represent inappropriate development within the Green Belt, whether any harm caused by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify the development.*

Other Material Considerations

55. The potential fall-back scenario of what could be constructed as a result of the extant planning permissions is clearly a material consideration in the determination of the appeal. There are three extant planning permissions for outbuildings at the site. Two of those relate to the construction of a garage with living accommodation above³ and the other relates to the construction of a replacement boathouse and demolition of an unlisted building (existing boathouse)⁴. Planning permission was approved for a garage, ancillary living space and associated walls and entrance gates in 2015 subject to a planning obligation to prevent the previous approval for a garage being implemented.
56. The terms of the obligation only become effective upon implementation of the 2015 permission. The building, as constructed, is materially different from the approved schemes in that it was erected as a single, larger, building. In that case, the 2015 permission has not been implemented and the planning obligation associated with that permission is not in force. That raises the theoretical possibility that the garage approved in 2014 could be erected if the buildings were demolished, in addition to the approved boathouse. That garage was wider than the garage approved in 2015 but not as long and I do not consider that there would be a significant difference between the impact of the two structures, albeit that the garage approved in 2014 would project further into the garden.
57. However, whether it is compared to a scenario involving the garage approved in 2014 or the one approved in 2015, I consider that the current building has a greater impact on the openness of the Green Belt. The parties agree that the external dimensions of the boathouse and first floor accommodation and the garage and first floor accommodation are in line with the dimensions of the approved boathouse and the garage scheme that was approved in 2015. The appellant estimates that the storage link building has a floorspace of 33.6m² which would result in an increase in volume of 12.8%, over and above the size of the approved boathouse and the 2015 permission for the garage.
58. Therefore, it is clear that the building, as constructed is larger in terms of volume and footprint than the approved buildings. Moreover, it is a single building, as opposed to two detached buildings with space in between. I have also noted the difference in the height and design of the entrance gate. The link containing the store room is not set back behind the side elevations of the garage and boathouse but projects outwards into the garden. To my mind the increased size and alteration in design results in a more substantial and prominent building and a consequential loss of openness, when compared to the individual buildings that have been permitted.

³ LPA references F/2014/1792 & 152082

⁴ LPA reference F/2015/0863

59. A single staircase is provided, as opposed to the two staircases that would have been required to access the two approved buildings. However, those staircases would have been situated discreetly in between the gable ends of the proposed buildings, as opposed to the current staircase which projects to the side, being more prominent from public vantage points. Thus, the increased visibility negates any benefit, in terms of the effect on openness, of the reduction from two staircases to one.
60. It is not for me to question the merits of the previous decisions but the extant planning permissions would permit a substantial increase in the scale of buildings at the site and, to my mind, any additional development above that already approved could not be justified, having regard to the effect on the openness of the Green Belt. Consequently, the fall-back position does not amount to a material consideration in support of the larger building that has been erected.
61. The appellant contends that additional storage space is required due to the absence of any other garden outbuildings. However, approval has been granted for two substantial ancillary outbuildings, including a garage. Any householders would be entitled to use those outbuildings for storage purposes and I can see no particular justification for additional development within the Green Belt on account of an absence of storage space.

Very Special Circumstances

62. For the reasons given, I have concluded that the building represents inappropriate development within the Green Belt. By definition, inappropriate development is harmful to the Green Belt, as set out at paragraph 87 of the Framework. The development has also eroded the openness of the area, thereby causing harm to one of the fundamental characteristics of the Green Belt. Inappropriate development should not be approved except in very special circumstances. Such circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
63. I am satisfied that the development has preserved the character and appearance of the Conservation Area, has not caused harm to the setting of the listed building, has not resulted in an increased flood risk, and that the impact upon the HRR building is acceptable. However, the absence of harm in those respects does not amount to a positive consideration in favour of the proposal. Similarly, the fact that planning permission has been granted for outbuildings at the site does not amount to a material consideration in favour of the larger building that has been constructed.
64. For all of the reasons given, no considerations have been put forward that would outweigh the harm to the Green Belt that I have identified. As such, the very special circumstances needed to justify the development have not been demonstrated and the development should not be approved, having regard to paragraph 87 of the Framework. Accordingly, I shall refuse planning permission and Appeal B on ground (a) fails and Appeal D is dismissed.

Appeal B on Ground (f)

65. S173(4)(a) of the 1990 Act as amended provides that the purposes of an enforcement notice can be to remedy the breach of planning control, including

by making development comply with the terms of any planning permission granted or by restoring the land to its condition before the breach took place. Where extensions are built without permission it is customary to require their demolition and the removal of materials from the site in order to remedy the breach. In that sense, the requirements of the notice are not excessive.

66. However, it seems to me that the planning permissions relating to the construction of the boat house and the garage⁵ are still extant and capable of taking effect. Those permissions are not time-expired and I understand that all conditions have been discharged in relation to those schemes. The parties agreed at the Hearing that the external dimensions of the boathouse and garage elements are in compliance with the previously approved details. Thus, the development could be modified without complete demolition, to ensure that it complied with the extant permissions. The circumstances are different from those in Appeal A where I was not satisfied that the extensions could be modified without substantial alteration and demolition.
67. Consequently, I find that the notice should be varied, in line with s173(4)(a), to require that either the development is removed and the site reinstated or the development is modified so as to comply with the terms and conditions of the two permissions. This would save the appellant the expense – and his neighbours the upheaval – of demolishing the building only to re-erect two new buildings in line with the extant planning permissions.
68. Varying the notice on this basis would cause no injustice to the Council. The breach would be remedied whether the building was demolished or altered to accord with the extant planning permissions. Condition no. 2 attached to both permissions specifies the approved drawings and any departure from the plans could be enforced against as a breach of condition.
69. I conclude that the requirements of the notice are not excessive to remedy the breach, but the same end could also be achieved by the alternative, lesser, step of making the development comply with the terms of the extant permissions. I shall vary the notice accordingly and the appeal on ground (f) succeeds to that extent.

Appeal B on Ground (g)

70. The appellant has requested that six months be given to undertake the steps required by the notice, as opposed to the three months required by the Council. No particular justification has been provided and I concur with the Council that three months would be sufficient time to undertake the work. However, I am mindful that work will also need to be undertaken as a result of my decisions in relation to Appeals A and C.
71. It is likely that the contractors would undertake one element of work before moving onto the other and it may be difficult to complete all the necessary work within a three month period. Therefore, having regard to the wider requirements relating to all of the enforcement notices that have been served, I consider that a six month period is reasonable, as requested by the appellant. The appeal on ground (g) succeeds to that extent and I shall vary the terms of the notice accordingly.

⁵ LPA references: F/2015/0863 & 1520082

Appeals C and E – The Construction of the Wet Dock

Appeal C on Ground (a) and Appeal E

72. The main issues are the same in relation to both. They are:

- i) The effect of the development on the setting of Bird Place Cottage and the effect on the character and appearance of the Remenham Henley Bridge Conservation Area;
 - ii) The effect on the structural integrity of the adjacent garden wall which is curtilage listed;
 - iii) Whether the development represents inappropriate development within the Green Belt;
 - iv) If the development does represent inappropriate development within the Green Belt, whether any harm caused by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify the development.
- i) *The Effect of the Development on the Setting of Bird Place Cottage and the character and appearance of the Conservation Area*

73. As set out above, the historic interest of Bird Place Cottage stems from the retention of its historic fabric, its association with Bird Place and its relationship and historical association with the Conservation Area. Like many properties within the area the dwelling has a close association with the river and the garden terminates at the river's edge. There is evidence that boats have historically been moored directly in the river channel at the bottom of the garden and the mooring of boats along the river is an essential part of the character of the area.

74. Consequently, I find nothing particularly unusual or discordant in the wet dock that has been created and the use reflects the association of the dwelling with the river. It is not particularly large, being of a size to accommodate a single boat and does not disrupt views of the house from the wider area. In addition, the dock is set behind a return in the garden wall which helps to separate the structure from the dwelling in a visual sense. The remaining garden is substantial and the works do not alter the prevailing character of the garden or result in over-development of the external space associated with the house. The external appearance is relatively discreet, having been finished in timber cladding to provide an outward appearance that accords with the character of the river front.

75. For those reasons I am satisfied that the wet dock has not caused harm to the setting of the Listed Building and that the character and appearance of the Conservation Area has been preserved, in accordance with the aims of the section 12 of the Framework and policy TB24 of the MDDL.

ii) *The Effect on the Structural Integrity of the Adjacent Boundary Wall*

76. Section 1(5)(b) of the LBCA Act identifies that any object or structure within the curtilage of the building which, although not fixed to the building, forms

part of the land and has done so since before 1st July 1948, shall be treated as part of the building. There is no dispute that the wall adjacent to the wet dock is part of a listed building. The wall divides the curtilage of Bird Place Cottage and Bird Place, both of which are listed buildings. Regardless of the ownership of the wall, it essentially forms part of the curtilage of both properties. Given its age and association with both listed buildings it is clearly of historic significance as a reflection of the layout and historic delineation of space within the site. It is also a feature of historic significance in its own right, by virtue of the attractive brickwork and traditional bonding in what appears to be a Flemish garden wall bond.

77. I have a statutory duty under section 66(1) of the LBCA Act to have special regard to the desirability of preserving the listed building, including any features of historic interest, including the wall. In that context, the effect of the development on the integrity of the wall is clearly a material consideration in the determination of the planning application. Any dispute relating to alleged damage to private property as a result of the works is a private matter that falls outside the scope of my decision.
78. The sheet piling for the wet dock has been constructed extremely close to the base of the wall as can be seen on photographs submitted with the appeal. As is evident from those photographs and from my site inspection there are a number of cracks within the wall at various places, some of which clearly pre-date the work to form the wet-dock, judging by the moss, lichen and other debris that has filled those cracks. However, other cracks would appear to be more recent. A section of the wall has been re-pointed relatively recently, as can be seen from the age of the mortar. The appellant has submitted a report from a civil and structural engineering consultancy⁶ which suggests that the pointing was undertaken prior to the construction of the wet-dock. I have no reason to doubt that was the case. The report, dated 03 August 2016, goes on to conclude that no subsequent cracking has occurred. However, at my accompanied site visit in January 2017 it was clear that further cracks have developed in the wall within the section that had been re-pointed. The cracks were not only evident in the mortar but a vertical crack could be seen through the centre of one of the bricks. Thus, it would seem that recent movement has occurred.
79. From the evidence presented it is not clear whether that movement has occurred as a result of the piling works and the formation of the wet dock. The appellant notes the presence of trees in close proximity and they may have an effect on the integrity of the wall but I cannot discount the possibility that the works have caused recent movement on the evidence before me. The report suggests that the piling is situated at least 700mm from the external face of the wall but the photographs suggest that the sheeting is closer. In addition, the report suggests that the piling would not affect any 'corbelling foundation that may exist' but it is not clear if any investigation was undertaken to determine how the wall is constructed in terms of its foundations, or to understand the nature of the sub-soil surrounding the wall. Certainly, no information has been presented on those points.

⁶ Report by Robert Wallbank BSc. C. Eng. M.I.C.E of RWA Consulting, dated 03 August 2016

80. Neither the report nor the plans submitted with the application specify how deep the piling is, or how it has been backfilled and it is not clear if any consideration has been given to the potential long term effects of water movement in and around the piling. Given the absence of detail in those respects it is not possible to determine the likely long term stability of the piling itself or the effect on the wall. I note the suggestion that the work was carried out by experienced contractors but that does not provide justification for absence of any detailed structural information about the way in which the dock has been constructed and the effect on the listed wall.
81. The Council has not undertaken any investigation of its own and, whilst the letter from the Insurers acting for Mr Sutherland suggests that the development may have caused subsidence, it finishes by noting that further investigations are being organised and no details are provided to support the assertion that the damage was caused by the work relating to the wet dock. Nonetheless, given the statutory importance of preserving the listed structure, it appears to me that the onus falls upon the appellant to demonstrate that the work has not caused harm. For the reasons given, I am not satisfied that the work has been undertaken in a manner that would preserve the long term structural integrity of the listed wall. Recent cracks are evident in the wall and, in the absence of further information, I cannot discount the possibility that those cracks have been caused by the creation of the wet dock. For those reasons, the development fails to comply with the aims of policy TB24 of the MDDL P and the aims of the Framework with regard to the preservation of listed buildings.
82. In the context of the listed building taken as a whole, damage to the garden wall would amount to less than substantial harm. Having regard to paragraph 134 of the Framework, no public benefits have been put forward in support of the works and I attach significant weight to the harm that I have identified.
- iii) Whether the Development Represents Inappropriate Development Within the Green Belt*
83. New development within the Green Belt is inappropriate unless it falls within a specified list of exceptions. The second bullet of paragraph 89 of the Framework identifies that the provision of appropriate facilities for outdoor sport and recreation will not be inappropriate, providing that the openness of the Green Belt is preserved and that there is no conflict with the purposes of including land within it. The listed exception does not state that any facilities for outdoor recreation need to be accessible to the wider public and I can see no reason why a wet dock to provide a recreational mooring would fall outside the scope of the exception. Equally, the development could be classed as an engineering operation which is one of the exceptions listed at paragraph 90.
84. The work has removed part of the river bank and created a retained void, filled with water from the river. To my mind that has not resulted in any material harm to the openness of the Green Belt. Ancillary steps and fencing are part of the development but it is likely that fencing would have been included at the rear part of the garden in any event. Whilst a boat moored within the dock would have a physical presence, it would be no greater than would be the case if the boat was moored at the bottom of the garden directly within the river channel, as appears to have happened in the past. Consequently, the wet dock has preserved the openness of the Green Belt and does not conflict with any of

the purposes of including land within it, such that it does not represent inappropriate development.

iv) The Planning Balance

85. Given that the development is not inappropriate development within the Green Belt there is no need for the appellant to demonstrate that very special circumstances exist to justify the proposal. I have found that the development has preserved the setting of the listed building and that no harm has been caused to the character and appearance of the Conservation Area. Nonetheless, I am not satisfied that the work has been carried out in a way that has preserved the structural integrity of the listed garden wall in the immediate and long term. Given that I am required to have special regard to the need to preserve the listed building it would not be appropriate to grant planning permission for the development in the absence of information to demonstrate that the integrity of the wall has not been affected by the development. I attach significant weight to my concerns in that regard and, in the absence of any public benefits in support of the scheme, I conclude that planning permission should not be granted.
86. Accordingly, I shall refuse to grant planning permission, Appeal C on ground (a) fails, and I shall dismiss Appeal C and Appeal E.

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Neil Boddington	Boddingtons Planning
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Graham Vaughan	Planning Officer
Ms Marcia Head	Planning Service Manager
Mr Giles Stephens	Conservation Officer
Mr Boniface Ngu	Principal Flood Risk and Drainage Engineer
Mr Jerry Hedley	Enforcement Officer

INTERESTED PERSONS:

Mr Justin Sutherland	Neighbouring resident
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