



Appeal Decision

Hearing held on 28 February 2017

Site visit made on 5 December 2016¹

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 11 April 2017

Appeal Ref: APP/W4705/C/16/3149439

Land at The Grange, Woodfield Road, Cullingworth, Bradford BD13 5JL

- 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 Act'].
- The appeal is made by Mr Jaspal Singh against an enforcement notice issued by Bradford Metropolitan Borough Council.
- The enforcement notice, numbered EN 07, was issued on 22 March 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of an unauthorised building on the land.
- The requirements of the notice are to:
 - (1) Demolish the unauthorised building.
 - (2) Remove all resulting materials from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed, and the enforcement notice is upheld with corrections and variation as set out below in the formal decision starting at paragraph 49.

The notice

1. The site is identified in the plan appended to the notice however the boundaries are inaccurately drawn. This minor error is overcome by substituting the plan with the one submitted at the event. For greater precision, section 2 should refer to the building's location as shown in the revised plan. Drawing 2, which describes the building, should be included in the description (a scanned copy of that plan is at Appendix B). I am satisfied that no injustice arises by these corrections to any party². I shall correct the notice.

Ground (b)

2. Building operations comprised in the construction of the building started in November 2013. Agreed measurements of the building are as follows: 15.1 metres wide, 6.5 m deep, 5.755 m high to the north elevation, 5.215 m high to the south elevation, 5.225 m to the east facing elevation and 3.740 to the west. Given the permanent nature, size and scale of the building, the operations involved in its erection firmly fall within the scope of s 55(1) and 55(1A) of the Act. At the time when the notice was issued, development had been carried out and the appeal building existed in reality. The matters stated in the notice occurred in fact. Ground (b) therefore must fail.

¹ Procedure changed from written representations to hearing after the site visit. The appeal parties agreed circumstances on site had not changed since my visit.

² Section 176(1) applied.

Ground (c)

3. The onus of proof is firmly on Mr Singh to show, on the balance of probabilities, that the matters stated in the allegation do not constitute a breach of planning control. The ground of challenge is that the building work involved in the construction of the building is permitted development ['PD'] by virtue of Class E Part 1 Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended ['the GPDO']. The Council counter-argue that, at the time that it was constructed, the building did not comply with thresholds set out in Class E.
4. In April 2015 the GPDO changed because the 1995 version was repealed. However, according to *Williams Le Roi*³, the date upon which development commenced determines which GPDO the development is to be judged against. The 1995 version applies as development commenced in 2013.
5. Article (3) – permitted development - grants a general planning permission for development described in Schedule 2. Class E Part 1 relates to the following type of scheme: *the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such*, which is a basic criteria (Class E(a)). There is agreement that the building falls within the curtilage to The Grange. However, in order to comprise PD, all of the building must be required for a purpose incidental to the enjoyment of the dwellinghouse as such; all of these words are important. Additionally, the building must also comply with all of the parameters set out in paragraph E.1. Failure to comply with this basic aspect and/or the thresholds renders the development outside the scope of PD.

Having regard to all of the above, I consider that the main issue to assess is whether the basic principle in Class E(a) was met and, if so, whether the threshold in paragraph E.1 were satisfied.

6. What do the following words in Class E(a) mean: *...required for a purpose incidental to the enjoyment of the dwellinghouse as such*? The adjective 'incidental' describes something that occurs in connection with something else. Paragraph E.3 defines the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse as an incidental purpose. However, the GPDO does not define the meaning of Class E(a) nor does it explain how it must be applied in particular circumstances. There is no statutory definition of the word *incidental*, but case law provides authority for its interpretation⁴.
7. A building that may be considered incidental to the enjoyment of a substantial dwelling with many occupants and large grounds may not be incidental if situated in the garden of a small cottage with a single occupant. It is therefore reasonable and necessary to consider the building in the particular context within which it is situated. Size alone is not necessarily a determining factor and a wide range of outbuildings for different purposes may be permitted depending on the particular circumstances. In *Emin* the Court confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. Physical size of a building in comparison to the dwellinghouse might be an important consideration, but was not by itself conclusive. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to

³ See *Williams Le Roi*³ v SSE & Salisbury DC [1993] JPL 1033.

⁴ See *Emin v SSE* [1989] JPL 909, *Pêche d'Or Investments v SSE* [1996] JPL 311, *Rambridge v SSE & East Herts DC* QBD CO-593-96) and *Wallington v SSE & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942.

whether the building is genuinely and reasonably required or necessary in order to accommodate the use or activity and thus achieve that purpose.

8. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier. But a hard objective test should not be imposed to frustrate the reasonable aspirations of an owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on particular circumstances.
9. I consider that it is reasonable and necessary to consider the justification for the building. It is for Mr Singh to show that the building was required for incidental purposes. On his behalf, Mr Steel submits that an existing garage and tractor store have been demolished. The building was built to replace these facilities. It comprises three parking bays measuring about 3 m x 5.8 m. The garage is accessed via the north facing elevation. Its height allows three hydraulic ramps to be installed and safely operate. These would be used to maintain and repair vintage cars, which is Mr Singh's hobby. The ramps will allow working access beneath hence the height of the building. Dormer windows at roof level will allow daylight penetration. The building includes a separate ground maintenance machinery storage space.
10. I note the argument that there is no absolute limitation in percentage terms as to how small or large a curtilage building can be. But it does not necessarily follow that any scale or size of building is permitted under Class E. The contention is that a number of curtilage buildings could, at least in theory, be built, however that line of reasoning overlooks the fact that each building must be required for a purpose incidental to the use of the dwellinghouse as such and satisfy physical tolerances.
11. The agreed evidence is that The Grange is a large property situated in substantial grounds; a total of 26 rooms and eight-bedrooms. The dwelling's floor area is about 763 square metres (sq m) or 381 sq m if ground floor area is only taken. In comparison, the subject building is 98 sq m. While the floor area is limited, the size of the appeal building in comparison to the floor area of the host dwelling is not determinative in itself.
12. The Grange is vacant and subject to renovation; that was the circumstance at the time the notice was issued. Once the refurbishment is complete, Mr Singh and family intend to move into the house and the appeal building is required to serve their residential use of the planning unit. Mr Singh has his own car and a work van and the claim is that the family has numerous motor vehicles for day-to-day use; that was the situation at the time construction work started but the dwelling was unoccupied. The evidence presented does not precisely show how many people will permanently occupy the dwellinghouse. Insufficient evidence has been submitted to show how many motor vehicles the family actually own and who requires a parking space within the triple garage.
13. I acknowledge that the restoration of vintage vehicles could be reasonably described as a hobby. Photographic evidence shows two BMWs and one Alfa Romeo, although actual ownership details have not been provided. There is no plausible explanation as to where these vehicles are currently kept and maintained. There is nothing to suggest that these cars were kept at The Grange when the building was erected. Additionally, given the limited number of motor vehicles it is unclear why three hydraulic lifts are necessary. Furthermore, apart from mere assertion, ambiguous evidence has been submitted to show who actually takes part in the activity. For example, little information has been presented showing amount of time spent on restoration project,

the nature of the activity or type and extent of tools, plant and machinery used and by whom.

14. I also have concern about the different activities that the building is intended for. For example, the claim is that it is required for the parking of household motor vehicles on a daily basis, but it will equally be utilised for vintage motor vehicle restoration. There is no precise explanation as to how these two activities will coexist in practice, because of the design and layout. Likewise, I have noted that the building will provide space to store ground maintenance machinery in a secure location. But scant evidence has been submitted to show the amount, extent and type of machinery likely to be kept inside the building.
15. My assessment of the evidence presented indicates that, in all likelihood, the space required for purpose of garaging motor vehicles, restoring vintage cars and storing tractor and ground maintenance machinery is excessive. On the basis of the available evidence, I find that a building of this height and size was not genuinely and reasonably required for the intended purposes. It is on a scale that is not incidental to the enjoyment of the dwellinghouse as such. On the particular facts and circumstances of this case, I conclude that the building did not, and would not, meet the necessary requirement of Class E(a). It is unnecessary to consider whether the development met all the conditions and limitations in paragraph E.1. However, for completeness, I will grapple with that issue next.
16. Council officials say that when the building was erected, it failed to comply with the terms of paragraph E.1(d) of Class E (now in E.1(e)). The argument focuses on interpretation and application of the word *dual-pitched*. It argues that the 3 m limit for other roof types should apply. A second line of argument is that even if the building has been erected with a dual-pitched roof, the 4 m height limitation is exceeded when measured from ground level adjacent to the north elevation. They argue that the height of the building is 5.755 m and 5.215 m high to the north and south elevation respectively.
17. Mr Steel vehemently disagrees with the Council's approach. His counter-argument is a simple one, namely, that the building has a dual-pitched roof. The ground level is not uniform and in such circumstances the measurement of the height should be taken from the level of the highest part of the surface of the ground, which is adjacent to the west facing elevation. The overall height of the building is 3.740 m thus complying with the height limitation set out in paragraph E.1(d)(i) (E.1(e)(i)).
18. Mr Steel maintains that the roof has a central ridge from which measurement can be taken. He submits that the Council has been inconsistent in its approach to such cases and draws support from other examples in the district. It has granted a lawful development certificate ['LDC'] for a rear single-storey extension with two dual-pitched roofs at no. 30 Sunningdale Crescent⁵, but that enlargement scheme relates to PD development under Class A of Part 1 to Schedule 2. He refers to appeal decisions that appear to support his reasoning that an outbuilding could have a dual-pitched roof that has been subdivided into smaller sections each with a dual pitch, or is a building with an 'L-shaped' footprint⁶. However, as you will discover later, the latter is not the circumstances here.

⁵ Council ref: 16/07630/CLP.

⁶ APP/J1915/X/10/2122330 allowed 17 September 2010 at 73 Downfield Road, Hertford Heath, Herts, and APP/R0660/X/10/2120458 allowed 21 April 2010 at property known as Beech Coppy, Bradford Lane Macclesfield.

19. There is s 174(2) decision at the same appeal site⁷. In 2012 the Council granted a LDC for the construction of a single-storey extension (known as the games room) on the basis that this development was considered to be a domestic adjunct to The Grange falling within the scope of Class E. As building work commenced the Council alleged a two-storey building was erected not in accordance with the approved plans. An enforcement notice to that effect was issued and the subsequent appeal allowed on ground (b). The Inspector finding a single-storey games room had been erected with only one floor. The games room is situated some 3.5 m away from the appeal building between it and The Grange. Mr Steel suggests that the Inspector considered the roof of that building as dual-pitched but I do not agree with that interpretation. There is no finding of fact as to whether or not that development constitutes PD.
20. The GPDO does not define *dual-pitched* and there is nothing before me to suggest the question has been determined in the Courts. To assist interpretation, technical guidance was produced by the Department: '*Permitted development for householders, technical guidance*' ['the TG']. In force is the April 2016 version. Given the very substantial variations in the design of individual houses, the guide cannot cover all possible situations that may arise. The guidance gives an explanation of the rules on PD rights for householders, what these mean and how they should be applied in particular set of circumstances.
21. The TG states the height limit on a building with a dual-pitched roof is 4 m, which should also be applied to buildings that have hipped roofs (slopes on all four sides)⁸. The logic appears to be that a hipped structure is likely to have a less bulky appearance, because of its roof design, thereby reducing its visual or amenity impact, than say, a gabled roof of similar height due to its built-form. The TG does not make a similar concession to other roof designs such as a multi-pitched roof. Nor does it describe a multi-pitched roof as dual-pitched. In my opinion, the extension of the interpretation to hipped roofs cannot automatically be assumed to apply to any other form or shape of roof design, due to the specific use of the words '*dual-pitched*'.
22. The building's roof, as a matter of fact, has a central ridge with two sets of planes on each side of the ridge. The main wall continues above the eaves line to form wall dormer windows on the north and south elevation, but these are physically part of the main roof. Nevertheless, the roof structure includes two gable projections set at right-angles to the central ridgeline. The latter is not broken by the gable projections but these are situated to the east and west facing elevations and each have a central ridgeline running north-south with two slopes. Whilst the TG indicates that roofs with slopes on all four sides fall within the definition of dual-pitched, that is not the situation in this instance. I do not consider that the meaning of dual-pitched roof can be stretched to include schemes which incorporate a multi-pitched roof design such as this. Since the roof form is not dual-pitched and the building exceeds the 3 m limitation (other height limitation) set out in Class E.1(d) (iii) now (e)(iii), it is not PD. Even if the definition of dual-pitched includes multi-pitched complex shape, there is an added complexity because the height of the building exceeds the 4 m limitation when measured from the north and south elevation.
23. Mr Steel strongly protests that the height of the building, including its eaves, must be measured from the west facing elevation. He refers to Article (1) – interpretation, subparagraph (3) to the GPDO. It states: *Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery shall be construed as a reference to its height when measured from ground level; and for the*

⁷ Appeal reference with the digits ending with 3003339 dated 21 May 2015.

⁸ Reference is taken from page 42 of DCLG's technical guidance 2010 version and page 43 of the April 2016 document.

purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. The 2010 version of the TG, at page 6, repeats that terminology but the footnote suggests that this will be the level of the *natural ground*. The 2016 version excludes reference to natural ground; the GPDO definition does not refer to natural ground. For the following reasons, I disagree with this approach.

24. The Grange includes a high earth embankment with dense vegetation. The bund is situated between an area that is laid to lawn and an internal driveway; the latter is lower than the bund. Like the previous Inspector, I too consider that the mound has been a natural feature of the grounds given the submitted documentary evidence. For example, the aerial images of the land in question clearly show the existence of the earth bund. In reality, the building does not sit on sloping ground nor is it situated on top of a mound. A portion of the bund has actually been removed to make space for the building. The explanation indicates that the mound was significantly reduced in height to permit construction of solid foundations and facilitate motor vehicle access. The triple garage is accessed from the adjacent driveway that is level with the north-facing elevation.
25. Mr Singh maintains that the work was not supervised engineers and limited amount of soil had been removed, but I consider that the nature and scale of the work suggest a significant operation had taken place. It is arguable as to whether, as a matter of fact and degree, these works amount to a separate engineering or other operation substantially different in character to PD in Class E. The undisputed evidence is that a considerable amount of earth has been physically dug out by the use of heavy plant and machinery; this is not a simple case where topsoil had been removed only. The land has been levelled to make space for the building. It is physically erected upon this levelled surface of area from foundation level upwards.
26. I note that soil has been restored to previous levels to the east and west-facing elevation of the building, however, unlike circumstances pertaining to the adjacent games room, the mound to the north and south facing elevation has not been restored to its original level. Practically the mound cannot be restored to its original level due to the building's presence; access in and out of the building would be physically blocked. There is clearly a reasonably flat and fairly level area of land upon which the building is situated and it has ground to its north and south elevations; that is the level of the surface of the ground immediately adjacent to the building from which measurements must be taken from. In my assessment, it would be artificial to take measurements from the restored bund to the west and east elevation.
27. There is an added complexity. Class E, paragraph E.1(e) now E.1(f), state development is not permitted if the height of the eaves of the building would exceed 2.5 m. The TG states the maximum height of the eaves on any part of the building irrespective of total height is 2.5 m. The eaves height of the building is 1.610 m when measured from the mound adjacent to the west elevation. However, it is 3.140 m, 3.750 m and 3.720 m respectively when measured from the east, north and south facing elevations. Clearly, the development cannot be PD by virtue of the building's eaves height.
28. The material facts indicate to me that the development is in excess of thresholds set out in Class E. According to *Garland*⁹, if a development exceeds PD limits the whole development is unauthorised. So, even if an alternative view prevails on the incidental

⁹ See *Garland v MHLG* [1968] 20 P&CR 93.

use issue, the development cannot be PD by reason of its failure to comply with parameters in E.1.

Conclusion on ground (c)

29. Drawing all of the above threads together, in my planning judgement, the evidence shows on the balance of probabilities that the building operations involved in the construction of the building constitute development for which an express grant of planning permission was required. It has not been obtained and Mr Singh cannot rely on the deemed permission granted by the GPDO, because the building fell outside the scope of Class E PD rights at the date of the notice's issue. My firm conclusion is that the matters alleged constitute a breach of planning controls. Consequently, ground (c) must fail.

Ground (a)

30. The deemed application for planning permission under s 177(5) of the Act is linked to the breach of planning control. This is mirrored by the power to grant planning permission under s 177(1), which is limited to a power to grant planning permission in relation to the whole or any part of the matters stated in each notice as constituting the breach. Planning permission for the construction of a building for use as a triple garage and tractor and garden maintenance machinery storeroom. The building is illustrated in Plan 2 Annexe B.
31. The Grange is located within the designated Green Belt. Paragraphs 89 and 90 of the National Planning Policy Framework ['NPPF'] set out certain categories of development regarded as exceptions to inappropriate development in the Green Belt. Paragraph 87 advises that inappropriate development is, by definition, harmful to the Green Belt and should not be approved other than in very special circumstances. Paragraph 88 adds that such circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The purpose of these protectionist policies are broadly reflected in Bradford Replacement Unitary Development Plan 2005 ['the UDP'] policy GB1 - New Buildings in the Green Belt, GB2 - Siting of New Building in the Green Belt and GB5 Extension and Alteration of dwellings. I find no significant conflict with the NPPF and these local planning policies have full force¹⁰.

Main issues

32. The detached triple garage and store is a free-standing curtilage building. I concur with the parties that the development cannot be reasonably regarded as the extension or alteration to The Grange given its separate location and position; there is an intervening games room between the dwelling and appeal building. I also agree that the development does not amount to a replacement building because previous linked garage and tractor store have been totally demolished¹¹. Neither the NPPF nor local plan policy makes reference to the construction of curtilage buildings. In my assessment, the development must therefore be regarded as the construction of a new building that does not fall into any exception category set out in NPPF paragraph 89 and 90 as well as local policy and therefore constitutes inappropriate development inside the Green Belt.
33. Against that background, the main issues are as follows:

¹⁰ NPPF, paragraph 215, applied.

¹¹ See *Sevenoaks DC v SSE & Dawe* [1997] EWHC CO 1322-97.

- (1) The effect of the development upon openness, and
- (2) Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.

Reasons – *Effect on openness*

34. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Openness is identified as one of the essential characteristics of Green Belts. Certainly, it is eroded by any item of substantial size, such as a three dimensional building, by simple reason of the fact that it covers and occupies land. I note that a conservatory, linked garage and tractor store covering some 280 sq m of floor area has been demolished. It is contended that the footprint of the building is 98 sq m; which is much less compared with the dwelling. The argument is that openness has actually improved because of the reduced footprint in built development. However the bulk, mass and volume of the triple garage and tractor store combined with its overall height and scale considerably diminishes openness. The development fails to preserve openness.
35. The location of the building means that it is set some distance away from the host dwelling and, due to physical separation, it does not closely relate to the built-form of The Grange. The former conservatory, linked garage and tractor store were situated in proximity to the main dwelling and were seen as group of buildings closely related to the main dwelling. In contrast, the siting of the appeal building represents spread of built development in this part of the Green Belt and is encroachment; that conflicts with at least one of the purposes of designating land inside the Green Belt. Furthermore the building is likely to be noticeable from a nearby public footpath in long-distant views because of its height, scale and position. It has a visual impact on this part of the Green Belt. For all of the above reasons, I conclude that the proposal has a materially harmful effect upon openness of the Green Belt. Accordingly, it fails to comply with UDP policies GB1 and GB2.

Other considerations

36. As I have already observed earlier, The Grange is a large dwellinghouse located in spacious grounds. Mr Steel submits domestic outbuildings of this size are expected in large properties such as this. If planning permission is not granted, it is contended that there is no alternative but to exercise PD rights set out in Class E Part 1 Schedule 2. I am told that the family will need a triple garage for keeping household motor vehicles as there is a security issue. There is a need to store garden machinery. The restoration of vintage motor vehicles is a family hobby and a building with a tall ceiling is required, because of the type of hydraulic lifts. The argument is that a single building containing all of these uses is far better for the environment compared to numerous curtilage buildings. However, there is nothing before me to suggest such building(s) are genuinely and reasonably required for incidental purposes.
37. The Council argue that the threat of implementing Class E PD rights is hypothetical, but the fall-back position may be taken into account even if the prospect of it occurring is very slight. The problem is that the evidence presented does not sufficiently show a realistic prospect of PD rights being exercised. For example, there is an absence of specific detail or drawings showing how, where and in what circumstances building(s) that would not exceed PD thresholds could be built. It is difficult to compare the potential impact of the purported fall-back position with the appeal building.

38. Notwithstanding the shortcomings in the evidence, the appeal parties acknowledge that domestic scale outbuildings erected under PD rights are likely to be materially different by virtue of the fact that physical limitations must be met. The roof design of such structures is likely to be materially different to the multi-pitched roof on the appeal building. Thus, in practice the potential visual impact of small-scale domestic structures would be materially different when compared to the bulk, mass and volume of the building. So, even if there is a greater than theoretical possibility of lawful fall-back position being implemented¹², this matter does not justify grant of planning permission for significantly more harmful development. I attach this line of argument limited weight.
39. I should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. The latter should only be used where it is not possible to address unacceptable impacts through a planning condition. Mr Singh is willing to accept a condition taking away PD rights and restricting use of the building. However, the Department's Planning Practice Guidance¹³ advises that conditions restricting the future use of PD rights will rarely pass the test of necessity and should only be used in exceptional circumstances.
40. The site's planning and enforcement history was subject of much debate. The land is located within the Green Belt where stringent planning policies apply. Nevertheless, these factors are not persuasive to justify removal of PD rights. It would be unnecessary to impose a blanket restriction on freedoms granted by Parliament whereby small-scale domestic outbuildings, extensions or alterations to the main dwelling are requiring express planning permission. Additionally, such a blanket ban covering the whole property is unreasonable given that the notice relates to the appeal building. To make the development acceptable in planning terms there may be an argument in favor of a planning obligation, but an agreement is not before me for my consideration. I give little weight to this argument.
41. A consequence of my decision to dismiss this ground (a) appeal is demolition of the building at considerable expense and disruption. But there is no risk of homelessness and interference with family life¹⁴. Local and national planning policies seek environmental protection in the public interest, whereas the development causes visual harm, which cannot be mitigated by planning conditions. There is a need for development management policies to be applied to proposals and this is an appropriate proportional response to that need. It is necessary to consider whether it would be proportionate to refuse planning permission in all the circumstances of this case. I shall consider whether refusal would have a disproportionate effect on the appellant and occupiers of the site in my planning balance.

Other matters

42. A neighbour is concerned about the overall height of the building. It would not be used for residential purposes. The dormer windows are intended to allow daylight penetration to the garage. I am satisfied that the development does not result in loss of residential amenities.

¹² See *Raffaele Gambone v Secretary of State for Communities and Local Government & Wolverhampton City Council* [2014] EWHC 952 (Admin) and *R (on the application of Wynn-Williams) v SSCLG* [2014] EWHC 3374 (Admin).

¹³ PPG – paragraph 017 Reference ID: 21a-017-20140306.

¹⁴ Article 1 of the First Protocol and Article 8 of the European Convention on Human Rights protections have been codified into UK law by the Human Rights Act 1998.

Planning balance

43. In the light of the above deliberations, the development causes harm to the Green Belt by reason of inappropriateness and this carries substantial weight. Harm to openness also carries substantial weight. The location of the building represents encroachment thus conflicts with at least one of the purposes of designating land inside the Green Belt; that is a serious planning objection. On the other side of the scales, I recognise Mr Singh's desire, zeal, want and claimed need for the building. However, I attach limited weight to the fall-back argument, little weight to the possibility of imposing conditions because these cannot be imposed to make visually intrusive development acceptable in planning terms.
44. Any interference with Mr Singh and his family life must be balanced against the public interest in upholding planning policy to protect the environment. I am of the firm view that dismissal of the appeal would be a proportionate response and would not lead to an unacceptable violation of any of Mr Singh or his family's Human Rights, which thus carry only limited weight.
45. The case has been forcefully argued. On balance, however, the considerations advanced whether taken individually or cumulatively do not in my planning judgement clearly outweigh the inappropriate nature of the development in the Green Belt and the other identified harm. Consequently, the very special circumstances necessary to justify the development do not exist in this case. Accordingly, the development conflicts with UDP policies GB1, GB2 and GB5, and national planning policy cited above.

Ground (f)

46. The notice's purpose is to remedy the breach of planning control by restoration. Mr Steel submits that its terms should be varied to make the building comply with the deemed planning permission granted by Class E Part 1 Schedule 2 of the GPDO. I disagree.
47. PD rights apply to prospective development and not retrospectively. I have considered elsewhere merits of fall-back arguments. Bearing in mind the debate as to whether or not the building satisfied parameters set out in Class E, I am not persuaded that the notice could be varied as promulgated, as the variation sought requires extensive alterations to the built fabric and structure of the building; given the nature and scale of the operations I do not consider a variation of the notice's terms is appropriate. Such a variation has the potential to create interpretation issues and legal debate as to the meaning of the notice's terms. Given the possible sanctions for a failure to comply with the notice, I find that to be an unacceptable outcome. The steps required by the notice do not exceed what is necessary to remedy the breach of planning control. Therefore, ground (f) fails.

Ground (g)

48. It is necessary to consider whether the specified compliance period, three months, falls short of what should reasonably be allowed. Quotations would need to be obtained for the work required by the notice. It would need to be arranged. All of this is likely to take considerable time and result in significant disruption. A slightly extended period would assist. I am of the firm opinion six months is reasonable and appropriate. This is a just and proportionate response to the particular circumstances presented, and strikes a fair balance between the competing interests of the wider public and the appellant. Therefore, ground (g) succeeds.

Formal decision

49. It is directed that the notice be corrected by the deletion of the site plan attached to the notice and the substitution therefor of the plan attached to this decision at Appendix A.
50. It is directed that the notice be corrected by the deletion of the text in section 2, the land to which the notice relates, and substitution therefore by the following text: *Land at The Grange, Woodfield Road, Cullingworth, Bradford BD13 5JL, edged in a thick line on the plan attached at Appendix A to this Decision. The approximate location of the unauthorised building is shown on the plan with a star (*). For identification purposes only, the unauthorised building is shown in plan 2 attached at Appendix B to this Decision.*
51. The notice is varied by deletion of the text *three calendar months* in section 6, time for compliance, and the substitution of *six months as the period for compliance*.
52. Subject to the corrections and variation above, 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.

A U Ghafoor

Inspector



Plan

This is the plan referred to in my decision dated: 11 April 2017

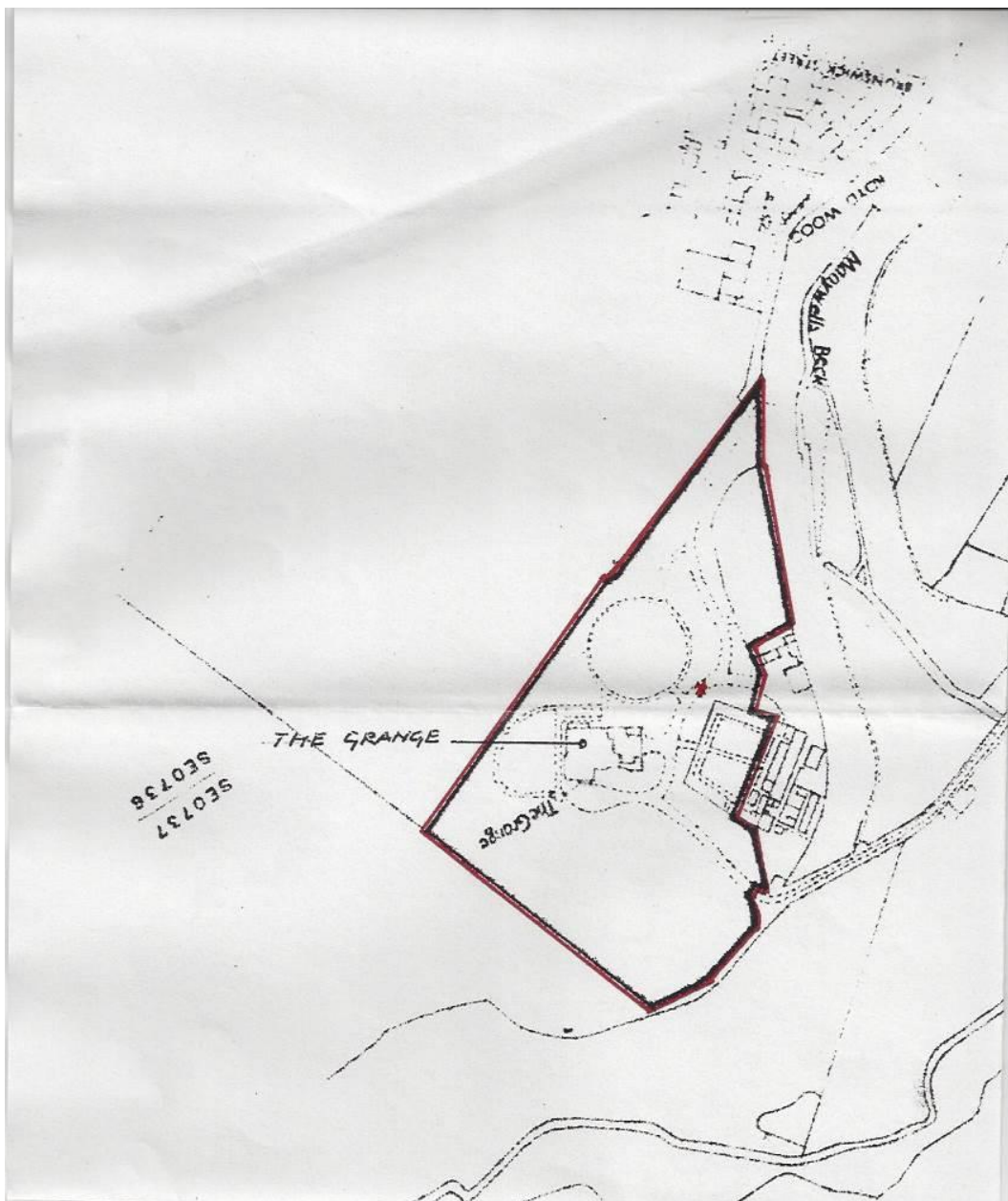
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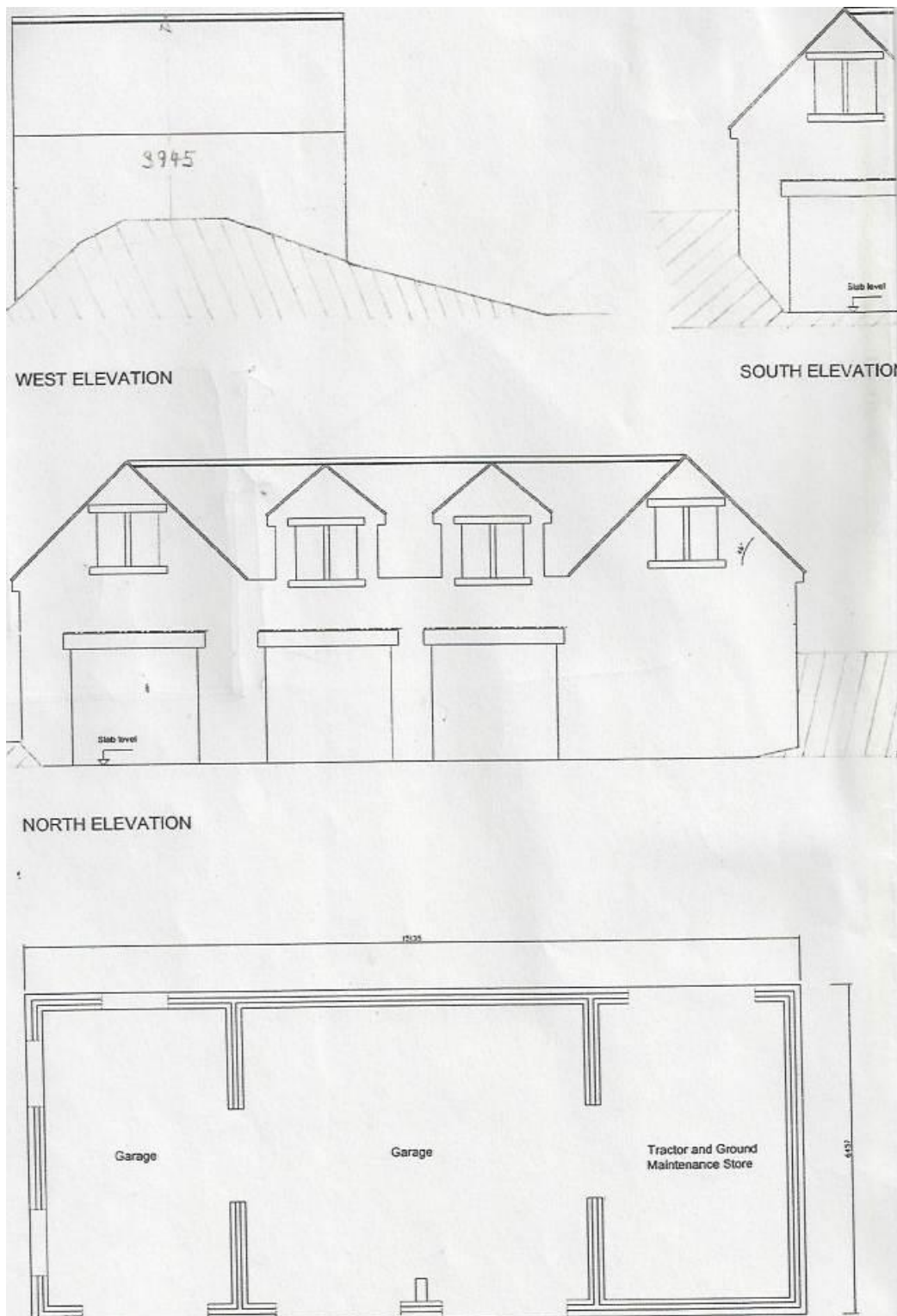
Appendix A - Land at The Grange, Woodfield Road, Cullingworth, Bradford BD13 5JL

Reference: APP/W4705/C/16/3149439

Scale not stated.



Appendix B: Plan 2 elevation and floor plan (scale not stated)





APPEARANCES

FOR THE APPELLANT:

Mr J Steel J.O. Steel Consulting

Mr J Singh Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Holliday Planning Officer, Bradford City Council

Mrs Flockton Enforcement Officer, Bradford City Council

INTERESTED PERSONS:

Councillor Mr Simon Cooke Ward Councillor

Mrs S Kelsall Local resident

DOCUMENTS HANDED IN AT THE HEARING:

- (1) Letter of notification
- (2) Mr Singh's summary of facts
- (3) Floor areas handed in by Mr Singh
- (4) Letter by Mrs Kelsall
- (5) Cullingworth Village Society letter
- (6) Extract copy of UDP policy D1.

PLANS AND PHOTOGRAPHS HANDED IN AT THE HEARING:

- (1) Copy of photographs attached to the Council's statement of case
- (2) Lawful Development Certificate approved plan 11/05537/CLP.