
Appeal Decisions

Site visit made on 11 April 2017

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

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

Decision date: 24 April 2017

Appeal Refs: APP/H2265/C/16/ 3154625 (Appeal A) & APP/H2265/C/16/3154626 (Appeal B)

2 Keepers Cottage, Platt, Sevenoaks TN15 8TA

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr Ian Williams (Appeal A) and Mr Matthew Williams (Appeal B) against an enforcement notice issued by Tonbridge & Malling Borough Council.
- The enforcement notice was issued on 16 June 2016.
- The breach of planning control as alleged in the notice is: without planning permission the construction of walls including the insertion of windows and doors to infill triple bay carport to facilitate the use of the pre-existing garage space as an independent residential unit.
- The requirements of the notice are to remove all walls, windows and doors within the western elevation triple bay garage.
- The period for compliance with the requirements is 14 calendar days.
- The appeals are proceeding on the grounds set out in section 174(2) (a) (Appeal A only) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals are dismissed, the notice is varied and upheld and planning permission is refused for the deemed application.

Background and procedural matters

1. No. 2 comprises one half of a semi-detached property in an isolated location within the Metropolitan Green Belt. Planning permission was granted in December 2006 for a triple carport and stable with first floor storage and a building ("the garage building") was subsequently constructed to the south of the main house. This is the building subject of the enforcement notice.
2. It is common ground that the garage building was not built in accordance with the consent and has subsequently been used as residential accommodation.
3. An enforcement notice was issued in June 2009, and subsequently varied and upheld at appeal¹ (the 2010 appeals). The requirements were to "cease the use of the building as a single family dwelling and remove the kitchen and all associated fixtures and fittings and any beds and other furniture designed for sleeping". The period for compliance was 6 months (July 2010) but I saw that the appellants do not appear to have complied with this Notice. It appears that prosecution action, for non-compliance, is being undertaken by the Council. A subsequent appeal for the use of part of the garage building as an annexe to

¹ Appeal references APP/H2265/C/09/2108838 and APP/H2265/A/09/2108061 , decision dated 4 January 2010

No. 2 was dismissed in August 2011². A third appeal against the refusal of the garage building as an annexe was also dismissed³ in 2016.

4. The requirements of the Notice before me are concerned with operational development, rather than use, and I was provided with a copy of the approved plans after the site visit.

Ground (a) and the deemed application (Appeal A only)

Main issues

5. The main issues in this appeal are:

- whether or not the proposal constitutes inappropriate development in the Green Belt;
- if the proposal is inappropriate development whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify permission.

6. The notice is solely concerned with alterations to the west or front elevation of the garage building. The plan approved in 2006 shows an open fronted triple bay carport with braced timber posts with, at the southern end, timber boarding forming the rear of a loose horse box. The building has altered somewhat over the years but, since late 2015, it appears significant alterations have been undertaken so that the entire front elevation has been infilled and all the original carport openings have now been enclosed⁴.
7. I saw that the front of the garage building now comprises a wall along the full length incorporating a brick plinth and timber boarding above. This front wall has a central glazed door, with full height glazed panels and two domestic windows to the right-hand-side; each of these has three panes. I also saw that the entire building is in residential use and that this appears to be self-contained. The land to the rear has also been enclosed and physically separated from No.2 and its garden. From what I saw the garage building is now a substantially complete and independent dwelling house.
8. The appellant says the minor building works which have been carried out should not be regarded as "inappropriate development" within the Green Belt, because the garage building is of the same size and height as that which was permitted in 2006.
9. However, critically, in the appeal before me the garage building as constructed in this location has never been granted planning permission. As the Inspector in the 2010 appeals noted in paragraph 4 of his decision, the building is neither in the same place nor of the same dimensions as the operational development granted planning permission in 2006. He decided to dismiss both the appeals and uphold the notice (with a variation to which I refer below). Accordingly the notice issued in June 2009 came into effect at the date of the appeal decision, 4 January 2010, with a six month period for compliance.

² Appeal reference APP/H2265/A/11/2152477, decision dated 5 August 2011.

³ Appeal reference APP/H2265/W/15/3133025, decision dated 3 February 2016.

⁴ The Officer report to the Councils Planning committee held on 8 July 2015 reports that at that time half the ground floor remained in use as a workshop. The evidence also shows that between April 2010 and March 2015 one bay of the garage was infilled.

10. Although the Inspector in the 2010 appeals referred to the effect of S173(11) of the Act in granting permission for the construction of the garage building, subsequent events have altered that situation and do not help the appellant. As has been pointed out by the Council, Section 173(11)(b) demands compliance with all the requirements of an enforcement notice before deemed planning permission is granted. In this case the variation to the notice made by the Inspector in the 2010 appeal decisions was to require the removal of kitchen and all associated fixtures and fittings and any beds and other furniture designed for sleeping from the garage building. My site visit showed that not only is the kitchen on the ground floor of the garage building still in place, but the upper floor contains several beds and other furniture designed for sleeping. Earlier appeal decisions and officer reports on applications for permission to use the building for other purposes show that the kitchen and beds/furniture for sleeping were present during the intervening period. Hence on the balance of probabilities compliance with the requirements of the notice as varied by the 2010 appeal decision has not occurred.
11. Therefore, whilst it appears that the Council have never taken enforcement action against the garage building, it remains the case that the notice issued in June 2009 is still in effect, there is no deemed planning permission for the erection of the garage building which hence has not acquired immunity from enforcement action. Thus even if I were to accept the appellant's argument that the works are simply alterations to an existing structure, because the whole building is unauthorised any alterations to it are also unauthorised. In the light of the judgment in *R v East Sussex CC Ex p. Reprotech (Pebsham) Ltd.*[2003] 1 W.L.R. 348, I hold to this conclusion notwithstanding the advice of the Council officer in his letter to the appellant of 14 June 2011.
12. Policy CP3 of the Tonbridge and Malling Local Development Framework Core Strategy says that National Green Belt policy will be applied in the Borough. In turn the National Planning Policy Framework (the Framework) says that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence⁵. Openness is generally defined by an absence of built form. Paragraph 89 of the Framework says the construction of new buildings is inappropriate in the Green Belt, other than specified exceptions, none of which apply here.
13. Paragraph 87 of the Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 says in turn that substantial weight should be given to any harm to the Green Belt and that very special 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.

Openness and any other harm

14. The gist of the appellant's argument in this context is that the blocking of the open bays and the domestic doors and windows does not reduce the openness of the Green Belt nor cause harm. I do not agree, because the infilling of the bays has resulted in a more solid structure which has a significantly greater impact than the "as-built" garage building which was visually lighter and more

⁵ Paragraph 79: The National Planning Policy Framework

permeable. Indeed the as-built garage building has a character not dissimilar from a suburban chalet bungalow. Consequently it is not subservient to the main house and it appears that there are two separate dwelling houses where there was previously one. But in any event, as I have concluded above, the entire garage building is unauthorised and as part and parcel of that building the infilling simply consolidates and intensifies the loss of openness caused by the structure.

15. This harmful impact on the openness of the Green Belt is exacerbated by the physical enclosure and separation of the garage building and its attendant garden from the curtilage surrounding No.2. I saw that the use of the property as a separate dwelling which is facilitated by the operational works includes a parking area, fencing and a copious amount of domestic paraphernalia including fixed play equipment, a wendy house and a whirlingig washing line. This adds to the harm by reason of loss of openness.
1. In addition to this is the incongruous nature and appearance of the structure which is overtly residential and an uncomfortable anomaly in this remote rural location. This is because it has the appearance of a suburban chalet bungalow which is in turn compounded by the domestic paraphernalia and enclosed garden. Hence the loss of openness and suburban character adds to the harm that I have identified by reason of inappropriate development.

Benefits

16. The appellant says that it is inconsistent for the Council to take action now because the building has not increased in size and previously the infilling of one of the carports was considered to be acceptable and not require planning permission. However, even if I was to accept this argument it does not amount to a tangible benefit.

The balancing exercise and conclusion

17. In carrying out the balancing exercise, I attach substantial weight to the harm that would be caused to the Green Belt by reason of inappropriate development. Added to this is the separate harm by reason of the loss of openness and the suburban appearance of the building
18. Although the garage building currently provides a home for a family, in the absence of any claimed benefits, and given the unauthorised status of the building, there are no very special circumstances that outweigh the harm to the Green Belt. Consequently the ground (a) appeal does not succeed.

The appeals on ground (g)

19. This ground of appeal is that the period for compliance is too short. The appellant says that 14 days is insufficient time to undertake the works to comply with the notice. This is because the garage building is occupied by a family with 4 small children and it is impractical to carry out the works required by the Notice whilst the building is occupied by a large family.
20. On the other hand, the Council says that it is plain the building should not be occupied by a family at all and in the light of the continued breach of planning control a 14 day compliance period is reasonable.

21. I have some sympathy for the Council's position as the period for compliance with the Notice issued in 2009 and upheld by the 2010 appeal decision required the use of the premises as a single dwelling to cease by summer 2010. Nonetheless, I have a duty to consider the best interests of the children, and in this context it is just and proportionate to enable those children currently in school to substantially complete the current 2016-2017 academic year without undue disruption.
22. I shall therefore extend the period to 2 months. This would strike the appropriate balance between competing public and private interests and would not place a disproportionate burden on the appellant.
23. For the reasons given above I conclude that a reasonable period for compliance would be 2 months and I shall vary the enforcement notice accordingly. The appeal on ground (g) succeeds to that extent.

Decisions

Appeal A: APP/H2265/C/16/3154625

24. It is directed that the enforcement notice is varied by:

deleting the words "14 calendar days" under the heading 'Period for compliance' and replacing with the words "two calendar months".

25. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld, and planning permission is refused for the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/H2265/C/16/3154626

26. It is directed that the enforcement notice is varied by:

deleting the words "14 calendar days" under the heading 'Period for compliance' and replacing with the words "two calendar months".

27. Subject to this variation, the appeal is dismissed and the enforcement notice is upheld.

Sukie Tamplin

INSPECTOR