

# Appeal Decision

Site visit made on 30 March 2017

**by Andrew Dale BA (Hons) MA MRTPI**

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

**Decision date: 25 April 2017**

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**Appeal Ref: APP/X1545/C/16/3161468**

**Land at Rudley Oaks, Chelmsford Road, Purleigh, Essex CM3 6QP**

- 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 John Lawrence against an enforcement notice issued by Maldon District Council.
- The notice was issued on 20 September 2016 under ref. ENF/16/00189/01.
- The breach of planning control as alleged in the notice is set out as follows:  
"The unauthorised change of use of the land ("the Land"), shown edged in **green** to use as residential curtilage.  
The unauthorised erection of two detached outbuildings on the land, their approximate locations marked with "**X**"s on the attached plan.  
The unauthorised creation of a swimming pool on the land, its approximate location marked with an "**S**" on the attached plan.  
The unauthorised erection of walls, gates, fences and other means of enclosure on the land, their approximate location marked in **blue** on the attached plan."
- The requirements of the notice are set out as follows:  
"a. Cease the unauthorised residential use of the land and remove any associated residential paraphernalia, such as tables and chairs;  
b. Demolish the unauthorised outbuildings and remove from the land any debris, detritus or materials resulting from the demolition;  
c. Remove the unauthorised walls, gates fences (sic) and other means of enclosure from the land;  
d. Decommission and cover with soil the unauthorised swimming pool and remove any resulting debris, detritus or materials from the land."
- The period for compliance with the requirements is "Two (2) calendar months".
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (d) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended falls to be considered.

**Summary of Decision: The appeal is allowed on ground (a), the enforcement notice is quashed after correction and variation and planning permission is granted in the terms set out below in the Formal Decision.**

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## Matters concerning the enforcement notice

1. Whilst no numbering system is deployed within paragraph 3 of the notice, it is clear that it seeks to attack four different alleged breaches of planning control.
  2. By reference to section 55 of the 1990 Act as amended, the first alleged breach would be more correctly expressed as a material change in the use of the land. Moreover, the word "curtilage" in this context is not a description of a use of land but rather it is a description of an area of land. This word should be replaced with the word "garden".
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3. In the light of the appellant's evidence presented under ground (c) and/or ground (d) relating only to the smallest and northernmost of the two outbuildings, the Council has exercised its powers to relax the requirement at paragraph 5b of the notice so that it no longer requires the demolition of this particular outbuilding. Retaining the original plan attached to the notice, I have made a similar variation to the notice accordingly. However, if the two outbuildings are also left within the alleged breach at paragraph 3 then an unconditional planning permission would be granted for that smaller outbuilding by virtue of section 173(11) of the 1990 Act as amended. So as to avoid any confusion with the planning permission that will arise from the ground (a) appeal, I have omitted the smaller outbuilding from the second alleged breach.
4. The notice at paragraph 4 refers only to the four-year time limit for the taking of enforcement action. It should also have referred to a ten-year time limit to cover the material change of use. My decision above addresses this matter.
5. I am satisfied that the notice can be corrected and varied for the reasons given in paragraphs 2 to 4 above without giving rise to any injustice to the parties.

### **The grounds of appeal**

6. Given the Council's updated position on the small rear outbuilding, the appellant confirms in his final comments that "The Inspector is therefore concerned only with Grounds (a) and (g)." I see no reason to disagree. Grounds (c) and (d) have been overtaken by events and I shall take no further action upon them.

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

7. Reading the reasons given in the notice for its issue, I consider that the main issue in deciding if planning permission should be granted is the effect of the developments upon the character and appearance of the area.
8. The development plan includes the Maldon District Replacement Local Plan (RLP). The relevant cited RLP policies are S2 (Development outside development boundaries), CC6 (Landscape Protection), CC7 (Special Landscape Areas), CC23 (Garden Extensions in the Countryside) and BE1 (Design of New Development and Landscaping). Insofar as the issues in this appeal are concerned, these policies are broadly consistent with the National Planning Policy Framework (the Framework).
9. The emerging Maldon District Local Development Plan (LDP) is at a relatively advanced stage in its progress towards adoption but the cited relevant policies (S1, S8, H4 and D1) do not fundamentally change the approach from those in the adopted RLP. Like the Framework, they are material considerations, as are the Landscape Character Assessment (Appendix 2 of the Council's statement) and the local Article 4 Direction removing some permitted development rights.
10. The appeal concerns about 0.12 ha of land on the western side of Rudley Oaks, one of two sizeable houses built pursuant to a planning permission issued in November 2013 under ref. 13/00733/FUL. This land has now been incorporated into the residential garden of Rudley Oaks which is set back from

the northern side of Chelmsford Road (part of the B1010) in the hamlet of Rudley Green.

11. The starting point should be the principle of the additional residential garden space as a land use in this rural locality. RLP Policy CC23 does not preclude garden extensions in the countryside even within Special Landscape Areas or areas covered by Landscape Character Assessments. Three criteria are identified in part 1 of this policy.
12. The Council accepts that the evidence presented for the appellant in the form of an appraisal of the agricultural qualities of the land by a director of Whirlledge and Nott (Chartered Surveyors), specialising in agricultural business and rural property in Essex, satisfies the first criterion by illustrating that the area of land involved can no longer be effectively farmed. Having read what I consider to be a comprehensive appraisal, I see no reason to declare otherwise.
13. Given the distance from neighbouring properties, the Council also accepts that the scheme has not had a detrimental effect on the amenities of the occupiers of the neighbouring properties. There have been no third party objections. The second criterion is satisfied.
14. The third criterion expects the residential use of the site to not be visually detrimental to the character of the surrounding landscape or to existing landscape features. My reading of the policy and its explanatory text suggests to me that this criterion is primarily concerned with the garden use per se rather than with any buildings that may be erected upon it (often at a later date), which would have to comply with other policies.
15. In this regard, the garden as enlarged is reasonably in keeping with the size of the house and not significantly out of scale with other gardens in the vicinity at Rudley Green. It is a logical garden extension in terms of location and shape. The northern third of the new garden area previously included a large commercial outbuilding (now demolished) and areas of hard surfacing. It was not pristine countryside when viewed in the round. The remainder of the land taken in was only a small part of the wider adjacent field. I have not been made aware of any detrimental changes to the field pattern, landscape features or the gradient of the land. I found the garden to be relatively unobtrusive in itself and not visually detrimental to the character of the surrounding landscape. There is respect for the third criterion in part 1 of RLP Policy CC23.
16. Part 2 of RLP Policy CC23 indicates that where new boundaries are being formed for garden extensions, consent will be subject to a condition requiring them to be defined by new hedgerows comprising native species. Fencing will only be permitted in exceptional circumstances. Soft fencing will be permitted as a temporary measure until the hedgerows have matured.
17. The northern and southern boundaries of the additional garden (as edged green) are formed by natural features, these being a ditch and roadside planting respectively. Its eastern boundary is the western boundary of the approved residential garden. In effect it is an internal boundary and not a new boundary. Insofar as the notice can be said to relate to fencing or other means of enclosure on this boundary, I find it difficult to take exception to any of the structures I saw along it or next to it. Similarly, the render and brick wall that

screens the swimming pool is not on a new outer boundary as such. It is well designed and complements the external appearance of the host dwelling. The planting of a beech hedge in front of it, as suggested in the appellant's statement, would help to soften its visual impact. This can be controlled through a condition. The timber gates next to the wall are not unduly prominent or grandiose.

18. The timber fence along the western boundary of the additional garden consists of simple, vertically planked boards given a natural brown stain on the field side where there is also a stock-proof wire fence. Even so, the permanent retention of this timber fence on a new boundary would run counter to the aims of part 2 of RLP Policy CC23. The appellant clearly intends to plant a native hedgerow along this boundary and I take the pragmatic view that the fence could be allowed to remain for a temporary period to allow for the hedgerow to mature.
19. The outdoor swimming pool has an open design, is modest in size and cannot be readily seen in views from Chelmsford Road given the existence of the screen wall.
20. The outbuilding contains recreational space and a changing room/bathroom on the ground floor with storage areas in the roof space above. It has the architectural style of a traditional Essex barn characterised as it is by a steeply pitched roof of red clay tiles and by walls clad with black weatherboarding. The design and materials are of high quality and the building is visually attractive.
21. Careful attention has been paid to its location and siting. The outbuilding stands on part of the footprint of the former commercial barn. It is well set back from the rear elevation of the host dwelling, immediately adjacent to the approved residential garden area and over 40 m away from the carriageway in Chelmsford Road. The site is at the lowest end of the field. The land rises to the west and even more so to the north.
22. Even allowing for its steeply sloping roof, the outbuilding is notably lower than the host dwelling. With low eaves to the front and rear, the building does not appear to be especially bulky. The appellant has produced detailed figures which contradict the Council's assertion that the building is almost double the volume of the original commercial barn. These factors added to its siting result in a building that is not a disproportionate or dominant form of development. I note also that this replacement outbuilding has been welcomed by a number of local residents who saw the former commercial barn as an eyesore. Judging from the photographs, the subject recreational barn is certainly far more attractive than the barn it has replaced.
23. When approaching along the B1010 from the south-east, the outbuilding is effectively hidden by the house. When approaching along the B1010 from the north-west, views of the outbuilding are largely filtered by mature roadside planting or take in a backdrop that contains the house, the rising ground to the north and the trees in the distance. I agree with the appellant that neither the outbuilding nor the development in general can be termed prominent or visually intrusive. The development does not fundamentally alter the character of Rudley Green as a dispersed hamlet, materially extend the pattern of built development given the pre-existing development here or bring about harm to

the landscape character of the locality. With further landscaping, which can be controlled by condition, the development would make a positive contribution to the landscape and to the character and appearance of this rural area.

24. I have taken into account all other matters raised including the appeal decisions relating to the erection of new dwellings at Treelawn Nursery (enclosure b of the appellant's statement) and the recent approved planning application ref. 17/00236/FUL, but find nothing to alter my conclusion on the main issue that the development does not materially harm the character and appearance of the area. I find no conflict with the relevant development plan policies or with their counterparts in the LDP.
25. In addition to a condition that permits the timber fence on the western boundary for a temporary period (see paragraph 18 above), I agree with the parties that a condition is required covering landscaping to protect the rural character of the area. I have used the Council's suggested condition but adapted it to: allow for a beech hedge in front of the screen wall; provide a specific number of trees on the western boundary; include the appellant's own tree planting suggestions and block plan; and provide for replacement planting in case of failures. I have also removed the requirement for the existing site boundary treatments to the north, east and south to be dismantled within one year of the grant of permission; this makes little sense as it is the western boundary fence that is a concern and this will be covered by the condition on the temporary time limit. Three years seems to me to be a more reasonable time limit for that fence; this will give the hedgerow a good chance to mature, after planting in the next available planting season, and will protect the privacy of the occupiers in the meantime.
26. To reflect the use to which the outbuilding is being put and because other uses may raise different planning considerations, it should not come as a surprise that I have attached a condition similar to the one suggested by the Council restricting the outbuilding's use to incidental purposes. Given the former commercial use of part of the site, a condition covering potential contamination is necessary for the safety of the residential occupiers; I prefer a simpler version to the ones recommended by the Council.
27. I conclude that the appeal on ground (a) and the deemed planning application should succeed. Conditional planning permission has been granted. As the notice will be quashed, ground (g) no longer falls to be considered.

### **Formal Decision**

28. It is directed that the enforcement notice be corrected and varied as follows:

- (a) In the first alleged breach of planning control at paragraph 3, by inserting the word "material" before the word "change" and by altering the word "curtilage" to the word "garden".
- (b) By deleting the text of the second alleged breach of planning control at paragraph 3 in its entirety and substituting therefor the following text: "The unauthorised erection of one detached outbuilding on the land, its approximate location marked by the southernmost of the two "X"s on the attached plan."

- (c) By deleting the first sentence in paragraph 4 in its entirety and substituting therefor the following sentence: "It appears to the Council that the breach of planning control relating to the material change of use of the land occurred within the last ten years and that the following three breaches of planning control concerning operational developments occurred within the last four years."
  - (d) In the second requirement at paragraph 5b by altering the word "outbuildings" to the word "outbuilding".
29. Subject to the above corrections and variations, the appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the Town and Country Planning Act 1990 as amended for the development already carried out, namely the material change of use of the land to use as residential garden, the erection of one detached outbuilding, the creation of a swimming pool and the erection of walls, gates, fences and other means of enclosure on the land at Rudley Oaks, Chelmsford Road, Purleigh, Essex CM3 6QP referred to in the notice, subject to the following four conditions:
- 1) The timber fencing along the whole western boundary of the site is hereby permitted for a temporary period only and it shall be dismantled and removed no later than three years from the date of this decision.
  - 2) The outbuilding hereby permitted shall only be used for purposes incidental to the enjoyment of the dwelling house at Rudley Oaks as such.
  - 3) Within the first available planting season (October to March inclusive) after the date of this decision the following planting shall be undertaken:
    - (i) New native hedges shall be planted adjacent to the western site boundary and immediately to the south of the walling hereby permitted as indicated on the block plan numbered JL1. The former hedge shall be made up of at least 80% hawthorn plants with the remaining hedge plants being a mixture of holly, hazel, blackthorn or elder. The latter hedge shall have the same content or comprise of beech hedge plants. All hedgerow plants shall be planted in double staggered rows, with rows 300 mm apart and plants spaced at 450 mm centres along each row. The plants shall be planted into ground previously cleared of all weed growth and mulched with a fabric/polythene sheet mulch and/or organic mulch. Shrub guards shall be used to protect the plants.
    - (ii) At least five established trees chosen from oak, ash and field maple shall be planted within the hedgerow required for the western site boundary.
    - (iii) Two established whitebeam trees and one established lime tree (all trees at a height of approximately 4 m) shall be planted in the places specified on drawing number JL1.

Any trees or plants which within a period of five years from the date of planting die, are removed or become seriously damaged or diseased shall be replaced within the next planting season with others of a similar size and species.

- 4) Within six months of the date of this decision, an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites – Code of Practice and the Environment Agency’s Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), together with, if any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development, shall have been submitted in writing to the local planning authority for approval. Where identified as being necessary in the approved assessment/report, the site shall be remediated in accordance with the approved measures and timescale and a verification report demonstrating the effectiveness of the remediation carried out shall be submitted in writing to the local planning authority for approval within 14 days of the report being completed.

*Andrew Dale*

INSPECTOR