
Appeal Decisions

Site visit made on 6 June 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 22 June 2017

Appeal A Ref: APP/Q4625/C/17/3168989

Appeal B Ref: APP/Q4625/C/17/3168990

The Stables, Grove Farm, Jacobean Lane, Knowle, Solihull B93 9LP

- 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 appeals are made by Miss Martine Matty (Appeal A) and Mr Raymond Matty (Appeal B) against an enforcement notice issued by Solihull Metropolitan Borough Council.
 - The enforcement notice was issued on 30 December 2016. The Council's reference is AP/2017/00008/ENF
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a wooden tree house/ raised platform.
 - The requirements of the notice are: (a) Take down, cut down or demolish the wooden tree house/ raised platform structure in the approximate position marked "X" on the plan.
 - The period for compliance with the requirements is two months from the date the notice takes effect.
 - Appeal A 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. Appeal B is proceeding on grounds (f) and (g). Since the prescribed fees have not been paid within the specified period in relation to Appeal B, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.
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Decision in Relation to Appeal A

1. 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.

Decision in Relation to Appeal B

2. The appeal is dismissed and the enforcement notice is upheld.

Procedural Matters

3. Two appellants were named on the appeal form, as set out in the banner heading above. Where more than one appellant is named it is common practice for the Planning Inspectorate to allocate a separate reference number to each appellant because, in effect, two appeals have been made. I have referred to them as Appeal A and Appeal B. The grounds of appeal were identical but the requisite fee in relation to the ground (a) appeal has only been paid in relation to Appeal A. Consequently, Appeal A shall proceed on grounds (a), (f) and (g) and Appeal B will proceed on grounds (f) and (g).
 4. The appellants have suggested that the enforcement notice is invalid on the basis that the alleged breach should have been described as a breach of
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condition, as opposed to operational development. The host dwelling is a converted barn and a condition was attached to the planning permission for the conversion to remove "permitted development rights" for the erection of domestic extensions, outbuildings and other alterations¹. However, the development that has been undertaken is not one that would have been "permitted" under the terms of The Town and Country Planning (General Permitted Development) Order (GPDO) 1995, as was in force at the time the permission was granted, or the GPDO 2015, as is currently in force. It is not clear, from the information before me, precisely when the structure was erected and hence, it is not clear whether the 1995 GPDO or 2015 GPDO was in force at that point in time.

5. However, in both versions of the GPDO, garden buildings within the curtilage of a listed building were excluded from the definition of "permitted development" and the maximum height of any building could be no greater than 2.5 metres if within 2 metres of the boundary of the curtilage of the property or 3 metres in the case of other buildings, except those with pitched roofs². It seems to me that the converted farm buildings have a close physical and historical association with Grove Farm and I concur with the Council that they fall within the curtilage of the listed building. Moreover, the structure amounts to a "building" in planning terms due to its permanence, means of construction and overall size. Its height is well in excess of what could have been constructed as permitted development. In other words, planning permission would have been required regardless of the condition that removed permitted development rights. Consequently, I am satisfied that the Council has correctly served the notice in that respect.
6. The appellant has also noted that the stated reasons for issuing the notice do not refer to any local planning policy with regard to the impact upon the listed building. The Council subsequently referred to Policy C16 in that regard within its statement. Regulation 4(b) of the Town and Country Planning (Enforcement Notices and Appeals) Regulations (2002) (the 2002 Regulations) states that an enforcement notice should specify all policies and proposals in the development plan that are relevant to the issue of the enforcement notice. The failure to refer to policy P16 would appear to be in breach of that regulation. However, in my view, that omission of itself does not render the enforcement notice invalid. The Council clearly referred to the impact on the listed building within the notice, the appellants were aware of the issue and have had the opportunity to comment on the Council's statement of case. As such, I am satisfied that no prejudice will arise as a result of my decision to determine the appeals, notwithstanding the failure to refer to policy P16 within the reasons for issuing the notice.

Appeal A on Ground (a)

7. From the information before me the main issues are:
 - i) Whether the development represents inappropriate in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - ii) The effect on the openness of the Green Belt

¹ Condition 5 of Planning Permission reference 2006/2239

² See Class E, Part 1 of Schedule 2 of the 1995 GPDO and the 2015 GPDO

- iii) The effect on the character and appearance of the area and on the setting of Grove Farmhouse; a grade II listed building;
- iv) The effect on the living conditions of neighbouring residents with particular regard to privacy; and
- v) If the development is inappropriate development, whether any harm to the Green Belt by way of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Whether the Structure Amounts to Inappropriate Development Within the Green Belt

8. Paragraph 87 of the National Planning Policy Framework (the Framework) identifies that 'inappropriate development' is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 89 states that new buildings should be regarded as inappropriate in the Green Belt, save for a limited number of exceptions. Paragraph 90 identifies other forms of development that are not inappropriate. Policy P17 of the Solihull Local Plan (2013) (the LP) is consistent with, and largely defers to, the Framework in terms of Green Belt policy. The policy notes that the Council will not permit inappropriate development in the Green Belt except in very special circumstances.
9. Thus, national and local planning policy afford stringent control of development within the Green Belt and the first stage in assessing a proposal is to determine whether it represents an 'inappropriate' form of development; in other words, one that does not fall within the list of exceptions identified at paragraphs 89 and 90 of the Framework. Any development falling outside those exceptions is 'inappropriate' and deemed harmful to the Green Belt by definition.
10. None of the exceptions listed at paragraph 90 are relevant to the current appeal. Paragraph 89 does not make any specific exception for domestic outbuildings or other garden structures, although the extension and alteration of a building, including a dwelling, is not considered as 'inappropriate' providing that any additions are not disproportionate to the size of the original building. The courts have held that some outbuildings may be considered as extensions on the basis that they are 'normal domestic adjuncts', for example, the construction of a garage in close proximity to a dwelling. However, I am not satisfied that the current structure should be considered on that basis. It is essentially an ornamental garden structure with a raised seating platform, clearly designed with some artistic input. In other words, it is not an extension to accommodation that would normally be found within the dwelling itself.
11. On the basis of the above, the development does not meet any of the exceptions listed at paragraphs 89 and 90 of the Framework and I must conclude that it would represent inappropriate development within the Green Belt.

The Effect on the Openness of the Green Belt

12. The Framework identifies that the fundamental aim of Green Belt is to prevent urban sprawl by keeping land permanently open. In essence, the concept of openness has a physical and visual dimension. In a physical sense, any

building on land that was previously free of development will have some impact on the openness of the Green Belt. That is the case in this instance. The dead stump of a tree has been used as the central column of the feature around which has been created a spiral staircase, leading to the raised platform which is enclosed by timber fencing around its perimeter. A framework of structural timbers supports that staircase and platform. The tallest part of the structure extends above the height of the first floor bedroom window within the gable end of the converted stable and, when compared to normal domestic outbuildings, it is a substantial and imposing structure.

13. In visual terms, the structure is not prominent within the wider area but is clearly visible on the approach to the building as one enters what would have been the farmyard around which the now converted agricultural buildings are situated. Due to its height, the building rises above the hedgerows that delineate surrounding gardens and the car port to the side of The Stables. Consequently, it encroaches into the skyline between the gable end of The Stables and the adjacent building, The Cottage.
14. In view of the above, I find that the development has reduced the openness of the Green Belt to a moderate degree, albeit that the visual impact is relatively localised due to the concealed position of the site, away from public vantage points.

The Effect on the Character and Appearance of the Area and the Setting of Grove Farmhouse

15. It is clear that the structure is well built and that considerable craftsmanship has gone into its construction. Whilst there is always a degree of subjectivity in consideration of design matters I find that the use of the tree as a central feature and the use of rusticated 'worked' timber for the framework provides an aesthetically pleasing result.
16. That said, whilst the structure may be an attractive object in itself, it does not necessarily follow that it will be appropriate in the context of the site which comprises a closely related group of buildings, including Grove Farmhouse and the now converted agricultural buildings surrounding the farmyard. The buildings around the farmyard have a close historical and physical relationship with the listed building and those buildings are integral to the setting of the farmhouse. Having viewed the site, it appears to me that careful consideration was given to the conversion of the buildings in order to retain their original character.
17. As noted, the Council imposed a condition to remove permitted development rights for further extensions and alterations, no doubt in an attempt to prevent the proliferation of further buildings and structures in an attempt to retain the original character of the agricultural complex. I noted that garages for various dwellings had been created in a barn to the rear of the site and the car port to the side of The Stables was discreetly planned. Few other outbuildings or structures were apparent. Therefore, whilst the complex is now entirely in residential use the agricultural origins can be readily discerned.
18. Great care is required to ensure that domestic structures within the gardens of the former agricultural buildings do not alter visual and functional relationship with the listed farmhouse. In other words, the farmhouse was the domestic hub of the complex and the outbuildings had an ancillary and functional

purpose. I am very mindful of the Council's concerns relating to the introduction of a feature of domestic character adjacent to the former stables. I have no doubt that a proliferation of domestic buildings across the site would have the potential to alter the visual relationship between the former agricultural buildings and the listed farmhouse.

19. Nonetheless, operational farms are not museum pieces and it is not uncommon in my experience to see a range of structures in and around farmyard complexes, including tree houses and other similar play equipment that may be constructed for children of the farm to play on in the absence of any formal play provision. In that respect, I do not find that the tree house structure is particularly unusual in its context situated, as it is, within a converted farmyard. In my view, it does not substantively alter the visual relationship between the converted buildings and the farmhouse and the functional distinction between the roles of the various buildings remains intact.
20. Taking that into account, in addition to the level of craftsmanship that is clearly evident in the structure itself, I am satisfied that the development has not caused harm to the character and appearance of the area in line with the aims of policy P15 of the LP which, amongst other things, requires development to conserve and enhance local character and distinctiveness. I also conclude that the development has preserved the setting of the listed building, having regard to the statutory requirement at section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

The Effect on Living Conditions of Neighbouring Residents

21. Due to its height and proximity to the boundary of the property, clear views are available from the raised platform into neighbouring gardens, including the gardens of The Farmhouse and The Cottage to the north-west and, to a lesser extent, The Barn to the south-east. I have no reason to suppose that the structure has been erected out of a desire to overlook neighbouring gardens and I note that views onto agricultural land to the rear are available. I also note that a number of residents within the complex have written in support of the proposal.
22. Nonetheless, ownership of properties may change in future and I am required to assess whether the proposal is acceptable in planning terms. Given its height, the structure has the appearance of a watch tower, sitting well above adjacent garden hedges. Benches have been incorporated on the raised platform and it is clearly intended to be used for sitting out, potentially for prolonged periods. The use of the platform could generate a significant loss of privacy for residents in adjacent gardens, particularly those to the north-west, as a result of direct overlooking. Even if those on the platform had no deliberate intention of looking into neighbouring gardens I find that the use of the structure would result in a strong perception of being overlooked as a result of its height, proximity and design.
23. Therefore, I conclude that the development has caused harm to the living conditions of neighbouring residents as a result of a loss of privacy, contrary to the aims of policy P14(i) of the LP and paragraph 17 of the Framework which identifies that planning should seek to secure a good standard of amenity for all existing and future occupiers of land and buildings.

If the development is inappropriate development, whether any harm to the Green Belt by way of inappropriateness and any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development

24. Paragraph 87 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 continues by stating that very special circumstances will not exist unless the harm to the Green Belt by way of inappropriateness, and any other harm, is clearly outweighed by other considerations.
25. The development in this case amounts to inappropriate development and the Framework requires that substantial weight is attached to the harm in that regard. It has also caused a moderate loss of openness within the Green Belt and caused harm to the living conditions of adjacent residents by way of overlooking. It is well designed and I am satisfied that it does not cause harm to the character and appearance of the area, or the setting of Grove Farmhouse. Nonetheless, good design is an expected part of the planning process and there is a statutory duty to give special regard to the need to preserve the setting of listed buildings. As such, the lack of harm in those respects does not amount to a positive material consideration in favour of the development.
26. I note that the dead tree stump could be left if the structure was removed, potentially resulting in an unattractive feature. That would be a matter of choice for the homeowner. However, the stump would be smaller and less prominent than the structure that has been erected around it and, even if left alone, it would not cause significant harm to the character of the area in my view. I attach little weight to any suggested benefit in that regard.
27. I have considered whether the harm I have identified could be overcome through the imposition of conditions, taking account of the appellant's suggestion of a revised scheme with a lower overall height, perhaps including the removal of the platform and the creation of a 'garden feature'. However, in the absence of any revised plans it is unclear what alternative is being suggested. Under ground (a), planning permission is sought for the breach of planning control described by the notice; in other words, the development as built. I may grant planning permission for the whole or any part of the matters stated in the enforcement notice³ but I have no power to grant planning permission for a different form of development.
28. It seems to me that a substantially reduced structure of a different design, with a platform at a different height or no platform at all, would amount to a different form of development and not one that would form part of the matters comprised in the alleged breach. Consideration of such a structure would fall outside the limited scope of my powers and a planning application would need to be submitted to the Council for consideration. In the absence of any further details I am not satisfied that the concerns could be overcome through a grant of planning permission for part of the development described in the notice or that planning conditions could be attached to mitigate the identified harm.

³ See section 177(1) of the Town and Country Planning Act 1990

29. Consequently, no other matters have been put forward that would outweigh the harm that I have identified and, as such, the very special circumstances needed to justify inappropriate development within the Green Belt do not exist.
30. For the reasons given I conclude that planning permission should not be granted for the development. Consequently, Appeal A on ground (a) must fail.

Appeals A & B on Ground (f)

31. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. The steps in this case require the removal of the structure in its entirety and it is clear that the Council is seeking to remedy the breach of planning control and not merely the injury to amenity that has been caused.
32. As set out above, no revised plans have been submitted with regard to the appellants' suggestion of an alternative design. It falls outside the scope of my powers to grant planning permission for a different form of development under the appeal on ground (a). Planning permission would be required to retain the structure in modified form. Equally, in the absence of any plans I am not satisfied that it would be appropriate to grant planning permission for part of the development. Thus, if the appellant were to reduce the height of the structure it would not overcome the breach of planning control. No steps other than complete removal have been put forward that would remedy the breach of control and, consequently, the appeal on ground (f) must fail.

Appeals A & B on Ground (g)

33. The enforcement notice specifies that the work should be carried out within two months of the date the notice comes into effect which, in this case, would be the date of my decision. The appellants suggest that the period be extended to three months within their initial appeal statement and four months within their response to the Council's statement. No particular justification has been put forward within the appeal documentation and, whilst I note an offer to provide further details if necessary, the onus is on an appellant to demonstrate his or her position within the timeframe for the submission of appeal documents. I can only determine the appeal on the basis of the information before me.
34. It seems to me that the process of taking down the structure would not be unduly complex or lengthy and that the framework could be dismantled by anyone with a reasonable degree of competency such that the work would not necessarily require a tradesperson to be engaged. In the interests of ensuring expediency in the enforcement of the planning system I find that two months is a reasonable period and the appeals on ground (g) fail.

Overall Conclusion

35. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed planning application in relation to Appeal A.

Chris Preston

INSPECTOR