
Appeal Decisions

Site visit made on 28 March 2017

by Mrs H M Higenbottam BA (Hons) MRTPI

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

Decision date: 23 June 2017

Appeal A: APP/B1550/C/16/3150839

14 Pevensey Gardens, Hullbridge, Hockley SS5 6AR

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr David Steff against an enforcement notice issued by Rochford District Council.
- The enforcement notice was issued on 29 April 2016.
- The breach of planning control as alleged in the notice is 'Without planning permission, the material change of use of an outbuilding (in the approximate position shown hatched on the attached plan and labelled A ("the Outbuilding")) within the curtilage of the Land from a games room ancillary to the original dwelling house to residential use resulting in the creation of a separate planning unit, through the conversion of the games room into a single storey two (2) bedroomed independent living space and subsequent extension thereto comprising the erection of three (3) further rooms also used for residential purposes, (shown cross hatched on the attached plan labelled B).'
- The requirements of the notice are:
 1. Cease the use of the outbuilding for residential purposes
 2. Remove the outbuilding, both the older part of the outbuilding hatched and labelled A and the added three rooms extension cross hatched and labelled B
 3. Remove, from the site, all resultant material, debris and waste arising from carrying out all the steps above.
- 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) (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal succeeds in part and the enforcement notice is upheld as corrected and varied in the terms set out below in the Decision.

Appeal B: APP/B1550/W/16/3150812

14 Pevensey Gardens, Hullbridge, Hockley SS5 6AR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr David Steff against the decision of Rochford District Council.
- The application Ref: 15/00892/FUL, dated 4 December 2015, was refused by notice dated 14 March 2016.
- The development proposed is 'Retention of existing outbuilding in the rear garden and use as residential annex'.

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. Following my site visit, the Planning Inspectorate wrote to the Council and the appellant to seek comments on whether there would be any prejudice caused if the notice were to be corrected so that the requirements of the notice only stipulate that the 'extension' (labelled B) was to be demolished. Neither party considered this would cause prejudice.
2. Clarification was also sought as to whether or not the Council's intention was to direct the notice at the erection of both parts of the building Labelled A and B and its use as a dwelling house. The Council confirmed that the building was constructed as two building operations. The Council clarified that its position is that outbuilding 'A' failed to comply with the limitations and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, this is not contained within the particulars of the breach and the Council does not seek to persuade the Inspector to widen the scope of the allegation.
3. In Appeal B the development is described as 'retention of'. This is not an act of development and I shall determine the appeal as a retrospective application for the outbuilding for use as a residential annex.
4. While there is reference to the appellant intending to submit a unilateral undertaking for consideration as part of the appeals, none has been submitted.

The notice

5. In relation to Appeal A it is clear from the allegation and the parties' submissions that what is being alleged is understood to be the material change of use of the outbuilding to a dwelling house and the erection of a three room extension to that building. In the interests of clarity I will therefore correct the notice to reflect this and determine Appeal A on the basis of this corrected allegation.
6. I will also direct that the requirements of the notice are varied in the light of the correction to the allegation and the clarification from the parties. The original requirements would have seen the whole of the outbuilding, including the kitchen and bathroom removed. The outbuilding is to remain as a structure which contains currently a living room, kitchen, bathroom and one bedroom. With the demolition of the extension, there would no longer be a need for the corridor linking through to the living room and thus there is a possibility that another room could be created within the outbuilding, as the Council refer to the outbuilding being a two bedroom unit prior to the extension being built. In the light of this the notice will be varied to require the use as a dwelling house to cease; the removal all domestic fixtures and fittings including kitchen cupboards, appliances and kitchen sink and bathroom which facilitate the use as a dwelling house, the demolition of the extension and the removal from the site of all material, debris and waste arising from those steps.
7. I consider that the corrections to the allegation and variations to the requirements would not result in either prejudice or injustice to either party.

Appeal A on ground (b)

8. In appealing on ground (b) the burden of proof is firmly on the appellant to demonstrate that the matters stated in the enforcement notice have not occurred.
9. The appeal building comprises a large room accommodating a living room at the front and a fitted kitchen at the rear. There is a bedroom and bathroom accessed from this room with a corridor leading to three further rooms within the extension. Two rooms in the extension are laid out as bedrooms and one has some domestic storage within it and a bare concrete floor. The appellant states that it is occupied by family members who help to care for the care needs of their mother, who occupies No 14 with her husband.
10. There is no definition of a dwelling or dwelling house in the Town and Country Planning Act 1990 as amended (the Act) but in *Gravesham BC v SSE and O'Brien*, [1983] JPL 306 it was accepted that the distinctive characteristic of a dwelling house was its ability to afford to those who used it the facilities required for day-to-day private domestic existence. The outbuilding and extension clearly have all the attributes of a dwelling house, having a kitchen, bathroom, bedrooms and a living room. Moreover, the building has clearly been extended and the evidence of the appellant acknowledges that.
11. I therefore find that, as a matter of fact, the extension has been erected and the outbuilding and extension are in use as a dwelling house. The appeal on ground (b) therefore fails.

Appeal A: Whether those matters alleged in the notice constitute a breach of planning control

12. There is no formal appeal on ground (c) before me. Nonetheless, the appellant has questioned whether or not the use of the property as a dwelling house is a breach of planning control. In such a case, the burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that the matters stated in the notice do not amount to a breach of planning control.
13. It has not been argued by the appellant that the erection of the extension did not amount to a breach of planning control. I will therefore only deal with the use and whether or not that element of the corrected allegation amounts to a breach of planning control. Section 55(1) of the Act defines the making of a material change of use of land as development and section 57(1) requires that planning permission is necessary for development subject to some specific exclusions.
14. The outbuilding and extension share the same access, parking and garden area as No 14. Electricity, water supply and sewage disposal are stated to be taken from the main house. However, such services do not, in my view, mean that the outbuilding and extension are ancillary to the main dwelling No 14 or reliant on it. If No 14 was unoccupied/inaccessible the appeal building's occupation would be unaffected, as it does not rely on any facility for day to day private domestic existence within the main dwelling to support its occupation as a dwelling house.
15. The outbuilding and the extension provide the facilities of a dwelling house i.e. a kitchen, bathroom, three bedrooms and living room. The scale and size of the residential unit is such that it results in a separate self-contained

dwelling house. I appreciate that the land around the outbuilding and extension is not separated from No 14 but the notice is directed against the outbuilding and extension and not the shared garden and access.

16. No express planning permission has been granted for the material change of use of the outbuilding and as such, it is in breach of planning control.
17. On the evidence provided the appellant has failed to demonstrate on the balance of probabilities, in a precise and unambiguous way, that a material change of use of the outbuilding to a dwelling house and the extension are not a breach of planning control. I therefore find that the matters alleged in the notice do constitute a breach of planning control.

Appeal A on ground (a) and Appeal B

Preliminary Matter

18. The ground (a) appeal relates to the material change of use of the outbuilding to a dwelling house, and its extension. However, Appeal B relates to a retrospective application for the outbuilding as a single building, as well as its use as a residential annex.

Main Issues

19. The appeal site lies within the Metropolitan Green Belt and as such the main issues for both appeals are:
 - Whether the development is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the development plan;
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the area; and,
 - Whether any harm by way of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether there exist very special circumstances that justify the development.

Planning Policy

20. The development plan includes the Rochford District Council Core Strategy (December 2011) (CS) and Development Management Plan (DMP) (December 2014). The most relevant policies are CS Policies GB1 and H1 and DMP Policy DM3.
21. CS Policy GB1 states that the Council will allocate the minimum amount of Green Belt land necessary to meet housing and employment needs in the District. It will direct development away from the Green Belt as far as practicable and sets out that a new building will be deemed inappropriate within the Green Belt unless it is for one of the stated purposes.
22. CS Policy H1 relates to the efficient use of land for housing and resists the intensification of smaller sites within residential areas. Although limited infilling will be considered acceptable where it relates well to the existing street pattern, density and character of the locality.

23. DMP Policy DM3 sets out criteria to be considered in relation to proposals for infilling and in particular it seeks to avoid a tandem relationship between dwellings.
24. The Framework states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances. Substantial weight is given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The construction of new buildings is inappropriate in the Green Belt unless it falls within one of the exceptions listed in paragraph 89. One of those exceptions is the extension or alteration of a building, provided that it does not result in disproportionate additions over and above the size of the original building. In relation to Appeal B, there is no reference within the Framework to outbuildings within a domestic curtilage as an exception. The Framework defines 'original building' as '*A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.*'¹
25. Paragraph 215 of the Framework explains that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework, the closer the policies in the plan to the policies in the Framework the greater the weight that may be given. The wording of CS Policies GB1 and H1, and DMP Policy DM3 are consistent with the Framework. As such I will give them full weight.

Reasons

Inappropriateness

Appeal A: ground (a) appeal

26. The appellant states that the outbuilding was extended to provide a further 40.8 square metres of floor space which represented a 64% increase above the original outbuilding. The resultant building i.e. the outbuilding and the extension is stated by the Council to be 13.1m by 8.6m with a height of some 3.4m. The Council state that the footprint of the outbuilding and extension taken together is 113 square metres and the host dwelling, No 14, has a footprint of 114 square metres.
27. For the purposes of the Framework, in Appeal A, the outbuilding is the original building and is of a permanent and substantial construction. Thus its reuse is not inappropriate development. However, the extension has resulted in a significant increase in floor space over the original size of the outbuilding. In my view, this amounts to a disproportionate addition to the original building which amounts to inappropriate development in the Green Belt.
28. The appellant refers to the use of the building as an annex. However, it is a substantial building which has multiple bedrooms, a fully fitted kitchen, living area and bathroom. I note that its services are via No 14 and the access and garden area are shared. I also note that the appellant refers to the care needs of the occupier of No 14; however this does not alter my findings that it is a dwelling house.

¹As set out at Annex 2: Glossary to the Framework.

29. As such, while the material change of use of the outbuilding is not inappropriate development, I find that the extension is inappropriate development in the Green Belt. The extension is therefore contrary to CS Policy GB1 and the Framework.

Appeal B

30. This appeal relates to the retrospective planning permission for the building and its use as an annex.
31. Paragraph 89 of the Framework sets out the limited purposes for which the erection of a building will not be considered inappropriate. This does not include the erection of a building for use as an annex or as a self contained dwelling. Certain other forms of development are not inappropriate providing they preserve the openness of the Green Belt and do not conflict with the purposes of including land within Green Belt (paragraph 90). Again this does not include the erection of a building for use as an annex. I therefore consider that the development constitutes inappropriate development in the Green Belt and would not accord with CS Policy GB1 or the Framework.

Openness – Appeal A ground (a) and Appeal B

32. The Framework states that one of the essential characteristics of Green Belts is their openness. The extension, in the case of Appeal A, has resulted in an area that was previously undeveloped being developed and thus it has reduced openness. In the case of Appeal B it is the whole building i.e. the outbuilding and extension together that has reduced the openness of the Green Belt and thus the reduction in openness resulting from the erection of this building is greater than the extension under consideration in Appeal A.
33. Openness is one of the Green Belt's most important attributes and loss of openness, however minor, adds to the harm to the Green Belt resulting from the development.

Character and Appearance

34. Pevensey Gardens is a cul-de-sac comprising predominantly detached bungalows. Some of these bungalows have rooms in the roof, and many have been extended and altered in the past. There are various detached buildings within the rear gardens of many of the dwellings within the road, but there was no substantiated evidence to demonstrate any were of a similar or larger size than the appeal structures.
35. In addition to the appeal development, No 14 has a large detached garage building, also in the rear garden but forward of the appeal building. However, there were no examples of a second tier of residential development within Pevensey Gardens, whether annexes or self-contained dwellings, brought to my attention either in evidence or at the site visit within the general locality. As such, second tier residential development is not part of the character or appearance of Pevensey Gardens.
36. In relation to Appeal A the extension is a significant addition of floor space and volume to the outbuilding. This has resulted in a building which is dominant, occupying a significant part of the rear garden of No 14 and it is not subservient in scale to the host dwelling. Furthermore, it results in a second

tier of self-contained residential accommodation which is contrary to the established character and appearance of the area.

37. While the appellant has referred to the existence of a number of large detached outbuildings in other rear gardens nearby, the history of those buildings is not before me. Although I saw a number of such structures, it did not appear to be the overwhelming feature of the area or one that should be repeated. Adhoc, generally subservient, incidental buildings within rear gardens are the predominant form of development with some clearly significant structures in some rear gardens.
38. Pedestrian access to the appeal building is via the driveway, through gates and across the rear garden. Vehicles, for the occupiers of the appeal development and No 14, are parked on the driveway adjacent to No 14 and there is also the garage structure. As a result of the location of the self-contained dwelling (Appeal A) or annex (Appeal B) there is inevitably comings and goings to the appeal development by those occupying it and their visitors across and through the rear garden area. This, of itself, is out of character with that of neighbouring properties.
39. I therefore find that in both Appeal A and Appeal B the development harms the character and appearance of the area. This is contrary to CS Policy H1 and DMP Policy DM3 as it fails to protect the character of the residential area by failing to respect the existing street pattern by introducing a tandem relationship between dwellings.

Other Considerations

40. The appellant refers to two appeal decisions in support of his contention that the building is ancillary and subservient to No 14. The Inspector in the first case, Far End Cottage (reference APP/B3438/A/12/2188171) considered that due to its overall size being small (one bedroom) and with a basic level of facilities that it was ancillary to the main dwelling. In granting the appeal at Far End Cottage the Inspector imposed a condition restricting the occupation of the unit for purposes ancillary to the residential use of the host dwelling.
41. The second appeal case referred to by the appellant was at Lower Lodge (reference APP/W1525/D/11/2159416). This related to a single storey side and rear extension to the host dwelling to provide a granny annex. No details of the layout or what facilities were to be provided are set out in the decision letter. However, the Inspector concluded that there was a lack of material harm to the existing property and the character of the surrounding countryside and the personal circumstances of the appellant were sufficient to outweigh the harm to a development plan policy. A completed Unilateral Undertaking required that the extension would only be occupied as residential accommodation ancillary to the existing dwelling.
42. In the current appeals, the unit of accommodation is at least three bedrooms, a fitted kitchen, living area and bathroom. As such, the current appeals can be differentiated on their own particular facts from the two appeal decisions referred to and, on their facts, I consider that the unit of accommodation provided is not ancillary to the host dwelling No 14 but a self contained dwelling house.

43. I appreciate that the appellant considers that in order to care for the occupier of No 14, it is necessary for relatives to live in close proximity and that the occupiers of the appeal development provide care for her. I note the letter from the occupier of No 14 doctor states that she often requires the help of her son as a result of her medical issues. However, very little information as to the specific needs of the occupier of No 14 has been provided or why such care could only be provided by someone occupying a three bedroom dwelling house such as the appeal development. The appellant considers No 14 could not be extended to accommodate the relatives needed to care for her. However, there is nothing to demonstrate why her needs cannot be accommodated in other ways. On the evidence available I can only give limited weight to the care needs of the occupier of No 14.
44. In relation to Appeal B I note that the outbuilding is to be retained and only the extension element is to be demolished if the notice in Appeal A is upheld. The dwellinghouse use would also be required to cease. Whilst I have found that the whole building in relation to Appeal B is inappropriate, it is clear that part of it will remain. This reduces the harm to openness in the Green Belt associated with Appeal B, but does not remove that harm in full.
45. In relation to Appeal A the appellant has put forward the following alternatives as lesser steps pursuant to his ground (f) appeal:
- i. Removal of the kitchen from the outbuilding, ensuring that the annex has to further rely on the host dwelling;
 - ii. Reason (2) only targets the extension to create three bedrooms not the building that existed prior. Thus, the later extension could be removed to reduce the mass and bulk of the building and to ensure that the proposal does not constitute inappropriate development in the Green Belt.
 - iii. As a combined requirement, without prejudice to the previous lesser steps and relying on what is targeted in section 3 of the notice, the requirements of the notice should be to require the removal of the three bedrooms that form the extension together with all domestic internal fixtures and fittings.

No alternative plans demonstrating any of these options have been provided as part of the evidence.

46. In relation to option (i), the removal of the kitchen would not, to my mind, overcome the harm to the character and appearance of the area of a second tier of residential development, albeit not self-contained. Nor would it address the harm to the Green Belt due to the inappropriate development and harm to openness. In relation to option (ii) there is no indication of the layout of the retained accommodation and whether or not it would retain a kitchen within it. However, it would overcome the harm to the Green Belt in terms of the inappropriate development and harm to openness. In relation to option (iii) the varied requirements are that the outbuilding would remain, the extension would be demolished and the domestic internal fixtures and fittings would be removed.

47. These three alternatives set out by the appellant may lessen the harm to the Green Belt through either inappropriateness or openness, but this does not amount to a positive benefit, just less harm.

The Planning Balance/Very Special Circumstances – Appeals A and B

48. I find there is substantial harm to the Green Belt by way of inappropriate development and a reduction in openness in both Appeal A and Appeal B. There is also harm to the character and appearance of the area. In addition, the personal circumstances of Mrs C Steff do not amount to very special circumstances that outweigh the identified harm.
49. In the case of Appeal A I have considered the options put forward by the appellant. However, whilst there would be less harm than the current situation, none of the options are such that the harm to the character and appearance of the area would be outweighed and none would lead to very special circumstances to justify allowing the development.
50. For the reasons given above Appeal A on ground (a) and Appeal B fail.

Appeal A on ground (f)

51. This ground of appeal is that the requirements of the notice are excessive and that lesser steps would overcome the objections. In appealing on ground (f) the appellant must give specific lesser steps which, in their view, would overcome the objections to the appeal development.
52. The purpose of the notice is accepted by the appellant as being to remedy the breach of planning control. I have dealt with three of the options put forward by the appellant under the ground (a) appeal. A further lesser step relating to alterations to the outbuilding to ensure it was fully compliant with Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 is not relevant in the light of the fact that the requirements of the notice, as varied, will not require the combined outbuilding and extension to be demolished. The varied requirements will only require the demolition of the extension.
53. Therefore, in the absence of cogent evidence to the contrary, I conclude that the requirement of the notice in Appeal A is not excessive. Accordingly, Appeal A on ground (f) fails.

Appeal A on ground (g)

54. This ground of appeal is that the time given to comply with the notice is too short. The Council has given, in relation to the notice in Appeal A, three months to comply. The appellant has requested a minimum period of 12 months.
55. The notice in Appeal A results in the engagement of Article 8 rights and Article 1 rights (1st Protocol) in that there will be interference with the occupiers' home and family life and with use of private property. Those rights are, however, qualified and it is for the decision maker to ensure interference is proportionate. In particular, this relates to the occupiers of the outbuilding and extension on the appeal site.
56. In my view, three months would be an inadequate period of time for the occupiers of the outbuilding and extension to look for alternative

accommodation and for the demolition of the extension to be undertaken. However, a period of 12 months would be akin to a temporary planning permission and it has not been demonstrated why such a long compliance period is necessary. I will therefore vary the compliance period to 7 months. This extended compliance period would also allow sufficient time for alternative care to be sourced for the occupier of No 14. In my view, this would strike the appropriate balance between the rights of the individuals and the protection of matters of acknowledged public interest.

57. For the reasons given I conclude that a reasonable period for compliance would be 7 months and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decisions

Appeal A

58. The appeal is allowed on ground (g), and it is directed that the enforcement notice be corrected by

- In paragraph 3 the deletion of the words “(in the approximate position shown hatched on the attached plan and labelled A (“the Outbuilding”)). Within the curtilage of the Land from the outbuilding ancillary to the original dwelling house to residential use resulting in the creation of a separate planning unit, through the conversion of the outbuilding into a single storey two (2) bedroomed independent living space and subsequent extension thereto comprising the erection of three (3) further rooms also used for residential purposes, (shown cross hatched on the attached plan labelled B).’
- The insertion in paragraph 3 after the word ‘outbuilding’ of the following ‘(shown hatched and labelled A on the attached plan) (the Outbuilding) to a dwelling house and the erection of a three room extension to the Outbuilding (shown cross hatched and labelled B on the attached plan) (the Extension).

And varied by;

- delete steps 1) and 2) in paragraph 5 and substitute with:

“1) Cease the use of the outbuilding (hatched and labelled A on the plan attached to the enforcement notice) as a dwellinghouse;

2) Remove from the outbuilding (labelled A on the plan attached to the enforcement notice) all domestic fixtures and fittings including kitchen cupboards, appliances and kitchen sink and bathroom fittings;

3) Demolish the extension (shown cross hatched and labelled B on the plan attached to the enforcement notice);” and
- renumber step 3) as step 4) in paragraph 5; and
- the deletion of three months and the substitution of seven months as the period for compliance.

Subject to these corrections and variations the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B

59. The appeal is dismissed.

Hilda Higenbottam

Inspector