
Appeal Decisions

Hearing held on 20 June 2017

Site visit made on 20 June 2017

by Alan Novitzky BArch(Hons) MA(RCA) PhD RIBA

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

Decision date: 07 July 2017

Appeal A Ref: APP/J1915/C/3156953

Rowneybury Cottage, Harlow Road, Sawbridgeworth, Herts CM21 0AJ

- 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 Malcolm Cook against an enforcement notice issued by East Hertfordshire District Council.
 - The enforcement notice, numbered E/16/0156/ENF, was issued on 28 July 2016.
 - The breach of planning control as alleged in the notice is the unauthorised erection of extensions to the dwelling and unauthorised outbuilding (pool house) within the curtilage of the dwelling.
 - The requirements of the notice are: Remove the unauthorised extensions as outlined red on the attached plan PD1 and the outbuilding (pool house). Remove all resultant material from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B Ref: APP/J1915/C/3156954

Rowneybury Cottage, Harlow Road, Sawbridgeworth, Herts CM21 0AJ

- 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 Mrs Janine Cook against an enforcement notice issued by East Hertfordshire District Council.
 - The enforcement notice, numbered E/16/0156/ENF, was issued on 28 July 2016.
 - The breach of planning control as alleged in the notice is the unauthorised erection of extensions to the dwelling and unauthorised outbuilding (pool house) within the curtilage of the dwelling.
 - The requirements of the notice are: Remove the unauthorised extensions as outlined red on the attached plan PD1 and the outbuilding (pool house). Remove all resultant material from the land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, 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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Appeal C Ref: APP/J1915/F/3156955

Rowneybury Cottage, Harlow Road, Sawbridgeworth, Herts CM21 0AJ

- The appeal is made under section 39 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Malcolm Cook against a listed building enforcement notice issued by East Hertfordshire District Council.

- The enforcement notice, numbered E/16/0156/ENF, was issued on 28 July 2016.
 - The contravention of listed building control alleged in the notice is, without listed building consent, the construction of unauthorised extensions to the side and rear of the dwelling.
 - The requirements of the notice are: Remove the unauthorised extensions as shown outlined in red on the attached plan PD1.
 - The period for compliance with the requirements is 6 months.
 - The appeal is made on the grounds set out in section 39(1)(e) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.
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Summary of Decisions

Appeal A:

1. The appeal succeeds in part and permission for that part is granted as set out in the Formal Decision below. Otherwise the appeal fails and the enforcement notice is upheld as varied.

Appeal B:

2. The appeal fails and the enforcement notice is upheld as varied.

Appeal C:

3. The appeal succeeds in part and listed building consent for that part is granted as set out in the Formal Decision below. Otherwise the appeal fails and the listed building enforcement notice is upheld as varied.

APPEAL A, ground (a) – *that planning permission should be granted for what is alleged*

APPEAL C, ground (e) – *that listed building consent ought to be granted for the works*

Main Issue

- The effect of the unauthorised works on the special interest of the heritage asset

Reasons

4. Rowneybury Cottage is a Grade II listed, late 16th or early 17th century, timber framed building with back to back hearths and a single stack aligned with the entrance. Its basic form comprises three rooms in line, on each of two storeys, although the room to the north east may originally have been double height. Brunskill describes the characteristic form as a three-unit baffle-entry house.¹
5. Before the unauthorised alterations, a two storey rear extension, broadly occupying the central of the three bays, had been added, as had a porch and detached garage, apparently in accordance with a planning permission granted in 1976. In this state, the characteristic three bay form remained clear.
6. Historically, the Cottage may have been part of a farm grouping on the Pishiobury estate, possibly occupied by a bailiff. Now, little of the historic

¹ R W Brunskill, *Traditional Buildings of Britain*, Victor Gollancz, 1993, pp.52 and 53; *Houses and Cottages of Britain*, Victor Gollancz, 2000, p.66

- setting remains and the plot is enclosed with tall fencing and hedging, forming an effective visual barrier.
7. The special interest and significance of the listed building lies mainly in its evidential value and its historic architectural character, particularly in its form, construction, materials and its spacial relationships. The appellant commissioned a thorough heritage analysis of the building. From this, and from the site visit, I conclude that relatively little of the original fabric has been lost as a result of the unauthorised works. However, the works have eroded the historic character and intelligibility of the Cottage, and hence its significance, either by obscuring the form and fabric or altering the historic layout of the building.
 8. In particular, the construction of the additional two storey bay against the south west gable flank wall, has totally obscured the three bay form, turning it into an uncharacteristic four bay building. Moreover, this, together with the single storey addition filling the re-entrant space to the south, between the authorised rear extension and the rear of the additional two storey bay, has fundamentally altered the historic layout and its spacial relationships at ground floor level.
 9. The close studding to the south west flank wall has been exposed and the surrounding material cleared away, so that visual connectivity now exists between the original building and the extension at ground floor level, but no direct circulation is possible between the two internal spaces. Instead, circulation proceeds from an existing ground floor opening to the north of the authorised rear extension, through this rear extension, into the new single storey addition, and thence into the new extension. The result is an open, flowing character of space at odds with the historic nature of the listed building.
 10. Access to the upper level of the two storey flank extension is achieved exclusively via an external timber staircase. This leads to an open platform onto which French windows from the upper level of the two storey extension open. Although this arrangement minimises the loss of historic fabric, it is alien to the character of the heritage asset.
 11. There is also an unauthorised two storey intervention to the rear of the building in the space to the north east of the earlier two storey extension, which it attempts to echo in form and material. It is built on the footprint of a previous single storey lean-to extension. No details of the lean-to have been supplied but it was probably built after the authorised two storey extension. Access to the ground floor of this intervention is via the existing opening noted, from which circulation proceeds to the other elements to the rear and flank. A window in the original fabric has been extended to floor level to provide access at first floor level.
 12. Despite following its general form, the two storey intervention differs from the authorised extension in a number of ways, including the roof pitch and the full width folding glazed screen opening onto the garden at ground floor level. However, it does not compromise the intelligibility of the historic three bay form of the listed building and is relatively unobtrusive.
 13. In addition, an open timber framework has been built onto the closed front porch authorised under the 1976 permission, extending the area covered by

the roof of the porch. The framework is a generally sympathetic extrapolation of the late 20th century porch.

14. The pool house, also the subject of enforcement action, is to the rear of the listed building, the other side of the outdoor swimming pool, against the south east boundary of the plot. I am told that it replaced an earlier building in a poor state of repair, but there is no evidence to confirm this.
15. The setting of the listed building comprises the plot and its relationship to the road frontage, which is slight at present because of the boundary treatment. The setting contributes to the significance of the listed building to the extent that it avoids visual cluttering detrimental to appreciation of the building, and could be more extensive in future should the boundary treatment change.
16. The pool house is a long, narrow, low building, which gives the impression of a irregular, open loggia. In my view, with its materials of timber, brick and tile, sympathetic to the aesthetic of the listed building, it is not visually assertive and does not intrude harmfully into the setting of the listed building.
17. I find the unauthorised works as a whole have caused considerable harm to the special interest of the heritage asset. In particular, the two storey bay set against the south west gable flank wall gives rise to a great deal of harm. However, in the terms set out in paragraph 134 of the National planning Policy Framework (NPPF), I find overall that the works have caused less than substantial harm to the significance of the heritage asset.
18. There are no public benefits to the unauthorised works as a whole. The optimum viable use of the asset, residential occupation, was perfectly possible and clearly took place without them.
19. I give considerable importance and weight to duties under s66 and s16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.
20. As a whole, the unauthorised works do not preserve the listed building. Moreover, they conflict with policies ENV1 (Design and Environmental Quality), ENV5 (Extensions to Dwellings), and ENV6 (Extensions to Dwellings – Criteria) of the development plan, the East Herts Local Plan Second Review April 2007 (LP). Similar conflicts occur in relation to the emerging District Plan. It has only just completed consultation stage, but its policies are consistent with those of the development plan and the NPPF and therefore carry some weight.
21. The effect of the unauthorised works as a whole on the special interest of the heritage asset is unacceptable.

APPEAL A, ground (a) – *that planning permission should be granted for what is alleged*

Main Issue

- Whether the development comprises inappropriate development in the Green Belt and, if so, would the harm and any other harm be clearly outweighed by other considerations sufficient to amount to the very special circumstances required to justify the development.

Reasons

22. The site lies within the Metropolitan Green Belt. LP Policy GBC1 defines the categories of development which are not inappropriate. These are largely consistent with the categories set out in the NPPF at paragraph 89. However, whilst LP GBC1(d) refers to limited extensions or alterations to existing dwellings in accordance with Policy ENV5, the NPPF requires them to not result in disproportionate additions over and above the size of the original building.
23. On agreed figures, excluding the pool house, the unauthorised additions together with the earlier two storey rear extension amount to some 115% increase in floorspace over and above the size of the original building. If one were to include the outbuildings - that is, the pool house and the earlier garage - the proportionate increase would be much larger.
24. The plot is well enclosed at present and, if seen at all, its buildings are only glimpsed briefly from surrounding public and Green Belt areas. However, this may not be so in future and, even if effective enclosure were to persist, visual impact is not the only aspect to be considered in assessing the proportionality of an extension.
25. I have had regard to the Shenleybury appeal.² I note the standard of design and construction in the present case, and that the rear garden remains adequate for amenity purposes. However, the additions increase the built up nature of the area, and harm its character as part of the Green Belt.
26. I find that the additions are considerable in relation to the original size of the building. The proportionate increase is in conflict with the NPPF's fundamental aim, set out in paragraph 79, of restricting urban sprawl - in this case associated with the Harlow Road - by keeping land permanently open. Even without the outbuildings, the additions are disproportionate, in my view. The unauthorised extensions therefore comprise inappropriate development in the Green Belt.
27. Turning to considerations which might outweigh harm, amounting to very special circumstances, the appellant refers to the relevance of multiple factors in assessing the effect on the openness of the Green Belt. The argument regarding visual impact is repeated.
28. The appellant also distinguishes the built up part of the Green Belt along the Harlow Road from the open, more undeveloped land to the east. However, the further development of this margin, which is an integral part of the Green Belt, lessens its effectiveness in restricting sprawl and its ability to safeguard the countryside from encroachment. This is so, despite the present physical enclosure of the plot and that of the neighbouring Rowneybury Bungalow.
29. The appellant also refers to the consistency of decision making by the Council with regard to development at The Bungalow and Rowneybury House. However, each case must be judged on its own merits and I have insufficient knowledge of the sites or the circumstances of the approvals to judge whether I would have agreed with the Council's decisions.
30. The appellant also argues that it is not in the public interest to require demolition, given the degree of harm and the disruption to the appellant's

² APP/N1920/D/16/3153050

family and neighbours. I will weigh this factor. However, the harm and disruption would be no more than that caused by the unauthorised construction.

31. It is also noted that there is no clear requirement regarding reinstatement after removal of the unauthorised extensions. However, it is implicit that the listed building should be restored to its state prior to the unauthorised works and, should the building be left in other than its authorised state, it would be open to further enforcement action.
32. The appellant's ecology report tells us that Rowneybury Cottage has a high potential to support roosting bats, so that the requirements of the notices could be harmful. This consideration would have applied equally to the construction of the unauthorised works, and it may be that unlawful disturbance of bat roosts took place whilst the works were under way. In any event, the advice of the County Ecologist should be sought prior to operations taking place.
33. I note there is little or no third party opposition to the works carried out. However, this does not mitigate the harm identified. I have considered the implications of the European Convention on Human Rights and consider that any infringement would be justified by the public good arising.
34. Overall, having considered the appeal decisions submitted,³ I find the development comprises inappropriate development in the Green Belt and, the harm arising to the Green Belt and to the special interest of the listed building is not clearly outweighed by other considerations sufficient to amount to the very special circumstances required to justify the development.

APPEAL A, ground (f) – *that the steps required are excessive and lesser steps would overcome the objections*

35. S177(1)(a) of the Town and Country Planning Act 1990 notes that on determination of an appeal, the Secretary of State may grant planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control in relation to the whole or any part of those matters. Since an appeal has been made on ground (a), planning permission may be granted in relation to part of those matters.
36. With regard to the effect of the unauthorised works on the special interest of the heritage asset, the two storey bay, constructed against the south west gable flank wall, and the single storey addition, filling the re-entrant space to the south, are the most harmful elements, for the reasons noted.
37. The two storey intervention to the rear, adjoining the earlier two storey extension, is less harmful since it does not compromise the character or intelligibility of the historic three bay form of the listed building. Nor does it fundamentally alter the historic layout and its spacial relationships at ground floor level. This is in part because it is built on the footprint of the single storey lean-to extension, which would probably have been based on similar circulation principles.
38. In my view the addition to the late 20th century porch, whilst altering its appearance, is not harmful to the special interest of the listed building.

³ Document 3 and 4

Moreover, as noted in paragraph 16 above, the pool house does not intrude harmfully into the listed building's setting.

39. Overall, I find the two storey intervention to the rear, the extended porch, and the pool house acceptable with regard to their effect on the special interest of the heritage asset. With these elements of the unauthorised works alone remaining, the listed building and its setting would be preserved.
40. Turning to Green Belt matters, with the exclusion of the two storey flanking bay and the single storey rear structure, the additional floor area would be reduced from 115% to some 62% of the floor area of the original building. This is a significant reduction which, in my view, would no longer result in a disproportionate addition over and above the size of the original building. The remaining works would, therefore, not be inappropriate in the Green Belt.
41. Moreover, the visual impact on the Green Belt would be reduced with the remaining additions tucked into the rear of the building. Overall, the effect on the character and appearance of the Green Belt, and the area in general, would be acceptable. Under these circumstances, the works would accord with the development plan and NPPF policy overall. I find that the steps required are excessive and the lesser steps outlined above would overcome the objections.

Conclusions

42. With regard to Appeal C, section 41(6)(a) of the Planning (Listed Buildings and Conservation Areas) Act notes that the Secretary of State may grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works. Both the enforcement notices and the listed building enforcement notice will be upheld, but planning permission and listed building consent will be granted for the elements found acceptable, subject to a condition discussed at the hearing, and will override the notices in respect of these elements.
43. The condition is necessary for the purposes of protecting the special interest of the listed building during the demolition and restitution works. The time for compliance set out in both enforcement notices must be varied, to allow the process set out in the condition to take place.
44. The open timber staircase and platform which gives access to the upper level of the two storey bay is not outlined in red on plan PD1 or otherwise referred to within the enforcement notices. No action is therefore required with regard to this element, although it is difficult to see what purpose it would serve with the two storey bay removed.
45. Appeal B is dismissed because, without a ground (a) component, planning permission cannot be granted for the acceptable elements. However, this does not affect the planning permission granted under Appeal A.

FORMAL DECISIONS

Appeal A:

46. It is directed that the enforcement notice be varied by altering the time for compliance from 6 months to 12 months and be upheld as varied. The appeal is allowed insofar as it relates to specified parts of the development and planning permission is granted on the application deemed to have been made

under section 177(5) of the 1990 Act as amended, for the two storey extension replacing the single storey lean-to shown coloured blue on Plan PD1 attached to the enforcement notice, the extension to the porch shown coloured yellow-green on Plan PD1, and the pool house shown uncoloured on Plan PD1, subject to the following condition:

- 1) Within three calendar months of the date of issue of this planning permission, a method statement and schedule of demolition and restitution works, taking into account the advice of the County Ecologist with regard to bat roosts, shall be submitted to the Local Planning Authority, which the Local Planning Authority shall approve in writing within three calendar months of receipt. The works shall then be carried out within a further six months in accordance with the approved details.
47. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to the remainder of the development outlined in red on Plan PD1, and planning permission is refused in respect of the two storey extension coloured green on Plan PD1, and the single storey extension coloured orange on Plan PD1, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B:

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

Appeal C:

49. It is directed that the listed building enforcement notice be varied by altering the time for compliance from 6 months to 12 months and be upheld as varied. The appeal is allowed insofar as it relates to specified parts of the works and listed building consent is granted for the retention of the two storey extension replacing the single storey lean-to shown coloured blue on Plan PD1 attached to the enforcement notice, and the extension to the porch shown coloured yellow-green on Plan PD1, at Rowneybury Cottage, Harlow Road, Sawbridgeworth, Herts CM21 0AJ subject to the following condition:
- 1) Within three calendar months of the date of issue of this listed building consent, a method statement and schedule of demolition and restitution works, taking into account the advice of the County Ecologist with regard to bat roosts, shall be submitted to the Local Planning Authority, which the Local Planning Authority shall approve in writing within three calendar months of receipt. The works shall then be carried out within a further six months in accordance with the approved details.
50. The appeal is dismissed and the listed building enforcement notice is upheld as varied, insofar as it relates to the two storey extension coloured green on Plan PD1, and the single storey extension coloured orange on Plan PD1, and listed building consent is refused for the retention of the works carried out in contravention of section 9 of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended.

Alan Novitzky

Inspector

APPEARANCES

FOR THE APPELLANT:

Matt Collerson	Planning Consultant – CC Town Planning
Nathan Blick	Heritage Consultant – Cotswold Archaeology
Gary Campion	Heritage Consultant – Cotswold Archaeology

FOR THE LOCAL PLANNING AUTHORITY:

Emma Berrel	Officer with the Council
Ciaran Mac Cullagh	Officer with the Council
Paul Dean	Enforcement Officer with the Council

DOCUMENTS

- 1 Plan PD1, referred to in Enforcement Notice
- 2 Additional copy of Cotswold Archaeology's report on Rowneybury Cottage
- 3 Appeal decision APP/J1915/D/17/3166395
- 4 Appeal decision APP/J3720/C/16/3159691