



Appeal Decision

Site visit made on 9 August 2017

by K R Saward Solicitor

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

Decision date: 15 August 2017

Appeal Ref: APP/M1595/C/16/3158977

Land known as Malgraves Meadow, Lower Dunton Road, Horndon On the Hill, Essex SS17 8QD

- 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 Adam Cheale against an enforcement notice issued by Thurrock Borough Council.
- The enforcement notice was issued on 2 September 2016.
- The breach of planning control as alleged in the notice is without planning permission the unauthorised construction on the Land of a biomass building containing a biomass boiler with external flue and associated wood storage as shown hatched blue within the Land on the plan attached to the notice.
- The requirements of the notice are:-
 - (i) Remove the unauthorised building containing a biomass boiler with external flue and associated wood storage as shown on the plan attached to the notice.
 - (ii) Remove all resultant materials arising from step (i) above from the Land and restore the Land to a clear clean and open state.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f)&(g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.

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

Procedural Matters

1. Whilst not raised by the appellant, paragraph 5(ii) the notice requires the land to be left in a 'clear clean and open state'. Use of the word 'clean' is vague and entirely subjective. As such, it requires deletion. This can be done without injustice to either party.
2. A retrospective planning application for the development was dismissed on appeal on 9 December 2016¹. Whilst that decision is a consideration in this appeal, I shall consider the issues afresh on the information before me.

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

Main Issues

3. The appellant has identified the effect on the landscape character of the area

¹ Appeal Ref: APP/M1595/W/16/3154660

as a main issue between the parties. Whilst this was a factor raised in the previous appeal, it is not given as a reason for issuing the notice. This followed the finding of the previous Inspector that there was no material harm to the character and appearance of the area. Having seen the site, I have no reason to come to a contrary view and to take issue on the point.

4. Therefore, the main issues are:-

- whether the building is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- the effect of the development on the openness of the Green Belt and the purposes of including land in it; and
- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

5. The appeal relates to a timber building with metal roof which houses a biomass boiler. A central steel flue projects about 2m above the roof slope which is approximately 3.5m in height at the front reducing to around 3m in height at the rear. Part of the structure has an open frontage providing an area for the storage of logs. The building is located within an agricultural landholding comprising approximately 45 hectares in the Metropolitan Green Belt.

Whether the barn is inappropriate development

6. The Framework sets out national policy regarding development in the Green Belt in Paragraphs 79 and 87–90 thereof. Paragraph 89 establishes that new buildings within the Green Belt are inappropriate unless they fall within a prescribed exception.
7. Although the production of energy by biomass is a form of renewable energy as defined within the glossary at Annex 2 of the Framework, it does not of itself fall within an exception to development within the Green Belt. Indeed, Paragraph 91 of the Framework states that when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development.
8. The third bullet point of Paragraph 89 provides an exception for 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. This exception is echoed in Policy PMD6 of the Council's Core Strategy (CS)² which was adopted in 2015. As the policy is consistent with the Framework it has full weight. Policy PMD6 goes on to say that the extension of the curtilage of a residential property which involves incursion into the Green Belt will only be permitted where it can be demonstrated that very special circumstances apply.
9. The appellant states that the building houses the biomass boiler and associated log fuel to provide heating and hot water to the farmhouse only. It has no other purpose or function. The boiler is detached from the house due to

² Core Strategy and Policies for Management of Development, 2015

constraints inside the house and the need to allow adequate air circulation around the flue. Therefore, it is for safety reasons that the boiler is positioned away from the dwelling.

10. The High Court in *Sevenoaks District Council VSSE and Dawe [1997] EWHC Admin 1012* held that an Inspector was fully entitled to hold that a detached garage was part of the "dwelling" in the sense that it was a normal domestic adjunct. A car shelter extension to that garage was capable of being an extension of an existing dwelling. The judgment is authority that the mere fact that the development is physically separated from the main house does not prevent it from being part of the dwelling. It is a matter of fact and degree in every case.
11. I accept that the structure forms an important domestic adjunct insofar as it houses a biomass boiler and associated wood storage to service the house. However, I agree with the previous Inspector that at approximately 20m away, it is not sited close to the main dwelling. Whilst the building appears subordinate in size, and is largely seen in the context of the farmhouse because of the wider isolated surroundings, the degree of separation exceeds what can reasonably be regarded as an extension to the dwelling.
12. Furthermore, unlike the *Sevenoaks* case this is not an extension to an existing structure, but a new building entirely set some way from the main dwelling. The building is outside the residential curtilage which is demarcated by wire fencing. It is located within an agricultural field forming part of the surrounding farm-holding. These factors reinforce my view that the building cannot properly be regarded as an extension of the dwelling.
13. Inside the building there was none of the large household appliances or boxed live birds observed by the previous Inspector. Instead there were numerous large crates stacked up and filled with wood which was being dried out. The removal of the previous contents and replacement with wood storage still does not make this an extension of the dwelling.
14. As no exception within the Framework applies, the building is inappropriate development in the Green Belt and conflicts with CS Policy PMD6 as aforesaid.

Openness of the Green Belt and the purpose of including land in it

15. Paragraph 79 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. There is no definition of "openness" in the Framework, but case law has established that openness of the Green Belt has a spatial as well as a visual aspect and the absence of visual intrusion does not in itself mean that there is no impact on the openness of the Green Belt.
16. Due to dense hedgerow lining this side of Lower Dunton Road, the building could not be seen from the highway at the time of my visit. It is partially visible beyond the top of the long driveway once the high wooden entrance gates are opened. Apart from the dwelling, the surrounding area is fields stretching into the distance and only the occasional group of buildings are apparent. Many of the fields are enclosed by hedgerow and trees, but this does not diminish the sense of openness. Indeed, the field in which the building is located contributes towards the openness of the landscape.

17. Given that the building is at a relatively elevated level it will be visible from far afield notwithstanding the presence of hedgerows and trees. It is not hidden by the topography. This is not a particularly small structure and its tall metal flue is very pronounced. Being set away from the dwelling in an agricultural field, the building palpably extends development further into the countryside.
18. The significant effect on openness would not be mitigated to any appreciable degree by staining the wood a darker colour and providing additional planting as per the landscaping scheme provided. Development would still encroach into the countryside regardless of its level of visibility.
19. I find that the development does not preserve openness contrary to the aim of Paragraph 79 of the Framework. Moreover, it also conflicts with one of the purposes of including land within Green Belts identified in paragraph 80 of the Framework, namely, to assist in safeguarding the countryside from encroachment. As such, the building fails to accord with CS Policy PMD6 which aims to maintain, protect and enhance the open character of the Green Belt.

Other considerations

20. The Framework, at Paragraph 87 advises that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 requires decision makers to ensure that substantial weight is given to any harm to the Green Belt. Other considerations in favour of the development must clearly outweigh the harm.
21. I acknowledge that domestic biomass boilers are larger than conventional domestic boilers and that space is required for storage of quantities of fuel/logs. Nevertheless, the building does appear to be excessively large for its stated purpose when the biomass boiler occupies part only of the enclosed area and a separate area is provided for storing logs. Whilst it may be convenient to use the remaining enclosed space for drying logs, it is unclear why such a large amount of additional space is required. This limits the weight I can attach to the functional need for this size of building.
22. The appellant says that the logs are locally sourced, but I can attribute this little weight in the absence of further particulars.
23. It is contended that the current location is less harmful than a building being sited within the residential curtilage where there is no landscaping and it would be at higher ground level. Having made a substantial financial investment, the appellant says he will move the biomass to be within the residential curtilage under permitted development rights if this appeal fails. It is plausible that he would do so. Planning permission is deemed to be granted pursuant to Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO) for certain buildings required for a purpose incidental to the enjoyment of the dwellinghouse as such. Class E is, however, subject to conditions and limitations.
24. A photograph of the type of timber structure that could be built has been supplied. Even if a replacement curtilage building were constructed under Class E then it would be restricted in size and position. Another location might be slightly more exposed due to the topography, but that does not provide justification to retain the building in its present position where it does give rise to harm. Moreover, I am not satisfied that the fallback position would

- comparatively be much worse than the existing building given the constraints of Class E and how a building within the curtilage would be likely to appear less removed from the dwelling. The fallback position carries limited weight.
25. The existing building is outside the residential curtilage. Therefore, it could not be rebuilt as permitted development nor could modifications be made to bring it within the parameters of development that would be allowed under Class E.
26. It is contended that if permitted development rights were exercised, the cumulative impact of ancillary buildings within the domestic curtilage could potentially have greater impact on the Green Belt than this single structure. It is suggested that situation could be avoided by removing such permitted development rights by condition upon the grant of permission for the existing building. There is nothing before me to indicate that the scenario described is likely to occur. In any event, the national Planning Practice Guidance advises that conditions to restrict the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. In my view, it would not be reasonable or appropriate to grant permission for an unsatisfactory development sited outside the residential curtilage in order to control development within it. It is an argument that carries little weight.
27. The appellant suggests that the building could be modified by removal of the flue and the installation of doors to the open fronted section for use as an animal feed shelter associated with the farm. That is not what has been applied for. The deemed planning application is derived from the terms of the allegation and not some other form of development that could be created with adaptations. The deemed planning application is for the construction of a biomass building. I have power (under section 177(1)) to grant permission for the whole or part of the development applied for. Potentially that could include a biomass building without the flue, but to do so would serve no purpose when the flue is an integral part of the use.
28. The appellant has also produced an image identifying an alternative location for a building which could be used to house the biomass boiler and for household storage. Not only does that encompass a different use from the application before me, but it is also beyond the scope of the ground (a) appeal which cannot be used to consider another location or other uses.
29. Both of these suggestions for alternative uses and locations carry very little weight in considering the case for retention of the existing building.
30. Sustainable development is seen in the Framework as a golden thread running through decision taking. Paragraph 7 identifies three dimensions to sustainable development; economic, social and environmental.
31. In economic terms the appellant suggests that the lower fuel costs and Government subsidy help the farm to remain viable. No details have been supplied to quantify the benefit and how it would compare to other available heating sources. Thus, I can attribute this limited weight only. The social role is concerned with building strong, vibrant and healthy communities. There is nothing to indicate that this role is fulfilled.
32. The environmental role encompasses minimising pollution and mitigating and adapting to climate change including moving to a low carbon economy. It is

also a core planning principle in Paragraph 17 of the Framework to encourage the use of renewable resources, for example, by the development of renewable energy, the importance of which is made clear in Paragraphs 93-98. As a renewable energy source, the biomass is to be commended in terms of its compliance with the aims of national policy to reduce the carbon footprint. This is in favour of the development, but the benefits in delivering heat and hot water to a single dwelling will be limited. Weighed against those environmental benefits is the environmental harm arising from its incursion into the Green Belt. Therefore, the environmental role is only partially fulfilled. When the three strands of sustainable development are considered collectively, the building does not perform particularly well.

Green Belt Balance

33. The building enforced against is inappropriate development in the Green Belt which is harmful by definition and it has a significant effect on openness. According to the Framework substantial weight must be given to any harm to the Green Belt.
34. On the other hand, there are environmental benefits from the use of the building for renewable energy purposes and possible economic benefits to assist the appellant in offsetting costs to the farm. When considering these and the other factors advanced in favour of the case as a whole, I have reached the view that the other considerations do not clearly outweigh the totality of harm identified. Consequently, the very special circumstances necessary to justify the development do not exist and the development is contrary to the development plan.

Overall conclusion on ground (a), the deemed planning application & Appeal A

35. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeal on ground (a) fails and the deemed planning application should be dismissed.

The appeal on ground (f)

36. The ground of appeal is that the steps required by the notice to be taken are excessive.
37. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. These are either to remedy the breach of planning control which has occurred (section 173(4)(a)), or to remedy any injury to amenity that has been caused by the breach (section 173(4)(b)).
38. Whilst the Council has not identified which of these purposes it seeks to achieve, requiring removal of the building is consistent with remedy of the breach which can only be achieved if it is removed in its entirety.
39. It is contended that with minor modification the building would fall within Part 6 of Schedule 2 of the GPDO as permitted development providing storage of animal feed needed for the appellant's farming business. Permitted development rights cannot be gained retrospectively. Unlawful development cannot be modified so as to become permitted development because the time for assessing if it is permitted development is the time it was built. Furthermore, Part 6 is subject to the prior approval of the local planning

authority, a procedure that will not have been followed for the amended scheme.

40. Given that the notice does no more than seek to achieve the purposes of section 173(4)(a), it is not excessive.

41. The appeal on ground (f) fails.

The appeal on ground (g)

42. The ground of appeal is that the time given to comply with the requirements of the notice falls short of what should reasonably be allowed. The appellant seeks 18 months rather than the 3 months afforded by the notice.

43. The notice will take effect on the date of this decision allowing opportunity for works to be completed before the onset of winter. However, the appellant was entitled to anticipate success on ground (a) and I appreciate that 3 months is not long in which to secure quotes, find funding, arrange the works and have the building removed, albeit a light structure which should be disassembled easily.

44. The welfare of the appellant's young children is clearly paramount, but 18 months is far too long and is not justified.

45. A period of 6 months would be more appropriate. It strikes the right balance between affording sufficient time for works to be undertaken with all that entails and ensuring the harm arising is addressed in a timely manner so that the response is a proportionate one.

46. To that extent, the ground (g) appeal succeeds.

Formal Decision

47. It is directed that the enforcement notice be corrected by deleting the word "clean" from paragraph 5(ii) and varied by substituting 6 months as the period for compliance.

48. Subject to that correction and variation, 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.

KR Seward

INSPECTOR