The Planning Inspectorate

Appeal Decision

Site Inspection on 13 December 2018

by Graham Self MA MSc FRTPI

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

Decision date: 23 January 2019

Appeal Reference: APP/G5180/C/18/3195844
Site at: Walnut Tree Cottage, Jackass Lane, Keston BR2 6AN

- The appeal is made by Mr Peter Gardner under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by the London Borough of Bromley.
- The council's reference is ENF 17/00050OPDEV.
- The notice is dated 15 January 2018.
- The breach of planning control alleged in the notice is: "Without planning permission the construction of a detached wooden outbuilding with dual pitch roofs and associated raised wooden platform".
- The requirements of the notice are:
  "1 Remove the outbuilding.
  2. Remove the associated wooden platform.
  3. Remove all items associated with (1) and (2) above from the land, and restore the land to its previous condition".
- The period for compliance is one month.
- The appeal was made on grounds (a), (f) and (g) as set out in Section 174(2) of the 1990 Act. Since ground (a) has been pleaded, an application for planning permission is deemed to have been made under Section 177(5) of the Act.

Summary of Decision: The appeal fails, except for an extension to the compliance period. The enforcement notice is varied and upheld.

Ground (a)

1. Under this ground of appeal, planning permission is sought for the development enforced against. The main issue raised is whether, as is argued by the appellant, there are very special circumstances sufficient to overcome the normal presumption against most forms of development in the green belt.

2. Part of Mr Gardner's case is that the unauthorised building is within the curtilage of the dwelling known as Walnut Tree Cottage. The council also appear to accept that the building is within the curtilage of the cottage, although the council seem to take an ambivalent view, saying that the building "may be regarded as within the residential curtilage of the host dwelling, however in the council's opinion given the distance from the host dwelling it appears unrelated to it".

3. In my judgment this building is not within the curtilage of Walnut Tree Cottage. The area of land attached by ownership and occupation to Walnut Tree Cottage is extensive; it includes wooded copses and a separately fenced paddock. The disputed building is located a considerable distance away from the house, beyond

the wooded copses. Taking into account established case law on the definition of the term "curtilage" [1], I find as a matter of fact and degree that the building cannot be properly regarded as being within Walnut Tree Cottage's curtilage. This is not merely a matter of land area: from what I have seen and read I judge that the land where the building is located does not have the sort of intimate association with the dwelling at Walnut Tree Cottage which would make it part of the dwelling's curtilage; nor does this land serve the purpose of the dwelling in some necessary or useful way. Those are criteria which have been held by the courts to be relevant in defining the term "curtilage" for the purposes of planning law. The red line on the enforcement notice plan has no significance either way; it merely defines the planning unit (that is to say in this case, the extent of ownership and occupation).

4. Even if it were to be assumed that the building is within the curtilage of Walnut Tree Cottage, the appellant's arguments about building within permitted development allowances[2] have no force, since permitted development rights at this site were removed under a legal agreement entered into by the owner in 1985. Moreover, even ignoring the 1985 agreement, there is scant evidence to suggest that the building is reasonably "required for a purpose incidental to the enjoyment of the dwellinghouse as such",[3] especially given the distance between the dwelling and the building. The bare statement that the building "is to be used for purposes ancillary and incidental to the enjoyment of the existing dwelling at Walnut Tree Cottage" does not meet the test set out in the GPDO, for three reasons: first, it is vague; second, it does not explain why the building is *required*; and third in any case, Class E does not grant permission for a building which is to be used for "ancillary and incidental" purposes.[4]

5. There are clear objections to the development. Under national and local planning policies (set out in the National Planning Policy Framework and policy G1 of the development plan for this area), the construction of new buildings is "inappropriate" in the green belt, subject to exceptions which do not apply here. Inappropriate development is by definition harmful to the green belt. Permission will not be granted for such development unless very special circumstances can be demonstrated which clearly outweigh the harm. The building is visible from Jackass Lane but even if it were hidden from public view, that would not be a special, let alone very special, circumstance.

6. Mr Gardner has argued (through his agent) that the difference between the height of the building as erected and the height of a building which could normally be erected as permitted development is *de minimis,* and that the building's design is similar to many others associated with dwellings in the green belt. These arguments do not hold water. As explained above, permitted development rights do not apply here; the design of the building is not an issue.

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[1] The standard leading court judgment is *Sinclair-Lockhart Trustees v Central Land Board* [1950] 1 P&CR 195. Other relevant judgments include *Dyer v Dorset CC* [1988] 3 WLR 213 and *McAlpine v SSE* [1995] JPL B43.

[2] This refers to Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (abbreviated to "GPDO" elsewhere in this decision), under which - subject to numerous provisos - planning permission is granted for the provision of certain buildings within the curtilage of a dwellinghouse.

[3] This phrase is quoted from Class E. The words *as such* are important here.

[4] The appellant and his agent seem not to have appreciated that for the purposes of planning law relating to the GPDO there is a significant difference between "ancillary" and "incidental". As noted above, Class E only covers buildings used for purposes *incidental* to the enjoyment of a dwellinghouse as a dwellinghouse.

7. I note the appellant's willingness to have a condition imposed, aimed at restricting the use of the building. Conditions would not overcome the objections to the development.

8. I have had regard to all the other issues raised for the appellant on which I have not specifically commented, including the fact that the building is positioned on a slope and the claim that the building is "sensitively sited". They do not outweigh the points explained above. I find that the appellant's case on ground (a) fails comprehensively.

Ground (f)

9. Under this ground of appeal it is claimed that the requirements of the enforcement notice are excessive, and that lesser requirements would be sufficient to remedy the breach of planning control. The appellant contends that reducing the height of the building to a height within the tolerances of Class E of the GPDO would address the council's concerns.

10. The building is unauthorised. I have found that planning permission for its erection should not be granted. The objections to this development would not be overcome by "under-enforcing" in the way suggested by the appellant. There is nothing unreasonable or excessive about the requirements specified in this enforcement notice. I conclude that ground (f) of the appeal fails.

Ground (g)

11. This ground of appeal concerns the period for compliance, which now runs from the date of this decision. The appellant argues that one month is unreasonably short, and that three months should be allowed.

12. The building is constructed mainly of timber. Its demolition and the removal of the resultant material would not be a particularly difficult or time-consuming operation and certainly would not need to take three months. However, I can see that it may be necessary to engage a contractor to carry out the work, although no supporting evidence has been put forward in this respect - for example, I have no reason to believe that it would be difficult to find a suitable contractor. The appellant has also been entitled to await the outcome of the appeal before taking any action to comply with the enforcement notice. On balance, I have decided to extend the compliance period from one month to six weeks. Ground (g) succeeds to that limited extent.

Other Matters Arising from my Site Inspection

13. During my inspection I saw a building within the appeal site which had windows obscured by drawn curtains. Mr Gardner called it "the hut". When I sought to see inside this building, Mr Gardner did not have a key available. However, it became apparent that the building was occupied and I was able to inspect its interior. It was fully fitted, carpeted and furnished as living accommodation with two bedrooms, a bathroom, kitchen and living room, and appeared to be in use as a dwelling.

14. The history of the appeal property as described in the council's statement includes instances of two buildings which were originally within the grounds of Walnut Tree Cottage and later became used as dwellings, unlawfully for some time but later gaining a certificate of lawfulness after the use had been undetected by the planning authority without enforcement action being taken. A sceptic knowing the pattern of past history and having seen what appears to be happening at a third building ("the hut"), followed by the development of a fourth

building (the one subject to the enforcement notice) might think the appellant was aiming to repeat a past process. Be that as it may, whether the situation regarding "the hut" should be further investigated is a matter for the local planning authority.

Formal Decision

15. I direct that the enforcement notice be varied by deleting "one month" from the text of the notice specifying the time for compliance and substituting "six weeks". Subject to that variation, I dismiss the appeal, uphold the notice as varied, and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

G F Self

Inspector