



Appeal Decisions

Site visit made on 27 August 2019

by **Andrew Dale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Date of decisions: 11 September 2019

Appeal A Ref: APP/M3645/C/19/3223645

Appeal B Ref: APP/M3645/C/19/3223646

Poets Corner, Pikes Lane, Crowhurst, Lingfield RH7 6LX

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeals are made by Mr Nigel Bryant (Appeal A) and Mrs Annette Bryant (Appeal B) against an enforcement notice issued by Tandridge District Council.
- The notice, No. 4 (2019), was issued on 7 February 2019 under ref. ENF/2018/36.
- The breach of planning control as alleged in the notice is *"Without planning permission, the unauthorised construction of an outbuilding in the approximate position outlined and cross-hatched in black on Plan A."*
- The requirements of the notice are set out as follows:
"1. Demolish the building and permanently remove all resultant material from the Land".
- The period for compliance with these requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2) (a) and (f) 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 section 177(5) of the Act. Appeal B is proceeding just on the ground set out in section 174(2) (f) of the Act.

Appeal C Ref: APP/M3645/W/19/3223391

Poets Corner, Pikes Lane, Crowhurst, Lingfield RH7 6LX

- 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 Nigel Bryant against the decision of Tandridge District Council.
- The application ref. TA/2018/2314, dated 26 November 2018, was refused by notice dated 21 January 2019.
- The development proposed is *"Retention of outbuilding after alterations"*.

Decisions

Appeals A and B

1. It is directed that the enforcement notice be varied, following the limited success of the appeals on ground (f), by the deletion of the text within paragraph 5 and the substitution therefor of the following text: "Within 6 months from the date on which this Notice takes effect: **EITHER** demolish the outbuilding and remove all resultant materials from the Land **OR** alter the outbuilding so as to make it comply with the terms (including conditions,

limitations and approved plans) of planning permission ref. TA/2017/211 which has been granted in respect of the Land.”

2. Subject to the variation, the appeals are otherwise dismissed, the enforcement notice is upheld and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C

3. The appeal is dismissed.

Background and matters of clarification

4. Poets Corner is a detached bungalow standing in a sizeable, triangular-shaped plot next to the junction of Pikes Lane and Willow Drive. There is a cluster of dwellings near to this junction, including those in Eliot Place a short distance to the south-east. The appeal site is situated within an area designated as Green Belt. The appeals concern an outbuilding which has been erected in the garden between a garage and the south-eastern boundary of the plot.
5. Planning permission for the erection of a single storey outbuilding was granted on 31 March 2017 under ref. TA/2017/211. There is no dispute that what has been built departs from what was approved in a material way to the extent that the planning permission has not been implemented. The enforcement notice, the subject of Appeals A and B, attacks the development as built. The planning application, the subject of Appeal C, is for the outbuilding incorporating some design changes to the scheme as built, the most significant being the removal of roof windows and the reinstatement of the original ground levels in the areas surrounding the outbuilding.
6. The outbuilding is laid out over 2 floors. It is about 5.21 m wide and 9.05 m in length. The height to the ridge from the finished floor level on the excavated ground is 6.095 m (based on the elevation drawing) or 6.09 m (based on the calculation of building height drawing). The ground floor contains a home office/computer desk, sofa, television, games area, storage areas and a kitchen area with a cooker, sink, fridge and cupboards. The first floor is given over to a bedroom with an ensuite bathroom.

Appeal A, the appeal on ground (a) and Appeal C, the section 78 appeal

7. Guidance in the National Planning Policy Framework (the Framework) sets out the government’s policy on Green Belts. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from a proposal, is clearly outweighed by other considerations.
8. The main issue is therefore whether the outbuilding as built or as proposed to be altered amounts to inappropriate development in the Green Belt, and if so, 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 required to justify the development.

Whether inappropriate development

9. The development plan includes the Tandridge Local Plan Part 2: Detailed Policies 2014-2029 (TLP). Policies DP10 and DP13 of the TLP broadly reflect the Framework's stance that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. The subject outbuilding does not fall within any of the exceptions to this general policy of restraint as set in paragraph 145 of the Framework or in TLP Policy DP13.
10. TLP Policy DP14 deals with new garages or other ancillary domestic buildings in the Green Belt. Paragraph 14.1 of the TLP says that such garages and buildings constitute inappropriate development in the Green Belt. However, it also explains that there may be situations where such buildings would be reasonable and compliance with the 4 criteria in the policy would in effect provide the very special circumstances needed to justify a grant of planning permission. I turn to these criteria below under "*Other considerations*".
11. As it is, applying the Framework and TLP Policies DP10 and DP13, I find that the outbuilding (as existing and as proposed to be altered) amounts to inappropriate development in the Green Belt.

Harm

12. Inappropriate development is, by definition, harmful to the Green Belt.
13. The Framework explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. There is no definition of openness in the Framework but in the Green Belt context it is generally held to refer to freedom from, or the absence of, development. The openness of the Green Belt has spatial and visual aspects.
14. The outbuilding has quite a significant impact upon the openness of the Green Belt in terms of volume and physical presence. That impact is also manifest in a visual sense, being noticeable in views across Pikes Farm when approaching along Pikes Lane from the north, from the road junction between Pikes Lane and Willow Drive when approaching along Pikes Lane from the west and from Willow Drive in glimpsed views between vegetation. The development has materially reduced the openness of the Green Belt and the suggested amendments to the building and its immediate surroundings would not address this loss of openness.
15. There is some residential development in the vicinity but the area viewed as a whole has a resolutely rural sense of place. Even though the original ground levels are to be reinstated around the outbuilding, the roof windows removed and the eaves of the outbuilding and the adjacent garage are broadly similar in height, the fact remains the outbuilding has a sizeable and steeply pitched roof, the ridge of which is notably higher than the adjacent garage, so as to accommodate 2 floors of accommodation. To my eyes, it also appeared to be higher than the roof over the bungalow. The outbuilding

(as built or as would be altered), by virtue of its excessive scale, 2-storey form and overall height, does not reflect the character, setting and local context or integrate effectively with its surroundings.

16. It is sufficiently visible from public and private viewpoints to have a dominant and negative visual impact upon the character and appearance of the locality. That visibility increases during the months of the year when many of the nearby trees are devoid of leaf cover. There is conflict with the aims of TLP Policy DP7 and Tandridge District Core Strategy Policy CSP 18 which deal with the character and design of development.

Other considerations

17. Compliance with TLP Policy DP14 would be an extremely important other consideration to weigh in the planning balance. However, I consider that the Council is correct to conclude that the development fails to meet 3 of the 4 criteria in this policy.
18. I have already found that the outbuilding constitutes an unduly dominant feature. Given the 2-storey built form and the height and size of the roof, the outbuilding is not clearly subservient to the associated bungalow. It appears excessive in size having regard to the size of the dwelling it is intended to serve. The proposed changes would not fully address these matters. The first criterion is not met.
19. I have also found that the outbuilding (as built or as would be altered) has an adverse impact on the rural character and appearance of the locality. The second criterion is not satisfied.
20. The fourth criterion seeks to ensure that an outbuilding will not be used for any purpose which is not incidental to the enjoyment of the dwelling. A purpose truly incidental to a dwelling would not cover normal residential uses such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen. The floor plans submitted with the planning application the subject of Appeal C are inaccurate and vague. From my description of the internal layout in paragraph 6 above, large areas of the outbuilding are laid out as primary living accommodation which includes purposes not truly incidental to the dwelling at Poets Corner. This fails to comply with the fourth criterion.
21. The extant planning permission ref. TA/2017/211 represents a fallback and is a material consideration. There are however important differences. That scheme was for a single storey outbuilding measuring 8.4 m long, 4.45 m wide and 4.5 m high to the ridge. It was to be used as a home office/games room, purposes wholly incidental to the dwelling house. It was shown to be built at the same ground level and with the same ridge height as the garage. It comes as no surprise that the Council deemed that scheme to be compliant with development plan policies.
22. Attempting to create an informal grouping of buildings with the addition of a barn-like structure with a steeply pitched roof suited to plain clay tiles is a laudable aim viewed in isolation. However, this ignores the facts that this is an area of Green Belt restraint, the parent building is a single storey

bungalow and the approved scheme offers a barn-like structure with a pitched roof of about 40 degrees laid with plain clay tiles.

23. Given the position of the outbuilding and the surrounding vegetation, especially on or close to the site's south-eastern boundary, the development cannot be said to be prominent. Nonetheless, this is not the same as saying it is invisible. The point is that it is sufficiently visible in itself and in relation to the bungalow, garage and wider surroundings for the built-up appearance of the site and the adverse visual impacts to be registered by observers.
24. Comparisons with the denser group of dwellings within Eliot Place are not appropriate as I understand that this residential development was permitted as part of a wider environmental improvement scheme to replace a sizeable brickworks in the Green Belt.
25. The proposed removal of the roof windows and the changes to the ground levels would have no material impact on how the outbuilding is perceived in views from outside the site, especially along Pikes Lane. In any event, the Council may find it difficult to resist a request to reinstall the roof windows at a later date, as they would be reasonably required to facilitate the use of a sizeable retained first floor space.
26. The house at Pikes Farm close to the north-eastern boundary of Poets Corner is a grade II listed building. I see that neither the Council nor the Heritage Conservation Team at the County Council raised any concerns about the effect of the development on the setting of the listed building. I see no reason to disagree. I appreciate that the development does not give rise to any other planning harms, including adverse impacts upon the living conditions of neighbouring occupiers. However, the absence of other planning harms is not a positive factor in favour of the development and so only attracts neutral weight.

The balance of considerations and conclusion

27. In accordance with the Framework, I attach substantial weight to the harm to the Green Belt by reason of inappropriateness and loss of openness. Also to be weighed in the balance is the harm to the character and appearance of the locality which attracts significant weight. It is apparent that the other considerations do not clearly outweigh the totality of the harm that is caused and so the very special circumstances necessary to justify the development do not exist. There is also conflict with the development plan and I find no material considerations of sufficient weight to justify a grant of planning permission. The objections to the development could not be fully overcome by the imposition of planning conditions. I conclude that for Appeal A, the appeal on ground (a) should fail and that the deemed planning application should be refused, and that for Appeal C, the appeal should be dismissed.

Appeals A and B, the appeals on ground (f)

28. This ground allows arguments to be put that the steps required by the enforcement notice to be taken exceed what is necessary to remedy the breach of planning control, or as the case may be, to remedy any injury to amenity which has been caused by the breach.

29. The way in which the Council has prepared the enforcement notice, including the formulation of its requirements, indicates that its purpose is to remedy the breach of planning control in accordance with section 173(4) (a) of the Act. It is reasonable and not excessive to require that the unauthorised operational development be demolished and that the resultant materials be removed from the site. This would remedy the breach and nothing more, by restoring the land to its condition before the breach took place.
30. The gist of the appellants' case is that lesser steps than those specified in the notice could be undertaken. It is said in a letter dated 1 March 2019 that *"The outbuilding was built in the same position, plan dimensions, eaves height and of the materials shown on the approved drawings: it would only be necessary to remove and rebuild the roof in order for the resultant form to match that given consent."*
31. With reference to section 173(4) (a), it is possible to remedy the breach by making the development comply with the terms (including conditions and limitations) of the planning permission which has been granted in respect of the land under ref. TA/2017/211. The appellants' case is broadly in line with this approach and the Council has suggested how the requirements specified in the notice could be altered accordingly.
32. Rather confusingly the appellants said in paragraph 3.6 of the Appeal Statement: *"Not least because the outbuilding has been constructed with an oak frame, altering just the roof and reverting to the approved height would entail demolition to ground level."* This calls into question the practicality of the lesser step suggested in the letter of 1 March 2019. Moreover, full compliance with the planning permission would be necessary in this alternative scenario and this may well involve adjustments to the building's width and length, as well as to the roof.
33. I judge therefore that the pragmatic solution would be to vary the requirements of the enforcement notice to impose, as an alternative to complete demolition, lesser steps requiring the development to be altered so as to accord with the planning permission ref. TA/2017/211. This would give the appellants a choice about how to proceed. I have varied the notice accordingly closely following the wording used in section 173(4) (a), rather than the wording suggested by the Council. I conclude that Appeals A and B should succeed on ground (f) to this limited extent.

Andrew Dale

INSPECTOR