



Appeal Decision

Site visit made on 28 August 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 October 2019

Appeal Ref: APP/H1515/C/18/3212968

Land at Oakwood, Ongar Road, Pilgrims Hatch, Essex CM15 9SA

- 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 Richard Wiggins against an enforcement notice issued by Brentwood Borough Council.
- The enforcement notice was issued on 4 September 2018.
- The breach of planning control as alleged in the notice is the erection of four buildings ('dwellings') including garages without planning permission.
- The requirements of the notice are: 1. Cease the continuation of the construction activities in respect of the four unauthorised 'dwellings' and associated outbuildings, apparently following the grant of planning permission reference 16/01437/FUL; 2. Demolish the four unauthorised 'dwellings' and associated outbuildings including the foundations and the underground services thereto; 3. Remove all demolition arisings from the land to a place authorised to receive such waste; and 4. Make good the surface of the land to either its previous state or to a levelled earthen surface seeded with native grass in order to conserve the openness of the Green Belt.
- The period for compliance with the requirements is 1. 7 calendar days after the notice comes into effect; 2. 56 calendar days after the notice comes into effect; 3. 3 calendar months after the notice comes into effect; 4. In the first planting season after the notice comes into effect.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (c), (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 Formal Decision.

Preliminary Matter

1. The allegation in the enforcement notice refers to the erection of four buildings ('dwellings') without planning permission. However, the notice requirements refer to dwellings. As the buildings are all incomplete, none are dwellings at this stage and the notice cannot attack a future use. Therefore, I intend to correct the notice requirements to refer to buildings. In doing so, I am satisfied that no injustice would be caused.

Ground (b) appeal

2. The ground of appeal is that the matter alleged in the notice has not, in fact, occurred. The onus of proof in a ground (b) appeal rests with the appellant, the relevant test of the evidence being on the balance of probability.
3. The appeal site contains four incomplete buildings at varying stages of construction. The Council granted conditional planning permission for

demolition of a commercial building and the construction of five dwellings with garages at the site on 12 January 2017¹.

4. The appellant accepted that the four buildings had been erected and that they deviated from the approved scheme. He argued that this had occurred after implementation of the 2017 permission and was therefore in breach of condition, as opposed to being development without planning permission.
5. Condition 2 of the 2017 permission required the development to be carried out in complete accordance with the approved drawings. The Council approved the details required by pre-commencement and materials conditions attached to the above permission on 20 October 2017. The building formerly occupying the site was demolished. Some parts of the external walls of the buildings on plots 3, 4 and 5 correspond in terms of their position on site with external walls of the dwellings in the approved scheme.
6. Nevertheless, the buildings occupying plots 2-5 all had a significantly larger footprint, with a correspondingly greater overall size and bulk, when compared with the dwellings in the approved scheme. The increase in the footprint size and overall scale varied between the buildings but was at its greatest on plots 2, 4 and 5. Substantial parts of the external walls of the buildings are in entirely different positions to the footprints of the approved dwellings. Additionally, whilst the building on plot 2 had only been erected up to around the level of the ground floor window heads, the buildings on plots 3, 4 and 5 were significantly taller when compared with the overall height of the approved dwellings. These are all material changes to the approved scheme, both individually and cumulatively. They are likely to have had planning consequences, including effects on the openness of the Green Belt. Substantial parts of the structures as built could not be incorporated into the approved scheme. Moreover, there was no firm evidence supplied to indicate that the buildings had not been erected as part of one continuous building operation.
7. Therefore, having regard to the principles set out in case law referred to concerning whether a planning permission has been implemented² and as a matter of fact and degree, when taken as a whole I find that the buildings are so significantly different from the approved scheme that their erection cannot have amounted to implementing the 2017 permission. It follows that erecting the buildings involved undertaking development without planning permission.
8. Consequently, the appellant has not shown that the matter alleged in the notice has not occurred and the ground (b) appeal must fail.

Ground (c) appeal

9. The ground of appeal is that the matter alleged in the notice does not constitute a breach of planning control. In a ground (c) appeal also, the onus of proof is on the appellant and the relevant test of the evidence is on the balance of probability.
10. The appellant's case on this ground is limited to the building on plot 3. When compared with the dwelling in the approved scheme, a large part of this building has a much greater depth, thereby giving it a substantially larger footprint. The building is also significantly taller than the approved dwelling.

¹ Council Ref: 16/01437/FUL.

² *Commercial Land Ltd v SSTLR & Kensington and Chelsea RBC* [2002] EWHC 1264.

Due to these factors, the building has a substantially greater overall scale when compared with the approved dwelling. Furthermore, due to the greater expanse of roof and the appreciably shallower pitch to the main roof, gables and dormers, together with changes to the size of some elevational openings, the elevations of the building differ considerably in appearance from the approved dwelling.

11. Due to the above factors, the plot 3 building is materially different in terms of its overall scale and appearance compared with that of the approved dwelling and it cannot form part of the 2017 permission.
12. Consequently, the available evidence does not show, on the balance of probability, that there has been no breach of planning control and the ground (c) appeal must also fail.

Ground (a) appeal

Main Issues

13. The entirety of the site is in the Metropolitan Green Belt on the Proposals Map accompanying the Brentwood Replacement Local Plan (LP). Therefore, the main issues in this ground of appeal are:
 - Whether there has been inappropriate development in the Green Belt, having regard to the LP and the National Planning Policy Framework (the Framework), including the effect on the openness of the Green Belt and its character and appearance.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development-effect on openness, character and appearance

14. LP Policy GB1 restricts development in the Green Belt including new buildings, other than for purposes appropriate to a Green Belt. LP Policy GB2 requires development to not conflict with the purposes of the Green Belt or harm its openness. These policies pre-date and are not fully consistent with the Framework paragraph 145. This states that the construction of new buildings should be regarded as inappropriate in the Green Belt apart from a limited range of exceptions, one of which is the partial or complete redevelopment of previously developed land where there is no greater impact on Green Belt openness than the existing development. Therefore, I shall afford greater weight to the Framework.
15. In granting the 2017 permission, the Council accepted that the site was previously developed land and that the approved scheme would have had no greater impact on Green Belt openness than development then in situ. At the time of writing, that permission has not expired and is still capable of being implemented. It follows that whether the buildings in this appeal are inappropriate development primarily rests on an assessment of whether there has been a greater impact on openness over the fallback position of the 2017 permission.

16. The Framework paragraph 133 advises that openness is an essential characteristic of the Green Belt. The Planning Policy Guidance³ advises that Green Belt openness can have both spatial and visual aspects. The Courts have identified the correct approach when assessing whether a change has a greater impact on openness is to consider the impact or harm, if any, brought by the change. Whether or not any change will have an adverse impact, and so cause harm to openness, might depend on factors such as the scale of the development, its locational context, and its spatial and/or visual implications⁴.
17. The buildings have a considerable sized footprint and a significant volume, both individually and cumulatively. The footprint and overall scale of all the buildings is substantially larger than that of the corresponding dwellings in the approved scheme. The building footprints occupy a much greater proportion of the overall site area. The enlarged footprints also extend the built forms appreciably closer to two of the site boundaries. The buildings are significantly bulkier and, apart from the plot 2 building at a less advanced stage of construction, they have a considerably greater overall height than those in the approved scheme. This has all resulted in a substantial increase in the extent and scale of building across the site, so that a much greater proportion of it is now enclosed by, or adjacent to, large-scale built forms when compared with the approved scheme.
18. The site has a predominantly rural setting, generally consisting of scattered residential development between tracts of open countryside. In terms of their detailed design, the buildings resemble aspects of the approved scheme. However, due to their appreciably larger overall scale, the buildings have a much greater visual presence in their rural surroundings compared with the approved scheme. The presence of more substantial built forms and a corresponding significant reduction in the undeveloped portions of the site has given the site and its environs an appreciably more built-up, suburbanised feel when compared with the approved scheme.
19. Although there might be limited public views in the wider surroundings, due to the considerably larger scale of the buildings the sense of the site being significantly more enclosed by substantial built form is readily apparent from the adjacent bridleway. Moreover, having regard to the proximity of the built forms to the site boundaries, the visual impact is not appreciably softened by the existing boundary planting. It would also not be ameliorated to any great extent by future planting. Siting the plot 2 building further from the boundary has not had any positive visual effects in terms of offsetting the substantial increase in footprint and the likely overall scale of the completed building when compared with the approved scheme.
20. Therefore, the buildings have caused a material and appreciable reduction in the openness of the Green Belt when compared with the approved scheme, in both spatial and visual terms. The failure to preserve Green Belt openness has caused a significant degree of harm to the Green Belt. Due to the above factors, the buildings have also unacceptably harmed the rural character and appearance of the surrounding area within the Green Belt.
21. It follows that the buildings amount to inappropriate development in the Green Belt, being inconsistent with the Framework paragraph 145 and not according

³ Paragraph: 001 Reference ID: 64-001-20190722.

⁴ *Euro Garages Ltd v SSCLG & Anor* [2018] EWHC 1753 (Admin).

with LP Policies GB1 and GB2, the adverse effect on local character and appearance not according with LP Policy CP1. At paragraph 143, the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I afford substantial weight to the harm to the Green Belt.

Other considerations

22. According to a Council report dated November 2018, its supply of housing land at 31 March that year amounted to only 4.1 years. Although this report and assessment are now somewhat dated, as neither party supplied updated figures the extent of any current shortfall in the Council's five-year supply of housing land is unclear. However, as noted above the 2017 permission is implementable and is capable of delivering five dwellings. In any event, the Framework policy protecting the Green Belt provides a clear reason for refusing permission for the buildings. Therefore, irrespective of any current shortfall in the Council's supply of housing land, the presumption in favour of sustainable development at paragraph 11 of the Framework is not engaged. Moreover, four dwellings would make a relatively small contribution towards the Council's supply of housing land. Consequently, I afford this matter limited weight.
23. The absence of unacceptable harm to the living conditions of occupiers of adjacent residential properties is a neutral factor which neither weighs in favour or against permitting the buildings. Interested parties have raised other concerns in their representations, including the effects of the buildings on drainage, the raising of ground levels and access considerations. However, in the absence of any firm evidence on these matters I afford them little weight.

Green Belt Balance

24. When considered against the fallback position of the 2017 permission, the buildings have had a greater impact on Green Belt openness, thereby amounting to inappropriate development. They have also unacceptably harmed the rural character and appearance of the surrounding area within the Green Belt. The other considerations do not clearly outweigh the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify permitting the buildings do not exist.

Conclusion on ground(a)

25. The failure to protect the Green Belt is inconsistent with the Development Plan and the Framework and the ground (a) appeal fails.

Ground (f) appeal

26. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or, as the case may be, to remedy any injury to amenity.
27. At s173, the Act sets out the two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control that has occurred by making the development comply with the terms (including conditions and limitations) of any planning permission granted in respect of the land, by discontinuing any use of the land or by restoring the land to its condition before the breach took place. The second (s173(4)(b)) is to remedy any injury to amenity caused by the breach.

28. The Council did not specify in the notice which of the above purposes that it sought to achieve. The notice required demolition of the buildings as opposed to lesser steps, such as reducing them in size. Therefore, the purpose of the notice must be to remedy the breach of planning control by restoring the land to its condition before the breach took place. In this context, the requirements of the notice are reasonable and are not excessive for the purpose of remedying the breach.
29. Nevertheless, as noted above it is also possible to remedy a breach of planning control by making the development comply with the terms of a planning permission. As enforcement action is intended to be a remedial measure, whether the planning difficulties could be overcome at less cost and disruption than total demolition of the buildings is a relevant consideration. The 2017 permission is therefore an important factor. Where, as in this instance the buildings erected differ significantly from an approved scheme with the result that the development as a whole is unauthorised, it is appropriate to provide the alternative of remedying the breach by making the development comply with the terms of the relevant planning permission. The differences between the buildings and the approved dwellings are clearly documented and the remedial works required to comply with the 2017 permission are therefore readily apparent. As a result, this requirement would be sufficiently precise in order to remedy the breach.
30. Consequently, whilst I find that the steps required by the notice are not excessive for their purpose, I shall vary the notice as set out above as an alternative remedy to the breach and the ground (f) appeal succeeds to that extent.

Ground (g) appeal

31. The ground of appeal is that the time specified for compliance with the notice is unreasonably short.
32. In practice, two months would afford the appellant limited time in which to complete the remedial works required, particularly following the success of the ground (f) appeal. This is due to the relatively substantial scale of the development involved, together with the extent and potential complexity of the works required to reconfigure the buildings to make them comply with the terms of the 2017 permission.
33. As a result, I find that the six-month compliance period requested by the appellant would strike a more appropriate balance between remedying the planning harm in a timely fashion, whilst allowing the appellant a suitable period in which to arrange for the remedial works and have them carried out.
34. Therefore, the appeal succeeds on ground (g) to that extent.

Formal Decision

35. The appeal is allowed on grounds (f) and (g), and it is directed that the enforcement notice be corrected by:
- Deleting the word '*dwellings*' in the requirements at paragraph 5, steps 1 and 2 and replacing it in both steps with the words '*buildings* (*'dwellings*)'.

and varied by:

- At the end of paragraph 5 inserting the following requirement:
"Alternatively, make the development comply with the terms (including the conditions and limitations) of the planning permission granted on 12 January 2017 (Application Ref 16/01437/FUL)".
- Deleting paragraph 6 in its entirety and the substitution of 6 months for the period for compliance.

Subject to the above correction and variations the enforcement notice is upheld.

Stephen Hawkins

INSPECTOR