



Appeal Decision

Site visit made on 10 March 2020

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 April 2020

Appeal Ref: APP/P1805/C/19/3237506

Land at 390 Bromsgrove Road, Hunnington, Halesowen, Worcestershire B62 0JN

- 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 James Lane against an enforcement notice issued by Bromsgrove District Council.
 - The enforcement notice, numbered 2016/0157/ENF, was issued on 13 August 2019.
 - The breach of planning control as alleged in the notice is: 'Without planning permission, the carrying out of operational development on the land by erection of an building which does not accord with the conditions and restrictions of the Town and Country Planning (General Permitted Development) (England) Order 2015, Schedule 2, Part 1, Class E ('the unauthorised development)'.
 - The requirements of the notice are:
 1. Demolish the building shown hatched blue on Plan B¹.
 2. Remove from the land all materials arising from the demolition of the building shown hatched in blue on Plan B.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (f) of the Town and Country Planning Act 1990 as amended.
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Decision

1. It is directed that the enforcement notice be corrected by deleting the word 'Romsley' from section 2 (The land affected) and replacing it with the word 'Hunnington', and by replacing the word 'an' before the word 'building' in section 3 (The breach of control alleged) with the word 'a'. Subject to these corrections, the appeal is dismissed and 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.

Preliminary matters

2. The site address in the notice incorrectly refers to the village of Romsley, rather than Hunnington. However, the site is clearly identified by the plan attached to the notice and the error does not appear to have caused confusion to any party. Accordingly, I am able to correct the error without causing injustice. I will also correct the notice by replacing the word 'an' before the word 'building' in section 3 of the notice (The breach of control alleged) with the word 'a', in order to ensure that the allegation is correctly expressed to ensure clarity. No injustice could arise from this very minor change.

¹ Plan B is attached to the enforcement notice

3. The lockdown in response to the Covid-19 outbreak was imposed during the determination of the appeal. In view of this I sought the views of both parties regarding whether this should have any bearing on the time period for compliance with the notice. Although there is no appeal on ground (g) in this case, s176(1)(b) of the Act gives an inspector appointed by the Secretary of State wide powers to vary the terms of an enforcement notice, provided it does not cause injustice. Accordingly, given the wide-ranging effects of the lockdown, I consider the question of the compliance period in this decision.

The appeal on ground (c)

4. To succeed on ground (c) the appellant must demonstrate on the balance of probability that the erection of the building does not constitute a breach of planning control. In this case it is argued that the building is development permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The relevant part of Class E permits:

The provision within the curtilage of the dwellinghouse of:

- (a) *any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure.*
5. Class E includes various restrictions, mainly concerned with the size of the building, but it is common ground that the building accords with these. The dispute centres on the question of whether the building can genuinely be said to be incidental to the enjoyment of the dwellinghouse as such. If it is not, it cannot be permitted under Class E.
6. The Government's *Permitted development for householders - Technical Guidance* assists in the interpretation of the GPDO. In relation to Class E it advises that the rules allow a wide range of buildings as long as they can properly be described as having a purpose incidental to the enjoyment of the house. It explains that a purpose incidental to a house would not cover '*normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen*'.
7. The appellant's Drawing No 2704/1 (Rev B) shows the building split into 3 areas. The drawing shows Area 1 and Area 2 used as a gym, while Area 3 has a large TV screen and a range of sofas and games tables. The building is of a split level design, with steps separating Area 1 from the rest of the building. Although many of the items in the building were arranged differently when I viewed them and a pool table had been added, the use of the building and the broad internal layout reflected the drawing. The drawing includes a breakdown of the internal floorspace, indicating 78m² for Area 1, 140m² for Area 2 and 124m² for Area 3. The drawing shows the building as having a footprint of 375m². This compares with the footprint of the original house of 90m², with extensions to the house adding a further 89m². There are additional outbuildings as well.
8. Whether or not a building is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such' is a matter of planning judgement based on the

specifics of the particular case. In this instance, the case put forward by the appellant is that the building is for use as a home gym and playroom. It certainly contained a wide range of gym and leisure equipment when I viewed it. In principle, a home gym/games room use might be regarded as a potential use incidental to the enjoyment of a dwellinghouse and I am mindful that the building falls within the size limitations imposed by Class E.

9. Nevertheless, the area devoted to the various activities the building contains is relevant to consideration of whether the use is genuinely incidental to the use of the dwellinghouse as such. To be incidental implies a degree of subordination to the main use and it is necessary to consider whether, as a matter of fact and degree, the scale of the building is reasonably related to the use the appellant claims, in its domestic context.
10. The area devoted to gym and fitness use (Areas 1 and 2 of the building) have a combined internal floor area of 218m². Even allowing for steps and circulation space, this is an unusually large area for a home gym. According to Table 6.1 of the appellant's statement, 28m² is devoted to punchbags alone. There was an array of punchbags in the building when I viewed it. Even if a range of different punchbags is desirable for a keen boxer, the area devoted to them strikes me as excessive for just a part of a home gym.
11. The appellant says that a clear area equivalent to a standard boxing ring (between 24 and 37sqm) is needed. In addition to this, separate areas of 25m² for a fitness gym and 25m² for a free weights area are identified in Table 6.1. While any one of these areas may be desirable, viewed as a whole, such extensive provision is excessive for a home gym.
12. Moreover, even with the large amount of equipment within the building when I viewed it, Areas 1 and 2 appeared to me to be very generously laid out and included room for a sofa in Area 1. The information before me does not indicate any doubling up of the use of space and implies that a separate space is devoted to each individual activity.
13. The appellant has referred me to the Sport England publication *Fitness and Exercise Spaces*, which suggests the space needed for various gym elements. However, the appellant advises that this is not specifically intended for domestic gyms and I give it little weight accordingly. Overall, I regard the area devoted to the gym activities as excessive for a home gym, beyond what could be reasonably regarded as incidental to the enjoyment of the dwelling.
14. Area 3 was laid out as a games room and included a pool table, air hockey and table football. I appreciate that space is needed around these in order to use them. Even so, this is a very large space for a domestic games room, with much of the space taken up by several large sofas, mostly with generous space around them. While some seating might be desirable within a games room, perhaps for those watching games or for playing screen games, the evidence before me does not show why such extensive seating is required here. Instead, the amount of seating suggests to me that this area is, in part, effectively used as an extension of the primary living accommodation of the main dwelling rather than for uses incidental to it.
15. With these points in mind, and considering the building as a whole, I conclude that the building is not entirely used for purposes incidental to the enjoyment

of the dwellinghouse as such. Accordingly, it does not fall within Class E and the appeal on Ground (c) fails.

The appeal on ground (a)

Main issues

16. The site lies within the West Midlands Green Belt. As a consequence, the main issues are:
- Whether the building is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
 - The effect of the development on the openness of the Green Belt.
 - Its effect on the character and appearance of the area; and
 - Whether any harm due to 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.

Whether the development is inappropriate within the Green Belt

17. The Framework advises at Paragraph 145 that, other than in the case of a number of specified exceptions, the construction of new buildings within the Green Belt is inappropriate. This basic approach is replicated in Policy BDP4 of the Bromsgrove District Plan. There is no suggestion that any of those exceptions apply in this case and the appellant accepts that the building should be regarded as inappropriate development in the Green Belt.
18. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances.

Openness

19. The building is located at the lowest part of this sloping site and is out of sight from public vantage points. Nevertheless, it is a new, significant structure, and there is consequently a loss of openness arising from the development. The Framework establishes that openness is one of the essential characteristics of Green Belt. Accordingly, while limited due to the low height of the building, the loss of openness here is harmful.

Character and appearance

20. The building occupies a significant proportion of the rear garden of the appeal property. It is finished in an oak-effect uPVC cladding, with a felt roof. The large scale of the building means that it appears excessive in its garden context, and consequently harms the character of the area. The fact that the appeal property is set within a row of houses rather than in more open countryside does not alter my view of this. The visual harm is limited due to the unobtrusive siting of the building, away from public view. I also accept that the low roof line of the building helps it to appear subservient to the house, despite its greater ground area. Nevertheless, the visual harm I have found leads to conflict with the design aims of Policy BDP19 of the District Plan.

Other considerations

21. I have had regard to the reasons the appellant has given for needing a home gym, including being an amateur boxer. I also appreciate the desire to create an indoor space for use by the appellant and his large family in all weathers. However, as discussed in relation to the appeal on ground (c), the building is unusually large for these purposes. Accordingly, I attach only limited weight to this consideration as a justification for this particular building.
22. While the appellant says that the building occupies a sloping area of little practical value, it strikes me as just being an ordinary area of garden, and I attach little weight to this consideration.
23. I agree with the appellant that the development does not conflict with any of the 5 purposes of Green Belt set out at Paragraph 134 of the Framework, but this does not alter my findings relating to harm to the Green Belt due to inappropriateness and loss of openness.
24. I accept that the building does not harm the living conditions of neighbours, but that does not alter the other harm I have found.
25. I have considered the presumption in favour of sustainable development set out in Policy BDP1 of the District Plan, but that does not suggest that permission should be granted in this instance, given the harm and policy conflict I have found.

Conclusion

26. I attach substantial weight to the harm to the Green Belt. There is additional, albeit limited, harm to the character and appearance of the area. Having considered all matters raised in support of the development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist, and the development is at odds with the Green Belt policy set out in Policy BDP4 of the Bromsgrove District Plan and the Framework. I therefore conclude that the appeal on ground (a) should fail.

The appeal on ground (f)

27. Section 173 of the Act indicates that there are 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 which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case the Council has not stated specifically which of these purposes it seeks to achieve. However, since the notice requires the removal of the entire building, the purpose must be to remedy the breach of planning control in accordance with (s173(4)(a)). Indeed, this is the basis upon which the appellant's case is put and so the question on ground (f) is whether the requirements of the notice exceed what is necessary to remedy the breach of planning control.
28. It is argued that the requirement to demolish the building is excessive and that the notice should only require the building to be removed in part. The appellant has not provided any drawn details of his proposal. However, I have been referred to a letter from the Council dated 16 January 2017 and a drawing attached to it. This suggests that the Council's concerns regarding the building

could be addressed if part of the building were removed. Although the drawing is sketchy, it adequately shows the part of the building that would need to be removed and the part that could be retained.

29. Nevertheless, I am not persuaded, on the very limited information before me, that this would address the planning concerns which have been raised. The first point to note is that the breach of planning control is the building as a whole, and this can only be remedied by its removal. Permitted development rights cannot be claimed retrospectively. Consequently, reducing the building as proposed would not remedy the breach of planning control. Nevertheless, I am mindful that the enforcement regime is intended to be remedial rather than punitive and it is open to me in this case (where there is also a ground (a) appeal) to consider the merits of the appellant's proposal.
30. It may well be that a smaller building, as suggested, could have been built under the provisions of Class E. However, that would not depend simply on the size of the building, but whether or not it was incidental to the enjoyment of the dwellinghouse as such. Yet I have no details of how the reduced building would be used and cannot assume that it would (if originally built in the reduced form) have accorded with Class E. While a reduced building would have a lesser visual impact, there is no argument made that such a building is one that would not be inappropriate development in the Green Belt. Consequently, I am not persuaded, on the information before me, of the planning merits of the proposal.
31. For these reasons, I conclude that reducing the building as the appellant suggests would not remedy the breach of planning control or fully address the planning harm arising from the breach. Accordingly, the appeal on ground (f) fails.

The period for compliance

32. Since there is no appeal on ground (g), the only matter to be considered is whether the circumstances arising from the Covid-19 outbreak indicate that a period longer than the 3 months specified in the notice is needed to comply with its requirements. In response to my letter to the parties on this matter, the Council considered that the compliance period should remain unchanged, while the appellant thought that a 9 month period would be appropriate.
33. By its very nature, the Covid-19 outbreak brings considerable uncertainty. Accordingly, any assessment of the compliance period must rely heavily on judgement and an assessment of circumstances at the time. It is not clear at the moment how long the current lockdown will remain in place, or what other restrictions may apply when it ends.
34. The appellant argues that it is impossible to demolish the building and remove the materials from the site within the 3 month period and that he is unlikely to be able to secure a contractor while the lockdown is in place. However, there is insufficient evidence to demonstrate, on the balance of probability, that a longer period is needed in this instance. There is no explanation of why contractors would experience difficulties in maintaining social distancing requirements at this site and nothing to show why there is likely to be difficulty securing a contractor for the work.

35. It may be that, in the event, genuine difficulties will be experienced due to the Covid-19 restrictions. However, such are current uncertainties that this could be the case even if a longer compliance period were permitted. In the event that difficulties are experienced, the Council has the discretion to extend the period for compliance under the provisions of s173A(1)(b) of the Act. The Council has made reference to this power and pointed out that this would allow it to react to prevailing circumstances.
36. For these reasons, and having regard to the desirability of ensuring that the breach of planning control is addressed without undue delay, I conclude that the period for compliance with the notice should remain unchanged.

Peter Willows

INSPECTOR