



Appeal Decisions

Hearing Held on 10 March 2020

Site visit made on 11 March 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 April 2020

"Notice 1" Appeal Ref: APP/M1595/C/18/3210414

Land known as Milo, South Avenue, Langdon Hills, Basildon SS16 6JG

- 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 Alan Palmer against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 31 July 2018.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the erection of a dwelling on the Land (including excavation of a basement as part of the dwelling) in the position numbered 1 on the plan and the erection of an outbuilding on the Land in the position numbered 2 on the plan.
 - The requirements of the notice are:
 - (i) Remove from the Land the dwelling numbered 1, on the attached plan;
 - (ii) Remove from the Land the outbuilding numbered 2, on the attached plan;
 - (iii) Restore the level of the land, where the basement has been excavated to a level consistent with the adjoining ground levels;
 - (iv) Remove all resultant materials arising from step (i) and (ii) above from the Land affected at Milo, South Avenue.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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"Notice 2" Appeal Ref: APP/M1595/C/18/3210418

Land known as Milo, South Avenue, Langdon Hills, Basildon SS16 6JG

- 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 Alan Palmer against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 31 July 2018.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the stationing of a caravan on the Land in the position numbered 1 on the plan and the stationing of a container on the Land in the position numbered 2, and the use of the caravan and container as temporary living accommodation.
 - The requirements of the notice are:
 - (i) Cease the occupation of the caravan and container as residential accommodation;
 - (ii) Remove the caravan numbered 1 from the Land;
 - (iii) Remove the container numbered 2 from the Land;
 - (iv) Remove all resultant materials arising from step (i) and (ii) above from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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“Notice 4” Appeal Ref: APP/M1595/C/18/3210416

Land known as Milo, South Avenue, Langdon Hills, Basildon SS16 6JG

- 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 Alan Palmer against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 31 July 2018.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the development of two detached dwellings shown numbered 2 and 3 on the plan by the conversion of two caravans and construction of foundations, decking, hardstanding and with associated services.
 - The requirements of the notice are:
 - (i) Remove the two detached dwellings numbered 2 and 3 from the Land;
 - (ii) Remove the associated decking to the dwellings from the Land;
 - (iii) Remove the foundations to the dwellings from the Land;
 - (iv) Remove associated hardstanding which form accesses to the dwellings from the Land;
 - (v) Remove the drainage associated with the dwellings from the Land;
 - (vi) Remove the water and electricity connections associated with each residential property;
 - (vii) Remove all resultant materials arising from steps (i), to (vi) above from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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“Notice 5” Appeal Ref: APP/M1595/C/18/3210415

Land known as Milo, South Avenue, Langdon Hills, Basildon SS16 6JG

- 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 Alan Palmer against an enforcement notice issued by Thurrock Borough Council.
 - The enforcement notice was issued on 31 July 2018.
 - The breach of planning control as alleged in the notice is: Without the benefit of planning permission, the erection of an office building (with foundations and connecting water drainage and electricity services) in the position marked in blue on the plan.
 - The requirements of the notice are:
 - (i) Remove the office building from the Land;
 - (ii) Remove the foundations associated with the office building;
 - (iii) Remove the drainage associated with the office building;
 - (iv) Remove the water and electricity connections associated with the office building;
 - (v) Remove all resultant materials arising from steps (i) to (iv) above from the Land.
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (g) of the Town and Country Planning Act 1990 as amended.
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Notice 1 Appeal Decision

1. It is directed that the enforcement notice be varied by the deletion of 6 months as the period for compliance and its substitution with 12 months. Subject to this variation 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.

Notice 2 Appeal Decision

2. It is directed that the enforcement notice be varied by the deletion of 6 months as the period for compliance and its substitution with 12 months. Subject to

this variation 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.

Notice 4 Appeal Decision

3. It is directed that the enforcement notice be varied by the deletion of 6 months as the period for compliance and its substitution with 12 months. Subject to this variation 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.

Notice 5 Appeal Decision

4. It is directed that the enforcement notice be corrected by deletion of "with foundations and connecting water drainage and electricity services" from the breach of planning control alleged and the deletion of requirements (ii), (iii) and (iv). It is directed that the enforcement notice be varied by the deletion of 3 months as the period for compliance and its substitution with 12 months. Subject to these corrections and this variation 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

5. At the Hearing the parties agreed that the full site address is as I have stated in the headings above. During the Hearing the Council withdrew an enforcement notice, known as "Notice 3", relating to 3 shipping containers, Appeal Ref: APP/M1595/C/18/3210417.
6. At the Hearing the appellant stated that the office building does not have foundations, water or electricity and that these should therefore be removed from the breach of planning control alleged in Notice 5. The Council did not contest this and so I am satisfied I may exercise my powers of correction in this regard pursuant to section 176 of the above Act. This also means that the requirements of Notice 5 must be corrected by removing items (ii), (iii) and (iv).
7. The appellant provided two additional statements at the Hearing and drew attention to photographs, some of which had not already been submitted in evidence. In addition, it was apparent to me that third parties had not been correctly notified of each of the appeals or the Hearing. As a result of a combination of the above factors, I adjourned the Hearing after the site visit.
8. The adjournment allowed corrected notification letters to be issued by the Council inviting comments from third parties. It also allowed the Council time to respond in writing to the additional statements and photographs provided by the appellant. I then gave the appellant the opportunity to respond in writing to the Council's written response.
9. I am satisfied that no issues have been raised by submissions received after the adjournment to warrant the Hearing being resumed. I am also satisfied that every opportunity has been given to both main parties to comment on each other's evidence. Consequently, I closed the Hearing in writing on 8 April 2020.

The Ground (a) Appeals

10. The main issues in each of the ground (a) appeals are:

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

Whether Inappropriate Development

11. Pursuant to section 55 of the Act, Notices 1, 4 and 5 are headed 'operational development'. Notice 2 contains no such heading. However, the caravan and container which are the subject of Notice 2 have been joined together with other materials to form a connecting internalised space between the two. As a result, in my judgement, Notice 2 includes built development. The main parties have treated the development which is the subject of Notice 2 in this way for the purposes of paragraph 145 of the Framework. Considering all of the above points, I am satisfied each notice involves the development of buildings.
12. Each enforcement notice refers to Policy PMD6 of the Thurrock Local Development Core Strategy and Policies for Management of Development. This policy seeks that the open character of the Green Belt is maintained, protected and enhanced and states that planning permission will only be granted for new development in the Green Belt provided it meets as appropriate the requirements of the Framework, other policies in the document and specific requirements for development types specified in the policy. Development types specified in Policy PMD6 include extensions, replacement buildings and redevelopment of previously developed land.
13. Policy PMD6 pre-dates the Framework but is broadly consistent with it. Paragraph 145 of the Framework states that the construction of new buildings should be regarded as inappropriate in the Green Belt. Three exceptions to this stated in the Framework include:
 - 145 (c) the extension of a building provided that it does not result in disproportionate additions over and above the size of the original building;
 - 145 (d) the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces; and
 - 145 (g) the redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development.
14. At the Hearing, the appellant's evidence drew on each of the above three development types. However, none of the appeal developments relate to extensions and so this development type is not relevant for any of the appeals.
15. Consistent with the Framework, Policy PMD6 permits replacement dwellings in the Green Belt only where not materially larger than the original building. The replacement of other buildings is permitted by Policy PMD6 only if for the same use and where not materially larger than the one it replaces.

16. In terms of baseline, it is common ground that a single storey 1 bedroom dwelling previously occupied the appeal site for a long time, in broadly the same location as where the principal dwelling which is the subject of Notice 1 is now. The appellant considers that the previous dwelling's permitted development rights should be taken into account. However, it was established at the Hearing that permitted development extensions proposed for the previous dwelling were not built. As such, they cannot form part of the baseline for the purposes of 145 (d), and, to take them into account would not comply with the wording of Policy PMD6 where it clearly defines what is meant by 'original building'.
17. The new dwelling contains at least two bedrooms in addition to other rooms including a rehabilitation room. Even taking into account some of its accommodation is within a basement, based on the information provided, it is materially larger than the original dwelling and so it does not comply with this exception from the Framework or Policy PMD6.
18. I have reached the same view in respect of the outbuilding which is the subject of Notice 1. Whilst I appreciate the appellant may have sought to consolidate the number of outbuildings on the site, based on the information provided, I am not satisfied the outbuilding which now exists has a lesser impact on openness than the outbuildings it is said to have replaced, given its size and prominent siting close to a footpath.
19. In respect of the two detached dwellings which are the subject of Notice 4, evidence suggests two caravans existed on the site between 1999 and around 2014 and that these had been used as residential accommodation with Council Tax paid for several years. Whilst there is no evidence these caravans were 'buildings' for the purposes of paragraph 145 of the Framework or Policy PMD6, they would still have had an effect on the openness of the Green Belt. However, from the information provided, the structures which are the subject of Notice 4 are materially larger than the previous caravans and so do not comply with this exception from the Framework or Policy PMD6.
20. In any event, the previous dwelling, outbuilding and caravans no longer exist and so, as has been established in case law on replacement buildings in the Green Belt, the new principal dwelling, outbuilding and the two detached dwellings which are the subject of Notice 4 cannot benefit from the replacement building exception set out in the Framework.
21. There is no evidence that the replacement building provisions from Policy PMD6 or paragraph 145 of the Framework are relevant for the temporary living accommodation which is the subject of Notice 2, or the office building which is the subject of Notice 5.
22. The evidence indicates the appeal site previously contained about 15 outbuildings in addition to the previous dwelling and two caravans. Consistent with the Framework, Policy PMD6 states that redevelopment should have no greater impact on the openness of the Green Belt than the existing development.
23. Policy PMD6 further states that any buildings demolished prior to the grant of permission for redevelopment will not count as developed area. In this regard, the policy is more restrictive than the Framework and not consistent with it as

- the Framework includes land which **was** occupied by a permanent structure, within its definition of previously developed land.
24. The Council does not consider the site is previously developed land as previous structures were either not permanent or had blended into the landscape. However, for the purposes of the Framework, the latter of these characteristics relates to the **remains** of permanent structures and there is no evidence that only the remains of previous permanent structures existed. Moreover, there is no evidence the previous dwelling on the site was not permanent or that all of the other previous structures were not permanent.
25. At the Hearing the Council referred to structural stability. But this is not a factor in determining whether land is previously developed or not. Accordingly, considering all of the above points, I am satisfied the appeal site is previously developed land. The question therefore arises as to whether the appeal developments have a greater impact on the openness of the Green Belt than the existing development.
26. I have considered what development previously existed on the appeal site, shown on the drawing and photographs submitted during the Hearing. As set out in the Framework, the essential characteristics of Green Belts are their openness and permanence. The aerial photographs provided by the Council show the site was previously green and heavily vegetated. It appeared free from built development with the exception of a few dispersed buildings.
27. By contrast, by area, the site now exhibits considerably more built development. Each of the appeal developments is clearly seen from at least one public footpath. A well-trodden footpath runs immediately adjacent to the site on its north-eastern side and another provides clear views of developments on the site looking north as the footpath runs perpendicular to South Avenue, close to the site. At the Hearing the appellant suggested this footpath is not well used but this was not what I found at my site visit.
28. From the information available, it is clear that compared with what previously existed, the appeal developments have a greater visual and spatial impact on the openness of the Green Belt. Consequently, encroachment into the countryside has occurred. This does not accord with purpose (c) of the Green Belt, set out in paragraph 134 of the Framework and which the main parties agreed at the Hearing is the most applicable purpose in this case. My view on this does not change whether I consider each appeal development separately or together.
29. I conclude on this main issue, each of the appeal developments is inappropriate development in the Green Belt and this does not comply with Policy PMD6 or the Framework. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Other Considerations

30. The appellant has explained he is disabled and is not in good health. It has also been explained that 24/7 care has needed to be provided by his wife for family members living on the site including his and her elderly fathers. Care will continue to need to be provided on site for the foreseeable future. So I have had due regard to the Public Sector Equality Duty (PSED) contained in section

149 of the Equality Act 2010 and the personal circumstances of the appellant and other family members currently living on the site.

31. I give these considerations significant weight. But, as is set out in paragraph 133 of the Framework, the Government attaches great importance to Green Belts and so it does not follow from the PSED that any of the appeals should succeed on ground (a) because of the personal circumstances of the appellant and/or his family member living on site and dismissing the ground (a) appeals is a proportionate response given the Green Belt harm identified above.
32. The appellant has described the previous state of the site as overgrown and rubbish-filled. They have provided new planting and a lawn. However, in my judgement, the site having been overgrown and providing new planting does not justify any of the appeal developments on a site which is in the countryside and in the Green Belt, and, there are other means by which the clearance of rubbish may be achieved. So I give these considerations limited weight.
33. The appellant is willing to provide mitigation for the effects of the developments through landscaping, such as tree planting. But no proposals are before me to consider and so I give this consideration limited weight.
34. I accept, based on the information available, that previous structures on the site were in a dilapidated state and did not provide satisfactory living accommodation. In that regard, the appeal buildings provide better conditions for occupiers, particularly the principal dwelling which provides family-sized accommodation and benefits from rainwater harvesting and other sustainability features. I give this consideration moderate weight.
35. In respect of the previous dwelling's permitted development rights to extend, the appellant's own evidence indicates those proposals could not be carried out and that dwelling is now demolished. So the previous permitted development proposals do not represent a realistic fallback position which justifies the dwelling which is the subject of Notice 1 and so I give this consideration limited weight.
36. My attention has been drawn to other permitted development rights, particularly in respect of outbuildings and basements. But due to the provisions of Article 3(5) of the General Permitted Development Order, no such rights exist for any of the appeal developments as the principal dwelling which is the subject of Notice 1 was not lawfully constructed. So I give this consideration limited weight.
37. The appellant states that in assessing the replacement dwelling and outbuilding, the Council has no concerns with regards to the design of the replacement buildings and that the structures pose no amenity, transport or ecological concerns. Also, it is said the office building is sited on an area of existing hardstanding and so has resulted in no loss of land of ecological quality. However, these are all neutral points so I give them limited weight.
38. I appreciate the temporary living accommodation may have been provided only for the duration of the build of the principal dwelling, thereby not having a permanent effect on the openness of the Green Belt. But as there is no permission for the principal dwelling I give this consideration limited weight.
39. I realise that security and theft are genuine concerns for the storage of valuable equipment in a countryside setting. But I am not satisfied this justifies

- the size of outbuilding built in this case, which is prominently sited adjacent to a public footpath. So I give this consideration limited weight.
40. The appellant has expressed a willingness to remove fixed elements from the two caravan conversions, including their extensions. But based on the information provided, whilst their colour may have been chosen to fade into the landscape, these structures would still be materially larger than those which existed before and so I give this consideration limited weight.
 41. The appellant has offered to remove all existing structures on the site in order to retain the principal dwelling which is the subject of Notice 1. This would enable the appellant to live in that building with all other family members currently on the site, preventing homelessness. It is the appellant's view this would significantly 'open up' the land compared with its original condition.
 42. So I have carefully considered whether the amount of development which may previously have existed on the site before (including the previous dwelling, two caravans and about 15 outbuildings, shown on the drawing and photographs submitted by both main parties during the Hearing), is equivalent to the principal dwelling which is the subject of Notice 1.
 43. But the appellant's own evidence says the scale of the original outbuildings is unknown and is challenging to calculate retrospectively. Based on all the information which has been provided, it is my judgement that I simply cannot conclude with any certainty that the amount of development which may previously have existed on the site had a greater effect on the openness of the Green Belt than the principal dwelling which exists now. Accordingly, I give limited weight to the amount of development which may previously have existed when compared with the principal dwelling.
 44. It has been explained that the situation in this case has come about, not out of any disregard for the planning system but unintentionally, due to an unfortunate misinterpretation of advice and permitted development rights. Be that as it may, this consideration could be too easily repeated and so I give this consideration limited weight.
 45. I appreciate representations in support of the appeal developments have been received, including from a ward councillor. But these do not change my overall conclusions on the appeal developments in this case in light of the harm identified above and so I give these limited weight.
 46. The appellant has said they are not in a financial position to completely rebuild their home or find another one. But there is no evidence this is the case or that my overall conclusions should change for this reason and so I give this consideration limited weight.
 47. The considerations noted above relating to disability, age and the quality of living accommodation, weigh in favour of the appeal developments. However, the Framework states that it should be ensured that substantial weight should be given to any harm to the Green Belt. I do not consider that the harm to the Green Belt identified above, is clearly outweighed by other considerations in this case, including those noted above, whether considered individually or cumulatively. I therefore find the very special circumstances necessary to justify any of the appeal developments do not exist.

Conclusion on the Ground (a) Appeals

48. The appeal developments are inappropriate development in the terms set out in the Framework and lead to a loss of openness in the Green Belt. This harm is not outweighed by other considerations so as to amount to very special circumstances. For all of the reasons given above and taking into account all other matters raised, I conclude that the ground (a) appeals should be dismissed.

The Ground (f) Appeals

49. Whilst ground (f) is ticked on all of the appeal forms, at the Hearing the appellant confirmed that ground (f) is pleaded only in respect of Notice 1, Notice 3 and Notice 4.
50. Under section 173(4) of the above Act, when serving an enforcement notice the Council may seek to (a) remedy the breach of planning control, or (b) remedy any injury to amenity which has been caused by the breach.
51. At the Hearing the Council confirmed the purpose of each notice is to remedy the breach of planning control, pursuant to section 173(4)(a) rather than section 173(4)(b). In light of this, the appellant agreed there is no lesser step for Notice 1 or Notice 4 that would resolve the breach of planning control. Accordingly, the appeals on ground (f) for Notice 1 and Notice 4 fail and Notice 3 has been withdrawn.

The Ground (g) Appeals

52. At the Hearing the appellant confirmed they seek 12 months to comply with Notice 1, Notice 2 and Notice 4 and 6 months to comply with Notice 5. The notices were issued some time ago. But the appellant is entitled to assume success and to a reasonable period for compliance after the notices take effect. So I do not accept the Council's argument that the appellant has already benefitted from a long period of time to resolve the breaches.
53. Since the Hearing opened a public health emergency relating to COVID-19 has begun, and, as well as complying with each of the requirements of each of the notices, the appellant and other family members currently living on the site will have to seek alternative accommodation.
54. The Council has stated its willingness to negotiate with the appellant on a revised proposal for the site. Should this be appropriate, I am allowing additional time for this to happen, in addition to ensuring time is allowed to seek alternative accommodation in current circumstances and comply with the notices. So I am extending the compliance period for all the notices to 12 months. This is the maximum period I consider reasonable in the circumstances and as such the appeals on ground (g) succeed to that extent.

Notice 1 Appeal Conclusion

55. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice as varied and refuse to grant planning permission on the deemed application.

Notice 2 Appeal Conclusion

56. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice as varied and refuse to grant planning permission on the deemed application.

Notice 4 Appeal Conclusion

57. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice as varied and refuse to grant planning permission on the deemed application.

Notice 5 Appeal Conclusion

58. For the reasons given above I conclude that the appeal does not succeed. I uphold the enforcement notice as corrected and varied and refuse to grant planning permission on the deemed application.

L Perkins

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kieron Hodgson	Iceni Projects
Charlotte Orrell	Iceni Projects
Len Norris	Appellant's father-in-law
Alan Palmer	Appellant
Diane Palmer	Appellant's wife

FOR THE LOCAL PLANNING AUTHORITY:

Matthew Gallagher	Major Applications Manager
BA(Hons) DipTP Cert UD MRTPI	
Genna Henry	Senior Planning Officer
BA(Hons) MSc (Hons)	
Jonathan Keen	Interim Strategic Lead for Development Services
Adam Roberts	Planning Enforcement Officer

DOCUMENTS SUBMITTED DURING THE HEARING

- 1 Statement of Len Norris
- 2 Statement of Diane Palmer
- 3 1999 Aerial Photograph
- 4 2004 Aerial Photograph
- 5 2008 Aerial Photograph
- 6 2010 Aerial Photograph
- 7 2012 Aerial Photograph
- 8 2014 Aerial Photograph
- 9 2018 Aerial Photograph
- 10 Drawing STS-1360-101 – Block Plan Before Works
- 11 Original Site Photos Memo
- 12 Local Planning Authority's Response to Evidence
- 13 Appellant Response to Local Authority Response to Evidence