



Appeal Decision

Site visit made on 20 February 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 01 May 2020

Appeal Ref: APP/C3620/C/19/3226937

Oxshott House, Oxshott Road, Leatherhead, Surrey KT22 0ER

- 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 Hisham Zubeidi against an enforcement notice issued by Mole Valley District Council.
 - The enforcement notice was issued on 18 March 2019.
 - The breach of planning control as alleged in the notice is: Without planning permission the erection of a single storey detached outbuilding on the Land (annotated in green on the attached plan).
 - The requirements of the notice are:
 1. To remove completely from the Land the detached outbuilding (annotated in green on the attached plan) and any associated bases, fittings, materials and debris.
 - The period for compliance with the requirements is Six (6) months after this Notice takes effect.
 - 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. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Summary of Decision

1. The appeal succeeds in part and planning permission for that part is granted, but otherwise the appeal fails, and the enforcement notice as corrected is upheld as set out below in the Formal Decision.

Procedural Matters

2. When the appeal was first lodged the appellant also appealed the enforcement notice under ground (c) thereby considering that there had not been a breach of planning control, asserting that the building fell within the parameters of Class E under Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015. However, the appellant subsequently withdrew this ground.
3. This withdrawal effectively concedes that the development is not Class E permitted development and, in accepting that the outbuilding falls outside the limitations of such and requires the benefit of planning permission for its lawful retention, is in accordance with my findings. Due to the outbuilding's sheer size relative to the dwelling itself, which I refer to later in this letter, and the various uses labelled on drawing no 2019/15/S02, dated February 2019, I disagree with the appellant's assertion in 5.14 of his Statement that the uses "are all reasonably required in connection with the existing dwelling."

4. In this particular instance, and with reference to the second stated reason for issuing the enforcement notice, I find that due to the considerable expanse of the outbuilding in situ there is a real prospect that the nature and scale of the various uses labelled could go beyond a purpose merely incidental to the enjoyment of the dwelling. In this context physical size has to be a relevant consideration. The word "incidental" denotes an element of subordination, in land use terms, in relation to the enjoyment of the dwellinghouse itself.
5. Given the circumstances, I do not consider that the outbuilding as exists could be reasonably considered as incidental to the enjoyment of the dwellinghouse.

Background

6. It is understood that there were previously four separate and detached outbuildings sited on the land which were then amalgamated by works involving demolition and rebuild to form one single building. In view of this the Council initiated an enforcement investigation and, as a consequence, considered it expedient to issue an enforcement notice requiring for the single outbuilding's demolition.

Appeal on Ground (a) and the Deemed Planning Application (DPA)

Main Issues

7. The main issues are:
 - 1) whether the proposal would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework;
 - 2) the effect on the openness of the Green Belt;
 - 3) whether the proposal would result in any other harm; and
 - 4) if it is inappropriate development, whether the harm by reason of inappropriateness and by reason of any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development

8. The National Planning Policy Framework (the Framework) indicates that the construction of new buildings in the Green Belt is inappropriate development, unless it is for one of a number of specified purposes, as set out in paragraph 145 of the document. The appellant considers that the development falls within exception d) thereto and represents essentially the replacement of a building which is in the same use and NOT materially larger than the one it replaces. The crucial factor here is whether the development is harmful to the openness of the Green Belt.
9. In the above connection paragraph 144 of the Framework says that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

10. Before the consolidation works to the outbuildings were carried out, there were four detached, individual outbuildings sited within the dwelling's curtilage. However, the appellant has put forward figures to suggest that, although the combined floorspace of the four former outbuildings measured some 372 sqm, the floorspace of the single building created equates to approximately 942 sqm. The sheer size of the footprint, relative to the dwelling, is apparent from drawing Nos 2019/15/P201 and 2019/15/S02.
11. In *R (Heath and Hampstead Society) v Camden LBC*, Carnwath LJ held:
"The words 'replacement' and 'not materially larger' must be read together and in the same context...Size is the primary test. The general intention is that the new building should be similar in scale to that which it replaces....some qualification to the word 'larger' is needed. A small increase may be significant or insignificant in planning terms, depending on such matters as design, massing and disposition on the site. The qualification provides the necessary flexibility to allow planning judgement and common sense to play a part, and it is not a precise formula. However, that flexibility does not justify stretching the word 'materially' to produce a different, much broader test."
12. The appellant comments in his representations that as, in his opinion, the former buildings and new structure are of a low scale and bulk with flat roofs such an increase can be considered as "appropriate" in that it is not materially larger than the one it replaces. Given the substantial floorspace increase I fail to see the logic of this assertion. Indeed, given the context and proximity to the relatively small two-storey dwellinghouse, the initial visual impression from the front of the site is that of a very considerable, expansive building. To my mind the single-storey form accentuates its horizontal emphasis and this only adds to the stark contrast between the dwelling and what should be an outbuilding essentially incidental to the dwelling itself.
13. Given the site's location and that outbuildings previously existed at the site I consider that the dwelling's garden constitutes previously developed land. However, in light of the circumstances I have described, the development does not convincingly meet the exception set out in paragraph 145(5) of the Framework nor, for that matter, any of the other exceptions referred to in the paragraph. Given this, I conclude that the outbuilding constitutes inappropriate development, which is, by definition, harmful to the Green Belt. As mentioned, such development should not be approved except in very special circumstances.

Openness

14. The Framework states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open.
15. Openness in terms of the Green Belt can have a spatial as well as a visual aspect, although the Supreme Court has held that a consideration of openness is essentially a matter for the decision maker on a case by case basis. Although the outbuilding occupies a similar position on the site as the four separate outbuildings it replaced the infilling involved in the amalgamation works has resulted in a substantial increase in floorspace. This material alteration has inevitably given rise to a loss of openness.

16. I therefore conclude that in both spatial and visual terms the development has a significant impact on the openness of the Green Belt. As such, the proposal fails to safeguard the countryside from encroachment, one of the five purposes of the Green Belt, and does not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open.
17. In the circumstances I consider that the development has had a greater impact on the openness or the purposes of including land in it than was previously the case, prior to the former outbuildings' amalgamation.
18. I thereby conclude that the proposal is harmful to the openness of the Green Belt, contrary to relevant advice within the Framework.

Planning Balance

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. Apart from inappropriateness and harm to the openness of the Green Belt no other harm as a result of the development has been identified.
20. Policy RUD9 of the Council's Core Strategy (CS) requires that garages and ancillary buildings in the countryside outside the local defined settlement areas of the villages, as is the case with the appeal site, should, amongst other things, not be excessive in size having regard to the size of the dwelling which they serve nor should they constitute a dominant feature. In this instance I have found that the development is in conflict with both these provisos.
21. I am, though, mindful that there were previously four established separate outbuildings on the land. At my site visit I noted that the swimming pool building is distinguishable in form and height from the attached expanse of building which houses the gym, garages and workshop and games room. The latter is the most visible area of development when approaching the property. Such is its sprawl that the single-storey height accentuates its incongruity to the two-storey dwelling.
22. In contrast, the pool and the attached section of the outbuilding housing the sauna, steam room, changing rooms, treatment and plant room, are set back to the rear of the dwelling so as to markedly lessen their impact. Whilst this section of the outbuilding, if isolated, would still impact on the Green Belt's openness, I find that its retention as a consolidated unit would be considerably less harmful in this regard than the fragmented arrangement which previously existed and, most certainly, would represent a significant improvement on the consolidated development in situ due to what would be a marked reduction in the built form. The relative angles of the dwelling and this element of the outbuilding would mean that, at least from the front approach to the property, the latter would be largely hidden.
23. Although the DPA is for the extent of the development enforced against, by way of s177(1)(a) of the 1990 Act as amended, it is open to me to grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters, or in relation to the whole or any part of the land to which the notice relates.

24. Given my findings I am satisfied that the retention of the swimming pool and its attached associated facilities area, given the significant reduction in floorspace from the removal of the remainder of the building, would allow for a site arrangement that would be less harmful to the openness and a much less intrusive than that which exists. The Council's case report for the Certificate of Lawfulness application (ref MO/2019/0434) indicates that the pool and associated facilities area has a floorspace of approximately 360 sqm whereas the totality of the four former outbuildings was some 372 sqm.
25. Accordingly, in weighing up the planning merits and impacts I have had regard to the situation which existed prior to the amalgamation works being carried out. Given these factors I am satisfied that, in this particular instance, very special circumstances exist to outweigh the harm to the Green Belt's openness from what would still be a large outbuilding relative to the footprint of the dwelling at the site. Nonetheless, the said modifications would result in a building and use that could be considered as incidental to the enjoyment of the dwellinghouse and consistent with paragraph 145(d) of the Framework, thereby justifying this part of the development carried out.
26. In granting planning permission, albeit in part, I am satisfied that the section of the building housing the swimming pool and its associated facilities are physically severable from the remainder of the outbuilding.
27. I thereby conclude that the development in part, as described, would be acceptable, but subject to a condition, retrospective in form, which requires that details of the intended treatment of its external elevations shall be submitted to the Council for subsequent approval. This would ensure that the development would be properly finished and to a satisfactory appearance. In the event there would be no material conflict with the objectives of CS policies RUD9, ENV22 and CS1, nor relevant advice within the Framework.
28. The Council has also suggested conditions be imposed in the event that the appeal is allowed. I agree that a condition is necessary to ensure that the outbuilding should remain incidental to the dwelling and shall not be severed therefrom. Similarly, given the relevance of limiting the floorspace which I have already discussed, it is both necessary and reasonable to ensure that no additional outbuildings are erected under Class E permitted development (PD) rights. This does not prohibit the erection of any such future development but would, instead, require that the Council has control over it as planning permission would be needed for such. The suggestion that a condition be imposed to restrict any permitted development to the dwelling itself is, as the appellant says, unrelated to the outbuilding and it is extraneous. Accordingly, it would be both unnecessary and unreasonable to remove the dwelling's PD rights specified.
29. For the above reasons, and having had regard to all matters raised, the appeal succeeds in part and planning permission, by way of the DPA, is granted in part to reflect this.

The appeal on Ground (f)

30. The appeal on ground (f) is that the requirements of the notice exceed what is necessary to remedy the breach of planning control or the injury to amenity caused by the alleged development. S173(4)(a) and (b) of the 1990 Act as amended provides that the purposes of an enforcement notice can be (a) to

remedy the breach of planning control, including by restoring the land to its condition before the breach took place, or (b) to remedy any injury to amenity which has been caused by the breach. Given the nature of its requirements I consider that the enforcement notice's purpose was to remedy the breach.

31. The consideration of "alternatives" to the development against which enforcement action has been taken was explored in *Arnold v SSCLG and Guildford Borough Council* [2017] EWCA Civ 231.
32. In the current appeal the appellant has invited me to consider the drawings previously submitted to the Council under planning application ref MO/2019/1460 where it was proposed that the single outbuilding be broken up and works carried out to once more create four separate buildings. Given that the enforcement notice had already been issued the Council used its powers under s70C of the Main Act and declined to determine the application.
33. In light of my findings that a single building, albeit much reduced, with a roughly comparable floorspace to the totality of the original outbuildings, represents an acceptable solution, fragmentation with a significant additional floor area, would be unacceptable in the circumstances, and in material conflict with the objectives of the planning policies cited and relevant advice within the Framework. Indeed, this would equally apply to the two building scheme for which a lawful development certificate was previously sought under MO/2019/0434). Further, no fallback position exists.
34. From the evidence and appeal papers before me I have not identified any acceptable lesser steps that could be carried out to remedy the breach of control. Accordingly, the appeal on ground (f) fails.

The Appeal on Ground (g)

35. The appeal on ground (g) is that the period for compliance with the notice falls short of what is reasonable. The appellant considers that the specified six month period is insufficient time to carry out the steps and believes that a more reasonable period for compliance would be twelve months.
36. The six month period concerned the outbuilding in its entirety whereas the degree of demolition required is now significantly reduced. Accordingly, I am satisfied that both the necessary physical works can be effected and also measures taken to find alternative storage accommodation can be completed within this time period. Under s173A(1)(b) the Council holds powers to extend the period for compliance should it see fit.
37. The appeal on ground (g) therefore fails.

Overall Conclusions

38. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice as corrected and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as is inconsistent with the permission which I will grant by virtue of s180 of the Act.

Formal Decision

39. It is directed that the enforcement notice be corrected by, in differentiating between two distinct sections of the outbuilding, the substitution of the plan attached to the enforcement notice with the replacement plan now attached to this decision to reflect this.
40. The appeal is allowed insofar as it relates to the land shaded pink on the plan annexed to this decision and a specified part of the development, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for that area of the outbuilding comprising the swimming pool, steam room, treatment room, sauna, male & female changing rooms, plant room and garden store, as shown and labelled on drawing No 2019/15/P306, dated August 2019, subject to the following condition:
- 1) The development hereby permitted shall only be used for accommodation incidental to the main dwellinghouse. The resultant building shall not be let, sold, or otherwise disposed of separately to the dwellinghouse.
 - 2) Notwithstanding the provisions of the Town and Country (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no further extensions within Schedule 2, Part 1, Class E, shall be carried out on the land the subject of this planning permission.
 - 3) The area of the outbuilding hereby permitted shall, consistent with the remaining section of the building, be demolished within six months of the date of failure to meet any of the following criteria:
 - (i) Within three months of the date of this decision, details of the treatment of its external walls, and the external materials to be used in this respect, shall be submitted to the local planning authority.
 - (ii) Within nine months of the date of this decision the details shall have been approved in writing by the local planning authority or, if the local planning authority refuses to approve the details or fails to give a decision within the prescribed period, an appeal shall have been made to, and accepted as valid by, the Secretary of State.
 - (iii) If an appeal is made pursuant to (ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - (iv) The approved scheme shall be implemented within three months of final approval.
41. The appeal is dismissed and the enforcement notice is upheld as corrected, insofar as it relates to the land hatched green on the plan attached to this decision for the majority of the outbuilding comprising the gym, games room, gardener's garage, store and workshop and garages and workshop, as shown and labelled on drawing No 2019/15/S02, dated February 2019, and planning permission is refused in respect of the gym, games room, gardener's garage, store and workshop and garages and workshop, as shown and labelled on

drawing No 2019/15/S02, dated February 2019, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Timothy C King

INSPECTOR

