



Appeal Decision

Site visit made on 28 January 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 11 May 2020

Appeal Ref: APP/X1545/C/19/3234346

**Woodham Mortimer Place, Rectory Lane, Woodham Mortimer,
Essex CM9 6SW**

- 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 Ms K Ball against an enforcement notice issued by Maldon District Council.
 - The enforcement notice was issued on 30 June 2019.
 - The breach of planning control as alleged in the notice is: Unauthorised operational development for the erection of a building on the Land, its approximate location marked with an **X** on the attached plan (Annex 2).
 - The requirements of the notice are to:
Demolish the unauthorised building, remove from the Land all resulting and associated materials, items, paraphernalia, detritus or debris and restore the Land to its condition before the unauthorised development took place.
 - The period for compliance with the requirements is 2 calendar months after this Notice takes effect.
 - 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. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to made under section 177(5) of the Act as amended falls to be considered.
-

Summary of Decision

1. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Application for costs

2. An application for costs was made by Ms K Ball against Maldon District Council. This application is the subject of a separate decision.

The Appeal on ground (a) and the deemed planning application (DPA)

Background and Main Issue

3. In January 2017 it is understood that the Council opened an investigation into a potential breach of planning control from the erection of an outbuilding at the property. Given that the Council assessed the development to be unacceptable due to the outbuilding's scale, form and appearance, it determined it was expedient to issue an enforcement notice requiring for the building's demolition.
4. The outbuilding lies within the grounds of a statutorily listed building, and a nearby listed outbuilding, set within a substantial area of land of some 7 ha.

Although the Council does not consider that the development has any adverse effect on these, nor two other listed buildings outside the site, I have a particular duty under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to consider the desirability of preserving the listed buildings' settings, along with their features of special architectural and historic interest. Having walked around the grounds at my site visit and observed the outbuilding's location relative to the other said buildings, I am satisfied that their setting has not been compromised by the development.

5. In the circumstances the main issue in this appeal is the development's effect on the character and appearance of the area.

Reasons

6. The outbuilding appears as a utilitarian type metal framed structure of marked width and depth with a relatively low central ridge and shallow roof pitches. It is sited centrally within a large area of grassed garden, but markedly distanced from the sites' main cluster of buildings. It is also partially screened by boundary enclosures, although its light colour draws attention to the fact that is significantly more modern than the other outbuildings I observed when walking through the site. This accentuates its incongruity.
7. The Council, in its representations, refers to its spatial policies, S1 and S8 of the Maldon District Local Development Plan (DLP) which, in order to protect the landscape character of the countryside, does not encourage development outside of the defined settlement boundaries. The appeal site is a case in point and the Council's concerns also relate to the new building's appearance which it describes as an excessively large warehouse like structure – it is used for the storage of classic cars – and, as such, the authority considers it out of character in its contextual setting.
8. I share these concerns to an extent, but that is not to say that the building's appearance could not be tempered by it being painted a darker colour and with associated vegetative planting to reduce its obtrusiveness. The new building, which, as mentioned, is distanced from the more traditionally designed buildings within the main cluster, takes advantage of the site's totality and, given the mitigation measures proposed by the appellant, I am satisfied that the development's impact can be adequately reduced to make it acceptable in its particular setting. In this respect I also consider it consistent with advice within paragraphs 117 and 118 of the government's National Planning Policy Framework (the Framework) which encourages the optimum use of land and also DLP policy H4 which advocates the effective use of land.
9. I therefore conclude that the development is not harmful to the character and appearance of the area and, subject to the condition I have imposed, there is no material conflict with DLP policy S8, the design objectives of DLP policies D1 and H4, nor relevant advice in paragraphs 117, 118 and 127 of the Framework.
10. Accordingly, for the reasons given, and having had regard to all matters raised, the appeal on Ground (a) succeeds and planning permission, by way of the DPA, is granted, but subject to a condition as set out in the Formal Decision below.
11. The essence of the condition, as put forward by the appellant and illustrated in the submitted drawings nos 19 5688/sk01 and 19 5688/sk02, is essentially

retrospective in form with a staged schedule requiring for the outbuilding to be appropriately painted and for an acceptable landscaping scheme to be drawn up and implemented.

12. In terms of a preferred colour for the building I am inclined to suggest 'black' so as to match the largest of the other outbuildings. However, I shall leave this to be decided by way of negotiations between the main parties. I am proposing such a staged process which allows for the possibility of no approval emanating from the Council.
13. The wording might seem somewhat draconian but the stated timelines are necessary as there needs to be a "long stop". Also, they are reasonably achievable. In the event I do not therefore anticipate difficulties in approval being ultimately obtained, given the resultant improvement on the outbuilding's current appearance.
14. No condition is necessary as to the use of the building as, should it be used in the future for commercial storage purposes rather than as facilitating a hobby, as has been indicated, then the Council would be entitled to exercise its remedial powers as it sees fit.

The appeal on ground (g)

15. The appeal on ground (g) is that the stated period for compliance of two months is unreasonably short. It appears that the appellant is, instead, requesting a period of nine months given considered problems with the practicalities involved in addressing the remedial measures required by way of the enforcement notice. However, as I am allowing the appeal through the DPA, and quashing the notice, it is not necessary for me to explore this matter further.

Formal Decision

16. The appeal is allowed, the enforcement notice is quashed, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an outbuilding on the land (in the approximate position marked **X** on the plan attached to the enforcement notice) at Woodham Mortimer Place, Rectory Lane, Woodham Mortimer, Essex CM9 6SW, as referred to in the notice.
17. The permission is subject to the following condition:
 - 1) The outbuilding, hereby permitted, shall 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 outbuilding's treatment in terms of it being painted in accordance with an agreed alternative shade shown on the submitted drawings nos 19 5688/sk01 and 19 5688/sk02, and also a planting and landscaping scheme showing species of trees and shrubs and their sizes, including a timetable for implementation, shall be submitted to the local planning authority.
 - (ii) Within nine months of the date of this decision all details of both elements of this condition 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 have been implemented in accordance with the approved timetable.

Timothy C King

INSPECTOR