



Appeal Decision

Site visit made on 6 October 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 25 November 2020

Appeal Ref: APP/J1915/C/20/3250587

The Barn, Ware Park, Ware, Hertfordshire SG12 0EA

- 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 R Lacey against an enforcement notice issued by East Hertfordshire District Council.
 - The enforcement notice was issued on 12 March 2020.
 - The breach of planning control as alleged in the notice is: The unauthorised erection of a store/plant room.
 - The requirements of the notice are to:
 - (i) Remove the roof from the structure, remove the side wall and the two pillars as marked on the attached photograph.
 - The period for compliance with the requirements is 28 days after this Notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), and the requisite fee paid, an application for planning permission is deemed to have been made under Section 177(5) of the Act as amended, and falls to be considered.
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Summary of decision

1. The allegation of the breach is re-worded, and subject to this correction, the appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matter

2. Given the physical form of the building, which is open at the front as the originally intended three sets of timber double-doors were never hung, its description in the enforcement notice as a store/plant room is incorrect. From my site visit observations there is no indication that the building was ever completed, as was originally proposed.

The Enforcement Notice

3. In light of the above I will correct the notice and re-word the allegation to that of *"The unauthorised erection of an open-fronted store building."*

Background

4. The Council's decision to refuse planning permission for the erection of a store/plant room was unsuccessfully appealed when, in August 2019, the Inspector found that the structure, which at the time was part built would, once

completed, "*reduce the openness of the appeal site when taken as a whole compared to the existing situation.*" (APP/J1915/W/19/3227676).

5. Consequently, she considered the structure to constitute inappropriate development within the Green Belt, as is defined in the National Planning Policy Framework. In finding that no 'very special circumstances' existed to outweigh the harm caused she dismissed the appeal. Nonetheless, the unfinished structure remained in situ and, in March 2020, the Council saw it expedient to issue an enforcement notice requiring for its removal.

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

Main Issues

6. The site is located within the Metropolitan Green Belt. With regard to the stated reasons for issuing the enforcement notice, as set out in the document, and with regard to the National Planning Policy Framework, the main issues are:
 - 1) whether, for the purposes of the National Planning Policy Framework, the development is 'inappropriate' within the Green Belt and, if so, the effect on the Green Belt's openness;
 - 2) whether the development has resulted in any other material harm; and
 - 3) if it is inappropriate development whether this and any identified harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development and Openness

7. 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 structure at issue is not a replacement building and I do not consider that it falls within any of the categories cited. The appellant has not asserted otherwise.
8. This then requires that the development's effect on the Green Belt's openness, an essential characteristic of such, must then be assessed. 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.
9. Although the previous Inspector similarly found that the structure would constitute inappropriate development, she based this on it leading to a considered loss of openness, although in referring to the openness of the site itself she does not specifically term it as '*openness of the Green Belt*'.
10. The structure is largely built into the substantial earth bank to the rear whilst it is clear that its east flank has utilised an existing retaining wall which is overlain by a low, close boarded wooden fence. I also observed a lengthy stretch of open timber fencing intertwined with 'red robin' shrubs perpendicular

to, and leading back from, one of the two pillars. This demarcation has effectively split the residential curtilage whereby only one third of the structure would serve the 'Windrush' dwelling, from which I gained access to the site, although the majority of its frontage is set within the adjoining garden. In the circumstances I have described I found that the structure is not overly obtrusive in its setting.

11. Subsequent to the appeal decision, in September 2019, the Council granted planning permission (ref 3/19/1442/HH) for a detached building to accommodate a garage, gym and plant room. Positioned close to 'Windrush' the Council, in reaching its decision, considered it reasonable to treat the new building as a domestic extension. In this context the proposal was considered acceptable. This represents a significant material change in circumstances and a comparison between the new stand-alone building and the design, form and secluded location of the structure enforced against illustrates the relative physical modesty of the latter.
12. The previous Inspector, in her decision letter, makes reference to a reconfiguration of the site but, importantly, she was required at the time to assess a building which would become fully enclosed, and would accommodate both a store and plant room. Whilst she refers to the amount of operational development being relatively small she considered that it would nonetheless generate harm that would weigh against the scheme. However, the fact that it is now open fronted, and used only for general domestic storage purposes, markedly ameliorates its impact. In this context removal of the roof, the pillars and a side wall, as required by the enforcement notice, would serve only a limited planning purpose.
13. I note from the approved plan (drawing no 13212-G001-A) for the new building the annotation "plantroom removed". From the orientation and distance evident this appears to refer to the structure enforced against, although only one of its three sections is shown in outline on the drawing. Further, there was no condition imposed requiring for its demolition. In the circumstances I am satisfied that no material irregularity in planning terms has resulted in this respect.
14. On the above basis, although I consider that the works carried out represent inappropriate development, in view of the clear material change I have highlighted, its impact in both spatial and visual terms is relatively limited and not so appreciable as to be materially harmful to the Green Belt's openness.
15. 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. Notwithstanding the latter, I am also satisfied that neither the objectives of policy GBR1 of the East Herts District Plan 2018 nor relevant advice in the Framework are compromised by the development.

Other harm

16. The Council has not identified any other harm arising from the development, and I agree with this assessment.

Planning balance and conclusion on the ground (a) appeal

17. On balance, I have found that the development as exists does not significantly impact on the Green Belt's openness, nor is it at odds with relevant planning policy. Accordingly, I consider that the very special circumstances necessary to outweigh any identified harm have been demonstrated. Nonetheless, were it, for instance, to be completed as per the proposed scheme which was unsuccessfully appealed then, even with the presence of the nearby new detached building, the effective enclosure and intended dual use would potentially jeopardise my favourable assessment.
18. As such, I have corrected the enforcement notice's allegation to reflect the current planning position. It is then within the Council's remedial powers to act upon any changes should they occur and assess the materiality of the modifications carried out and, potentially, any change of use within.
19. I therefore conclude that the appeal under ground (a) and the DPA should succeed.

The Appeal on Ground (f)

20. The appeal on ground (f) is that the requirements of the notice exceed what is necessary. However, in view of my decision on the DPA it is not necessary for me to consider this ground of appeal further.

Overall Conclusion

21. For the reasons given above, and having had regard to all matters raised, the appeal is allowed on ground (a) and planning permission will be granted. The appeal on ground (f) does not therefore need to be considered.

Formal Decision

22. The enforcement notice is corrected as described and, subject to this correction, 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 open-fronted store building.

Timothy C King

INSPECTOR