The Planning Inspectorate

# Appeal Decision

Site visit made on 12 November 2020

**by Andrew Dale BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 11 December 2020**

**Appeal Ref: APP/G5180/C/19/3243834**
**Land at Cookham Farm, Skeet Hill Lane, Orpington BR5 4HB**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Ms Sally Campbell against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice was issued on 18 November 2019 under ref. 19/00374/OPDEV.
- The breach of planning control as alleged in the notice is: "*Without planning permission, the construction of an extension edged green on the attached Plan to the Annexe building, edged red on the attached Plan.*"
- The requirements of the notice are to:
  "*(a) Remove from the Land the extension to the Annexe building*
  *(b) Remove from the Land all building materials and rubble arising from compliance with the requirement as stated at (a) above.*"
- The period for compliance with these requirements is two 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. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the 1990 Act as amended.

## Decision

1. It is directed that the enforcement notice be corrected by altering the date of the notice from "18TH December 2019" to "18th November 2019". Subject to the 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 Town and Country Planning Act 1990 as amended for the development already carried out, namely the construction of an extension edged green on the attached Plan to the Annexe building, edged red on the attached Plan on land at Cookham Farm, Skeet Hill Lane, Orpington BR5 4HB referred to in the notice.

## Procedural matters

2. My decision above provides for a correction to the date of the enforcement notice. This reflects the agreement between the parties that the notice was in fact issued one month before the date given on the notice. I am satisfied that such a correction would not result in any injustice to the parties.

3. A second enforcement notice alleging a material change of use of the land from an agricultural outbuilding to the commercial use of the outbuilding as a Pilates studio (Class D2) was withdrawn by the Council on 1 June 2020. No explanation has been provided for that action. The separate appeal (ref.

APP/G5180/C/19/3243833) lodged against that notice is therefore deemed to have been withdrawn too.

4. As a general rule it is possible to have a lawful building with no lawful use or where its lawful use is contested. Drawing in part on the planning history of Cookham Farm, which I have read, there is some discussion by the parties, including third parties, about the use of the annexe (outbuilding as described in the withdrawn notice) over time and the extent of the residential curtilage associated with Cookham Farm. However, it follows from the withdrawal of the second notice that the use of the outbuilding or annexe is not now directly before me. The extent of the residential curtilage would also be a matter for the parties in the first instance. The terms of the deemed planning application in the remaining appeal are strictly defined by the breach of planning control alleged in the enforcement notice which relates to operational development (an extension) only.

## Background

5. The appellant purchased Cookham Farm in June 2011. As well as the dwelling house, there are various outbuildings and structures, including the annexe building situated close to the site entrance. The annexe building and the house are separated by the access drive. The site fronts onto a narrow lane which progresses through countryside. There is only sporadic residential development hereabouts. As well as my tour of the appeal site, I travelled along Skeet Hill Lane in both directions and walked along the closest public footpath (pointing towards Chelsfield) some distance to the south-east.

6. The annexe building, including a series of pigsties attached to its southern side, was originally built circa 1920 along with the dwelling house. In early 2012 lean-to style roofing, partly covered with tiles and partly with plastic sheets, was added over a sizeable part of the area occupied by the pigsties. This structure could have been in place for a period in excess of 4 years before it was replaced in 2016 by the more permanent lean-to style extension which is the subject of the notice.

## The appeal on ground (a) and the deemed planning application

7. This ground of appeal is that planning permission ought to be granted for what is alleged in the enforcement notice.

8. The appeal site lies within the Green Belt. Guidance in the National Planning Policy Framework (the Framework) sets out the government's policy on Green Belts. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from a proposal, is clearly outweighed by other considerations.

9. Reading this guidance, alongside the reasons for issuing the notice at paragraph 4 therein, the ***main issue*** is whether the extension to the annexe

building constitutes inappropriate development in the Green Belt and, if so, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the development.

10. In assessing whether the development amounts to inappropriate development in the Green Belt, Policy 49 of Bromley's Local Plan and Policy 7.16 of the London Plan are broadly consistent with the Framework which explains that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt. Exceptions to this rule include: at paragraph 145 c) of the Framework *the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building*; and at paragraph 145 d) of the Framework *the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces*.

11. The Framework explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. There is no definition of openness in the Framework but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The openness of the Green Belt has a spatial aspect as well as a visual aspect as confirmed in the Court of Appeal in *Turner v SSCLG & East Dorset Council [2016] EWCA Civ 466*. However, it is important to remember that the same court in *Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council & Anor (Rev 1) [2016] EWCA Civ 404* endorsed the view that where development is found to be not inappropriate, it should not be regarded as harmful either to the openness of the Green Belt or to the purposes of including land in the Green Belt and it does not have to be justified by very special circumstances.

12. I shall base my assessment, like the parties have primarily done, on paragraph 145 c) of the Framework. Whilst I am aware that the definition of a building includes part of a building, there is no certificate of lawfulness in place for the 2012 work, so comparisons with the structure created then, based on paragraph 145 d) of the Framework, may not be reliable. More importantly, I have not been referred to any appeal decisions or court cases which would interpret that paragraph of the Framework as being intended for use where parts of a building are replaced, as opposed to whole buildings. Moreover, that approach would not really make sense here where the subject 2016 building work unquestionably forms an extension to the annexe building, whether viewing it internally or externally, such that the test at paragraph 145 c) of the Framework would need to be met in any event.

13. The drawings in Appendix 1 of the appellant's statement, based on a survey conducted in 2007, would appear to reflect the original annexe building in physical terms as it may have existed on 1 July 1948, as confirmed by the parties at the site visit. With the removal of the 2012 works, there have been no obvious previous additions to the original building. What might constitute disproportionate additions over and above the size of the original building is not defined in the Framework or the relevant development plan policies. This exercise therefore relies on a planning judgement about the matter of size and

should not consider the visual impact of the extension or any effect on the openness of the Green Belt.

14. The subject single storey extension has not increased the footprint or floorspace of the original building as it is positioned over the area occupied by the former pigsties in the very recent past.

15. Those pigsties had low walls and some of the area they occupied was covered by roofing sheets to a low profile. The introduction of a long mono-pitched roof over side walls of additional height and the creation of a lower ground floor level internally have brought about an increase in volume but no party has sought to quantify the proportionate increase in volume over the original building's volume taken as a whole. Given that part of the original building includes a loft floor and there is a similar long sloping projection on its northern side and having regard to the physical dimensions of the former pigsty structures, I am not convinced that the additional percentage increase in volume would be so significant as to render the enlargement disproportionate.

16. To the extent that massing and scale are indicators of size, the roof over the extension is much lower than the tallest part of the original building and roughly on the same level as the northern lean-to element. It has not fundamentally altered the overall scale, form or shape of the original building. Rather, if anything it has added a greater degree of symmetry to the overall building. The fact that the extension is more enclosed and solid than the original pigsty arrangement does not of itself make the development somehow disproportionate in terms of massing, scale and size. The original form of the host building remains sufficiently dominant.

17. Drawing these threads together, I find, on the available evidence, that the development has not resulted in disproportionate additions over and above the size of the original building. Accordingly, I conclude on the main issue that the extension to the annexe building does not constitute inappropriate development in the Green Belt. It respects the provisions of the Framework and the relevant development plan policies. Following the *Lee Valley* judgement, there is no requirement to consider its effect upon the openness of the Green Belt or the purposes of including land in the Green Belt and it does not have to be justified by very special circumstances.

18. There are some **other issues** to cover. Some of the Council's comments, particularly relating to the installation of windows and roof lights, do not really relate to the matter of size, but would suggest a concern about the impact of the development on the character and appearance of the area. Whilst I could see that this locality has a resolutely rural sense of place, I agree with the appellant that the resulting annexe building, in the very limited public views of it that are available, appears as an attractive and well-finished outbuilding which complements the site's rural setting in terms of appearance, design, materials and fenestration details.

19. It would not be necessary to remove the remaining pigsty building as a means of keeping the subject extension. A planning condition to that effect, as suggested by the appellant, is not therefore required. No conditions have been

suggested by the Council in the event of the appeal on ground (a) being allowed and I see no reason for any.

20. I can understand why the appellant may be perplexed about the Council's approach to developments at Feathercot, a property close to the appeal site. However, these concerns were raised at the final comments stage so I am not in possession of the Council's response. Moreover, I have examined the appeal scheme entirely on its own merits.

21. I have had regard to all other matters raised by the parties, including third parties, but my finding on the main issue is decisive in this appeal. I find nothing to outweigh **the conclusion** I have reached that the appeal on ground (a) and the deemed planning application should succeed. Planning permission will be granted.

**The appeal on grounds (f) and (g)**

22. For the reasons given above, the appeal on ground (a) succeeded. The enforcement notice has been quashed. Grounds (f) and (g) do not therefore need to be formally considered.

*Andrew Dale*

INSPECTOR