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## Appeal Decisions

Site visit made on 24 February 2021

by **P H Willows BA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 12 March 2021

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**Appeal A: APP/B3030/C/20/3261505**

**Appeal B: APP/B3030/C/20/3261506**

**Land at Glebe Barn, Gonalston NG14 7JA**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Dr Smita Jobling (Appeal A) and Dr Craig Jobling (Appeal B) against an enforcement notice issued by Newark & Sherwood District Council.
  - The enforcement notice was issued on 15 September 2020.
  - The breach of planning control as alleged in the notice is: *Without planning permission, 'development' consisting of the erection of a building, shown on photograph 1 and on Plan B marked 'X'.*
  - The requirements of the notice are: *Remove the building as shown on photographs 1 & 2 from the site and marked X on Plan B in its entirety including the associated base.*
  - The period for compliance with the requirements is 40 days.
  - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (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 Act.
  - Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Act.
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### Decisions

1. It is directed that the enforcement notice be corrected by:
  - i) Deleting 'Glebe Barn' from section 2 (The land to which the notice relates) and replacing it with 'Glebe Steading';
  - ii) Replacing the wording at section 5 (What you are required to do) with the following: *Remove the building as shown on photo 1 and marked 'X' on Plan B from the site in its entirety. This requirement does not relate to the hard surface on which the building is placed.*And varied by:
  - iii) Deleting '40 days' as the time for compliance and replacing it with '3 months'.
2. Subject to these changes the appeals are 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 in respect of Appeal A.

## **Preliminary matters**

3. The enforcement notice refers to the property as 'Glebe Barn'. In fact, it is known as 'Glebe Steading'. Additionally, section 5 of the notice refers to 'photographs 1 & 2' but only 1 photograph is attached to the notice and the reference to photograph 2 appears to be an error. I can correct both of these errors without causing injustice to either party and will do so.

## **The appeals on ground (c)**

### *The building*

4. The appeal on ground (c) is made on the basis that the works that have been undertaken is development permitted by Classes E and F of Schedule 2, Part 1 of *The Town and Country Planning (General Permitted Development) (England) Order 2015* (the 'GPDO').
5. Class E permits 'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'.
6. This is subject to various limitations at paragraph E.1. The only one of these in dispute is E.1(c), which states that development is not permitted by Class E if, 'any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse'. To address this, it is necessary to consider which is 'the principal elevation of the original dwellinghouse'.
7. The Ministry of Housing, Communities & Local Government publication *Permitted development rights for householders Technical Guidance* contains the following definition:

*"Principal elevation" – in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.*
8. Glebe Steading is a former barn, converted to a dwelling in the 1990s. It is orientated 'end-on' to Main Street, which is the road which sets its postcode. Despite facing the road, this relatively narrow, featureless end elevation is clearly not the front of the house and is not, in my view, the principal elevation.
9. Before its conversion, the barn would have originally faced westwards, forming a courtyard with other buildings at Glebe Farm. However, the original group of buildings has been sub-divided. Glebe Steading is now a separate dwelling and has been reconfigured so that it now faces eastwards, towards its garden. This is evident from the positioning of the main entrance, various windows, and the pathway running from the driveway to the east elevation of the property. Accordingly, having regard to the Technical Guidance, and as a matter of fact and degree, I find that the eastern elevation is the principal elevation for the purposes of Class E. Since the summerhouse is on land forward of this elevation, it follows that it is not development permitted by Class E.

10. The appellant suggests that the 'original dwelling' could actually be Glebe Farm. However, although Glebe Steading was originally part of the group of buildings associated with Glebe Farm, the group has been sub-divided. Consequently, Glebe Farm cannot be said to be the 'original dwelling' in this case, since it has no relevance to the 'planning unit' under consideration. The 'original dwelling' is the converted barn and the principal elevation of that dwelling is the eastern elevation. The fact that it used to face onto a courtyard to the west when it was a barn is not relevant to the question of which is currently the principal elevation now that it is a dwelling.

#### *The hard-surfaced base*

11. The summerhouse has been built on a hard-surfaced base. The allegation in the notice does not, in fact, make any direct reference to the base. Given that it is a distinct element of the development, it would perhaps have been clearer if it had done so. However, it is evident from the requirements of the notice that the Council regard it as part of the development targeted by the notice and I have approached the ground (c) appeals with that in mind.
12. Class F of Schedule 2, Part 1 of the GPDO allows for 'the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such'. It is subject to certain limitations, but none are relevant in this case.
13. The Council argues that the hardstanding is an integral part of the summerhouse building and, as such, cannot be regarded as being 'for any purpose incidental to the enjoyment of the dwellinghouse as such' in its own right. However, it appears to me to be part of a group of works in this part of the garden, which includes not only the summerhouse but also a 'swimming pond', earthworks, a retaining wall, a stone patio and wooden decking. Even without the summerhouse, it seems likely to me that a form of hard surfacing would be wanted in this location, largely enclosed as it is by the retaining wall, patio and decking. Thus, the hard-surfacing of this area cannot be said to be related to the summerhouse alone. In these circumstances, I consider that, even without the building, the hard surfacing is required for a purpose incidental to the enjoyment of the dwelling as such. Accordingly, it benefits from the provisions of Class E and should not be targeted by the notice. To that extent alone, the appeal on ground (c) succeeds.
14. Given the lack of any reference to the hard surface in the allegation, it is not necessary to correct the allegation, but rather to make a consequential change to the requirements of the notice to remove the reference to the base.

### **The appeal on ground (a)**

#### *Main issues*

15. The site lies within the Green Belt. As a consequence, the main issues are:
- Whether the building is inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.
  - The effect of the development on the openness of the Green Belt.
  - Its effect on the character and appearance of the area; and

- Whether any harm due to inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

*Whether the development is inappropriate within the Green Belt*

16. The Framework advises at Paragraph 145 that, other than in the case of a number of specified exceptions, the construction of new buildings within the Green Belt is inappropriate. The summerhouse falls to be considered under this paragraph. Accordingly, unless one of the exceptions at Paragraph 145 apply, it is inappropriate development in the Green Belt. Spatial Policy 4B of the Council's *Amended Core Strategy* seeks to apply national Green Belt policy in relation to proposals such as this.
17. Two of the exceptions listed at Paragraph 145 are cited by the appellant. These are:
  - c) 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;*
  - g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings), which would:*
    - not have a greater impact on the openness of the Green Belt than the existing development;*
18. However, this is a free-standing building, some distance from the dwelling. Consequently, despite the functional relationship, it is not an extension for the purposes of paragraph 145(c).
19. As to paragraph 145(g), I cannot see that the summerhouse, even with the pond and associated works to the garden, can be said to be limited infilling or the partial or complete redevelopment of the land. It is not located in a gap between existing buildings, being some distance both from the converted barn and an existing workshop building, and so is not infilling. While I understand that there were previously agricultural barns and sheds on the land, it appears that they were demolished many years ago and their removal was not linked to the development before me. Thus, there is no redevelopment in this case, just the erection of a building. Consequently, regardless of whether the site is previously developed land, paragraph 145(g) does not apply.
20. Since the development does not fall within any of the exceptions at Paragraph 145, it is inappropriate development in the Green Belt. The Framework advises that inappropriate development is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances.

*Openness*

21. The building is modest in scale and has been cut into the slope of the land, with a retaining wall behind it. These factors mean that, while there has been some loss of openness due to the creation of a new building, the extent of that loss is very limited. Nevertheless, the loss that has occurred reinforces my view that the building is inappropriate development within the Green Belt and is not development provided for by paragraph 145(g) of the Framework.

### *Character and appearance*

22. The summerhouse has the appearance of a typical garden building and is therefore not incongruous in its garden setting, notwithstanding the character of the former barn that comprises Glebe Steading and the wider rural landscape. The modest size of the summerhouse and its incorporation into the slope of the land minimise its impact. Views from the road are very limited indeed. Although the building is visible from the adjacent fields, the slope of the land limits its impact, as does the incorporation of a sedum roof. Overall, it has no harmful effect on the character and appearance of the area and I find no conflict with the design aims of Policy DM5 of the *Newark and Sherwood Allocations and Development Management Development Plan Document* (the ADMDPD).

### *Other considerations*

23. Policy DM6 of the ADMDPD deals with householder development. It is written in a permissive style, saying that permission will be granted for various things, including 'curtilage buildings', subject to various exclusions. I agree with the appellant that the summerhouse accords with the policy. Compliance with the policy weighs in favour of the development. However, the development plan must be read as a whole, and it is evident that the policy has not been written to address Green Belt issues. Although the development accords with aspects of the Council's *Householder Development Supplementary Planning Document*, the document explains the need to have regard to Green Belt policy where relevant.
24. The appellant argues that a caravan or park home could lawfully be sited at Glebe Steading and that this would be less visually sympathetic than the summerhouse. However, I have no evidence to show any genuine intent to bring a caravan to the site. Even if it were to happen, it seems unlikely that the appellants would introduce an item that would cause undue visual harm to their garden. Accordingly, I give only limited weight to this consideration.

### *Conclusion*

25. I attach substantial weight to the harm to the Green Belt. Having considered the matters raised in support of the development I conclude that they do not clearly outweigh that harm. Accordingly, very special circumstances do not exist, and the development is at odds with the Green Belt policy set out in Policy 4B of the Amended Core Strategy and the Framework. While there is compliance with some relevant development plan policies, I find that, considered as a whole, there is conflict with the development plan. I therefore conclude that the appeal on ground (a) should fail.

### **The appeals on ground (f)**

26. The appeals on ground (f) are made on the basis that the requirement to remove the base is excessive. There is no ground (f) appeal in respect of the summer house itself. Since I have allowed the appeal on ground (c) in respect of the base, it follows that the notice cannot require its removal. I will amend the notice accordingly and the appellants' aims in respect of the ground (f) appeals have therefore been achieved. Consequently, there is nothing further to consider in respect of this ground of appeal.

### **The appeals on ground (g)**

27. The appellants argue that a period of 12 months is needed to comply with the notice, having regard to the difficulties arising from the pandemic and the need to take account of the potential for bats, birds and amphibians on the site.
28. However, the appeals lack sufficient evidence to show why a period of 12 months is needed. Nor, despite the reference to potential habitats, is there clear evidence of the presence of protected species on the site<sup>1</sup>. I am also mindful of the desirability of addressing the breach of planning control without undue delay. I do not, therefore, consider that the 12 months sought is justified.
29. On the other hand, I agree that, despite the small scale of the building, 40 days is too short a period, given the current difficulties imposed by the pandemic. The appellants were also entitled to wait for the outcome of this appeal before making any arrangements regarding compliance with the notice. In my judgement, a 3 month period strikes a more suitable balance and I will vary the notice accordingly. To that extent, the appeal on ground (g) succeeds.

*Peter Willows*

INSPECTOR

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<sup>1</sup> Should genuine difficulties complying with the notice within the specified period be encountered due to the presence of protected species on the site, this could provide a defence under s179(3) of the Act if everything that could be expected to be done to secure compliance with the notice had been done.