



Appeal Decision

Site visit made on 9 June 2021

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th July 2021

Appeal Ref: APP/J1915/C/20/3258919

Land at Molewood Hall, High Molewood, Hertford, Hertfordshire SG14 2PL

- 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 Michael Edwards against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 12 August 2020.
- The breach of planning control as alleged in the notice is the erection of an outbuilding.
- The requirements of the notice are 1. Permanently remove from the land the building outlined in red on the attached plan; 2. Remove from the land all the resultant materials following compliance with (1).
- The period for compliance with the requirements is 6 months.
- 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.

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

Applications for costs

1. An application for costs was made by East Hertfordshire District Council against Mr Michael Edwards. A counter application for costs was made by the appellant against the Council. These applications are the subject of a separate Decision.

Preliminary Matter

2. The appeal is lodged on grounds which include (a), that planning permission should be granted. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve wholly or partly, any of the purposes set out in Section 173(4). These include, remedying the breach by making any development comply with the terms, including conditions, of any planning permission that has been granted in respect of the land.
3. In the event that I decide that planning permission ought not to be granted for the development, which is currently under construction, an alternative scheme has been advanced by the appellant for consideration (Drawing HEAL_MHH_PP_102, dated September 2020, depicting revised Elevations and Sections). This scheme is neither for the retention of what is built nor does it benefit from planning permission. Accordingly, in the event that I find the development as-built to be unsatisfactory, in order to give proper consideration to this alternative I need to deal with it under ground (a) and amongst other things consider whether this outcome could be achieved by granting planning

permission “in relation to the whole or any part” of the matters alleged in the notice, either with or without conditions.

Main Issues

4. The main issues are:

- whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
- The effect of the development on the openness of the Green Belt;
- If the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

5. Paragraph 133 of the Framework sets out that the essential characteristics of Green Belts are their openness and their permanence. It states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Paragraph 134 notes that the Green Belt has five purposes, which include safeguarding the countryside from encroachment. Paragraph 143 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
6. Policy GBR1 of the East Herts District Plan 2018 (DP) states that planning applications in the Green Belt will be considered in line with the provisions of the Framework.
7. The outbuilding to which this notice relates, was previously the subject of an unsuccessful application for retrospective planning permission and, subsequent to this, an unsuccessful appeal¹. In that case the Inspector found that the building, intended for a mixture of storage purposes, including machinery associated with maintenance of the grounds, and as a home office, constituted inappropriate development in the Green Belt. He also found the structure to be not insignificant in scale for a residential outbuilding and that it would amount to a tangible increase in built form on the site to the detriment of the openness of the Green Belt. This was despite its overall visual impact on openness not being significant, due to there being limited opportunities to view the building from outside the site.
8. I have no reason to take a contrary view to the previous Inspector’s findings. The Inspector also found it to be unclear why the extensive area of roof, with a ridge height of over six metres, was required. I also concur with this point.
9. It seems to me that the alternative scheme, which proposes amendments to the design of the roof in terms of reduced height and volume, can reasonably be regarded as part of the scheme that constitutes the breach of planning control. I find that whilst the alternative scheme would reduce the degree of impact, it would nevertheless remain inappropriate development that is harmful to the openness of the Green Belt.

¹ Ref APP/J1915/W/19/3238401

Other Considerations

10. The Inspector considering the previous appeal case also made the following findings. An adjacent building, described as a triple garage, equipment store and playroom, should meet some or all of the appellant's requirements; there is ample space for vehicles to be parked outside without there being an inherent security risk associated with doing so; that security cameras would be expected to provide an effective deterrent against the risk of crime and that there was a lack of clear evidence to demonstrate that the appellant's business or that of family members could not take place without the need for a new building, even if the use of the dwelling for such purposes results in some disturbance to other occupants.
11. I have considered the supporting information provided by the appellant in relation to the current appeal. However this does not lead me to take a contrary view to the aforementioned findings of the Inspector. Notwithstanding this, a key distinction between this appeal and the one that was heard previously is that in this case the appellant has presented a Unilateral Undertaking (UU).
12. The effect of this undertaking, which is legally binding, is that if planning permission is granted either for the development as constructed, or for the alternative scheme referred to above, then a previous planning permission granted in relation to the construction of stables (and associated development) elsewhere on the appellant's land would be revoked². In addition permitted development rights in relation to the potential future construction of buildings and structures on the same land would also be removed.
13. It is therefore necessary to consider the merits of revoking the planning permission for the stables and the removal of permitted development rights. From the information provided, it appears that the stable building would be somewhat shorter than both the building as constructed, and the alternative scheme proposed. However the site of the stables would be a relatively short distance from an existing dwelling to the west and would be immediately adjacent to a track / footway providing pedestrian access to and from dwellings on Cowper Crescent to the east.
14. Despite a degree of screening from existing boundary treatments and the possibility of adding further landscaping measures, it seems to me that the stables would have the potential to result in greater visual impact outside the appellant's property than the appeal building would. It is undisputed that the location of the permitted stables would also be on Green Belt land. Accordingly, although the buildings are not close to one another and notwithstanding their relative heights and footprints, the stables would nevertheless result in greater harm to the openness of the Green Belt, in visual terms, than the appeal building would.
15. Although this building was granted planning permission in 2012 and it is not yet built, it is accepted by the Council that the footings of the structure are in place. Notwithstanding the existence of a pre-commencement condition, referred to by the Council, that is apparently yet to be discharged, there is nothing to persuade me that the works carried out do not constitute a material

² Ref 3/12/1326/FP

operation that resulted in the lawful commencement of the development, and that as things stand at present, the development could not be completed.

16. It therefore seems to me that the revocation of this permission should be afforded significant weight in the overall planning balance. As to the commitment to give up permitted development rights with regard to the potential development of further buildings on the site, I am uncertain from the information submitted as to exactly what type of development might be permitted or indeed whether any such development was proposed. This however does not detract from the benefits of the aforementioned permission being revoked as set out above.
17. Paragraph 56 of the Framework states that planning obligations must only be sought where they meet all of the following tests:
- Necessary to make the development acceptable in planning terms;
 - Directly related to the development; and
 - Fairly and reasonably related in scale and kind to the development.

It seems to me, on the basis of the above assessment, that each of these tests would be met in this case.

Green Belt balance

18. National planning policy attaches great importance to Green Belts. Therefore when considering any planning application substantial weight should be given to any harm to the Green Belt.
19. With regard to the outbuilding I have found harm to the Green Belt by way of inappropriateness and to its openness, both in terms of the structure as built and the alternative proposed scheme, albeit to a lesser degree.
20. Nevertheless I have balanced the harm to the Green Belt against the other considerations cited. I consider, for the reasons set out above, that the revocation of planning permission for the stables building clearly outweighs in importance the harm caused by the alternative scheme. However, by comparison, because there appears to be no justification for the height and volume of the roof as constructed, the harm by way of inappropriateness would be too great in that case to be clearly outweighed by the significance of the UU.
21. I find that the other considerations in this case clearly outweigh the harm that I have identified with regard to the revised design. Looking at the case as a whole, I consider the very special circumstances necessary to justify the alternative scheme have therefore been demonstrated. Consequently that building, as it is proposed to be amended, would accord with the Green Belt protection aims of the Framework and with Policy GBR1 of the DP. The ground (a) appeal therefore succeeds in respect of this element of the development.

Conclusion

22. For the reasons given above I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development described in the notice, but subject to the conditions specified and the terms of the planning obligation provided. On this basis I am satisfied that my decision would not contradict that made by the Inspector in the previous case.

23. The appeal on ground (g) does not therefore fall to be considered.

Conditions

24. Conditions are required to secure modifications to the design of the outbuilding and to restrict its use in order to ensure a satisfactory form of development. A condition requiring the provision of bird and bat boxes is required in the interests of helping to safeguard habitat.

Formal Decision

25. 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 at Molewood Hall, High Molewood, Hertford, Hertfordshire SG14 2PL as shown outlined in red on the plan attached to the notice, and subject to the conditions below.

Roy Merrett

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The outbuilding hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within **one month** of the date of failure to meet the requirements set out in i) below:
 - i) Within **six months** of the date of this decision the unauthorised outbuilding, the subject of the notice, shall be modified in accordance with the following drawings: HEAL_MHH_PP_102, dated September 2020, depicting revised Elevations and Sections and HEAL_MHH_PP_101, dated September 2020, depicting revised Floor Plans and Specification.
- 2) The outbuilding hereby permitted shall only be used for purposes incidental to the enjoyment of the dwelling.
- 3) Prior to the outbuilding being brought into use, one bird box and one bat box shall be fitted externally to the building and shall thereafter be retained.

END OF SCHEDULE OF CONDITIONS