



Appeal Decisions

Virtual Hearing Held on 4 May 2021

Site visit made on 23 February 2021

by **M Madge DipTP, MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 2nd August 2021

Appeal A: APP/N4720/C/20/3258467

Appeal B: APP/N4720/C/20/3258468

Land at Hollinholme, Swillington Lane, Swillington, Leeds LS26 8BZ

- 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 Mr Mark Anthony Fella (Appeal A) and Mrs Joanne Fella (Appeal B) against an enforcement notice issued by Leeds City Council.
- The enforcement notice was issued on 31 July 2020.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised demolition and erection of a new detached dwelling and partially built structure within the Green Belt.
- The requirements of the notice are to demolish the dwelling and partially built structure in their entirety and remove all the materials from the demolition from the land.
- The period for compliance with the requirements is 6 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(c), (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 Act. Appeal B is proceeding on the grounds set out in section 174(2)(c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeals on grounds (b) and (c) fail. Appeal A succeeds on ground (a) in so far as it relates to the new detached dwelling and planning permission is granted under s177(5) of the 1990 Act accordingly, the enforcement notice is upheld in respect of the partially built garage.

Preliminary matters

1. The appeal was to be dealt with by way of written representations. After the site visit, the appeal procedure changed to a Hearing, where all the evidence was discussed. I was not invited to conduct a further site visit and I am content to proceed on this basis.
2. During the hearing it was agreed that the previously amended 'as built' drawing still exhibited errors. A further amended plan dated 'May 2021' was submitted and that plan forms the basis of the ground (a) appeal pertaining to the alleged erection of a new detached dwelling.
3. The appellants' case includes that the '*unauthorised demolition and erection of a new detached dwelling*' has not occurred, this falls to be considered and so there was an implied appeal on ground (b). Although this ground was not selected on the appeal form, the parties agreed that there is significant overlap between the ground (b) and (c) arguments. The appeal parties agreed that I can evaluate both ground (b) and (c) together and this is how I shall proceed.

4. The appellants have provided a planning obligation dated 16 February 2021, which surrenders the permitted development rights contained in Classes A, AA, B, C and E (paragraph a) of Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ("the GPDO"). The planning obligation is signed by the appellants and on behalf of the mortgage company and is made out to the Council.
5. A revised version of the National Planning Policy Framework was published in July 2021 ("the Revised Framework"). While the paragraph numbering within chapter 13 Protection of Green Belt has changed, the wording within the chapter has not. There is therefore no need for further comments from the appeal parties on the Revised Framework and I shall proceed on this basis.

The notice

6. The Council request that the notice be varied to include the following additional works that they claim have occurred since the notice was issued:
 - Completion of the partially built structure to form a garage
 - Siting of a storage container
 - Removal of part of the front hedgerow and erection of a stone wall, piers and gates, and
 - Removal of the rear boundary hedgerow, change of use of agricultural land to domestic garden and erection of a boundary wall.
7. S176(1)(a) makes provision for me to '*correct any defect, error or misdescription in the enforcement notice*'. It was shown at the site visit that the partially built structure had not been completed and that there was no storage container on site. Regardless of whether the further matters raised by the Council have occurred, varying the notice to include the matters set out above would widen the scope of the allegation. While the powers under s176(1)(a) are wide, they do not include adding additional matters to the scope of the allegation as this would cause injustice to the appellant.
8. The allegation refers to '*unauthorised demolition*' and, as not all demolition represents development, it is necessary to clarify what has been demolished. In this instance, it was a dwelling. Furthermore, there is no dispute that, if completed, the 'partially built structure' would be a garage. The error has not caused significant confusion because all the evidence points to the erection of a partially built garage. This is how the parties have interpreted the notice.
9. Accordingly, having regard to all the material facts and evidence before me, I find that the notice incorrectly describes the breach as including '*unauthorised demolition and erection of a ... partially built structure*' when what has been demolished was a dwelling and what has been partially built is a garage. In addition, for precision, there is no need for the allegation to include the words '*within the Green Belt*' as they are not relevant to the definition of development as set out in s55(1) of the 1990 Act. No injustice would arise from my correction of the notice.
10. For greater precision, the notice should describe the alleged breach of planning control in the following way:

'Without planning permission, the demolition of a dwelling and erection of a new detached dwelling and partially built garage'.

11. I will determine the appeals on the basis of the corrected allegation as set out in DL10 above.

Appeals A and B - grounds (b) and (c)

12. To succeed on these grounds the appellants should show, on the balance of probability, that the demolition of a dwelling and erection of a new detached dwelling and partially built garage has not in fact occurred, or if it has occurred, that it does not represent a breach of planning control. The onus of proof rests with the appellant and the relevant test is on the balance of probability.
13. It is clear from the evidence before me that building operations had taken place resulting in the demolition of a dwelling and the erection of a new dwelling and partially built garage. The building operations had taken place before the date the notice was issued. The breach of planning control described in the corrected allocation had therefore occurred.
14. In 2017 the appellant submitted a Prior Notification application (ref: 17/01978/DHH) for the erection of a large rear extension ("the 2017 PN"). The Council confirmed by letter dated 27 April 2017 that prior approval for the extension was not required. While the Council originally contended in their 'Statement of Case' that this development did not comply with the permitted development limitations, they conceded, having regard to the plans that accompanied application reference: P TA 1056, for the original bungalow, that the large extension would have been permitted development.
15. The appellant also made a householder application (ref: 17/01967/FU) for a '*single storey side extension, two single storey front extensions and alterations to roof including dormer window to rear*' ("the 2017 PP"). This application was granted planning permission on 19 June 2017. It is clear from the description of development that the 2017 PP did not include the rear extension despite it being shown on the approved plan.
16. The implementation of the 2017 PN required the demolition of a previous rear extension and alterations to the existing rear elevation, which would become an internal wall. The 2017 PP works required the demolition of the previous side extension, the garage, parts of the front elevation and removal of the roof to facilitate the hip to gable changes and other alterations to accommodate the increased depth of the building and new dormer. In addition, fenestration changes to the side (north) elevation were approved along with the extended dwelling being faced in coursed stone. There is no dispute that the permitted and approved works included a significant element of demolition, alteration and rebuilding of the previously extended dwellinghouse. In addition to those extensive approved works, Appellant A also confirmed that external walls that should have remained standing were taken down and rebuilt.
17. The Council provided photographs taken at various stages during the building works. Those dated 21 June 2017 show that only the front elevation of the previously extended dwellinghouse remained standing at that time. It cannot be confirmed from these photographs whether foundations for the demolished elevations remained in situ. While the foundation trenches for the 2017 PN extension can be seen, it is unclear whether its foundations had been laid

and/or whether its walls had been built up to damp proof course, as claimed by the appellant.

18. Article 3(2) of the GPDO¹ confirms that planning permission granted for the permitted development described in Schedule 2 is subject to the exceptions, limitations and conditions specified. Relevant to the 2017 PN, the condition set out in class A.4(11)(b) states that '*the development must be carried out ... in accordance with the information provided under sub-paragraph (2)*'. The 2017 PN may have been begun by the digging of the foundation trenches, but by the time the works had progressed above ground level, the rear and side walls of the previously extended dwellinghouse had been demolished. The 2017 PN could not have been completed in accordance with the information provided under sub-paragraph (2) as the original rear wall of the dwelling to which it was to be attached had been demolished. The large rear extension could not therefore benefit from the planning permission granted under Article 3(1) of the GPDO.
19. In respect of the 2017 PP, the grant of planning permission cannot be purported to grant something outside the terms of the application, this does not however mean that the grant must replicate precisely what has been applied for. What needs to be considered is whether the development would be so changed that it would in substance no longer be what was applied for. The 2017 PP clearly relates to extensions and alterations to the previously extended dwellinghouse. The permission was also conditioned that the development had to be carried out in accordance with the approved plans listed in the plans schedule on the decision notice.
20. Approved plan no. 1751-7 identifies existing walls to be retained in white and new external walls in black. The exterior walls to be retained were shown as the rear wall, the side (north) wall, part of the front elevation and part of the side (south) wall. The 21 June 2017 photographs show that the rear, south and north walls had been demolished, which the appellants do not contest. While the front elevation remained in situ at that date, the approved scheme required a significant proportion of this wall to be demolished. Photographs dated 20 September 2017 show that the new front elevation and side elevations were being constructed in coursed stone with new internal block walls.
21. The development may occupy a similar footprint and be of a similar appearance to that which would have resulted from completing the combined extensions and alterations granted by the 2017 PN and 2017 PP. However, I find that it is more than probable having regard to the extent of the demolition works that, rather than being extended and altered, the previously extended dwellinghouse was demolished and a new detached dwelling erected in its place. For this reason, the substance of the development was no longer what had been applied for.
22. The partially built garage did not fall within the scope of the 2017 PN or 2017 PP. Works on the partially built garage did not commence until spring/summer 2020, well after the previously extended dwelling had been demolished and the new detached dwelling had been substantially completed. While an argument could be made that this partially built garage could be permitted development, Article 3(5) states that permission granted in connection with an existing building by Schedule 2 of the GPDO does not apply '*if the building operations*

¹ Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)

involved in the construction of that building are unlawful'. As I have found that a new detached dwelling was erected, those works are unlawful, and the partially built garage cannot benefit from planning permission granted by Article 3(1).

23. The development described in the corrected allegation has occurred as a matter of fact and I have found that it does not fall within the scope of the 2017 PN and/or the 2017 PP. Express planning permission is required for the demolition of a dwelling, the erection of a new detached dwelling and partially built garage and it has not been obtained.
24. For these reasons, the implied appeals on grounds (b) and the appeals on ground (c) must therefore fail.

Appeal A - ground (a) and the deemed planning application

25. Application reference: P TA 1056 was for the erection of a bungalow on the site. The application plans, dated 29 March 1954, show the bungalow having a roughly 'L' shaped footprint with a detached single garage located to the south west of the dwelling (the 1954 PP). While the permission does not specifically refer to the detached single garage, the Council confirmed that a later planning permission referred to the 'retention of the garage'. It is therefore reasonable to assume that the garage shown on the plans submitted with the 1954 PP also formed part of that planning permission. It was agreed that the bungalow and single garage granted permission under the 1954 PP form the 'original building'.
26. The original building had been the subject of side, rear and dormer extensions, granted planning permission in 1979 (application reference: H33/1002/79). The previously detached garage became an integral part of the dwelling because of these works. This 'previously extended dwelling' is what formed the subject of the subsequent development proposals and works set out in the 2017 PN and 2017 PP.
27. The development for which planning permission is being sought is the erection of a new detached dwelling and a partially built garage.
28. There is no dispute that the site lies within the Green Belt. The **main issues** are:
- Whether the development constitutes inappropriate development in the Green Belt having regard to the Revised Framework and any relevant development plan policies.
 - The effect on the openness of the Green Belt.
 - The effect of the development on the character and appearance of the area.
 - If the development is inappropriate development inside the Green Belt, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate development

29. The Local Development Framework Core Strategy (2019) contains no relevant Green Belt Policies. Saved policy N33 of the Leeds Unitary Development Plan

(Review 2006) does not fully accord with the Revised Framework as it does not address the redevelopment of previously developed land. I attach limited weight to policy N33.

30. The Revised Framework states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. The construction of new buildings should be regarded as inappropriate in the Green Belt, subject to the exceptions set out in paragraph 149. Clearly, exceptions (a), (b), (e) and (f) do not apply in this case because the buildings are unrelated to agriculture or forestry, do not provide appropriate facilities for outdoor sport or recreation, are not infilling in a village and is not affordable housing for local community needs.
31. Paragraph 149(c) makes provision for the extension and alteration of a building providing that it does not result in disproportionate additions over and above the size of the original building. Paragraph 149(d) makes provision for the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces. In this case the existing dwelling had been demolished and a new dwelling and partially built garage constructed in its place, prior to any replacement scheme having been considered and approved. Therefore, I am not persuaded criterion (c) or (d) to paragraph 149 apply to the facts of this case.
32. Paragraph 149(g) makes provision for '*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*'. Previously developed land is defined in the Revised Framework as '*Land which is or was occupied by a permanent structure, including the curtilage of the developed land ... and any associated fixed surface infrastructure*'. The site is not located within a built-up area and it does not fall within the types of land excluded from the definition. The development would fall within this exception, subject to it not having a greater impact on openness.

Openness of the Green Belt

33. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence. In this instance the site has been occupied by a dwelling and put to residential use for more than 50 years. As such there is no conflict with the purposes of Green Belt.
34. In terms of the starting point for assessing the impact on openness, the appellant contends that this should be the previously extended dwellinghouse with the 2017 PN and 2017 PP works completed. The Council however contend that as the previously extended dwellinghouse had been demolished, the starting point should be a vacant site.
35. While the building operations undertaken include the erection of a new detached dwellinghouse, immediately prior to its erection, the site was occupied by the previously extended dwellinghouse. Furthermore, it was during the course of carrying out development granted planning permission, that the demolition works took 'a step too far'. For this reason, I find the appropriate

starting point for assessing the impact on openness to be the built form of the previously extended dwellinghouse.

36. There are similarities between the previously extended dwellinghouse and the new detached dwelling in respect of their siting, eaves height and overall design. The new dwelling is narrower in overall width but has a greater overall depth and it is higher to the roof's main ridge than the previously extended dwellinghouse. There is also no dispute that the new detached dwelling has a larger volume than the previously extended dwellinghouse. The partially built garage also adds to the volume and mass of the whole development and spreads the built development across the site.
37. When viewed from Swillington Lane the nominal increase in height of the new detached dwelling is offset by the reduction in its overall width. The increase in depth of the new dwelling results in it extending closer to the rear of the site, which bounds onto open fields. Visually the new detached dwelling appears more consolidated within the site, however there is no dispute that, spatially, it is larger. In respect of the partially built garage, while this may have re-introduced development into an area where development is said to have previously existed, there is little information as to what that development consisted of. The new detached dwellinghouse and partially built garage have therefore resulted in a loss of openness.
38. The erection of the new detached dwelling and partially built garage has a greater impact on openness and cannot fall within the exception set out in paragraph 149(g) of the Revised Framework. The development is therefore inappropriate development, which is by definition, harmful to the Green Belt.

Character and appearance

39. The site lies within an area of ribbon development in the countryside. There are two storey dwellings to the north and south. The site is characterised as a residential plot and has a domestic appearance, due to its location and position within the ribbon and the length of time it has been occupied by a dwelling. Mature trees and hedgerows have been maintained to the site frontage and throughout the garden. Neighbouring plots accommodate large dwellings with a range of attached and detached outbuildings.
40. The previously extended dwelling was constructed in red brick whereas the new detached dwelling is constructed in coursed stone, but the use of stone on the external elevations is acceptable because this type of material is found in the street scene and wider locality. The new detached dwelling resembles the external appearance of the former dwellinghouse, had it been extended and altered in accordance with the 2017 PN and 2017 PP. While the partially built garage represents an additional building in the countryside, the provision of such an outbuilding is not uncommon within the immediate locality. The use of natural building materials represents an improvement to the visual quality of the development.
41. For these reasons, the development has no adverse effect on character and appearance and does not conflict with saved policy GP5 of the Leeds Unitary Development Plan Review (2006), which seeks, amongst other things, to resolve detailed planning considerations, including landscape and design, and avoid problems of environmental intrusion.

Other considerations

42. The following arguments are advanced as other considerations that might weigh in favour of the development. It is clear, from the plans provided, that the planning permissions granted by the 2017 PN and the 2017 PP provided for a significant amount of the previously extended dwelling to be demolished. Only 2 of the original external walls would have been retained and those would have been subjected to fenestration changes. I do not doubt that a phased approach to the implementation of the 2017 PN and 2017 PP could have been feasible to ensure that the development undertaken fell within the scope of the extensions and alterations approved. However, the 2017 PP did not require the submission of a method statement detailing how the works would be carried out. As such there was nothing to prevent the appellant beginning the development in the manner that they did.
43. I acknowledge that the appellant was made aware of the Council's concerns that they had stepped beyond the approved works at a relatively early stage in the building process. In highlighting that the works had gone too far to represent extensions and alterations to the existing dwelling, I am however unclear as to how the appellant could have lawfully rebuilt '*the part demolished bungalow*' and then gone on to complete the 2017 PN and 2017 PP works without any form of further planning permission as suggested by the Council². Written expressions of support for the dwelling, were also given by the Council, subject to the removal of permitted development rights. While I appreciate that the Council's intention may have been to resolve the situation in a timely manner, in providing this advice, the severity of the situation in planning terms was significantly undermined.
44. The works in respect of the partially built garage were undertaken in full knowledge of the Council's concerns relating to the effect of the development on the openness of Green Belt. An argument has been made that, even taken with the increased size of the new detached dwelling, the completed garage would not be materially larger or disproportionate in size to the previously extended dwelling had the 2017 PN and 2017 PP been fully implemented and completed. However, I have already found that the new detached dwelling is materially larger than the previously extended dwelling that was demolished and the partially built garage adds further to the loss in openness.
45. The erection of the new detached dwelling represents a new chapter in the site's planning history. As such, the new detached dwelling is an 'original building' and any future proposals to extend it, either by way of permitted development rights or otherwise could be difficult to resist. While exemption 149(c)³ requires an assessment in respect of proportionality to be carried out, such an assessment is not a consideration when exercising permitted development rights as set out in the GPDO, which would affect openness.
46. The Revised Framework states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning conditions should only be used where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other

² Email from LCC dated 28 June 2017

³ National Planning Policy Framework July 2021

respects. Similarly, planning obligations must only be sought where they meet all the following tests:

- a) necessary to make the development acceptable in planning terms;*
- b) directly related to the development; and*
- c) fairly and reasonably related in scale and kind to the development.⁴*

47. The removal of permitted development rights would mean that any future extension proposals would require the benefit of planning permission. When considering any such application for planning permission, the Council would have regard to relevant planning policies and relevant material considerations. The fact that the new detached dwelling is materially larger than the previously extended dwelling that it replaced would be a consideration. The removal of permitted development rights, through the imposition of a condition, is necessary to make the development acceptable in planning terms. The Council has suggested such a condition, which I will return to later.
48. The appellant's planning obligation provides a further mechanism by which control over future development proposals can be achieved to make the development acceptable in planning terms. It is therefore necessary and relates directly to and is fairly and reasonably related in scale and kind to the development. The tests set out in paragraph 57 are met.
49. It was confirmed at the hearing that all the family's finances are tied up in the new detached dwelling, which represents a long-term investment to provide for their and their son's future. I heard that they had no other funding available to secure alternative accommodation and the loss of this dwelling would render the family homeless and in need of emergency housing provided by the local authority. Furthermore, the stress associated with the length of time it has taken for the matter to be progressed, coupled with the potential of losing the family home has had a significant impact on the family. Consequently, the education of the appellant's son has suffered. The dismissal of the appeal could result in a loss in employment, with the possibility of legal action being taken. I only have Appellant B's verbal submissions on these issues, but the Council did not challenge the personal circumstances presented. I have no reason to take a different approach, and the version of events is credible.
50. Given the nature of this appeal, the operation of Article 8 of the HRA⁵ is engaged. The outcome of this appeal could result in the interference with rights afforded under Article 8(1). I will also have regard to the best interests of the appellants' child, which align with the interests of the appellant.
51. Applying the Bingham Tests⁶, the dismissal of this appeal would be interference by a public authority with the exercise of the appellant's rights to respect for private and family life and their home. Furthermore, this decision could lead to the demolition of the family home, with little likelihood of securing planning permission for a new home on the site given its Green Belt location, their possible homelessness and other adverse effects on family life. This amounts to interference with their Article 8 rights.

⁴ Paragraph 57 of the National Planning Policy Framework July 2021

⁵ Human Rights Act 1998

⁶ AZ v SSCLG & Gloucestershire DC [2012] EWHC 3660

52. Such interference may however be necessary as it relates to the regulation of land use through the use of development control measures that are recognised as an important function of Government. The application of Green Belt policy would be in accordance with the law.
53. I have already found that the development does not conflict with the purposes of including land in Green Belt. The use of the land has not changed and planning permission was granted for a form of development that would have resulted in a dwelling of similar scale and appearance to that which currently exists on site. The unauthorised demolition of the previously extended dwelling has reduced the likelihood of the redevelopment of the site meeting any of the exceptions set out in paragraph 149 of the Revised Framework to such an extent that planning permission for a further dwelling on the site, once the requirements of the notice had been complied with, would be unlikely. This would leave the appellant and his family homeless and with a potentially undevelopable site. As such, I find the interference with the right to respect for private and family life to be disproportionate in respect of the new detached dwelling. The same cannot be said of the partially built garage, whose loss would have a negligible effect on the appellant's rights to respect for private and family life and their home and the best interests of the child.

Green Belt balance

54. I have found the development to be harmful to the Green Belt by reason of inappropriateness and loss of openness. I attach substantial weight to this harm. That said, the development does not however conflict with the purposes of Green Belt given the location of the site and its use not having changed. The development does not have a materially harmful effect upon the character and appearance of the locality. These factors neither way against or in favour.
55. The development could be made acceptable in planning terms subject to the imposition of a suitably worded condition removing permitted development rights. There is an executed planning obligation further securing the removal of rights to extend or alter the dwelling without first obtaining planning permission. To this factor, I attach great weight.
56. In addition, I attach considerable weight to the established use of the site, which included a dwelling and garden. I attach significant weight to the timescale that the site has been occupied by a dwelling and the new detached dwelling is very similar to the development that would have occurred had the planning permissions been implemented. The personal circumstances of the appellant and his family carries significant weight. I also attach moderate weight to the actions of the Council.
57. In my planning judgement, the advanced considerations in support of the appeal, taken together and on balance, clearly outweigh the conflict with planning policies designed to protect the Green Belt so as to justify the grant of planning permission on the basis of very special circumstances. Consequently, the very special circumstances necessary to justify the new detached dwelling exist. A favourable outcome would not violate the appellant's human rights and would be in the best interests of the appellant's son.
58. In contrast, the advanced considerations in support of the partially built garage, do not, on balance, clearly outweigh the conflict with planning policies designed to protect the Green Belt so as to justify the grant of planning

permission on the basis of very special circumstances. It is proportionate to refuse planning permission in respect of the partially built garage, which is plainly severable.

59. Therefore, subject to the imposition of conditions, I intend to grant planning permission for the new detached dwelling but refuse planning permission for the partially built garage.

Conditions

60. Given my findings above, I will focus on conditions relating to the new detached dwelling. The Council provided a list of 17 suggested conditions if planning permission were to be allowed. I received written submissions from the appellant in respect of those conditions and further discussion took place at the Hearing.
61. As the development has already taken place, I find conditions confirming the approved plan and showing the relationship of the dwelling to the site boundaries to be unnecessary. The need for a further red line plan is also unnecessary in respect of the issues before me.
62. Conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity. However, given the site's history, there is good planning justification to control future alterations and extensions. The new detached dwelling is larger and the increase in its depth results in it extending closer to the rear of the site. Visually, the dwelling appears more consolidated within the site. Extending and altering the dwelling under permitted development rights has the potential to further erode the openness of Green Belt. I consider that, in this case, it would be reasonable and necessary to impose a condition restricting the enlargement, improvement or other alteration of the dwelling without first obtaining planning permission. Additionally, in the interest of residential amenity, no windows shall be inserted in the side (north) gable wall facing the common boundary with Hollinhorpe House without first obtaining planning permission.
63. Securing an approved landscape plan, which includes the reinstatement of the section of frontage hedgerow, is justified in the interests of visual amenity. In the interest of visual amenity, the removal of the partially built garage is necessary.
64. While the specific details of the means of surface water disposal were not provided in advance of the Hearing, it was confirmed that the system that served the previously extended dwelling has been utilised and the Council confirmed that they would be satisfied with written confirmation of what this entails. As the development has already occurred, it is necessary to impose a sanction to ensure these conditions are enforceable in the event of non-compliance.
65. The site remains occupied by a single dwelling and there is no evidence to suggest that harm has been caused to biodiversity or that the appellants have suffered as a result of noise or contamination. The need for a Biodiversity Enhancement and Management Plan, a Noise Assessment, the submission of details of any contamination encountered during construction and contamination test results for any soil or soil forming materials that were brought on to site are disproportionate requirements given the use of the site

has not changed. It was also agreed that the implemented means of foul water disposal was acceptable.

66. Sight lines and a parking/turning area are already provided in front of the new detached dwelling and I saw that vehicles can enter and exit the site safely in forward gear. I was not made aware that the provision of an electric vehicle charging point is a policy requirement. The provision of a bin storage area would not promote sustainable travel and as the erection of any further buildings or structures could harm the openness of Green Belt, requiring the provision of secure cycle parking would be inappropriate in this instance.

Conclusion on ground (a)

67. S177(1)(a) allows for the grant of planning permission in relation to the whole or any part of the matters alleged in the notice. For the reasons given above, suitably worded conditions can be imposed to make part of the matters alleged, the erection of a new detached dwelling, acceptable in planning terms. The appeal on ground (a) succeeds and planning permission is granted, in so far as it relates to the new detached dwelling but refused for the partially built garage – a split decision.

Overall conclusion

67. For the reasons given above I conclude that Appeal A shall succeed on ground (a) in part only, and I will grant planning permission for the new detached dwelling, but otherwise I shall uphold the notice and refuse to grant planning permission for the partially built garage. The notice shall cease to have effect insofar as it is inconsistent with the planning permission which I will grant by virtue of s180 of the 1990 Act. As the appellants arguments on grounds (f) and (g) relate to the new detached dwellinghouse, there is no need for them to be considered.

Formal decisions

Appeal A: APP/N4720/C/20/3258467

68. It is directed that the enforcement notice is corrected by:

The deletion of the words "without planning permission, the unauthorised demolition and erection of a new detached dwelling and partially built structure within the Green Belt" and the substitution of the words "without planning permission, the demolition of a dwelling and erection of a new detached dwelling and partially built garage" in section 3: matters which appear to constitute the breach of planning control.

69. Subject to the correction, Appeal A is allowed insofar as it relates to the new detached dwelling located on land edged red on the plan 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 new detached dwelling at Hollinholme, Swillington Lane, Swillington, Leeds LS26 8BZ, subject to the conditions set out in the attached Schedule.
70. Appeal A is dismissed, and the enforcement notice is upheld as corrected insofar as it relates to the partially built garage located on the land edged red on the plan and planning permission is refused in respect of the partially built

garage at Hollinholme, Swillington Lane, Swillington, Leeds LS26 8BZ deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: APP/N4720/C/20/3258468

71. Subject to the correction to the enforcement notice the appeal on grounds (b) and (c) fail and the appeal on grounds (f) and (g) do not fall to be considered as they relate only to the new detached dwelling. The enforcement notice is upheld as corrected in the terms set out in paragraph 68 above.

M Madge

INSPECTOR

Schedule of Conditions

- (a) The new detached dwelling hereby permitted shall be demolished to ground level and all equipment and materials brought on to the land for the purposes of facilitating its erection shall be removed within 30 days of the date of failure to meet any one of the requirements set out in i. to vi. below:
- i. Within one month of the date of this decision a landscape plan detailing all existing hard and soft landscaping along with any mitigation/remedial works required by condition (a) ii, which shall include details for the reinstatement of the section of frontage hedgerow, as well as a written scheme of implementation and management, shall be submitted to and approved in writing by the local planning authority. Any mitigation/remedial works shall be carried out in accordance with a timetable detailed within the written scheme of implementation, and thereafter maintained as agreed.
 - ii. Within 3 months of the date of this decision the partially constructed garage and any associated hard landscaping shall be demolished and removed, all demolition materials shall be removed from the site and the land restored to its former condition.
 - iii. Within one month of the date of this decision details of the means of surface water disposal shall be submitted to and approved in writing by the local planning authority. The details shall include all necessary plans, documents and supporting calculations. Should any remedial works be required as a result of these details, they shall be carried out within one month of the local planning authority's written approval as required by this condition, and the agreed details.
 - iv. If within 6 months of the date of this decision the local planning authority refuse to approve the details required by (i), (ii) and/or (iii) or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - v. If an appeal is made in pursuance of (iv) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - vi. The details approved in respect of (i), (ii) and (iii) shall have been carried out, completed and managed in accordance with the approved timetable.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

- (b) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), (or any order revoking and re-enacting that Order, with or without modifications), no enlargement, improvement or other alteration of the dwelling shall be carried out and no building, enclosure or other structure shall be erected on any part of the site without first obtaining planning permission.
- (c) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended), (or any order revoking and re-enacting that Order, with or without modifications), no windows shall be inserted in the side (north) gable wall facing the common boundary with Hollinthorpe House without first obtaining planning permission.

APPEARANCES

FOR THE APPELLANT:

Josh Kitson
BA (hons)

Director, Walker Morris LLP

Paul Bedwell
MRTPI

Senior Director, Pegasus Planning Group Ltd

Mark Fella

Joanne Fella

FOR THE LOCAL PLANNING AUTHORITY:

Jessica Thomas
BA (hons), MA

Principal Planning Officer, Leeds City Council

Beverley Hocking

Senior Compliance Officer, Leeds City Council

Magda Lezama

Flood Risk Team, Leeds City Council