The Planning Inspectorate

Appeal Decision

Site visit made on 10 June 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 August 2021

Appeal Ref: APP/Y3615/C/20/3256615
Land to the north side of Thrashers, Old Lane, Cobham KT11 1NA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Auday Tokatly against an enforcement notice issued by Guildford Borough Council.
- The enforcement notice, numbered EN/18/00206, was issued on 25 June 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the carrying out of operational development comprising;
  (i) The erection of two detached buildings, shown on the plan attached to the notice as 'building 1' and 'building 2'.
  (ii) The installation of a hard surface.
- The requirements of the notice are:
  (i) Demolish the two buildings shown on the plan attached to the notice as 'building 1' and 'building 2';
  (ii) Remove the hard surface;
  (iii) Permanently remove from the land all materials and debris arising from the works outlined in step (i) and (ii);
  (iv) Reseed the land with grass seed.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (g) of the Town and Country Planning Act 1990 as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision

Application for costs

1. An application for costs was made by Guildford Borough Council against Mr Auday Tokatly. This application is the subject of a separate Decision.

The appeal on ground (d)

2. The appeal on this ground is that, at the date on which the notice was issued, no enforcement action could be taken in respect of any breach of planning control that may be constituted by those matters. In order to succeed on this ground, the appellant must show that the development was substantially complete on the date four years before the notice was issued. The test in this regard is the balance of probability and the burden of proof is on the appellant.

3. The appellant's evidence on this ground appeal essentially comprises a Statutory Declaration supported with various documents. The appellant's Statutory Declaration was properly made before a solicitor, and accordingly I afford it due weight.

4. It is the appellant's evidence that he purchased the appeal property known as Thrashers in November 2015 and then subsequently purchased additional land belonging to the occupiers of the adjoining Heathside Cottage on 29 March 2016. At the time of purchase, that additional land was occupied by a swimming pool, a large area of hardstanding and various outbuildings.

5. The appellant's evidence relates solely to building 1 as identified in the notice: it is no part of the appellant's case that building 2 as identified in the notice, or the extension of the hard surface associated with the building, were substantially complete on the date four years before the notice was issued. In relation to building 1, it is the appellant's evidence he accepted a quote from a company called Dove Construction Services Limited for the preparation of a slab and foundations for the structure together with the provision of the hard surface on 27 April 2016.

6. A copy of this quote has been provided as part of the appellant's evidence and, consistent with the appellant's Statutory Declaration, I note that the quote only relates to the construction of the foundation slab and other groundworks. The actual garage structure is not included in that quote. The quote is provided as an email under the subject heading 'Thrashers'. The works quoted for are referred to only in the main text of the email and are described simply as 'garage works'. It is evident from the email that it was accompanied by two attachments, neither of which have been provided.

7. I have some concerns surrounding the authenticity of this evidence, not least because only part of the email appears to have been provided. The quote provided has the appearance of being an amalgam between an email format and a formal letter, and some of the details typically associated with a quote are absent: for example, a reference number. Similarly, there is no mention of VAT. For these reasons, I have treated this evidence with an element of caution.

8. The appellant has also provided an invoice dated 30 May 2016 from Dove Construction Services Limited that purports to relate to payment for the works subject to the quote above. I also have some difficulty with this piece of evidence. Firstly, the invoice is addressed to the appellant but at a company called Hyatt Group Ltd operating from an address in Esher, Surrey. No explanation is given as to why an invoice for works at the appellant's private residence was sent to what appears to be the appellant's work address. Secondly, the header to the invoice is titled 'To carry out mobilisation and site set up'. On its face, this is not an obvious reference to works relating to the construction of foundations to a domestic outbuilding and connotes a more substantial form of development. Neither does it correlate with the simple description of 'garage works' provided in the quote dated 27 April 2016.

9. However, in my view the most significant anomaly concerns the amount payable. As the Council point out, the typewritten amount is significantly in excess of the total achieved by adding the various elements set out in the quote referred to above: by my calculation, in the region of one-third. There is a handwritten note to the effect that this total includes an additional amount to cover variations as required. No explanation is given as to what those variations were, or why they increased the cost to such a significant degree. Neither is any explanation given as to why the handwritten note was not formalised in typeface when the invoice was produced. Given that the invoiced

amount included those variations, reference to those variations in a handwritten note appears somewhat surprising.

10. In view of these anomalies, I am not convinced that the invoice does relate to works for the construction of foundations for building 1 as identified in the notice. I have therefore also treated this evidence with an element of caution.

11. According to the appellant, works on the foundation, drive and ground slab were completed during the week commencing 2 May 2016. The email providing the quote accepted by the appellant was timed at 17.29 on 27 April 2016, a Wednesday. Assuming that the quote was accepted by the appellant that same day, this would leave at most a total of 5 working days for the work to be completed (including the undisclosed but evidently significant variations). I will return to this timeline later.

12. In his Statutory Declaration, the appellant goes on to indicate that on 6 May 2016 he paid a deposit to a company called Custom Timber Buildings Ltd for the erection of the main garage structure. That company raised its final invoice on 31 May 2016, which the appellant paid on 25 June 2016. The appellant states that this was one month after the works were completed, which would place substantial completion of building 1 on or around 28 May 2016.

13. I note that the both the deposit and the final invoice were again addressed to the appellant C/O the Hyatt Group at their address in Esher. In both cases the address is clearly stated as being Thrashers at Old Lane, complete with postcode. The description of the works, given respectively as a timber storage unit and a garage structure, are also consistent with building 1 as identified in the notice.

14. In relation to all the invoices provided by the appellant, payment was made by bank transfer, screenshots of which have been provided as appendices to the appellant's Statutory Declaration. However, rather than being bank transfers from the appellant's personal account as might be expected, the screenshots provided are all from the Hyatt Group Ltd business account. I recognise that there may be a perfectly reasonable explanation as to why works to the appellant's private residence were paid from the business account held by Hyatt Group Ltd. But the appellant has not provided any such explanation. In the absence of that, I cannot discount the possibility that these payments relate to other works undertaken by the company rather than the erection of building 1. My concerns in this respect are reinforced by the header to the invoice dated 30 May 2016 which, as set out above, does not appear to relate to the construction of a domestic outbuilding.

15. Returning now to the timeline indicated by the appellant's evidence, this would result in building 1 being substantially complete within, at most, 23 working days or 31 calendar days (assuming that work took place at weekends and/or Bank Holidays). It is clear from the quote dated 27 April 2016 that this would include removing the pre-existing outbuildings, removing the hardstanding and infilling the swimming pool. This would then be followed by the construction of the new foundation slab and hard surface, including the undisclosed variations to the works initially envisaged. Finally, this would entail the construction of the garage itself.

16. I have no doubt that this would be technically possible, given adequate resources. However, it would require the supply of materials and labour to take place at extremely short notice, particularly in relation to the initial works undertaken by Dove Construction Services Limited. Similarly, given that the deposit for main garage structure was only paid on 6 May 2016, the appellant's suggested timeline would mean the garage was designed, manufactured, delivered and constructed within, at most, 16 working days or 22 calendar days. The appellant has provided no documentary evidence to demonstrate that the garage was substantially completed within that short timescale. For example, the appellant has provided no sworn statements from either Dove Construction Services Limited or Custom Timber Buildings Ltd to confirm that this timescale was achieved, and no dated photographs showing construction of the garage during construction and as completed.

17. Furthermore, it is the Council's evidence that the appellant submitted the commencement certificate under the Building Regulations on 23 May 2016, a Monday. If the appellant is correct in his assertion that the building was substantially complete on or around 28 May 2016, this would suggest that the building was constructed to the point where it was substantially complete within, at most, 6 days. Again, whilst I have no doubt that this would be technically possible, I have no documentary evidence to suggest this was in fact the case.

18. Indeed, the only documentary evidence available to me is the completion certificate under the Building Regulations. This was dated 3 July 2017, and would suggest that the building was substantially completed well outside of the relevant four year period. The appellant responds by explaining that he could not arrange for building 1 to be signed off as complete under the Building Regulations until non-structural internal installations had been completed. These included specialist lighting which had to be installed, commissioned and certified ahead of any sign off.

19. The appellant contends that this does not alter the fact that the outbuilding had been substantially completed, made watertight and fit for purpose before the non-structural internal installations had been completed. I recognise that completion under the Building Regulations is different to 'substantially complete' for the purposes of the 1990 Act. However, in relation to the latter, the Courts have held that a building could not be regarded as substantially complete for the purposes of section 171B(1) even if outstanding works affected only the interior. Instead, the Courts preferred a holistic approach in which, where planning permission is granted for a single operation, it is made in respect of the whole of the building operation.

20. I recognise that, in applying the relevant case law, determining whether a building could be regarded as being substantially complete is a matter of fact and degree. In that context, apart from reference to specialist lighting, the appellant has not provided any details in relation to the non-structural internal installations referred to. The appellant has not provided any photographic evidence of the building at the time at which he contends it became substantially complete. Neither have I been provided with any description of the building by the company that erected it. In the absence of that evidence, even if building 1 was structurally complete and watertight at the end of May 2016 as the appellant claims, as a matter of fact and degree I am not

persuaded that the building could properly be regarded as being substantially complete at that date.

21. There is a further point that flows from the above. The appellant maintains that building 1 was erected from foundation slab to the point of being structurally complete between 23 May 2016 and 28 May 2016, at most 6 days in total. It then took, on the appellant's own case, over a calendar year to fit the non-structural internal installations. I recognise that the various electrical systems, etc would all need to be commissioned, installed and certified before the building could be deemed complete under the Building Regulations. There is, nonetheless, an obvious disparity inherent in the appellant's evidence between the speed at which the building was initially erected and the relatively long period of time taken to install seemingly essential electrical and other systems. The appellant has not explained that disparity.

22. Finally, I note that the Council served a Planning Contravention Notice (PCN) on the appellant. I have been provided with a copy of the appellant's response, dated 14 April 2020. In response to question 10 of the PCN, the appellant answered that work on constructing Outbuilding 1 (building 1 as subsequently identified on the notice) commenced as soon as the previous buildings had been removed. The appellant gave that date as around the end of February 2016.

23. Question 12 of the PCN asked on what date the building was substantially complete. In response to that question, the appellant answered that he was awaiting verification from the installer, identified in response to the previous question as being Custom Timber Buildings.

24. A number of points arise from these responses. Firstly, the appellant submitted the commencement certificate under the Building Regulations on 23 May 2016. That represents a significant difference in time from "around the end of February" indicated in response to Question 10 of the PCN. Even if the appellant was intending to refer to the commencement of groundworks, it is the appellant's evidence in his Statutory Declaration evidence that it was not until 27 April 2016 that he accepted a quote for those grounds works. That still represents a significant difference in time from "around the end of February".

25. Secondly, although he answered that he was awaiting verification from Custom Timber Buildings regarding the date on which the building was substantially complete, that information was already in his possession. As indicated in his Statutory Declaration, that company raised its final invoice on 31 May 2016. The appellant paid that invoice on 25 June 2016. It is the appellant's evidence that both payments were made through the company accounts of the Hyatt Group Ltd. I can see no reason why that information would not have been known by the appellant at the time of responding to the PCN, and therefore why the responses in the PCN were phrased in such vague terms.

26. In relation to the hard surface associated with building 1, the appellant explains in his Statutory Declaration that he requested that the driveway be finished in tarmac so as to allow for its immediate use but that sufficient space be left for a resin covering (or another surface) at a later date. The appellant goes on to explain that no further works were undertaken to the driveway since it was laid in May 2016. It is evident from the appellant's explanation that it was originally intended for further works to be done to the driveway but that these were not carried out. The corollary is that driveway as it existed in May 2016

and thereafter was not substantially complete before the end of the period of four years before the notice was issued.

27. In summary, I acknowledge that, on the face of it, the final invoice raised by Custom Timber Buildings Ltd on 31 May 2016 and the appellant's payment of that invoice on 25 June 2016 constitute strong evidence in support of the proposition that building 1 was substantially complete before the notice was issued. However, that evidence must be considered in the context of all the evidence that is before me. That evidence points in the other direction.

28. The anomalies surrounding the quote and invoice from Dove Construction Services Limited raise questions in my mind as to whether those documents properly relate to building 1 as identified in the notice. Then there is the lack of supporting documentation from either Dove Construction Services Limited or Custom Timber Buildings Ltd to confirm that building 1 was substantially completed in what appears to be a tight timescale. My concerns in that respect are exacerbated by the disparity between the speed at which the building was initially erected and comparatively long period of time to install seemingly essential electrical and other systems. These concerns are further exacerbated by the vagueness of the appellant's response to the PCN and the inconsistencies therein with his later evidence.

29. The foregoing is all overarched by the case law relating to when a building can properly regarded as being substantially complete for the for the purposes of section 171B(1) of the 1990 Act. On the limited information available to me, I am not persuaded that, as a matter of fact and degree, building 1 could be regarded as being substantially complete at the end of May 2016.

30. This is a situation where the local planning authority has no evidence of its own to contradict that of the appellant or make his version of events less than probable. However, I find that the appellant's evidence is not sufficiently precise and unambiguous on its own to show, on the balance of probability, that building 1 was substantially complete before the end of the period of four years before the notice was issued. The appellant has therefore not discharged the burden that falls upon him.

31. Accordingly, the appeal on ground (d) fails.

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

32. The ground of appeal is that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted.

33. The Council has stated two substantive reasons for issuing the enforcement notice, from which the main issues raised are:

- whether the breach of planning control alleged in the notice is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (July 2018) and the development plan
- the effect on the development on the character and appearance of the area, and
- if the breach of planning control alleged in the notice is inappropriate development in the Green Belt, 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 necessary to justify the development.

Whether the proposal is inappropriate development for the purposes of the National Planning Policy Framework and the development plan

34. Paragraph 149 of the National Planning Policy Framework (Framework) indicates that, with some exceptions, the construction of new buildings is inappropriate in the Green Belt. The exceptions listed in paragraph 149 of the Framework do not include the construction of outbuildings required for a purpose incidental to the enjoyment of a dwellinghouse as such, as in this case.

35. Paragraph 2 of Policy P2 of the Guildford Borough Local Plan: strategies and sites (Local Plan) reflects the guidance in the Framework and provides that inappropriate development will not be permitted unless very special circumstances can be demonstrated. The policy goes on to indicate that the construction of new buildings in the Green Belt will constitute inappropriate development, unless the buildings fall within the list of exceptions identified in the Framework.

36. The hard surface constitutes an engineering operation. Paragraph 150 of the Framework indicates that certain forms of development, including engineering operations, are not inappropriate in the Green Belt provided they preserve its openness and do not conflict with the purposes of including land within it. Paragraph (3) of Policy P2 of the Local Plan reflects the Framework in this respect.

37. There is no dispute that the development subject to the notice does constitute inappropriate development in the Green Belt. I see no reason to take a different view. I therefore conclude that the breach of planning control alleged in the enforcement notice is inappropriate development in the Green Belt in the context of Paragraphs 149 and 150 of the Framework, as well as Policy P2 of the Local Plan. Paragraph 147 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

Character and appearance of the area

38. I noted during my site visit that neither of the two detached buildings is conspicuous when viewed from the public highway, being screened by trees, shrubs and the intervening boundary treatment. Similarly, the hard surface associated with those outbuildings is not readily visible from outside of the appeal site. Moreover, I consider the design and appearance of the building to be acceptable in these surroundings, and the size of the outbuildings to be proportionate to the main dwelling and their surroundings.

39. Accordingly, I conclude that the outbuildings and associated hard surface do not harm the character and appearance of the area. I therefore conclude that the development does not conflict with Policy D1 of the Local Plan.

Other considerations

40. On 11 June 2020, the Council granted a Certificate of Lawfulness for Proposed Use or Development (LDC) for the re-siting of the existing detached outbuildings (Council Ref: 20/P/00666). The appellant has confirmed that a material start on the construction of the dwelling had been made before the certificate of lawful development for the re- siting of the existing detached outbuildings was submitted. Consequently, the granting of this LDC is a material consideration relevant to the determination of this appeal.

41. Nevertheless, it is important to consider the exact development found to be lawful by this LDC. It is clear that this LDC contemplates the re-siting of the existing outbuildings: in other words, to put those existing outbuildings on a different site or in a different position. The plans submitted with the application show the 'existing' outbuildings to be re-sited are building 1 and building 2 as identified in the notice. This is confirmed in the supporting documentation to that application.

42. Pursuant to the LDC, building 1 and building 2 as identified in the notice would be re-sited to the south-east of the main dwelling. The obvious corollary is that both building 1 and building 2 would first have to be removed from their present location before they could be re-sited to the south-east of the main dwelling. This would, in effect, automatically secure compliance with the requirement at paragraph 5(i) of the notice.

43. The further corollary is that, should the development found to be lawful in the LDC be implemented, the situation would not arise where either building 1 or building 2 would remain in position at the same time as the outbuildings re-sited to the south-east of the main dwelling. On my reading, there is no equivalent provision in relation to the hard surface, insofar as there appears to be no requirement to remove the existing hard surface associated with building 1 or building 2 as identified in the notice before the hard surface proposed in association with the re-sited outbuildings can be constructed.

44. The appellant has completed and signed a Unilateral Undertaking in which he covenants not to commence or carry out the development pursuant to the LDC in the event that planning permission is granted for the development stated in the notice. However, even if the deemed planning application was granted for building 1 and building 2 as identified in the notice, implementing the development found to be lawful by the LDC would still require the re-siting of those two outbuildings to the south-east of the main dwelling. It follows that the Unilateral Undertaking completed and signed by the appellant is of no real effect.

45. The planning permission granted in October 2018 for the two-storey dwelling now erected on the site (Council Ref: 18/P/01669) was not subject to a condition removing the permitted development rights available under the Town and Country (General Permitted Development) (England) Order 2015 (GPDO). The Unilateral Undertaking completed and signed by the appellant does not voluntarily surrender those permitted development rights. It only covenants not to implement the specific development found to be lawful by the LDC.

46. It follows that, should planning permission be granted for building 1 and building 2 as identified in the notice, there would be nothing to prevent the appellant subsequently availing himself of the permitted development rights

offered by the GPDO for the construction of outbuildings of a different description on the land to the south-east of the main dwelling. In that scenario, the possibility would therefore exist in which building 1 and building 2 as identified in the notice would be present at the same time as one or more outbuildings to the south-east of the main dwelling.

47. I have set out the above in some detail because it represents the context in which the appellant's claimed fallback position must be assessed. It is to that fallback position which I now turn.

48. The appellant's position is that, in any comparison of any harm to the Green Belt, there is unlikely be any tangible difference between that arising from the development subject to the notice and that arising from the fallback position. Indeed, the appellant goes further and claims the re-siting of the outbuildings as found lawful by the LDC would have materially greater impacts in terms of openness than the retention of the appeal development.

49. I do not agree. The Courts have held that the openness of the Green Belt has both a spatial aspect and a visual aspect. In relation to the latter, neither the position in which the outbuildings are currently sited nor the location to the south-east of the main dwelling to which they would be re-sited pursuant to the LDC are widely visible from any public vantage point. As such, there would be no significant difference in the impact in terms of visual aspect.

50. In terms of the spatial aspect, the outbuildings as proposed to be re-sited are the same buildings (dimensionally) as those subject to the notice. Consequently, there would be no difference on the openness of the Green Belt in spatial terms.

51. Given that the appellant has completed a Unilateral Undertaking to forego the lawful option open to him to re-site the outbuildings, I am satisfied that the fallback position advanced by the appellant is a realistic prospect. However, having regard to the above and to the wider context in which the fallback position is set, I attach only limited weight to that fallback position.

52. In addition to the fallback position, the appellant also points to the advantages in terms of sustainability retention of the existing structures. The appellant also points to well-known dis-benefits to the environment arising from the re-construction of the outbuildings, including the need to dispose of existing materials, sending them to landfill or for incineration, and transportation of new materials to the site.

53. As a general principle, these are all clearly advantages that arise from the retaining the existing outbuildings subject to the notice. The appellant has not quantified those benefits through technical evidence including the extent, if any, to which the materials utilised in the construction of the existing outbuildings could be re-used should the outbuildings be re-sited pursuant to the LDC. Accordingly, whilst fully mindful of importance attached to sustainability in the Framework, in the absence of that evidence I attach only limited weight to sustainability arguments advanced by the appellant in this case.

Green Belt balancing exercise and conclusion on the ground (a) appeal

54. In accordance with paragraph 148 of the Framework, I attach substantial weight to the harm to the Green Belt by reason of the inappropriate nature of

the development. That harm could not be overcome by the imposition of suitably worded conditions.

55. Against this, I attach limited weight to the appellant's fallback position. I attach only limited weight to sustainability arguments advanced by the appellant.

56. Consequently, the harm by reason of inappropriateness and any other harm, is not clearly outweighed by other considerations, such that the very special circumstances necessary to justify the development do not exist.

57. For the reasons set out above, the breach of planning control alleged in the notice is also contrary to Policy P2 of the Local Plan. I have not been advised of any material considerations of sufficient weight, either taken individually or cumulatively, to indicate that determination should be made otherwise than in accordance with the development plan.

58. Accordingly, I conclude that the appeal on ground (a) should be dismissed.

The appeal on ground (g)

59. The ground of appeal is that the period for compliance specified in the notice falls short of what should reasonably be allowed. The period for compliance specified in the notice is six months.

60. The essence of the appellant's case on this ground of appeal is that, given the substantial value of the cars housed within the two outbuildings, he would wish to carry out the development found to be lawful by the extant LDC the first instance so that the cars can be safely and securely relocated prior to the demolition of the existing structure(s). To obtain quotes, instruct builders and for the new buildings to be erected could take 6 - 8 months depending on the availability of contractors, materials and weather conditions. The existing buildings will need to be removed, and the land re-seeded. The appellant considers that this could easily fall outside of the current compliance period. Accordingly, a compliance period of 12 months is sought.

61. I can fully understand the imperative to complete the re-siting the outbuildings found to be lawful through the LDC before the existing outbuildings are demolished. The appellant has not provided any technical evidence to corroborate his view that the erection of the re-sited outbuildings could take 6-8 months. In that respect, I recall the appellant's evidence in relation to his appeal on ground (d), in which it was contended that building 1 was erected within 6 days. The corollary is that the vast majority of the 12 period of compliance sought by the appellant would be taken up not with the physical construction of the buildings, but with obtaining quotes and instructing builders. On the limited evidence that is before me, I am not persuaded that such a lengthy period of time would be required to achieve this.

62. I am, however, mindful that the purpose for which the buildings are intended requires the fitment of specialised lighting and security systems. It is apparent from the evidence in relation to the appellant's ground (d) appeal that these specialist systems took a significant period of time to install. Consequently, whilst I am not convinced that the entirety of the 12 months period of compliance sought by the appellant is justified, I consider that a compliance period of nine months would be a proportionate response to the breach of planning control that has occurred.

63. Accordingly, the appeal on ground (g) succeeds to that extent.

Conclusion

64. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Formal Decision

65. It is directed that the enforcement notice is varied by:

- In paragraph 6 of the notice, delete the words "6 months" and substitute there the words "9 months"

66. Subject to the variation, the appeal is dismissed, 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.

Paul Freer

INSPECTOR