



Appeal Decisions

Hearing Held on 2 November 2021

Site visit made on 2 November 2021

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 December 2021

Appeal A Ref: APP/Y0435/W/20/3264312

West of 1 London End Lane, Bow Brickhill, Milton Keynes

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Gill Hudson Homes Limited against the decision of Milton Keynes Council.
 - The application Ref 19/02141/FUL, dated 23 August 2019, was refused by a notice dated 15 September 2020.
 - The development proposed is described as new residential dwelling (retrospective) and associated works.
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Appeal B Ref: APP/Y0435/C/20/3264325

Land to the west of 1 London End Lane, Bow Brickhill, Milton Keynes

- 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 Gill Hudson Homes Limited against an enforcement notice issued by Milton Keynes Council.
- The enforcement notice was issued on 5 November 2020.
- The breach of planning control as alleged in the notice is: Without planning permission the erection of a dwelling house.
- The requirements of the notice are:
 - (i) Remove the dwelling house from the land described in section 2.
 - (ii) Remove all resulting debris and materials from the land.
- The period for compliance with the requirements is eight months.

The appeal is proceeding on the grounds set out in section 174(2) (a) (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Decisions

Appeal A

The appeal is allowed and planning permission is granted for a new residential dwelling and associated works at West of 1 London End Lane, Bow Brickhill, Milton Keynes in accordance with the terms of the application, Ref 19/02141/FUL, dated 23 August 2019, subject to the conditions in the attached Schedule.

Appeal B

1. The appeal is dismissed, and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters and Background

2. During the course of the appeal process, and prior to the hearing, the appellant withdrew ground (b) in Appeal B. Appeal B therefore proceeds on grounds (a), (f) and (g) only.
3. A draft statement of common ground was prepared prior to the hearing and amended in several versions. No signed final version was agreed before the hearing took place.
4. A revised version of the National Planning Policy Framework (the Framework) has been published since the appeal was lodged. The main parties were given the opportunity to comment on any relevant implications for the appeal and have not therefore been prejudiced. I have had regard to the responses and the Framework in reaching my decision.
5. Planning permission was granted on appeal in November 2009 for a low impact dwelling with car shelter on the appeal site. A further planning permission was granted in 2013 to extend the time limit for implementation of the 2009 permission. Several amendments to that permission were subsequently approved. The parties agreed at the hearing that when development commenced on the construction of the dwelling in May 2016, planning permission Ref: 14/02691/FUL (2015 permission) was extant, with all pre-commencement conditions discharged, and capable of full implementation.
6. The dwelling that has been constructed on site, although not yet completed, has not been constructed in full accordance with the 2015 permission. The parties agree that the differences between the development constructed and that which was approved can be summarised as: omission of timber cladding and use of render finish to all elevations of the building; revised fenestration and omission of glazed entrance lobby and projecting ground floor plant room; approved garage replaced with habitable rooms; revised external stores/new garage; re-grading of external areas; installation of a BioDisc treatment plant instead of reed beds and the installation of an air source heat pump (ASHP).
7. Appeal A seeks planning permission for the dwelling as constructed and includes proposals to re-paint the external surfaces of the dwelling, install additional energy efficiency measures, including photovoltaic cells; carryout some additional groundworks, soft landscaping, a bio-diversity enhancement scheme, and new boundary treatments.
8. The terms of the appeal on ground (a) (Appeal B) derive directly from the alleged breach of planning control set out in the notice, which in this case is the erection of a dwelling house. The Land where the breach of planning control is alleged is identified in the notice as the footprint of the new dwelling. There is no requirement for the new access driveway or BioDisc treatment plant to be removed, or for the original ground levels to be reinstated.

Appeal A and Appeal B on ground (a), deemed planning application.

Main Issues

9. The main issues in these cases are:

- Whether or not the appeal site is suitable in principle for a new dwelling, with particular regard to local and national planning policy;
- The effect on the character and appearance of the area;
- The effect on ecology; and
- Whether the development is sustainable construction and includes sustainable drainage systems.

Reasons

Suitable location

10. Plan: MK 2016-2031 (MKP) adopts a spatial delivery strategy which seeks to focus housing development within, or adjacent to, the existing urban area of Milton Keynes. Elsewhere within the rural area new development will occur in villages and other rural settlements identified in made neighbourhood plans.
11. The appeal site is located on the southern edge of the village of Bow Brickhill, and within an area of countryside as defined by MKP. Policy DS5 of the MKP seeks to restrict new residential development in the countryside to that which is wholly appropriate to a rural area and cannot be located within a settlement. However, provision is made within Policy DS5 for replacement dwellings in the countryside and new dwellings which are of exceptional quality or innovative in the nature of their design, where they conform with paragraph 55 of the Framework. Since the adoption of the MKP, the Framework has been revised (July 2021). However, paragraph 80 of the revised Framework is generally consistent with former paragraph 55 and continues to ensure that isolated homes in the countryside are avoided, except where their design: is of exceptional quality; would help to raise standards in design more generally in rural areas; would reflect the highest standards in architecture and significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
12. It is clear from the previous Inspector's decision¹ in 2009 that he considered the dwelling to be isolated, of exceptional quality and sufficiently innovative in its design to be able to draw support from Planning Policy Statement 7 *Sustainable Development in Rural Areas*, which was enforce at that time. However, it is clear from the reasoning in his decision that his assessment of "isolated", was based on an absence of any visual association between the site and other land or buildings in London End Lane. It is the Council's view that this consideration still holds true. However, according to the Court of Appeal in *Braintree DC v SSCLG, Greyread Ltd & Granville Development Ltd* [2018] EWCA Civ 610 "...the word "isolated" in the phrase "isolated homes in the countryside" in the Framework, simply connotes a dwelling that is physically separate or remote from a settlement."

¹ APP/Y0435/A/09/2104644

13. The appeal site is located at the end of London End Lane and within easy walking distance of the settlement of Bow Brickhill. Whilst the dwelling is visually screened from London End Lane by vegetation, it is situated adjacent to an existing cluster of residential properties on this lane. The dwelling is not in my judgement physically separate or remote from the settlement of Bow Brickhill, and therefore not "isolated". The provision made for isolated homes in the countryside set out in Paragraph 80 of the revised Framework and Part D of Policy DS5 are not therefore matters for consideration in these appeals.
14. However, considering the location of the site within the countryside, outside of the settlement boundary of Bow Brickhill, and in a location which is not identified for new housing in the Council's housing development strategy, the appeal site is not a suitable location for a new dwelling when regard is had to local planning policy. For these reasons, I conclude that there is conflict with the development plan, and, with Policies DS1 and DS5 of the MKP, the aims of which are set out above.

Character and appearance

15. The appeal site is located on the edge of the settlement of Bow Brickhill. It is situated on the side of a hill and at the edge of a woodland where there are panoramic views towards Milton Keynes. The site overlooks a patchwork of fields and open pastureland which characterises the lower slopes of the valley. A bridleway passes the site entrance and there are public footpaths running alongside the north eastern and south western boundaries of the site.
16. As constructed and originally conceived, the unauthorised dwelling is an earth sheltered dwelling. It has been set into the hillside beneath the original ground level and incorporates a green roof. In this respect the development responds appropriately to its hillside location and woodland context. Due to its low-lying position, the dwelling is barely visible from distant views from Station Road or Brickhill Road in the valley below. In addition, it is screened by vegetation from views on the approach to the site along London End Lane. It is not therefore seen in the context of the neighbouring dwellings which front onto London End Lane. The unauthorised dwelling is very similar in scale and form to that originally approved in 2009. As anticipated by the previous Inspector, views of the dwelling are limited to those at close range from the bridleway and footpaths which adjoin the site. Furthermore, due to the earth sheltering, only glimpses of the property can be seen from those vantage points.
17. However, the roof of the enlarged store/garage at the front of the property does protrude above the existing ground level rather than being sheltered beneath it. In addition, the stark appearance of the existing render draws the eye and contrasts sharply with the more muted colours and appearance of the surrounding woodland.
18. Appeal A includes a proposal to undertake additional ground works and regrade the land in front of the garage. Those works, together with the proposed soft landscaping scheme which forms part of Appeal A, would provide significant new tree, wildflower and hedge planting, and would further integrate the development into its woodland setting. In addition, the appellant has suggested that the render could be repainted to soften its appearance, and this effect would be reinforced by the landscaping scheme which includes a proposal to introduce a trailing and climbing plant scheme for the front elevation of the dwelling.

19. I agree with the appellant that if the dwelling were to be repainted in a more muted colour, and the additional ground works and landscaping proposals carried out, then the development would have a very limited impact on its immediate surroundings.
20. For the reasons given above, I conclude that subject to the mitigation proposals set out above, which include repainting, new ground works and soft landscaping proposals, the development would not have a harmful effect on the character or appearance of the area. Consequently, there would be no conflict with the development plan, including Policies D1, D2 and D3 of the MKP which seek to ensure, amongst other things, that new development responds appropriately to the site and surrounding context.

Ecology

21. Prior to the construction of the dwelling, it is understood that the appeal site had last been in agricultural use, contained small areas of semi-natural habitat and the remains of a piggery. The adjoining woodland has a known biological significance, and the appeal site has been identified as being suitable for reptiles.
22. Before development commenced on the site a reptile/amphibian mitigation/avoidance strategy was approved by the Council which included fencing off areas with suitable reptile and great crested newt fencing to prevent reptiles/amphibians entering the site. In addition, permanent reptile refuges were to be provided and debris and potential basking areas removed from the development zone by hand to prevent harm if reptiles were found. The strategy included supervision of the works by a suitably qualified ecologist, post development monitoring and additional habitat enhancement, including filter beds, a pond and construction of further refuge and basking sites.
23. From the evidence before me, preventative fencing was erected and reptile refuges provided, in accordance with the approved strategy. An ecological re-inspection of the site was also carried out in 2018 by a qualified ecologist. There does not appear to be any dispute that during the groundwork phase of the development, when significant amounts of soil were heaped and then removed from the site, some of those works took place outside of the protected area. As a consequence, some of the reptile refuges were removed or damaged. However, the Council did not at any time consider it necessary to serve a breach of condition notice in relation to those works. In addition, subterranean hibernacula have been created along the site boundaries and the gabions which have been constructed as part of the ground works also provide a suitable habitat for reptiles. Moreover, as the development has yet to be completed, the approved reptile/amphibian mitigation/avoidance strategy which forms part of the proposals in Appeal A would be enforceable if planning permission were to be granted.
24. Appeal A includes several ecological enhancements as part of a proposed biodiversity enhancement plan. The ecological enhancements include increased botanical diversity through new planting, a pond, provision of bat, bird and insect boxes as well as hedgehog domes and further subterranean hibernacula for amphibians and reptiles. The Council accepted at the hearing that subject to the proposed biodiversity enhancement plan including a management plan and being a condition of any planning permission granted (Appeal A), then the development would result in a net gain of biodiversity for the site.

25. I conclude that subject to the imposition of the conditions outlined in the paragraphs above, the development would not have a harmful effect on the ecology of the area and there would be a net gain in biodiversity. There would be no conflict with paragraph 174 of the Framework or Policies NE2 and NE3 of the MKP which seek to protect habitats for protected and priority species and minimise impacts on and provide net gains for biodiversity.

Sustainable Construction

26. Policy SC1 of the MKP requires development proposals to demonstrate how they have implemented the principles of sustainable construction and requirements listed within that Policy, including in relation to materials and waste, energy and climate, water and where applicable, retrofitting.
27. Earth sheltering is an innovative way of insulating the dwelling and as a result the property requires less resources to heat and cool it. The use of earth sheltering also maintains a significantly higher level of vegetation than a conventional dwelling and this provides for carbon capture. An ASHP has been installed to heat and cool the house. The heating is supplemented by a wood burning stove. In addition, Appeal A includes a proposal to use photovoltaic cells to provide electricity to the dwelling and this can be used to power the ASHP.
28. The application the subject of Appeal A was supported by information relating to the design stage SAP rating (Standard Assessment Procedure) and Energy Performance Certificate (EPC) rating for the dwelling. This rating is based largely on the as built dwelling, as a full assessment cannot be made until the dwelling is complete. The predicted EPC rating for the dwelling is in the 'A' category and considered to be 'very energy efficient'. The dwelling is predicted to be at least carbon neutral.
29. The development includes a BioDisc sewage treatment plant which provides an efficient and environmentally safe solution to sewage disposal. However, it is clear from third party evidence that the works during the construction phase of the development have impacted on surface water disposal. In particular, the ditch which previously ran alongside the bridleway and site frontage is no longer operating effectively as a soakaway, and water is discharging onto the bridleway. When the surface water freezes in this location the bridleway is treacherous. In addition, the fields on the lower slopes of the valley, are said to be more saturated than previously. Although a pond has been provided within the site, this is lined and impermeable, consequently it often flows over.
30. It was accepted by the appellant at the hearing that further sustainable drainage investigations and solutions are necessary to address the current problems. However, those works could be required by the imposition of a condition on Appeal A, and I am satisfied that such a condition would be reasonable and necessary to make the development acceptable.
31. The Council advised at the hearing that they had omitted to consider the SAP and EPC ratings which had been included with the original planning application. However, they now accept that the dwelling, once completed (Appeal A), would be a low impact dwelling and would not conflict with the Council's sustainable construction policy.

32. For the reasons given above, I conclude that subject to the imposition of a condition requiring details of disposal of surface water to be agreed and implemented, the development would incorporate the principles of sustainable construction and drainage. There would be no conflict with the development plan, including Policy SP1, nor the sustainable drainage aims of Policy FR2 of the MKP.

Other Matters

33. It is the appellant's case that the 2009 appeal decision and subsequent approval for a low impact dwelling on the site is a significant material consideration in this appeal. Whilst there is no dispute between the parties that the development undertaken is not fully in accordance with the plans approved in the 2015 permission, it is the appellant's view that the 2015 permission remains extant and capable of full implementation.
34. For significant weight to be afforded to an available fallback position, then there needs to not only be a greater than theoretical possibility that the approved development might take place, but also that it would be equally or more harmful than the development proposed. To that end, the appellant stated at the hearing that, considering the amount of work that would be required to construct the dwelling in accordance with the 2015 permission, particularly in relation to ground works, it would be extremely unlikely that there would be an appetite to undertake those remedial works.
35. The unauthorised dwelling has been built on an almost identical footprint to that which was granted in 2015. It is also very similar in its overall form and scale. However, there are some differences. The approved glazed entrance porch and plant room have not been constructed, and the depth of the proposed bike/storeroom has increased and in use as a garage and houses the ASHP. In addition, the dwelling's projecting front wing has been laid out as living accommodation, rather than its intended garage use, and a first floor has been incorporated within it. There are also changes to the dwelling's fenestration, particularly to the front elevation. Those changes reflect minor alterations to the internal layout of the accommodation. In addition, the crib lock walling and timber cladding proposed to finish the elevations has been replaced by a smooth render.
36. The 2015 permission did not envisage any soil being removed from the site, and approved site levels and sections showed the earth to be mounded and re-contoured. However, I understand that during the development it became clear that the approved recontoured levels were not achievable. To prevent the mounded earth from encroaching and collapsing onto the adjoining footpaths and woodland, approximately 560 cubic metres of soil was removed from the site. Those works were undertaken with the written agreement of a Council Officer.
37. Furthermore, throughout the development period, which has extended to nearly five years and not yet complete, there has been a continuous dialogue between the appellant and the Council. During that period the Council did not consider it necessary to issue a stop notice or serve a breach of condition notice in relation to any unauthorised development or possible infringement of conditions attached to the 2015 permission.

38. From the evidence before me, including observations on my site visit, even if I were to find that the 2015 permission had not been spent, considering the requirements of the 2015 permission in relation to ground works, I agree with the appellant that should planning permission be refused in these appeals, it is extremely unlikely that the 2015 permission would be carried out. The 2015 permission does not therefore represent an available fallback position.
39. Nevertheless, all pre-commencement conditions in the 2015 permission were discharged, and apart from a slightly enlarged bike and storeroom, foundations were laid on the same footprint as those approved. Whilst there are deviations from the approved plans in relation to the amount of earth removed from the site, regrading, minor changes to the fenestration, internal layout and a different external finish, the dwelling that has been constructed and proposed for completion in Appeal A, remains an earth sheltered low impact dwelling. It is innovative in terms of pursuing energy efficiency aims, making use of renewable resources and achieving at least carbon neutrality.
40. For the reasons given above, although there may not be an available fallback position, I consider that in this instance the planning history of the site is a material consideration to be weighed in the planning balance.

Planning Balance and Conclusion on Appeal A

41. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 states that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise.
42. I have found that the appeal proposal would conflict with the development plan as it would be for a dwelling in the countryside and contrary to Policies DS1 and DS5 of the MKP.
43. Paragraph 134 of the Framework advises that significant weight should be given to, amongst other things, outstanding or innovative designs which promote high levels of sustainability or help to raise the standard of design more generally in an area so long as they fit in with the overall form and layout of their surroundings. In this case, although the detailed design characteristics of the dwelling may not be outstanding, the earth sheltered dwelling is innovative. Furthermore, once completed, the dwelling will achieve high levels of sustainability, and its overall form and layout fits in with the site's hillside location and woodland surroundings. These considerations weigh in favour of the scheme.
44. Moreover, completion of the dwelling provides an opportunity to secure new planting and create new habitats with resultant net gains in biodiversity. In addition, it would enable the existing surface water issues relating to the site to be resolved. When weighed against the environmental impact of demolishing a carbon neutral home, the amount of energy that would be involved in that process and the harmful effect the demolition process would have on the living conditions of neighbouring residents through disturbance from vehicle movements, these considerations in my opinion have significant positive weight in the planning balance.
45. I have identified the planning history of the appeal site as a material consideration in this appeal. The 2009 decision recognised that the new dwelling would result in some car journeys to be made by the occupiers of the

proposed dwelling to other local and district centres, particularly for shopping. However, the Inspector did not consider that the frequency of such trips would be so great as to raise a serious planning objection to the proposal. In addition, I noted on my site visit that Bow Brickhill has a train station, pre-school/primary school, community hall, church and a public house, all within walking distance of the appeal site. Thus, whilst the site is in the countryside, the appeal dwelling is not an isolated home, and the occupiers of the property would not be completely reliant on the private car to access all services. In addition, the development is a single dwelling. I am satisfied that the appeal site, its planning history and the dwelling's sustainable design are a unique set of circumstances which are unlikely to be repeated.

46. In the overall balance, the environmental benefits set out above significantly and demonstrably outweigh the limited harm I have identified resulting from the site's location in the countryside and the conflict with the development plan.
47. For the reasons given above and taking into account all other matters raised, I conclude that Appeal A should be allowed.

Conditions

48. A discussion was held at the hearing in relation to conditions that would be necessary should planning permission be granted. The Council and the appellant subsequently provided detailed wording for those conditions which I have considered against advice in the Framework and Planning Practice Guidance. As a result, I have amended some for clarity.
49. A condition is necessary to specify the approved plans as this provides certainty.
50. The purpose of conditions 2, 3 and 4 is to require the appellant to comply with a strict timetable for dealing with the appearance of the dwelling, surface water drainage and biodiversity requirements, which need to be addressed in order to make the development acceptable. The conditions are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The conditions therefore provide for the loss of the effective benefit of the grant of planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority ("LPA") or by the Secretary of State on appeal), and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, then the use would have to cease, and the dwelling would have to be removed.
51. In the interests of visual amenity and biodiversity, conditions are necessary to require and secure details of tree protection, landscaping, habitat creation and management, boundary treatment and repainting of the dwelling.
52. To safeguard the living conditions of neighbouring residents a condition requiring adherence to the approved Construction Environment Management Plan is necessary.

- 53. In the interests of protecting priority species and habitats, a condition requiring adherence to the approved Reptile Mitigation Strategy and Plan is necessary.
- 54. To avoid pollution and to prevent increased risk of flooding, details of a sustainable surface water drainage scheme and management of the system and overland flows of surface water are required to ensure that the system continues to be effective.
- 55. Conditions are necessary to prevent the alteration and extension of the dwelling to safeguard its unique design and appearance.
- 56. In the interests of securing and retaining a carbon neutral dwelling it is necessary to ensure compliance with design stage SAP rating calculations.

Planning Balance and Conclusions on Appeal B, deemed planning application.

- 57. The terms of the appeal on ground (a), the deemed planning application, derive directly from the alleged breach of planning control set out in the notice. In this case, the erection of a dwelling house. The Land where the breach of planning control is alleged is identified in the notice as the footprint of the dwelling and does not include the surrounding garden area where the ground works have been undertaken or the access drive constructed.
- 58. For the same reasons as those set out in Appeal A, the deemed planning application in Appeal B would conflict with the development plan. However, in the deemed planning application, the benefits in favour of the development do not extend to the mitigation and enhancement benefits which would be derived from conditions attached to the development proposed in Appeal A.
- 59. It would be possible to impose a condition to require the dwelling to be repainted and to require a climbing/trailing plant scheme to soften the dwelling's front elevation. However, the additional ground works and soft landscaping scheme necessary to integrate the development into its hillside and woodland setting could not be required as those works would relate to land which is not covered by the enforcement notice. Similarly, it would not be possible to impose conditions relating to biodiversity enhancement or a requirement to provide a sustainable drainage system to resolve the existing surface water issues. Consequently, the benefits attributable to those mitigation/enhancement works in Appeal A do not arise in Appeal B, and the sustainable credentials of the unauthorised dwelling are significantly less.
- 60. In the overall balance, the environmental benefits attributable to the unauthorised dwelling as alleged in the enforcement notice, do not outweigh the harm which arises from conflict with the development plan as a result of the site's location in the countryside.
- 61. For the reasons given above and taking into account all other matters raised, I conclude that Appeal B on ground (a) fails.

Appeal on ground (f) (Appeal B)

- 62. The issue is whether the requirements are excessive to achieve the purpose(s) of the notice.
- 63. Section 173 of the Town and Country Planning Act 1990 (as amended) indicates that there are two purposes which the requirements of an

enforcement notice can seek to address. The first is to remedy the breach of planning control that has occurred and the second to remedy any injury to amenity which has been caused by the breach. The Council confirmed at the hearing that the purpose of the notice in this case is to remedy the breach of planning control.

64. The appellant suggested several proposals which they consider would mitigate the harm resultant from the development constructed and would be of less cost and disruption than total demolition. The proposals include repainting or recladding the building's façade; additional landscaping/tree protection and a biodiversity enhancement scheme. Those mitigation proposals were considered as part of the planning merits in Appeal A and in Appeal B on ground (a). It can be seen from my decision on Appeal A that I found the development to be acceptable subject to securing those and other mitigation works by condition. However, due to the terms of the notice, those mitigations works do not extend to the deemed planning application in Appeal B, and the appeal on ground (a) failed.
65. The purpose of the notice is to remedy the breach of planning control, which can only be achieved by demolition of the dwelling. However, Section 180 (1) of the Act provides that: "Where, after service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so as far as inconsistent with that permission." The appellant is therefore able to rely on the provisions of Section 180 (1) should they adhere to the planning permission pursuant to Appeal A.
66. I conclude that the requirements are not excessive to achieve the statutory purpose of the notice and the appeal on ground (f) fails.

Appeal on ground (g)

67. The issue is whether the compliance period of eight months is reasonable. It is the appellant's case that given the restricted site access, which is single track, they will need to purchase a specific type of dump truck to remove the waste. The truck they purchased to carry out the development has now been sold. In addition, when the works were carried out there was significant disruption to neighbouring residents, this disruption would be repeated if the demolition works have to be undertaken within a short time period. The appellant considers that a period of two years would be more reasonable, taking into account the constraints of the appeal site and local road network.
68. It seems to me that eight months is a reasonable time within which the necessary equipment could be purchased, the works undertaken to demolish the building and to remove the debris from the site. From the evidence before me, neighbouring residents are likely to prefer the development to be either completed or removed from the site as soon as possible rather than prolonging the development period and any disruption that goes with it.
69. I conclude that a period of eight months is a reasonable time frame within which the notice can be complied with. The appeal on ground (g) fails.

Human Rights

70. I have taken into consideration the Human Rights Act, 1998 which enshrines in UK law most of the fundamental rights and freedoms contained in the European

Convention on Human Rights. I recognise that dismissal of Appeal B would interfere with the appellant's rights under Article 8 and Article 1 of the First Protocol. However, given the harm identified and considering my decision on Appeal A, the action is in accordance with the law and pursues legitimate aims of protecting the environment and is necessary and proportionate to the situation.

Overall Conclusions

Appeal A

71. For the reasons given above and taking into account all other matters raised, I conclude that Appeal A should be allowed, and planning permission granted subject to conditions set out in the formal decision.

Appeal B

72. For the reasons given above and taking into account all other matters raised, I conclude that Appeal B should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177 (5) of the 1990 Act as amended.

Elizabeth Pleasant

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: J8761 / 02, Location Map and LB-0173, As Built Details received on 27.08.2019; LB-0173, As Built Elevations and PC/GH/BB/004 Rev B, Proposed New Levels received on 31.10.2019; and SJA515.01.0, Soft Landscape Proposals and SJA515.02.0, Soft Landscape Details received on 02.07.2020.
- 2) The dwelling hereby permitted shall be demolished and all debris and materials associated with its demolition, shall be removed within eight months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i) Within 2 months of the date of this decision, details of the paint to be used on the external surfaces of the dwelling shall be submitted to the Local Planning Authority for approval.
 - ii) If within 4 months of the date of this decision the local planning authority refuse to approve the details 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.
 - iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted details shall have been approved by the Secretary of State.
 - iv) The approved painting details shall have been carried out and completed within 2 months of the approval of details and shall be retained thereafter.

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.

- 3) The dwelling hereby permitted shall be demolished and all debris and materials associated with its demolition, shall be removed within eight months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 2 months of the date of this decision, a scheme for surface water drainage works for the site, including information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime shall be submitted to the Local Planning Authority for approval.
- ii) If within 4 months of the date of this decision the local planning authority refuse to approve the scheme 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.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
- iv) The approved scheme shall have been carried out and completed 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.

- 4) The dwelling hereby permitted shall be demolished and all debris and materials associated with its demolition, shall be removed within eight months of the date of failure to meet any one of the requirements set out in i) to iv) below:

- i) Within 2 months of the date of this decision, a Biodiversity Enhancement Plan, which shall include a Biodiversity Management Plan and a timetable for its implementation, shall be submitted to the Local Planning Authority for approval.
- ii) If within 4 months of the date of this decision the local planning authority refuse to approve the Plan 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.
- iii) If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted Plan shall have been approved by the Secretary of State.

- iv) The approved Plan shall have been implemented and carried out in accordance with the approved timetable and managed thereafter in accordance with the approved Plan.

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.

- 5) Before any further ground works within the site are undertaken, the approved tree protection plan (ref. SJA143.02.C) shall be implemented and no tree shown to be retained within the approved plan shall be felled, lopped, or pruned without the written consent of the local planning authority.

All protective measures, including the fencing and ground protection, shall be put in place first, prior to any further groundworks commencing on site (this includes vegetation clearance, vehicle movements, machinery / materials delivery etc.). Signs informing of the purpose of the fencing and warning of the penalties against destruction or damage to the trees and their root zones shall be installed at minimum intervals of 10 metres and a minimum of two signs per separate stretch of fencing. The Root Protection Area (RPA) within the protective fencing shall be kept free of all construction, construction plant, machinery, personnel, digging and scraping, service runs, waterlogging, changes in level, building materials and all other operations, personnel, structures, tools, storage, and materials, for the duration of the construction phase. No fire shall be lit such that it is closer than 20 metres to any tree or that flames would come within 5 metres of any part of any tree. Earthworks, service runs, foundations and all other works involving excavation shall not be located within the root protection areas.

- 6) The development hereby approved shall be carried out in accordance with the approved Construction Environment Management Plan (dated 14th April 2015) including the vehicle parking, deliveries, and storage on site. Deliveries shall be limited to the following time: Mon - Fri 10:00 to 12:00 and 13:30 to 16:30 during term time and Mon - Fri 9:30 to 16:30 outside term time). Site working hours shall be limited to between 08:00 to 18:00 Mon - Fri and 08:00 to 13:00 Saturday with no working on Sundays or Bank/Public Holidays.
- 7) The boundary treatments shall be carried out in accordance with the approved details (ref. LB-0173 Rev B – Boundary Treatments) and shall be retained thereafter.
- 8) The development hereby approved shall only proceed in accordance with the Recommendations within the approved Arbtech Report: Reptile Mitigation Strategy and Plan (27th January 2012. Edits 11th Sept 2012). On completion of the development, safeguarded areas for reptiles identified in the plan shall remain undisturbed and any reptile/Great Crested Newt fencing preventing the movement of reptiles on site shall be removed.
- 9) The development hereby approved shall be carried out in full accordance with SAP calculation (dated 20th June 2019) and the approved plans, in relation to the energy efficiency of the building, within 6 months of the date of this

permission. The dwelling shall continue to achieve the standards set out within the SAP calculation in perpetuity.

- 10) All planting, seeding or turfing comprised in the approved details of landscaping (ref. SJA515.01.0 - Soft Landscape Proposals, and ref. SJA515.02.0 - Soft Landscape Details) shall be carried out in the first planting and seeding seasons following the completion of the groundworks; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows [other than those expressly authorised by this permission] shall be constructed.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), no development within Classes A, AA, B, C, D, E, F, or G of Part 1 Schedule 2 or Classes A, B, or C of Part 2 Schedule 2 of the afore mentioned order shall be carried out within the site.

End of Schedule.

APPEARANCES

FOR THE APPELLANT:

John Shephard	J & J Design
Jennifer Smith	Smith Jenkins
Peter Dixon	Exchange Chambers
Matthew Pearce	Smith Jenkins

FOR THE LOCAL PLANNING AUTHORITY:

Troy Healy	Interim Service Development Manager
Katy Lycett	Principal Planning Officer

INTERESTED PERSONS:

Alistair Twigg	Local Resident
Mary Preen	Local Resident

DOCUMENTS submitted at the Hearing

1. Letter from Sally Pepper and Alistair Twigg, dated 1 November 2021.
2. Letter from Mary Preen, dated 27 October 2021.

DOCUMENTS submitted after the Hearing

1. Condition Schedule, Agreed between the Council and Appellant.