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## Appeal Decision

Site visit made on 13 December 2021

**by Brian Cook BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 17 December 2021**

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**Appeal Ref: APP/M3645/C/21/3270996**

**Land at 2 Comforts Place Cottages, Lingfield RH7 6LW**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Carl Adam Shaw against an enforcement notice issued by Tandridge District Council.
  - The enforcement notice was issued on 25 February 2021.
  - The breach of planning control as alleged in the notice is without planning permission, the erection of a rear extension in the approximate position marked with a black hatch on the plan (Plan A) attached to the notice.
  - The requirements of the notice are:
    - i) Demolish the extension in the area shown by a black hatch on the plan (Plan A) attached to the notice and reinstate the rear wall of the dwelling house to the design which existed prior to the works commencing and using materials to match;
    - ii) Remove the material arising from compliance with step (i) above to an authorised place of disposal.
  - The period for compliance with the requirements is 4 months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.
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### Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a rear extension in the approximate position marked with a black hatch on the plan (Plan A) attached to the notice on land at 2 Comforts Place Cottages, Lingfield RH7 6LW referred to in the notice.

### The s174 appeal on ground (c)

2. Having reflected on the Council's appeal statement, the appellant acknowledges that the development carried out does not meet the requirements of Schedule 2, Part 1, Class A.1(j)(iii) of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).
3. The appeal on this ground is, in effect, withdrawn.

## **The s174 appeal on ground (a) and the deemed planning application**

### ***Background and main issue***

4. The appeal property is one of a pair of semi-detached dwellings situated to the west of Tandridge Lane. Both lie within the Green Belt. From the Lane the pair have a symmetrical appearance. To the front are rooms at ground and first floor level with the first floor window being set below a gable. To the side of each and set well back is a two-storey extension in which is set the front door to each property. At the rear the side extension has what is, in effect, a two-storey outrigger. Although the evidence is not entirely clear, it appeared to me that in both cases this comprised the original dwelling.
5. Both properties appear to have added a ground floor extension to the rear largely filling the space between the inward facing walls of the two outriggers. Immediately to the rear of both properties is a large building with associated offices and a large area of hard surfaced yard. This may have formed part of Comforts Place Farm and may still be associated with it but at the time of my site inspection it was occupied by Le Chateau Textiles.
6. In December 2019 the Council granted a certificate of lawful use or development (LDC) pursuant to s192 of the Act. The development that the LDC declared lawful was 'single storey rear extension and conversion of roofspace to habitable use to include a rear dormer and a 1 x front rooflight and alterations to the front elevation'.
7. In the event, the LDC development has not been carried out. Instead, the rear extension that is the subject of the notice has been erected. It is larger than the LDC extension would have been by, according to the appellant, less than 20 cubic metres. It also covers much of the rear elevation; the LDC scheme was not as wide.
8. An application for retrospective planning permission for the development carried out (Ref: TA/2020/2006) was refused in January 2021. The notice was issued the following month.
9. The officer report confirms that the effect of the development on the character and appearance of the area is acceptable, that the effect on the living conditions of the residents of the adjoining property are not harmed and that there are no highway safety issues arising.
10. The sole reason for refusal was that the development is a '...mathematically and visually disproportionate enlargement of the dwelling....' and therefore amounts to inappropriate development in the Green Belt which should not be approved except in very special circumstances. In fact, earlier in the officer report it says 'The proposed extension....is not considered visually harm the openness of the Green Belt.' Either the word 'to' is missing or 'harm' should read 'harmful'. Whichever, the Council has given no evidence as to the visual harm to the Green Belt caused by the development. This reason for refusal is reflected in the reason for issuing the notice.
11. The main issue for the determination of this ground of appeal is, therefore, whether, as the Council contends, the development carried out amounts to inappropriate development in the Green Belt.

## **Reasons**

12. Paragraph 137 of the National Planning Policy Framework (Framework) published in July 2021 repeats long-standing national policy that 'The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.' It has therefore long been recognised that not including Green Belt land in Schedule 1, Part 1, Article 2(3) of the GPDO is something of an anomaly. Development carried out under Schedule 2, Part 1, Classes A and E, in particular, have the potential to reduce the openness of the Green Belt to a considerable extent.
13. In this case I am guided by paragraph 13.3 of the Tandridge Local Plan: Part 2: Detailed Policies 2014-2029 (LP) adopted in July 2014. This gives guidance on the interpretation and application of LP policy DP13 E which deals with the extension or alteration of buildings within the Green Belt.
14. It acknowledges that the Framework gives no guidance as to what constitutes a disproportionate addition in the context of building extension or alteration and advises that the Council will therefore adopt a pragmatic approach. It will judge each case on its merits and take into account factors such as '...the size of the original building, the bulk, height, mass and prominence of the extension or alteration and the impact of the proposal on the openness of the Green Belt'. There are therefore three elements to be considered in turn.
15. The Council estimates the original building as having a volume of 240 cubic metres. Adding previous additions and the appeal development to this it derives a volume of some 410 cubic metres, a volume increase of nearly 71% over the original dwelling. The appellant does not dispute these calculations. Furthermore, the Council states that it considers extensions over 40% to result in disproportionate additions. No justification for the figure of 40% is given. While it seems to me an arbitrary figure, in fairness to the Council, it is used in terms of the mathematical element only and may properly be seen as simply the starting point in the application of LP paragraph 13.3.
16. Turning to the second element, the extension is single storey only. It can be glimpsed at most from the public domain since it is largely obscured by the garage to the side. Even then, given that there are no footpaths to either side of the Lane and any pedestrians will be more conscious of traffic, any glimpses are most likely to be gained by those in passing vehicles. It is only from the yard to the rear that the extension can be seen to any degree; not, as far as I am aware, part of the public domain. In my judgement, the development cannot be described as having any prominence.
17. Finally, there is the impact on the openness of the Green Belt. The openness of the immediate area of Green Belt is already compromised by the large building and the extensive area of hardstanding mentioned above. The appeal property has a relatively small rear garden and the development does cover the area closest to the house. However, this is the very area that is most likely to be covered anyway by domestic paraphernalia such as tables and chairs, barbeques, hot tubs and the like. In my judgement and in the context of the immediate area, the development has no material impact on the openness of the Green Belt.

18. Applying the pragmatic approach advocated by the Council's LP, I do not consider the extension can be characterised as a disproportionate addition over and above the size of the original dwelling, particularly when what could be built on the cleared site the notice requires in accordance with the LDC is taken into account. In accordance with LP policy DP13 the development does not therefore amount to inappropriate development in the Green Belt. There is therefore no conflict with that policy or with LP policy DP10 B which confirms that inappropriate development in the Green Belt will normally be refused. This conclusion is also consistent with that of another Inspector in an appeal<sup>1</sup> referred to me by the appellant.
19. The Council has not raised any other objections to the development and has not suggested any conditions to be imposed in the event of planning permission being granted.
20. The appeal on this ground therefore succeeds and planning permission shall be granted on the deemed planning application.

### **Overall conclusion**

21. For the reasons given above I conclude that the appeal should succeed on ground (a) and planning permission will be granted. The appeal on grounds (f) and (g) does not therefore need to be considered.

*Brian Cook*

Inspector

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<sup>1</sup> APP/M3645/D/19/3225214