



Appeal Decisions

Site visit made on 14 December 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 January 2022

Appeal A Ref: APP/H2265/C/21/3273711

Appeal B Ref: APP/H2265/C/21/3273712

Land West of Wrotham Heath House, London Road, Wrotham Heath, Sevenoaks TN15 7RS

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended. Appeal A is made by Ms C Smith and Appeal B is made by Mr Charles Elliott against an enforcement notice issued by Tonbridge and Malling Borough Council.
 - The notice, numbered 20/00219/WORKM, was issued on 29 March 2021.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a new building.
 - The requirements of the notice are to demolish the building identified on Plan TMBC 1 and Photograph TMBC 1 and to remove from the land to an authorised place of disposal all resulting demolition waste and associated materials and to restore the land to its former condition by the reseeded of the land.
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2)(a), (f) of the Town and Country Planning Act 1990 as amended.
 - Appeal B is proceeding on the ground set out in section 174(2) (f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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Decisions

1. It is directed that the enforcement notice is corrected by:
 - Deleting the words 'to an authorised place of disposal' and 'by the reseeded of the land' from the requirements.
2. Subject to these corrections, the appeals are 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.

Preliminary Matters

3. The site is subject to a Tree Preservation Order (TPO)¹, a copy of which has been provided. It includes an area of woodland W2 which is close to the siting of the building, but there is no suggestion that the work has affected any protected trees and I have not considered this matter further.

Matters concerning the notice

4. I have a duty to try to get the notice in order, and I have the power to correct errors, provided it would not cause injustice to the appellant or the council. The

¹ Ref 17/00004/TPO

requirement states that the land shall be reseeded. However, I have seen no evidence that it was previously laid to grass or other plants, and this would therefore be an improvement that is in excess of what is required to remedy the breach. It is also excessive to require that the waste is removed to an authorised place of disposal, as this is a matter that is addressed by other legislation. In order to remedy the breach, it is sufficient to require that the building is demolished, all resulting materials removed from the land, and the land restored to its previous condition. I am satisfied that no prejudice would be caused if I correct the requirements accordingly.

Background

5. The appeal relates to a building that has been constructed at the eastern end of the site, immediately abutting a neighbour's garage. A previous appeal decision² allowed the use of the wider site for the stationing of three touring caravans for residential use for a gypsy family, provision of hardstanding, cesspits and electricity meter. The Block Plan³ provided by the appellant shows the footprint of the previous building annotated as a 'dog isolation area', but the Council has provided a similar drawing with the same number and date where the building annotated as a garage. On both drawings a separate day room is indicated at the western end of the site.

Appeal A ground (a) and the deemed application

6. The site is within an area of open land within the Green Belt. Policy CP3 of the Tonbridge and Malling Core Strategy (CS) adopted in 2007 states that national Green Belt Policy will be applied. The National Planning Policy Framework (the Framework) sets out the Government's policy in relation to Green Belts. Inappropriate development is, by definition, harmful and should not be approved other than in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
7. Having regard to the reasons for issuing the notice, the main issues are as follows:
 - Whether the building is inappropriate development in the Green Belt,
 - The effect on the character and appearance of the area,
 - If the development is inappropriate, whether any 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.

Inappropriate development

8. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The construction of new buildings is regarded as inappropriate, subject to a number of exceptions as set out in paragraph 149. One such exception is d), the replacement of a

² Ref APP/H2265/W/17/3191362

³ Drawing no. J002796-CD03 dated November 2018

building, provided the new building is in the same use and not materially larger than the one it replaces.

9. The appellant refers to Policy DC2 of the Managing Development and the Environment Development Plan Document (MDEDPD) adopted in 2010 and a copy has been provided. This sets out detailed criteria relating to replacement rural buildings, and paragraph 7.3.3 of the supporting text states that in the wider countryside, including the Green Belt, the policy applies. This contradicts the Council's view that it does not apply to replacement buildings in the Green Belt, and I therefore conclude that it is a relevant policy. Part 1 of the policy includes criteria relating to matters such as character and appearance, agricultural unit, biodiversity and heritage. Part 2 relates to the replacement of non-residential buildings with new residential development, which will be considered in the light of PPG2 (now replaced by the Framework). The policy is broadly consistent with the Framework and I therefore give it considerable weight.
10. It has been established by case law that in assessing whether a replacement building would be materially larger than the building it replaces the baseline is the existing building. Although there was previously a building on a broadly similar footprint, attached to the neighbour's garage, the building had already been demolished prior to planning permission being sought. The building is not therefore a 'replacement building' as there is no existing building against which to assess the replacement building.
11. A photograph of the pre-existing building has been provided but gives limited information regarding the scale of previous building. The photograph shows a building with an asymmetrical roof, that is considerably lower than that of the garage building to which it is attached. It appears to be in a similar position to the existing building but was less deep. On the basis of this photograph, it is clear that the pre-existing building was considerably smaller and lower than the one that now stands on the site. The appellant's assessment that the new building is 50% larger is plausible, although it is not clear whether this relates to footprint or volume, and no dimensions have been provided. In any event, even if it could be considered to be a 'replacement building', I am satisfied that the increase in size is material as the current building is considerably taller and bulkier.
12. The appellant states that the new building is in the same use as its predecessor. With reference to the previous appeal decision and the associated drawing the appellant maintains that it has an approved use as a dog isolation area. However, I note the Council's view that it was annotated as a garage. I also note that in paragraph 43 of the same appeal decision the Inspector refers to the possibility of making use of the 'existing garage' as a dayroom, which is reflected in the wording of condition 4 of the appeal decision.
13. The new building appeared vacant and unused at the time of my visit and the notice does not allege a specific use. It is not clear to me whether the new building was to be used for purposes ancillary to the approved use of the land or some other use. In any event, on the basis of the evidence before me, I cannot conclude whether it would be in the same use as the previous building. For the reasons set out above, the building does not fall within the exception set out in paragraph 149 d) of the Framework.

14. I have also considered whether the building falls within the exception set out in paragraph 149 g), which relates to redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. In allowing the previous appeal, the Inspector accepted that the site was previously garden land, contained structures and was in his opinion previously developed land. On the facts of this case, where the site clearly contained a building that has relatively recently been demolished, I agree that the land is previously developed, according to the definition in the Glossary in the Framework.
15. The previous building was demolished, and is not available as a baseline against which to assess the impact on openness. The new building has introduced built form which has resulted in a decrease in the openness of the Green Belt, in both spatial and visual terms. The harm to openness is tempered by the relatively small size of the building, and is therefore limited. Nonetheless, it has a greater impact on the openness of the Green Belt than the existing development and does not fall within the exception set out in paragraph 149 g).
16. The appellant has also stated that part of the building has been retained, and that therefore it has been extended rather than demolished and rebuilt. However, there is no firm evidence before me to indicate that any part of the building remains. I do not therefore consider that the development falls within the exception contained in paragraph 149 c) in relation to the extension or alteration of an existing building that does not result in disproportionate additions over and above the size of the original building.
17. I therefore find that the building is inappropriate development in the Green Belt. Moreover, it causes some limited harm to openness.

Character and appearance

18. The appeal site is an elongated strip of land, with trees and a hedge along its margins, particularly at its western end, closest to the main A20 London Road. The building is visible from the shared driveway which passes by the southern boundary of the site and serves several dwellings. It is also visible in views from a public footpath to the north side of the appeal site, with long views across adjacent farmland, but mitigated to some extent by existing boundary trees and other vegetation. The building is larger than the previous building on the site and due to its increased height and proximity to the driveway, is likely to be more readily apparent in views through boundary screening than its predecessor. Despite the proximity of the building to the neighbouring garage, and the similarity in their ridge height, proportions and roof pitch, it appears as a substantial new building in a rural setting, that has a harmful visual impact.
19. I therefore conclude that the building is harmful to the character and appearance of the area. It is thus in conflict with MDEDPD Policy DC2, insofar as it requires that a replacement building is appropriate in scale and design to its setting and to the character of the area in which it is located.

Other considerations

20. The appellant states that the building is not harmful to highway amenity, neighbour amenity, landscape or biodiversity. However, these are neutral considerations rather than factors that weigh in its favour. The site is

previously developed land and there was previously a building on the same footprint, and this weighs in favour of the development. However, the new building is significantly larger and I therefore give this limited weight.

21. Neighbouring occupiers have raised a number of concerns, some of which relate to the wider use of the site for residential purposes, biodiversity, noise and disturbance. However, as I am dismissing the appeal for other reasons, I have not considered these matters further.
22. The appellant suggests that a condition could be imposed preventing its conversion into a residential unit. However, such a condition would not overcome the harm to the character and appearance of the area or the Green Belt and I therefore give it limited weight.

Green Belt balance

23. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, there is some limited harm to openness and harm to the character and appearance of the area.
24. I give limited weight to the reuse of previously developed land and the potential to impose a condition restricting its use, but these considerations do not clearly outweigh the substantial weight that must be given to harm to the Green Belt. The very special circumstances necessary to justify development do not, therefore, exist. It is therefore in conflict with the Framework, CS Policy CP3 and MDEDPD Policy DC2 in relation to the Green Belt.
25. For the reasons given above, and having regard to all matters raised, I conclude that Appeal A on ground (a) should fail and the deemed planning application should be refused.

The appeals on ground (f)

26. The ground of appeal is that the requirements of the notice exceed what is necessary to remedy any breach of planning control or, as the case may be, to remedy any injury to amenity which has been caused by any breach. In this case, the notice requires the removal of the building in its entirety, and therefore the purpose of the notice is to remedy the breach.
27. The appellant argues that the requirement could be varied to allow the previous building to be rebuilt. However, the alleged breach of planning control relates to the construction of a new building rather than the demolition of the previous building. To require it to be rebuilt would not therefore return the site to its condition before the alleged breach of planning control took place. The appeals on ground (f) therefore fail.

Conclusion

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

N Thomas
INSPECTOR