



Appeal Decision

Site visit made on 7 February 2022

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 07th March 2022

Appeal Ref: APP/J1535/C/21/3267017

Land at Millrise, Moreton Road, Bobbingworth, Ongar, Essex, CM5 0LU

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Julian Cullen against an enforcement notice issued by Epping Forest District Council.
 - The notice was issued on 10 December 2020.
 - The breach of planning control as alleged in the notice is without planning permission the erection of a building within the residential curtilage of a dwelling.
 - The requirements of the notice are to:
 1. Remove the Building shown hatched on the attached plan.
 2. Remove all resulting debris.
 - The period for compliance with the requirements is 3 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. 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.
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Decision

1. It is directed that the enforcement notice is corrected by the addition of the words 'as shown hatched black on the attached plan' in section 3 of the notice so that the alleged breach reads as follows:

Without planning permission, the erection of a building within the residential curtilage of a dwelling as shown hatched black on the attached plan.
2. It is also directed that the enforcement notice is varied by the deletion of the requirements set out in section 5 of the notice and their substitution by the following:
 1. Demolish the building shown hatched on the attached plan.
 2. Remove all resulting debris from the Land.
3. Subject to the correction and 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.

Application for costs

4. An application for costs has been made by the appellant against Epping Forest District Council. The application is the subject of a separate Decision.

The Notice

5. The appellant says that the notice is imprecise because it does not identify any land within the alleged breach, nor has any building been specifically identified.

On this basis he considers that the notice should be withdrawn. However, he goes on to assume that the notice relates to an outbuilding to the north of the site.

6. The Regulations¹ require that amongst the additional matters to be specified in an enforcement notice are the precise boundaries of the land to which the notice relates. In Section 2 of the notice a description of the land is set out and the plan which accompanies the notice also identifies the land. To that extent the notice identifies the land to which it relates.
7. In terms of the matters which constitute the breach of planning control Section 3 of the notice does not specify the particular building to which the notice relates. Nevertheless, the requirements of the notice (Section 5) set out that the notice refers to the building which is shown hatched on the enforcement notice plan. Read as a whole I do not find the notice to be a nullity. However, I am required to get the notice in order and, subject to the test of whether any alterations to the notice would give rise to injustice, I can make changes to it.
8. The appellant's statement establishes that he understands with reasonable certainty what the breach is and what are the steps which he is required to take. For that reason, I can correct the notice, to include reference to the building shown hatched on the plan in section 3 without causing injustice to either of the parties. I shall correct the notice so that the breach is as follows:

Without planning permission, the erection of a building within the residential curtilage of a dwelling as shown hatched black on the attached plan.

9. In respect of the requirements of the notice the appellant considers that the steps are unclear on the basis that they do not specify where the building is to be removed to and what to do with the building/materials following its removal. Section 173 of the Act² sets out that an enforcement notice may require the removal of any building or works, and the Council has followed this approach.
10. The notice does not need to specify where the building or the debris should be removed to. That is a matter for the appellant to determine. The Council has not suggested that the building could be repositioned elsewhere on the Land, and it follows that the notice requires the building to be removed from the Land.
11. On this basis the requirements are clear and reasonable, however, to avoid any doubt I shall vary the requirements as suggested by the appellant as follows:
 1. Demolish the building shown hatched on the attached plan.
 2. Remove all resulting debris from the Land

This variation can be made without causing injustice to either party as it does not make the notice more onerous to comply with or affect the cases made by the parties.

Ground (c)

12. An appeal on ground (c) is on the basis that the matters alleged in the notice do not constitute a breach of planning control. This is a legal ground of appeal,

¹ Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002

² Town and Country Planning Act 1990

and the onus of proof lies with the appellant. The evidence must be sufficiently precise and unambiguous, and the standard of proof is the balance of probabilities.

13. In order to achieve success on ground (c) the appellant must show that either there has been no development, or that planning permission is not required for whatever reason, or that what is alleged complies with the terms and conditions of a planning permission.
14. The appellant argues that the building which is the subject of the notice benefits from planning permission granted by the Council under reference PL/EPF/2440/16 (the 2016 permission).
15. The Council says that the approved plan (MR1A) for the 2016 permission is missing from its records, however this is disputed by the appellant and a copy has been provided to me. The Council says that the building which has been constructed is not in accordance with the approved plan, that none of the pre-commencement conditions have been discharged and therefore the 2016 permission has not been implemented and has now expired.
16. The appellant says that the building which has been constructed accords with a drawing which he attaches at Appendix 5 of his statement (Drawing No. RM1). A comparison between the approved plan (MR1A) and Drawing No. RM1 demonstrates that the building which has been constructed does not accord with the plan approved under the 2016 permission.
17. The appellant points out that the 2016 permission does not include a condition requiring compliance with plans. However, the Decision Notice refers to the proposal, the location and the Council's reference number such that it is possible to establish by reference to the application what has been permitted. Although not within the operative part of the Decision Notice there is also reference to the plans in an informative. Drawing all of these points together I do not find that the absence of a compliance condition results in the approved plans for the 2016 permission being unclear.
18. The appellant accepts that there have been variations from the approved plan MR1A. There is no evidence before me to suggest that these variations have been formally agreed by the Council. For this reason, the development does not comply with the terms and conditions of the 2016 permission.
19. The appellant also refers to his right to construct an outbuilding for a horse as permitted development and to the current use of the building, as a gym, workshop, and games room, as being consistent with the use as an ancillary building to the main dwelling. However, there is no evidence before me to demonstrate that the building which has been constructed constitutes permitted development.
20. The appellant invites me to amend the breach of planning control to reflect his position that the 2016 permission has been implemented and that what has been constructed incorporates changes to that development. However, I am not persuaded on the basis of the evidence that the 2016 permission has been implemented. Therefore, the breach does not require to be corrected.
21. For the reasons set out above and on the balance of probabilities, the appeal on ground (c) fails in respect of those matters which, following the correction of the notice, are stated as constituting the breach of planning control.

Ground (a)

22. An appeal under ground (a) is on the basis 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. The deemed planning application (DPA) derives from the breach set out in the notice which I have corrected to identify the building to which it relates.

Main Issues

23. The main issues are:

- Whether or not the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework), including any relevant effects on the openness of the Green Belt, and with regard to any relevant development plan policies.
- The effect of the development on the character and appearance of the surrounding area; and
- If the development is inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

The Development Plan

24. The Epping Forest District Local Plan Submission Version December 2017 (the Emerging Local Plan) has been submitted and examined but has yet to be found sound and does not form part of the Development Plan for the District. Although the Emerging Local Plan has reached an advanced stage it does not yet attract full weight. On the basis, I shall afford the Emerging Local Plan Policies considerable weight.

Whether inappropriate development/effect on openness

25. The enforcement notice sets out that the development involves the erection of a building within the residential curtilage of a dwelling.
26. The Council sets out in its reason for serving the notice that the building is inappropriate development in the Green Belt by virtue of its size, scale and bulk.
27. Paragraph 149 of the Framework sets out that the construction of new buildings in the Green Belt is inappropriate subject to a number of exceptions.
28. Policy GB2A of the Epping Forest District Local Plan Alterations (2006) (the Local Plan Alterations) restricts development in the Green Belt unless it falls into a number of specified types of appropriate development. Although this policy predates the first National Planning Policy Framework it is broadly in accordance with the restrictive policy of the Framework and, on this basis, it attracts significant weight.
29. Policy DM 4 of the Emerging Local Plan sets out that the construction of new buildings is inappropriate development in the Green Belt but allows for exceptions including the extension or alteration of a building provided that it

does not result in a disproportionate addition to it. This reflects the wording of the relevant exception in paragraph 149 of the Framework. In its statement the Council refers to a disproportionate change to the previously approved building.

30. The stables and cart shed which were the subject of the 2016 permission comprised a single storey building with low eaves and a steeply sloping roof. By contrast the building which is the subject of the notice has much higher eaves and a shallow pitched roof. The appeal building has a significantly greater volume and its elevations form a dominant aspect of its appearance in comparison with the previously approved building.
31. Notwithstanding that the previously approved building cannot be implemented, the appeal building would have constituted a disproportionate addition to it. On this basis the development conflicts with Policy DM 4 of the Emerging Local Plan.
32. Turning to the allied issue of the effect on the openness of the Green Belt. I have established that the appeal building is not the building which was the subject of the 2016 permission. The 2016 permission was not implemented and has now expired.
33. The appellant argues that if a planning application were submitted for the same development which was approved by the 2016 permission it would be approved as there has been no change in local policy. There has been a change in local planning policy with the publication of the emerging plan which may or may not affect the determination by the Council were it considering the stables/shed development again. Furthermore, the appellant did not seek to apply for planning permission before the 2016 permission expired in December 2019 to ensure that the consent remained extant, and he has not sought planning permission subsequently.
34. Drawing these strands together the building which was the subject of the 2016 permission is not a viable fall-back position and the baseline against which an assessment of impact on openness is the nature of the site before the appeal building was constructed.
35. There is no evidence before me to suggest that the site of the appeal building was occupied by any structure before the building was constructed. I shall therefore regard it as being an open site. Millrise is a substantial house on a large plot with hedging and gates to its boundary with Moreton Road. There are other houses and buildings on adjacent plots but the majority of the land surrounding Millrise is open.
36. As a result of the boundary screening the appeal building is not readily visible from the road. However, the site rises towards the house and the appeal building is roughly in line with the front elevation of it. Within the site itself the appeal building is therefore a prominent visual feature, when compared with the openness of the site and the contribution it makes to the surrounding area. In spatial terms the appeal building also introduces a footprint and volume of development onto part of the site where previously there was none.
37. Although the plot on which the existing dwelling sits is large the appeal building occupies a significant part of it compared with the footprint of the house and other domestic buildings. In combination the spatial and visual impacts of the

development has a significantly harmful effect on the openness of the Green Belt.

38. Drawing all of these strands together I find that the development is harmful to the openness of the Green Belt and that it is inappropriate development in the Green Belt contrary to Policy GB2A of the Local Plan Alterations.

Character and appearance of the surrounding area

39. Moreton Road is characterised by high hedges behind which are mainly open fields and sporadic development in the form of dwellings and buildings which appear to be associated with the predominately agricultural use of the land. Between the site and Epping Road, which is one of the primary roads through the area, there is a small group of houses but Millrise itself is more typical of the substantial detached dwellings which appear elsewhere in the surrounding area. Outbuildings which are associated with those houses appear to be subservient in scale and size to the dwellings they serve.
40. Although there is a mix of building design in the surrounding area, the use of tiles on steeply pitched roofs is present and these are a feature of the dwelling on the site. By contrast the roof of the appeal building whilst tiled and pitched has a comparatively shallow pitched roof. This is a consequence of the depth of the building and the heights of the front and rear elevations. The eaves height results in the building having a markedly different proportion of eaves height to ridge height than the dwelling on the site and it appears out of scale and bulky compared with the house. There is also no evidence before me that outbuildings of the scale and proportion of the appeal building are a common feature in the surrounding area.
41. The Council is also concerned about the appearance of the building in terms of its mix of fenestration and it has provided a photograph of the appeal building during its construction. However, since that time a stable door has been introduced in one opening and full height double doors to the central opening. The stable door could be replicated in the other opening which is incomplete. In the light of these additions the appearance of the building in terms of its fenestration to the elevations is appropriate to its setting.
42. I conclude that although the fenestration of the building is appropriate to its context, its scale and bulk is harmful to the character and appearance of the site and in consequence the contribution which the Millrise plot makes to the surrounding area. The development is therefore contrary to Policies CP2, DBE1 and DBE4 of the Epping Forest District Council -Combined Local Plan (1998) and Local Plan Alterations (2006). These policies jointly require that new buildings respect their setting in terms of scale, proportion, massing and roof-line, that within the Green Belt new buildings respect local character and protect the countryside for its own sake. For the same reasons the development is contrary to the Framework as it relates to achieving well-designed places and recognising the intrinsic character and beauty of the countryside.
43. The development is also not in accordance with Policy DM9 of the Emerging Local Plan which amongst other things seeks to ensure that new development relates positively to the locality.

Other Considerations

44. The Framework establishes that substantial weight should be given to any harm to the Green Belt and that inappropriate development, such as the appeal scheme, is by definition harmful to the Green Belt and should not be approved except in very special circumstances.
45. Save for the matter of fall-back, which I have dealt with above, the appellant has not made any other arguments in respect of other considerations to weigh against the harm to the Green Belt by reason of inappropriateness and other harm resulting from the development which I have found.
46. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.

Conclusions

47. The development is contrary to policy GB2A of the Local Plan Alterations which restricts development in the Green Belt and to Policies CP2, DBE1 and DBE4 of the Epping Forest District Council -Combined Local Plan (1998) and Local Plan Alterations (2006)
48. For the reasons given above, I conclude that the appeal on ground (a) should not succeed and that the deemed planning application should be refused.

Ground (f)

49. In this case the appeal under ground (f) is on the basis that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control. As varied the requirements of the notice are to demolish the building and to remove all resulting debris from the land.
50. The appellant refers to the delays which arose in relation to the Council's determination of an application which the appellant describes as a retrospective amendment to the 2016 permission (the 2018 application). He argues that this may have removed the potential for an alternative requirement to require works to be carried out to revert the development to a building which accords with the plan approved by the 2016 consent.
51. Notwithstanding the time it took the Council to deal with the 2018 application which was subsequently refused, as it stands the 2016 permission has not been implemented and that consent is no longer extant. Consequently, I am not able to vary the requirements to relate to works to bring the building in line with the plans approved under the 2016 permission.
52. I conclude that on the basis of the evidence it has not been shown that there is a viable alternative to full compliance with the requirements of the notice or that these requirements exceed what is necessary. For these reasons the appeal fails on ground (f).

Ground (g)

53. Ground (g) is that the period specified for compliance with the notice falls short of what should reasonably be allowed. The appellant considers that the compliance period of three months is too short as a result of the effect of the Covid pandemic lockdowns on the demand for professionals to carry out domestic building works. The view of the Council is that given the lifting of the

Covid pandemic restrictions the compliance period does not need to be extended for that reason.

54. The appellant has not provided any evidence to support his contention that he will not be able to engage contractors to carry out the works required by the notice within the three month compliance period. In the absence of such substantive evidence, I find that the three-month compliance period afforded by the notice does not fall short of what is reasonable, and I conclude that the appeal on ground (g) should fail.

Conclusion

55. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and a variation.

Sarah Dyer

Inspector