



## Appeal Decision

Hearing Held on 8 February 2022

Site visit made on 11 February 2022

**by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP**

**an Inspector appointed by the Secretary of State**

**Decision date: 18 March 2022**

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**Appeal Ref: APP/B1550/C/21/3279502**

**Land at 31 Barling Road, Great Wakering, Essex SS3 0QD (shown edged red on plan 1 attached to the notice)**

- 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 Scott Sandat against an enforcement notice issued by Rochford District Council on 7 June 2021.
  - The breach of planning control as alleged in the notice is:  
Without planning permission, the demolition of a dwelling house and the erection of a new dwelling house; with a link detached new outbuilding shown labelled B; that has resulted from the considerable changes which have been made to the design, scale and external appearance of the building such that the development clearly does not accord with the approved plans of application 20/00321/FUL (new dwelling is shown labelled A on plan 2 attached to the notice) and construction of an outbuilding shown labelled C on plan 2 attached to the notice.
  - The requirements of the notice are to:
    1. Demolish the new dwelling house shown in the approximate position labelled A on plan 2 attached to the notice.
    2. Remove the wall and dual pitched roof canopy linking the dwelling house labelled A to the outbuilding labelled B on plan 2.
    3. Make alterations to building B by reducing the overall height of the building to a maximum height of 4 metres. The height of the building should be measured from the highest ground level immediately adjacent to the building to its highest point.
    4. Remove the stairwell/access to the space created at first floor in the roof void of building B.
    5. Make alterations to building C by reducing the overall height of the building to a maximum height of 4 metres. The height of the building should be measured from the highest ground level immediately adjacent to the building to its highest point.
    6. Remove from the site, all resultant materials and debris arising from carrying out the steps 1 to 5.
  - The period for compliance with the requirements is 6 months.
  - The appeal is proceeding on the grounds set out in section 174(2) (a) (f) (g) of the Town and Country Planning Act 1990 as amended. Since an appeal on ground (a) has been made, the application for planning permission deemed to have been made under section 177(5) of the Act falls to be considered.
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### Decision

1. It is directed that the enforcement notice be varied by:
  - Replacing step 1 of the requirements in section 5 by “Either demolish the new dwelling house shown in the approximate position labelled A on the attached plan 2, or make alterations to it to comply with the terms of the planning permission 20/00321/FUL dated 24 June 2020 including the

conditions subject to which that permission was granted”, due to the appeal succeeding to this extent under ground (f); and

- Replacing “Six (6) months” by “Twelve (12) months” as the time for compliance in section 6, due to the appeal succeeding to this extent under ground (g).
2. Subject to these variations the appeal is otherwise dismissed and 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.

### **Procedural Matters**

3. It was established at the hearing that there are no accurate “as-built” drawings of the development available, with those associated with application 21/00015/FUL said by the appellant to be closest to the new dwelling which has been built (subject to internal differences at 2<sup>nd</sup> floor level, as highlighted in Council appendix RDC 22, and changes to rear fenestration). It is common ground that the “as built” external footprint is the same as 21/00015/FUL.
4. The Council is in the process of preparing a new Local Plan, which is yet to be submitted to the Secretary of State for examination. It is not part of the adopted development plan. In accordance with the National Planning Policy Framework (the Framework), due to the very early stage of preparation I give the policies of the emerging plan very limited weight and they do not alter my conclusions.

### **Ground (a) and the deemed planning application**

#### *Main issues*

5. The main issues under this ground of appeal are:
- Whether or not the appeal scheme is inappropriate development in the Green Belt.
  - The effect of the appeal scheme on the openness of the Green Belt.
  - The effect of the appeal scheme on the character and appearance of the area.
  - Whether or not the appeal scheme is intentional unauthorised development.
  - Would harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations? If so, would this amount to the very special circumstances required to justify the appeal scheme?

#### *Reasons*

#### Green Belt

6. The appeal development is situated within the Green Belt. The Government attaches great importance to Green Belts. 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<sup>1</sup>.

7. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances<sup>2</sup>. The Framework provides that the construction of new buildings should be regarded as inappropriate in the Green Belt, subject to exceptions which are listed in paragraph 149.
8. One such exception is for the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
9. This exception cannot apply to building C ("pool house") since it does not replace a building in the same use, though could apply to the replacement dwelling house (A) and to building B (which is used as a garage like the building it replaced) but only in the event I am satisfied that they are not materially larger than the buildings they replaced.
10. I have heard very limited or no substantive argument from the appellant against the Council's position that building B (a 2-storey building over 4m in height with a steep dual-pitched roof) is "over and above the size"<sup>3</sup> and materially larger than the one it replaced. Upon consideration of this, I find as a matter of fact that I agree with the Council.
11. Rather, the appeal submissions focus very largely on a central point of dispute between the parties as to whether or not the new dwelling house is materially larger than the one it replaced. The appellant argues that, as the earlier dwelling on the site was demolished and permission granted for a new dwelling under reference 20/00321/FUL (the permitted dwelling), it is the permitted dwelling which should be used as the baseline in deciding whether the new dwelling as built is materially larger. However, I do not agree. The permitted dwelling was not built. Notwithstanding what may or may not have been understood by communications with the Council, I interpret the Framework as requiring a comparison with the extent of what had been physically built on the site (the pre-demolition dwelling which has been replaced by the appeal development) and not with an unimplemented planning permission.
12. According to explicit references on plans, which I accept, the pre-demolition dwelling had a gross internal area of 321.4 square metres over two stories<sup>4</sup>. According to the Council's submissions, the main parties met on site on 29 June 2021 and measured a floor space of 95.32 square metres in the loft space, 150.87 square metres on the first floor and 246.42 square metres on the ground floor (excluding internal walls). Even taking the appellant's statement figure of 408 square metres gross internal area, this is significantly more than that of the dwelling that it replaced (and above the 25% permissive increase referred to Policy DM21 of the Council's Development Management Plan). Further, the building is taller than the one it replaced<sup>5</sup> and has an additional storey of accommodation. Taking all of these factors into account, I find that the appeal dwelling is materially larger than the one it replaced.

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<sup>1</sup> Paragraph 137 of the Framework

<sup>2</sup> Paragraph 147 of the Framework

<sup>3</sup> Paragraph 31 of the Council statement

<sup>4</sup> Appendix RDC23 of the Council statement

<sup>5</sup> 1.5m taller according to the appeal form, 1.043m according to Mr Coxall's rebuttal proof (3.6)

13. The appellant has also raised the exception (in paragraph 149(g) of the Framework) where a new building should not be regarded as inappropriate where its construction involves limited infilling or the partial or complete redevelopment of previously developed land (PDL), which would not have a greater impact on the openness of the Green Belt than the existing development.
14. Accordingly, there was discussion at the hearing as to whether the development involved infilling and/or the redevelopment of PDL. However, it is not necessary for me to determine those issues as I am very clear that the construction of the 3 new buildings - through the resultant increase in footprint, height, volume and bulk of built form over what existed previously - significantly reduces the openness of the Green Belt and creates a sense of dense urban sprawl of associated buildings extending back from Barling Road towards the larger open space also within the ownership of the appellant. The wall and roof canopy linkages between the dwelling house and building B also deleteriously contributes to this effect of dense development within the Green Belt.
15. Therefore, I find all aspects of the appeal development inappropriate development in the Green Belt which causes harm to which I must apply substantial weight.

#### Character and Appearance

16. The appeal site is situated within a ribbon of linear residential development along Barling Road, with a mix of building types of varying age and style.
17. The appeal dwelling has an increased overall height over pre-existing, with a roof which protrudes significantly above the ridge heights of neighbouring properties on the street. Further, the scale and width of the front of the large and contextually dominant dwelling is exacerbated further by connection with the 2-storey building B at its side creating a lengthy façade of brickwork and built form facing the highway. Taken together with the steep pitched roofs of the outbuildings, notwithstanding their contribution towards a cohesive design approach, the overall effect is one of overbearing overdevelopment significantly harming the character and appearance of the area.

#### Intentional Unauthorised Development

18. The Planning Policy Statement (PPS) on Green Belt protection and intentional unauthorised development issued on 31 August 2015 makes 'intentional unauthorised development' a material consideration to be weighed in the determination of planning applications and appeals, including enforcement appeals.
19. Having considered all the circumstances, and the extensive planning history, it is clear to me that the appellant intended the development to be authorised and therefore this consideration carries no weight in the balance.

#### Other considerations

20. The appellant says that the appeal development is of good design. However, given what I have said above, I disagree and I give this consideration no weight in favour of the development.

### Green Belt balancing

21. Paragraph 148 of the Framework indicates that in considering any planning application, substantial weight should be given to any harm to the Green Belt. Accordingly, as I have found harm to the Green Belt I apply substantial weight in respect to it. I have also found that significant harm would be caused to the character and appearance of the area. In totality, the harm is of a magnitude which weighs very heavily against the development.
22. Having considered all matters raised in support of the appeal development I conclude that, collectively, they do not clearly outweigh the totality of the harm I have identified. Accordingly, very special circumstances do not exist and the proposal is contrary to the guidance in the Framework and Policies GB1 and CP1 of the Core Strategy and Policies DM1 and DM21 of the Development Management Plan, which together seek to protect the Green Belt and character and appearance.
23. Accordingly, the appeal on ground (a) does not succeed and I will not grant planning permission for the development with or without conditions, there being no conditions I could reasonably impose that would make the development acceptable.

### **Ground (f)**

24. For an appeal to succeed on this ground, I must be satisfied that the requirements of the notice are excessive in achieving its purpose.
25. The Council stated at the hearing that the purpose of the notice was to remedy the breach of planning control. The notice seeks to do this in respect of the dwelling house by requiring its demolition.
26. However, having listened to the arguments of the appellant<sup>6</sup>, I find that such a requirement is excessive in remedying the breach of planning control since a requirement to make the development comply with the planning permission that has already been granted would also achieve the purpose of the notice.
27. Therefore ground (f) succeeds to this extent and I am varying the notice accordingly.
28. The appellants have said that the wall and dual-pitched roof canopy linking the dwelling house to building B could be required to be obscured with mature trees, rather than required to be demolished. However this would not achieve the purpose of the notice, or remedy harm to amenity, since it would not overcome the reduction of openness with the Green Belt. Retention of the stairwell/access to the space created at first floor in the roof void of building B would also not achieve the purpose of the notice.

### **Ground (g)**

29. For an appeal to succeed on this ground, I must be satisfied that the compliance period of the notice falls short of what is reasonably required.

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<sup>6</sup> Including human rights arguments said at the hearing to be connected with this ground, although it should be noted that human rights considerations do not arise in ground (f). The issue is strictly whether the requirements are excessive to remedy the breach or harm as the case may be.

30. Given the variation of the notice under ground (f), I consider that the dwelling's conversion to what has been permitted may take longer than the 6 months which had been allowed for works of demolition. I am therefore varying the notice further by increasing the compliance period to 12 months, which I consider to be reasonable and proportionate in all the circumstances.
31. Therefore the ground (g) appeal succeeds to this extent.
32. The appellant requested 24 months, but I consider that unreasonable while also taking into account the ongoing planning harm being caused by the development.

### **Conclusion**

33. For the reasons given above I conclude that the appeal should not succeed other than to the extent I have indicated as regards grounds (f) and (g). I shall uphold the enforcement notice with variations and refuse to grant planning permission on the deemed application.

*Andrew Walker*

INSPECTOR

## **APPEARANCES**

### FOR THE APPELLANT:

Charles Banner QC  
Gary Coxall  
Ian Beatwell

### FOR THE LOCAL PLANNING AUTHORITY:

Talent Masuku  
Katie Fowler

### INTERESTED PERSONS:

None who spoke at the hearing

### DOCUMENTS submitted at the hearing

- 1 Dartford Borough Council v The Secretary of State for Communities and Local Government & Ors [2017] EWCA Civ 141 (HTML Version of Judgement)