



Appeal Decision

Site visit made on 23 November 2022

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 January 2023

Appeal Ref: APP/Y3615/C/22/3292513

Land Lying to the South of Littleworth Road, Tongham, also known as Land at Appin Lodge, Long Hill, The Sands, Farnham, GU10 1NQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Antony Stuart against an enforcement notice issued by Guildford Borough Council.
 - The notice, numbered EN/19/00247, was issued on 18 January 2022.
 - The breach of planning control as alleged in the notice is, without planning permission operational development consisting the erection of a building.
 - The requirements of the notice are to:
 - i) Demolish the building hatched in black on the plan attached to this Notice.
 - ii) Remove all material resulting from compliance with step i).
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) 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 varied by deleting two months and the substitution with six months as the period for compliance in section 6.
2. Subject to the 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.

Main Issues

3. The main issues are:
 - whether the building amounts to inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (NPPF) and relevant development plan policy;
 - the effect on the openness of the Green Belt; and,
 - if the development is inappropriate, whether the 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 development.

Reasons

4. A retrospective application for the erection of a detached outbuilding following demolition of an existing building, was dismissed at appeal on 4 October 2021¹. That outbuilding is the subject of the enforcement notice.
5. Such a recent appeal decision is clearly a material consideration and regard should be had to it.

Whether inappropriate development within the Green Belt

6. The land to which the enforcement notice relates lies within the Metropolitan Green Belt. The NPPF states that inappropriate development is harmful to the Green Belt and should not be approved except in very special circumstances. Policy P2 of the Guildford Borough Local Plan: Strategy and Sites (LP) and the NPPF state that the construction of new buildings should be regarded as inappropriate in the Green Belt, subject to a list of exceptions. The exception in dispute in this case is *'the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces'*².
7. The appellant argues that the Council has erroneously declined to acknowledge the existence of a lean to store that was attached to the former outbuilding before its replacement with the existing garden room. Nevertheless, that was considered in the previous appeal decision where the Inspector's attention was similarly drawn to a structural survey from 1986, which refers to a *'very rough timber and corrugated iron store to the rear of the building'*.
8. However, the Inspector highlighted that the document does not give dimensions for the structure, and it is not supported by photographic evidence, and that it was also unclear when this store was removed, thereby limiting the weight which could be afforded to that consideration.
9. It appears that the only differing evidence before me is a signed statement by the appellant who acknowledges that he has no verifiable information as to the size of the lean-to shed but states that it ran to the width of the outbuilding (5.2m), it had a wooden door on the eastern side (thereby giving an indication of its height) and a corrugated roof and depth of around 3m. He states that the shed/store was demolished in 2019 at the same time as the brick outbuilding.
10. The appellant's signed statement is purported to be an affidavit but does not include a sworn oath. The covering letter appears to refer to the submission as a statutory declaration but, as it is not witnessed by a solicitor, commissioner for oaths or notary public, it cannot be³. I note the positions held and currently held by the appellant, who is clearly a person of repute. Nevertheless, an unsworn signed statement, to which no sanctions apply, carries limited weight.
11. The photograph⁴ in the appellant's design and access statement shows the pre-existing building at an angle, such that the side elevation can be seen. There is no indication in that photograph of a structure to the rear of the building. If it was 3m deep and ran to the full width, as stated, I would expect to be able to see some part of it. What is evident from the comparative photograph of the

¹ Appeal ref: APP/Y3615/D/21/3273008

² Paragraph 149d)

³ In paragraph 3 of the appellant's letter of 21 April 2021 reference is made to an 'enclosed statutory'

⁴ With circular landscape feature in the foreground

existing building from roughly the same location, is the marked differences in the width and height of the buildings.

12. The evidence remains that the building is materially larger than the one it has replaced. It follows that I find no reason to disagree with the previous Inspector's finding that the building constitutes inappropriate development in the Green Belt for the purposes of the NPPF and LP Policy P2. That conclusion is not altered because the building complies with the additional definition of LP Policy P2 in that a new building will only constitute a "replacement" if it is sited on or in a position that substantially overlaps that of the original building.

Openness

13. The NPPF explains 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*⁵.
14. As the building is materially larger than the one it replaced, it follows that there is a greater spatial impact on the Green Belt. The aforementioned photographs of the principal elevation of the existing building compared to the pre-existing building also show that the visual aspect is also significantly increased.
15. Consequently, there is both a spatial and visual loss of openness to the Green Belt. My conclusion on this issue is consistent with that reached by the previous Inspector.

Other considerations and the Green Belt balance

16. I have found that the building amounts to inappropriate development within the Green Belt and reduces its openness. The NPPF states that substantial weight will be given to any harm to the Green Belt, and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.
17. It is evident that for the previous appeal the appellant raised the issue of a fallback position whereby a garden building with a larger footprint could be erected under permitted development rights. However, the Inspector attached only very limited weight to that argument due to a lack of supporting evidence.
18. Since the previous appeal decision, the Council has granted a certificate of lawfulness of proposed development⁶ (LDC) for a detached outbuilding in the north east corner of the property.
19. The appellant submits that is a valid fallback position and being larger would result in a much more harmful impact on the Green Belt, neighbouring properties and the AONB, than the existing outbuilding.
20. The appellant has also suggested that to ensure against harm to the Green Belt from two outbuildings (arising from a successful ground (a) appeal), Class E permitted development rights⁷ could be removed by way of condition. Doing so

⁵ Paragraph 137

⁶ Ref: 21/P/02264 – Certificate of Lawfulness to establish if the erection of a detached outbuilding for purposes incidental to the enjoyment of the dwellinghouse would be lawful

⁷ Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015

would meet the tests of reasonableness and necessity in this case otherwise any fallback argument would be negated.

21. Although the height is similar, the footprint of the LDC building would be significantly greater than the appeal building. There would therefore be a corresponding increased effect on the Green Belt and its openness. Given the degree of screening provided by the main dwelling and surrounding woodland, the overall effect on the AONB would not be significantly different. For the same reasons and because of the separation distances, the LDC building would not materially affect the living conditions of the occupants of the nearest residential properties. For most of the appeal property, the existing building would have a greater degree of visibility but for the reasons explained below, the LDC building would be harmful to the setting of the main dwelling. Therefore, in overall terms, the LDC building would be a less desirable outcome than the appeal building.
22. Various court cases have considered the concept of fallback development as a material consideration. In the case of *Mansell*⁸, the Court of Appeal confirmed that there should be a 'real prospect' of a fallback development being implemented and that the decision-maker should exercise their planning judgment as to whether that would be the case depending on the particular circumstances. The basic principle is that a real prospect does not have to be probable or likely: a possibility will suffice.
23. In *Gambone*⁹ a two-stage approach was set out. Firstly, is there greater than a theoretical possibility that the development might take place (the 'real prospect' test)? If so, what weight should be ascribed to the fallback position.
24. Presently, the area to the north east of the dwelling is occupied by an outdoor swimming pool surrounded by a hard landscaped poolside area, finished to a very high standard. At the time of my site visit, the area at the head of the pool accommodated sun loungers and an umbrella, reflecting its poolside function. The space is largely enclosed by lattice fencing, beyond which the land falls away to the nearby property boundary. In combination with the woodland area, the existing layout provides an attractive setting to both the dwelling and swimming pool.
25. Although the LDC block plan shows the building in relation to the main dwelling, its position and relationship with the existing swimming pool and poolside space is not. Based on my own observations, it is highly likely that the building would run very close to the top of the swimming pool, if not cut across the top corner of it. Even if the pool itself would not be physically affected, the size and siting of the building would visually dominate the pool, and what would remain of the poolside area, as well as compromise circulation around it. Moreover, given the proximity, the building would also harm the setting of the main dwelling and adversely affect the outlook from it. Those amount to very significant drawbacks to the implementation of the LDC scheme.
26. I recognise that given the existing and pre-existing provision, it is clear that the appellant requires an outbuilding at his property. I therefore accept that if the appeal building has to be demolished, then it is logical and possible that the appellant would seek to replace the lost floor space elsewhere on the site.

⁸ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

⁹ *Gambone v SCLG* [2014] EWHC 952 (Admin)

However, the LDC building would do much more than replace lost floor space; it would effectively double the existing provision.

27. Given that the appellant is seeking to retain the existing building, it is reasonable to deduce that he is content with the existing floorspace provision. Indeed, the appellant explains that the LDC building would be used for similar purposes to the appeal building. Those issues raise questions as to why the LDC building is comparatively so large and whether doubling the existing provision is so important to the appellant that he would wish to significantly compromise the existing pool and poolside area, and the setting of the main dwelling.
28. There is no rule of law that, in every case, the real prospect will depend, for example, on the developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. Nevertheless, in the particular circumstances of this case, it is clearly relevant to the question as to whether there is a real prospect of it being built, or whether it is, as suggested by the Council, a strategic attempt to secure planning permission for the appeal building.
29. In my judgement, based on the particular circumstances of this case, the LDC development is merely a theoretical prospect and there is no real prospect of it being implemented. Consequently, the LDC development attracts very limited weight as a fallback position.
30. The appellant has further stated that he would be prepared to remove the existing 4m x 3m glass conservatory that is attached to the south eastern elevation of the host dwelling. That would assist in terms of off-setting the harm to openness, although no mechanism has been advanced for achieving the same and I am unaware of what other permitted development rights may remain available to the appellant.
31. Even if neighbours expressed support for the previously appealed planning application, Seale and Sands Parish Council have confirmed its objection to the development. Although, I have no evidence that the site is affected by the Thames Basin Heath Special Protection Area, as stated by the Parish Council, it does lie within the Surrey Hills Area of Outstanding Natural Beauty (AONB) and an Area of Great Landscape Value (AGLV).
32. Effects on the same do not form part of the reasons for issuing the enforcement notice and I note that the previous Inspector found that the outbuilding preserves the landscape and scenic beauty of the AONB and AGLV. Based on my own observations, I find no reason to reach a contrary position on those findings. Moreover, given its location relative to the nearest neighbouring dwelling, the outbuilding has no discernible impact on the living conditions of occupants of the same. The lack of such harms are neutral matters in the Green Belt balance.
33. Drawing the above together, the other considerations – taken individually or together – do not outweigh the harm caused to the Green Belt by reason of inappropriateness, which must carry substantial weight. The very special circumstances necessary to justify allowing the deemed planning application do not exist. The development is therefore contrary to LP Policy P2 and the NPPF.

Conclusions on the Ground (a) Appeal

34. For the reasons set out above, I conclude that the building is contrary to the development plan taken as a whole, and the NPPF. The material considerations do not indicate a decision other than in accordance with the development plan.
35. The ground (a) appeal should not succeed, and I shall refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

The Appeal on Ground (g)

36. The ground (g) appeal is that the two months given to comply with the notice is too short to arrange for the disassembling of a building which is connected to all main utility services and is a fully equipped gym/garden room with a separate shower room. The appellant submits that to obtain the services of a builder within such a short time period would be impossible given the huge demand/back log on the building trade as we come out of the Pandemic. The appellant requests a period of six to nine months.
37. Although I agree, for largely the reasons expressed by the appellant, that a period of two months is too short, a period of nine months is unjustified. Six months would strike a reasonable and proportionate balance between any difficulties the appellant may encounter in carrying out the requirements of the notice and the public interest in this case.
38. I shall vary the enforcement notice accordingly. The appeal on ground (g) succeeds.

Richard S Jones

INSPECTOR