



Appeal Decision

Hearing held on 17 January 2023

Site visit made on 17 January 2023

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2023

Appeal Ref: APP/Z1510/C/21/3285201

Land at Black Gables, Dunmow Road, Great Bardfield, Essex, CM7 4SD

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by NDR Contracting Ltd against an enforcement notice issued by Braintree District Council.
 - The notice was issued on 21 September 2021.
 - The breach of planning control as alleged in the notice is without planning permission:
 - 1. The erection of two '2-storey' detached dwellinghouses and two 'single-storey' garages.
 - 2. An engineering operation increasing land levels by an average height of 0.4 metres.
 - The requirements of the notice are to:
 - a) Demolish each of the two 'two-storey' dwelling houses and two 'single-storey' garages.
 - b) Remove all of the imported top soil used to raise the land level and restore the land level to that shown in the topographical plan submitted as part of the planning application (Drawing No DW2020-314, dated 21/11/2019).
 - c) Remove from the land to an authorised place of disposal, all materials and debris arising from compliance with the aforementioned requirements of the notice.
 - The periods for compliance with the requirements are: Step 'a' to be completed within 4 months, Step 'b' to be completed within 5 months and Step 'c' to be completed within 6 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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Summary Decision

1. The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as corrected and varied in the terms set out below in the Formal Decision.

Applications for costs

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary and Procedural Matters

3. To assist discussion at the Hearing I asked the appellant for paper copies, to scale, of all the drawings submitted with the application 20/00507/FUL, which permitted the development of two houses on the site. The appellant omitted to provide a copy of the existing topographical drawing and explained this did not form part of the application but accompanied a request for pre-application advice. However, it appears from the August 2021 John Roberts, Whiskers LLP

email¹ that it did form part of the application and a copy of the drawing was instead provided by the Council together with a copy of their own survey drawing carried out after the erection of the houses.

4. The Council confirmed that the second part of the allegation in the enforcement notice related to the rear gardens. This mentions an increase in land levels "by an average of 0.4 metres". It was not clear how the Council had arrived at the average figure of 0.4m and it was suggested that this could be deleted. It is open to me to correct the allegation, to put the notice in order, but this can only be done provided there is no injustice to either party.
5. I find omitting any reference to average land levels would not be fatal to the allegation. It is sufficient to state that there has been an engineering operation to increase land levels. Deleting the words "by an average of 0.4 metres" would not cause any injustice as it is clear from the appellant's submissions that they have not been misled by the framing of the allegation.
6. The appellant did query the Council's reference to an increase in height of the two dwellings by "approximately 1 metre". However, this phrase appears in the reasons for issuing the notice, not the allegation and, in my view does not result in the notice being either invalid or a nullity as it is not hopelessly ambiguous and uncertain.
7. The notice was issued September 2021 and referred to policies from the Braintree District Local Plan 2005. Since then, the Council have adopted a new development plan in July 2022, namely the Braintree District Local Plan 2013-2033 (the LP) and stated that they now rely on Policies LPP1 and LPP52. The appellant gave his views on the policy changes and I have taken those into account in determining the appeal.

The ground (c) appeal

8. Under a ground (c) appeal the onus of proof is on the appellant to show that there has not been a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development is set out in section 55(1) of the Town and Country Planning Act 1990 (the 1990 Act) and includes the carrying out of building operations on land.
9. The appellant's case is that there are changes in the height of the houses that have been erected on site and to the rear garden levels but these are not material and are within the normal limitations of accuracy. It is further stated that as the changes do not exceed what was required to comply with the approved drawings, there has not been a breach of planning control.
10. Planning permission was granted on 21 August 2020 for the erection of two houses on the site and the decision notice listed 6 plans as being the approved plans. These included a site plan with a south west elevation to the access road and proposed plans of the houses showing a cross section through the lobby, hall and stairs. Several conditions were imposed including No 2, that the development should be carried out in accordance with the approved plans. No conditions were imposed regarding set finished floor levels (FFLs), ridge heights or rear garden levels.

¹ Paragraph No 1., Appendix 2 Appellant's Grounds of Appeal and Statement of Facts

11. Following the grant of planning permission, the appellant submitted an application for a non-material amendment. This was granted on 18 December 2020 and approved three window alterations, namely a first floor Juliet balcony on the front elevation would be replaced with a window, a first floor side window would be removed and there would be an additional rooflight within the side elevation.
12. The appellant described the site as sloping approximately 800mm from front to back before the development took place and with undulations across the whole of the site. In the response to the Planning Contravention Notice (PCN) the appellant stated there was a difference between the approved ridge height of the houses and the "as built" height, which was in the region of 580mm (0.58m). As there was no levels condition, the only information available to him on which he relied for levels was the approved 1:200 south west elevation drawing.
13. Although the appellant's case at appeal described the south west elevation drawing as "illustrative" with a "notional" datum level of 75.00m, the drawing does not contain either of these words and is not illustrative as it also includes a scale bar. In my view it is an approved plan that forms part of the application and can be relied upon as it shows the 75.00m datum level, the level of the houses from the front in relation to that datum level and a scale. In addition, the Planning Practice Guidance states in relation to the submission of outline applications that unless applicants state drawings are only for illustrative purposes then they must be considered as forming part of the application. It seems to me that the same can be held for full applications.
14. The Council's detailed response to the appellant's case at appeal is that the houses are 0.47m (Plot 1) and 0.50m (Plot 2) too high, which is not dissimilar to the appellant's PCN response of 0.58m. The difference in height is made up from two components, namely the height between the datum level and the FFL and secondly, the height between the FFL and the ridge height. The Council accept that a FFL will always be higher than soil level but in this case the soil level has changed from that shown on the approved plans.
15. The approved plans show that datum level to FFL should have been 81.25m and this is accepted by the appellant. However, as surveyed by the Council, the FFL for both houses is 81.50m, leaving them 0.25m too high. Turning to the second component, the approved height of the dwellings is 7.5m but this has increased to 7.73m (Plot 1) and 7.76m (Plot 2), a difference of 23cm and 26cm. These calculations, allowing for some tolerance in the figures, support the stated overall increase in height of 0.47m (47cm) for Plot 1 and 0.50m (50cm) for Plot 2 from the approved scheme.
16. The appellant's PCN response sets out that during ground works he came across a foul water drain and worked out the minimum fall to enter the drain to improve historic blockage problems. It appears this resulted in the FFL of both houses being higher than approved. In addition, the appellant states that there were changes to the timber frame construction during manufacturing. This meant that there was an increase in height from that shown on the approved cross section, of around 20cm, to accommodate, for example, thicker beams for the bifold doors.
17. I find, as a matter of fact and degree, that the increases in height during the construction of both houses do not accord with the approved plans and that the

degree of change is material. Overcoming the issue of the foul water drain and the bifold doors are matters of design and are not a tolerance issue. This has resulted in development without the necessary planning permission being carried out, which is a breach of planning control.

18. Turning to ground levels around both new houses, the approved plans do not provide any information regarding garden levels post construction and no conditions were imposed requiring finished levels to be agreed. In addition, at the Hearing the Council accepted the withdrawal of the reference to "an average height of 0.4 metres" as being the increase in ground levels.
19. It should have been obvious to the Council that if the FFL was to be 81.25m, then whilst this would not have resulted in much visible change at the front of the site, where existing levels along the access way are shown to be between 81m to 81.23m, the FFL would be more noticeable from the rear. This is because pre-construction spot levels near to the rear of the houses vary from 80.45m to 80.67m. As the FFL was increased in height to 81.50m, the difference between the new FFL and the rear garden was even more noticeable. This is especially the case as during construction a layer of earth would have been moved to one side during the site preparation stage.
20. Comparing similar existing survey spot levels with "as built" survey spot levels, these show that across the rear gardens, levels have increased for example by 4cm, 23cm, 25cm, 26cm and 35cm and in one area decreased by 4cm. The comparison supports the appellant's case that the rear gardens area originally contained several depressions and following the completion of the houses, the earth, which had been pushed to one side prior to construction, was spread around the site to make it more even and top soil was imported to form a base for landscaping.
21. Depending on the form of landscaping to be carried out, developers will often add top soil to a depth of between 10-20cm. I saw on site that there is still a very gentle slope from the back of the new houses down towards Durham Close and that the Durham Close fencing (shown on the pre-development survey to be 1.5m high) did not appear to be reduced in height by raised soil levels. However, immediately adjacent to the new houses, levels have been increased outside the utility rooms and by the rear elevation to create less of a step down to the garden but there are still steps. Photographs from the Council and a third party show that these levels changed before the issue of the notice.
22. In conclusion, I find that following the construction of the houses the formation of the rear gardens and side areas amounts to an engineering operation falling within the meaning of development. The scale of work was significant and involved moving earth over a wide area, levelling undulations, importing and spreading top soil and aggregates, which has resulted in an increase in land levels. This is documented in a neighbour's photographs, which show diggers working on site, tipper lorries, piles of top soil and overgrown earth. The appellant submits that all this was necessary to comply with the approved landscaping plan but the plan does not show any existing or proposed levels and does not show paving, steps or patio areas. Therefore, development without the necessary planning permission has taken place, which is a breach of planning control.
23. For these reasons the appeal on ground (c) fails in respect of both allegations.

The ground (a) appeal and the deemed planning application

Main Issue

24. The main issue in respect of both allegations is the effect of the development on the living conditions of neighbouring occupiers, having regard to privacy and outlook.

Reasons

Background and surroundings

25. Prior to the erection of the new houses, the site was occupied by a single storey dwelling, with main windows overlooking each side of the plot. The site is surrounded on three sides by a variety of detached dwellings with the access road and a field marking the fourth side.
26. Field House and Strachan House are two storey dwellings which are positioned either side of the site. Evergreens is a bungalow and overlooks part of the side boundary of Plot 1 whereas two storey properties in Durham Close overlook the rear boundary of both plots. Vehicular access to the appeal site is from what appears to be a private road serving Field House and Strachan House. Place Farm is situated on the main road adjacent to the junction of the access road with the main road.
27. The Council were aware that the proposal to replace the existing dwelling with two storey dwellings, each facing the access road and with habitable rooms facing the rear boundary, would be a significant change for surrounding local residents. The scheme was designed so that the first floor rooms made use of some of the roof space, which I understand was to reduce the bulk of the two storey dwellings.
28. The proposal was carefully considered and the approved drawings are annotated with lines to show that there would be 25m between the new houses and the lounge window of No 26 Durham Close. There would also be 25m between the new dwelling on Plot 1 and the side elevation of No 28 Durham Close, where there is a single habitable room window at ground floor level facing towards the site.
29. The Council accept that the siting of the new dwellings accords with the approved plans. The sole issue is therefore the effect the changes in levels of the new houses and the gardens have on the living conditions of neighbouring occupiers.
30. Photographic evidence provided by a local resident shows that, prior to the issue of the notice, land levels were raised around the dwellings. However, I note that additional works to further change the levels were carried out after the notice was issued. In such a case, it is the levels at the time the notice was issued that is the subject of the ground (a) appeal.

The effects of the development

31. At No 26 Durham Close there are three habitable room windows (kitchen, lounge, bedroom) overlooking the rear garden. The only habitable room window at the first floor level of No 26 overlooking the rear is to a small study. The rear garden is shallow in depth but extends beyond the width of the house. It appears to be approximately 0.3m lower than the ground level on the other

- side of the boundary fence with Plot 2. This figure is derived from the fencing measuring 1.5m high from within Plot 2 and appearing to be in the order of 1.8m high from No 26's garden.
32. There is a horse chestnut tree at the bottom of Plot 2 and the appellant has planted laurel hedging adjacent to it on the boundary with No 26. There are no low branches on the tree and there is a clear view over the fence when standing in the kitchen of No 26 through to the upper half of the open plan kitchen/dining/sitting area (KDSA) window of the dwelling on Plot 2. I saw at my site visit that it is possible to see people standing in this room. The view into the bedroom window above the KDSA from the kitchen is interrupted by the branches of the horse chestnut tree.
33. There is a similar uninterrupted view when standing in the ground floor bedroom window of No 26, into the upper half of the KDSA window on Plot 2. This view disappears when sat down in the bedroom but the view remains into the bedroom window above the KDSA. From the study window there are clear views into all four windows within the rear elevation of Plot 2 but only when standing adjacent to the window, as the cill level is high.
34. Although there is 25m between the lounge window of No 26 and the nearest window on Plot 2, it is less than 25m between the ground floor bedroom window of No 26 and Plot 2 as the bedroom extends into the garden. Standing in the garden of No 26 it is still possible to see into the upper half of the ground floor windows on Plot 2. All the windows are large on Plot 2, with each bedroom having clear glazed Juliet balconies/inward opening glazed doors and, at ground level, one room as a four panel/bifold window and the other has a pair of patio doors flanked either side with a fixed glazed panel, which is similar in width to the bifold doors.
35. From within the ground floor of the dwelling on Plot 2, it is possible to look down into the kitchen window of No 26 and view the top part of the ground floor bedroom window at No 26. From the bedroom windows on Plot 2, it is possible to see down into all the rooms at No 26 and from within the garden of Plot 2 it is possible to see over the boundary fencing. Views from the ground floor windows of Plot 1 towards No 26 are limited by the boundary fencing between Plots 1 and 2 and a mature holly tree. Views from the first floor of Plot 1 towards the study window at No 26 are oblique.
36. Ordinarily, on a level site a 2m high fence will usually provide privacy between ground floor windows of overlooking properties. However, the additional height of the dwelling on Plot 2 coupled with the lower setting of No 26 has resulted in an unacceptable loss of privacy and outlook between ground floor windows, despite the 25m separation, as the occupier of No 26 is looked down upon from the extensive windows on Plot 2. An acceptable level of privacy is maintained between Plot 1 and No 26 due to intervening fencing and the oblique angle of the windows.
37. With regard to No 28 Durham Close, which is also at a lower level, the gable elevation contains one habitable room window at ground level. It is possible to look down into this room from the ground floor of Plot 1 and the loss of privacy and outlook is greater from the bedroom windows above. From the ground floor of Plot 2 this window is viewed from an oblique angle and for this reason an acceptable level of privacy is maintained at this point. From within the garden of Plot 1 it is possible to look into the upper portion of the window and

overall, I find the development results in an unacceptable loss of privacy and outlook for the occupiers of No 28.

38. With regard to No 24 Durham Close, all views from Plot 1 are at an oblique angle and due to this and the distance between Plot 1 and No 24 an acceptable level of privacy is maintained. From the first floor of Plot 2 it is possible to see down into the lounge and the bedroom above but not from ground level due to intervening buildings. From the bedrooms of No 24 it is possible to see into the first floor of Plot 2 but given the greater distance between these properties than between No 26 and the appeal site and the oblique angle it is considered that an acceptable level of privacy and outlook is maintained at this point.
39. With regard to Field House, this dwelling is set forward of the dwelling on Plot 1, at an angle and has the benefit of a large rear garden overlooked by a dining room window. At ground level within Plot 1 there are two windows within the flank elevation serving the kitchen and a utility room. Both are largely visible over the 1.8m high side boundary fencing when in the garden of Field House.
40. Following the completion of the development, the utility window glazing was replaced with obscure glass. However, when the window is open it is still possible to see into the garden of Field House and to a lesser degree its dining room window, as it is at an angle. There is also a clear view from the kitchen window on Plot 1 into the garden of Field House. Outside the dwelling on Plot 1 adjacent to the side elevation, views into the garden and the dining room window of Field House can only be glimpsed and it is therefore considered that an acceptable level of privacy is maintained at this point. However, standing just outside the KDSA window it is possible to see into the rear portion of the Field House garden and I therefore find that, overall, the development results in an unacceptable loss of privacy for the occupiers of Field House.
41. With regard to Evergreens, this dwelling is set below the level of its rear garden by four steps. There is a kitchen/diner window and two bedroom windows overlooking the garden but it is not possible to see anything of the KDSA window on Plot 1 from these windows. However, from within the garden it would be possible to see into the upper portion of the KDSA window if the laurel shrubs within Plot 1 were not there. There is nothing though to interrupt a view through the Juliet window above.
42. From within Plot 1 it is possible to see over Evergreens' garden from the KDSA window and to look down into it from the bedroom window above though it is not possible to obtain any clear view into Evergreens' rear windows due to their low height. It is also not possible to see into Evergreens' garden from within the garden of Plot 1. Nevertheless, overall, I find that the development results in an unacceptable loss of privacy for the occupiers when using the garden, having regard to window levels.
43. The front elevation of Strachan House overlooks the gable wall of the dwelling on Plot 2 and is separated from the plot by a drive and detached garage. It is therefore considered that due to the distance between and the orientation of these properties that changes in levels have not interrupted the seclusion of Strachan House.
44. With regard to Farm Place, the occupiers have the benefit of a low timber platform positioned at the bottom of the rear garden, which is used as a level sitting out area due to the sloping rear garden. From this point there are clear

views of the dwelling on Plot 2 but those of Plot 1 are interrupted by trees and a hedgerow lining the access road. I find that due to the considerable distance between and the orientation of these properties the changes in levels have not interrupted the seclusion of Farm Place to an unacceptable degree.

Interim conclusion

45. For these reasons I find that both developments have resulted in harm to the living conditions of neighbouring occupiers, having regard to their loss of privacy and outlook. The developments therefore do not accord with LP Policies LPP 1 and LPP 52. These state that within development boundaries, development will be permitted where it satisfies amenity criteria. In addition, permission will not be granted where there is an unacceptable impact on the amenity of nearby properties including on privacy, overshadowing, loss of light and overbearing impact.

Fall-back position

46. However, the appellant points out that the planning permission to erect two houses on the site has not expired and could be implemented if the houses were demolished. This amounts to a fall-back position and from the appellant's submissions, especially in respect of the ground (f) appeal, I consider there is a real prospect that the fall-back position would be implemented. It is therefore a material consideration in the determination of this ground (a) appeal to which I attach substantial weight.
47. It seems to me that the implementation of the approved scheme would result in a similar degree of overlooking from the new dwellings. This is because firstly, there is a noticeable difference between the approved proposed FFL of the new houses and the lower level of the properties in Durham Close. Using the approved FFL of 81.25m and a height of 1.7m², the typical eyeline would be just below this combined height of 82.95m. Using the original typical³ spot levels in the bottom corner of Plot 2, for example 80.49m and taking into account a 2m fence, a typical person standing in the KDSA of the new dwelling on Plot 2 would be able to see over the fence by approximately 0.3m.
48. Secondly, with regard to Field House, the existing ground levels along the boundary between the rear garden of Field House and the side of the new dwelling on Plot 1 were typically 81.07m⁴. With an approved FFL of 81.25m and a 2m boundary fence, it seems to me that it would still have been possible to see over the fence from the kitchen and utility windows.
49. Finally, with regard to Evergreens, it appears the approved plans would have resulted in a similar level of overlooking as would be experienced by the Durham Close properties, having regard to the spot levels on the existing survey drawing near the boundary with Evergreens.
50. In my view, the fall-back position would be similar to what has been built in terms of the effect on the living conditions of neighbouring occupiers. For these reasons I find it is acceptable to grant planning permission for the

² 1.7m is taken from the condition imposed in Part 1, Schedule 2, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2015 relating to the minimum height of the opening part of an obscure glazed window

³ There are four marked along the close boarded fence of 80.35, 80.44, 80.49 and 80.55.

⁴ There are three levels behind the tank of 81.05, 81.07 and 81.12.

scheme as built but with additional conditions to mitigate the effect of the development on privacy levels. Therefore:

- the glazing on the Juliet balconies on Plots 1 and 2 should be replaced with obscured glazing;
- the utility room window on the side elevation of Plot 1 should be repositioned to the front elevation and the side elevation kitchen window overlooking Field House should be removed;
- the existing fixed pane kitchen window within Plot 1 should be replaced with a new opening window to ensure that the kitchen is ventilated; and
- a scheme should be submitted for the hard and soft landscaping of the site, which would include finished levels and boundary planting, to reduce overlooking.

51. In the circumstances of this appeal, I consider the fall-back position is a strong justification for making a decision in respect of the dwellings as built, but with additional conditions, which is not in accordance with the development plan. It follows that the ground (a) appeal succeeds in respect of the first allegation.
52. With regard to the engineering operation, I find that there is no fall-back position as there are no approved drawings showing finished levels across the gardens. As such, the ground (a) appeal fails in respect of the second allegation.

Conditions

53. In allowing the appeal in part and granting planning permission, I have considered those conditions imposed on the original planning permission and suggested now by the Council and neighbours. I will grant a new permission with new conditions, having regard to the Planning Practice Guidance. This sets out 6 tests for conditions including that they are necessary, effective and do not place unjustifiable burdens on applicants or in the case of an appeal, appellants. Conditions requiring the payment of compensation or reimbursement for the cost of planting do not meet the tests.
54. I have drafted one condition in a particular form because, unlike a planning permission for development yet to commence, in the case of a retrospective granted permission, it is not possible to use negatively worded conditions precedent to secure the subsequent approval and implementation of outstanding detailed matters, as the development has already taken place.
55. The condition therefore provides for the loss of the effective benefit of the granted planning permission where the detailed matters in question are not submitted for approval during the time set by the condition, approved (either by the local planning authority or by the Secretary of State on appeal) and then implemented in accordance with an approved timetable. Should the requirements of the conditions not be met in line with the strict timetable, then the planning permission falls away.
56. Turning now to the details, it is necessary and reasonable to re-impose conditions 5, 7, 9, 10 and 13 of 20/00507/FUL concerning travel packs, tree protection, construction hours, unexpected contamination and ecology. This is because only one house is occupied and all groundwork has not been finished.

57. It is also necessary to require that all first floor side windows should be obscured glazed and non-opening below 1.7m for reasons of privacy but this condition also needs to list the "As built" plans submitted at the Hearing.
58. It is not necessary to re-impose conditions 2, 3 and 4 as the development is substantially complete. These relate to development to be built in accordance with the approved plans, approval of materials and details of windows.
59. In order to mitigate the effect of the development on privacy, it is reasonable and necessary to impose a condition to require the work set out in paragraph 50 above to take place.
60. With regard to the suggested removal of permitted development rights, it is possible, exceptionally, to impose such a condition to restrict further development without the prior approval of the Council. In this case I find there is good reason to remove permitted development rights set out in the Town and Country Planning (General Permitted Development)(England) Order 2015 Schedule 2, Part 1, Classes A, B, C, E and F. These classes permit development that potentially could add further windows or additional hard surfaced areas that could affect the privacy of surrounding occupiers.
61. Third parties have suggested the removal of the utility room on Plot 1 in order to remedy a loss of privacy but I find it is only necessary to re-position the window together with the removal of the side elevation kitchen window. Obscure glazing the Juliet balconies addresses residents' requests to replace the bedroom windows with conventional windows. Residents also request that the bifold doors be replaced with French windows on the basis that this would remove the expectation of walking straight out onto a terrace. However, I find it is not the style of window that creates this expectation, it is the existence of a window, whether it is a French window or bifold door, through which people can exit the dwelling to reach the garden.
62. Finally, the Council suggested imposing a condition to require the installation of 2m high fencing to replace 1.8m high fencing and to introduce it along the boundary with Durham Close. I have not done so as firstly, an additional 20cm along the boundary with Field House and Evergreens would do little to mitigate their loss of privacy. Secondly, adding a 2m fence along the boundary with Durham Close would be overbearing for the occupiers due to the lower ground level and the shallow depth of the gardens. For these reasons I find it would not be reasonable to require a fence 2m in height to be installed.

The ground (f) appeal

63. As the appeal on ground (a) succeeds in part, the appeal on ground (f) relates only to the raising of ground levels. An appeal on ground (f) is that the requirements of the notice exceed what is necessary to achieve its purpose. The purposes of an enforcement notice are set out in section 173 of the 1990 Act and are to remedy the breach of planning control (s173(4)(a)) or to remedy any injury to amenity (s173(4)(b)). In this case the notice requires the removal from the site of all the imported top soil used to raise the land level and the restoration to former levels as shown on the existing topographical survey plan. I therefore consider that the purpose of the notice is to remedy the breach of planning control.

64. In appealing on ground (f) the onus is on the appellant to specify lesser steps which in his view would overcome the objections to the development but in this case no specific lesser steps have been submitted in relation to soil levels. The appeal on ground (f) therefore fails.
65. It is necessary though to vary the notice by deleting the requirement to restore the land in accordance with the existing topographical survey plan. This is because it is only necessary to remove the imported top soil to remedy the breach of planning control. Restoration to previous ground levels in accordance with the survey plan would be excessive as the allegation did not mention that the land had been re-contoured, only that ground levels had been raised. Furthermore, there is no clear record of land levels between the spot levels on the plan and I can see no good planning reason to restore the land as an undulating site, even if that were possible.

The ground (g) appeal

66. This ground of appeal is that the time given to comply with the requirements of the notice is too short. It is therefore limited in scope to a consideration of the actual time needed to carry out the work or actions specified in the steps.
67. The appellant submits that an extra 3 months is needed to remove and dispose of the top soil, taking the compliance period to 9 months. The reason given is due to the ongoing labour shortage.
68. I find that the appellant's case relates to the time before the requirements can be carried out and that the actual removal of the top soil from the site should take no longer than the period specified in the notice. An extension of time has not been justified in any detail and it is therefore considered that the period for compliance is reasonable. As such, I see no cause to vary it. The appeal on ground (g) therefore fails.

Overall Conclusion

64. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of two '2 storey' detached dwelling houses and two 'single storey' garages but otherwise I will uphold the notice with a correction and variation and refuse to grant planning permission in respect of an engineering operation increasing land levels. The requirements of the notice will cease to have effect so far as inconsistent with the planning permission which I will grant by virtue of section 180 of the 1990 Act.

Formal Decision

65. It is directed that the enforcement notice is corrected and varied by the deletion of "by an average height of 0.4 metres" from the allegation and by the deletion of "and restore the land level to that shown in the topographical plan submitted as part of the planning application (Drawing No DW2020-314, dated 21/11/2019" from the requirements.
66. Subject to the correction and variation, the appeal is allowed insofar as it relates to the erection of two 2 storey dwellings and two single storey garages and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act on land at Black Gables, Dunmow

Road, Great Bardfield, Essex CM7 4SD. This is subject to the following conditions:

- 1) Prior to the occupation of the dwelling on Plot 1, the developer shall be responsible for the provision and implementation of a Residential Travel Information Pack for Sustainable Transport (to include 6 one day travel vouchers for use with the relevant local public transport operator).
- 2) The development shall only be carried out in accordance with the details contained within the Tree Protection Plan dated 8 July 2020 and the Arboricultural Report dated 10 August 2020 Rev 1 by Andrew Day Arboricultural Consultancy. The approved means of protection shall be installed prior to the commencement of any building, engineering works or other activities on the site and shall remain in place until after the completion of the development. No materials, goods or articles of any description shall be stacked, stored or placed at any time within the limits of the spread of any of the existing trees, shrubs or hedges. No works involving alterations in ground levels, or the digging of trenches, or excavations of any kind, (including the laying or installation of drains, pipes, cables or other services) shall be carried out within the extent of the spread of any existing trees, shrubs and hedges unless the express consent in writing of the local planning authority has previously been obtained. No machinery of any kind shall be used or operated within the extent of the spread of the existing trees, shrubs, hedges.
- 3) No site clearance, demolition or construction work shall take place on the site, including starting of machinery and delivery of materials, outside the following times: Monday to Friday 0800 hours to 1800 hours, Saturday 0800 hours to 1300 hours, Bank Holidays and Sundays - no work.
- 4) In the event that contamination is found at any time when carrying out the approved development that was not previously identified, it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken, and where remediation is necessary, a remediation scheme must be prepared, which is subject to the approval in writing of the local planning authority.
- 5) All mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Preliminary Ecological Appraisal (MKA Ecology March 2020), Great Crested Newt Environmental DNA Survey (MKA Ecology, June 2020), and Preliminary Roost Assessment (MKA Ecology June 2020), as already submitted with planning application ref: 20/00507/FUL and agreed in principle with the local planning authority prior to determination. This may include the appointment of an appropriately competent person, for example an ecological clerk of works, to provide on-site ecological expertise during construction. The appointed person shall undertake all activities and work shall be carried out in accordance with the approved details.
- 6) The first floor side windows for Plots 1 and 2 shall be glazed with obscure glass and none opening below 1.7 metres from finished floor level as shown on the "As built" plans numbered: 09.19.01 Rev D, (excluding the south west elevation drawing), 09.19.02 Revision E and 09.19.03 Rev E, all dated 10 January 2023, and thereafter shall be so retained at all times.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and

re-enacting or amending that order), no development within the curtilage of the dwellinghouse, as permitted by Schedule 2, Part 1, Classes A, B, C, E and F of the Order shall be carried out without first obtaining planning permission from the local planning authority.

8) The development hereby permitted shall be demolished to ground level and the land restored to its condition before that development took place within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

(i) Within three months of the date of this decision, submit details of:

(a) the totally opaque obscured glazing for the Juliet balconies on Plots 1 and 2;

(b) a scheme to show the re-positioning of the utility room window from the side elevation of Plot 1 to the front elevation and the making good of the former opening; the removal of the side elevation kitchen window overlooking Field House, the making good of the former opening; and a new opening window to replace the fixed glazed window in the secondary side elevation of the kitchen, to enable the kitchen area to be ventilated;

(c) a scheme for the hard and soft landscaping of the site, which should include finished ground levels and boundary planting to reduce overlooking. Such planting scheme shall include details of species, plant sizes and proposed numbers and densities.

The details shall have been submitted for the written approval of the local planning authority and shall include a timetable for their implementation and maintenance for a period of five years.

(ii) Within eleven months of the date of this decision, the details should have been approved by the local planning authority or, if the local planning authority refused to approve the details or failed to give a decision within the prescribed., an appeal should have been made to and accepted as validly made by the Secretary of State.

(iii) If an appeal is made in pursuance of (ii) above, that appeal should have been finally determined and the submitted details should have been approved by the Secretary of State.

(iv) The approved details shall have been carried out and completed in accordance with the approved timetable.

The works comprised in the details pursuant to condition 8 shall be retained for the duration of the development.

67. The appeal is dismissed and the enforcement notice is upheld as corrected and varied insofar as it relates to an engineering operation increasing land levels and planning permission is refused in respect of an engineering operation increasing land levels on land at Black Gables, Dunmow Road, Great Bardfield, Essex CM7 4SD on the application deemed to be made under section 177(5) of the 1990 Act.

D Fleming INSPECTOR

APPEARANCES

FOR THE APPELLANT:

P Kratz, Solicitor, GSC Solicitors LLP

N Ridgeway, NDR Contracting Ltd, the appellant

FOR THE LOCAL PLANNING AUTHORITY:

J Cannon, of Counsel, instructed by the Borough Solicitor

T Havers, Principal Planning Officer

D Tuff, Manager Planning Enforcement

INTERESTED PARTIES:

C Ruffle, Chair Great Bardfield Parish Council

T Bunkall, Local resident

J Carder, Local resident

A Burkett, Local resident

DOCUMENTS

- 1 Appellant's topographical survey prior to commencement of development
- 2 Council's topographical survey post development
- 3 Council's drawing to explain their response to ground (c)
- 4 Appellant's "As built" drawings excluding south west elevation to access road (Dwg Nos: 09.19.01 Rev D; 09.19.02 Rev E and 09.19.03 Rev E)
- 5 Copies of policies from Braintree District Local Plan 2013-2033
- 6 Statement from T Bunkall
- 7 Statement from J Carder