



Appeal Decisions

Site visit made on 25 January 2023

by Andy Harwood CMS MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 February 2023

Appeal Refs: APP/Y3615/C/22/3298994 and 3298995

Land at Maple Cottage, Lower Eashing, Godalming, Surrey GU7 2QF

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended (the Act). The appeals are made by Mr Simon Heard and Mrs Emma Heard against an enforcement notice issued by Guildford Borough Council.
 - The notice was issued on 9 May 2022.
 - The breach of planning control as alleged in the notice is without planning permission, carrying out operational development on the land consisting of the erection of an outbuilding at the approximate position shown on the plan edged and hatched in black.
 - The requirements of the notice are to:
 - i) Remove the building hatched in black on the attached plan;
 - ii) Remove from the land all material and waste resulting from Step (i)
 - The period for compliance with the requirements is: 1 month.
 - The appeals are proceeding on the ground set out in section 174(2)(a) 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 inclusion of the additional plan attached to this notice (Plan 2). Subject to the correction, the appeals are allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of an outbuilding at the approximate position shown on plan edged and hatched in black, subject to the following condition:

Within 1 month of this decision the 'old' outbuilding currently in the position marked with 'X²' on the additional plan (Plan 2) attached to this notice shall be demolished and all materials removed from the site.

In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limit specified in this condition will be suspended until that legal challenge has been finally determined.

Preliminary Matters

2. Following my site visit, I sought the views of the parties regarding some elements of their representations. In particular, in order to make my decision, I needed clarification about the outbuilding or outbuildings which have been removed or are intended to be removed. An additional plan marking the approximate positions of the outbuildings was then agreed. The original plan was not sufficiently accurate in this respect and the notice overall can therefore

be corrected using my powers under the provisions of s176(1)(a) of the Act. I can do this without causing injustice to the appellant or the Council given that they have been involved in drafting this plan which merely helps to illustrate facts and clarify an apparent ambiguity. This is therefore attached as 'Plan 2'.

3. The representations have referred to a planning condition that was imposed by the Council on their decision to grant planning permission for an extension to Maple Cottage (Ref 15/P/00862). The condition in question removed permitted development (PD) rights¹ for buildings within the curtilage of the dwellinghouse. The notice however does not define the breach of planning control under the provisions of s171A(b) of the Act as failing to have complied with any condition or limitation. It alleges that the breach of planning control was the carrying out of development without the required planning permission. Therefore s171A(a) of the Act is quoted on the notice. The Council states that the outbuilding does not comply with the relevant PD limitations. The appellant has not appealed on the basis that planning permission is not required and so it is not for me to review these matters.
4. Furthermore, the appellant within the appeal under ground (a) has suggested that I should consider discharging the planning condition that removes the PD rights. However, given the above I am not able to consider the ongoing appropriateness of the planning condition or whether it should be discharged.

The Appeal on ground (a)

Main issues

5. The appeal site is in the Green Belt (GB). The National Planning Policy Framework (the Framework) states that the construction of new buildings should be considered as inappropriate in the GB. It also states that inappropriate development is, by definition, harmful to the GB and should not be approved except in very special circumstances. The framework does however provide lists of development that should not be regarded as inappropriate. Paragraph 149 confirms that one of the exceptions is the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
6. Policy P2 of the adopted Guildford Borough Local Plan 2015-2034 (LP) confirms that it takes the approach to GB protection in accordance with the Framework. With respect to new buildings, it confirms that they will constitute inappropriate development unless they fall within the list of exceptions identified by the Framework. For the purposes of the policy, it applies further definitions however. It explains that a building will only constitute a "replacement" if it is sited on or in a position that substantially overlaps that of the original building, unless it can be clearly demonstrated that an alternative position would not increase the overall impact on the openness of the GB. This is consistent with what the Framework refers to as a fundamental aim of GB policy, to prevent urban sprawl by keeping land permanently open with the essential characteristics of GB being their openness and their permanence.
7. The main issue is therefore whether the development is inappropriate development in the GB having regard to the Framework and LP Policy P2

¹ Under the provisions of Article 3, Schedule 2, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

including the consideration of its use and size as well as the effects on openness of the GB.

Reasons

8. The outbuilding which is the subject of the notice is located within the garden to the south-east of Maple Cottage. It is detached from the dwelling, separated by a parking area and it is close to the lawn where I saw some domestic items such as a football goal, balls and other play equipment. The outbuilding is a timber shed with a pitched and ridged roof and is marked as 'X³' on Plan 2.
9. When I asked at my site visit about which of the outbuildings is proposed by the appellant to be removed, a domestic shed close to the north-eastern boundary of the site was pointed out to me ('X²' on Plan 2). I could see that this was rather dilapidated and was positioned alongside another similar shed close to that boundary.
10. Outbuilding 'X³' as required for removal on the notice is used in part as a base for a security camera system for adjoining land. I saw a modest sized box with cables coming out of it and when I asked was told it was the effective part of the security system. This is a very minor element in terms of space that this takes up in the building. In the most part the building has a typical range of domestic items being stored mainly on a large shelving unit and on the floor. There is no dispute that the overall use of the outbuilding is for purposes ancillary to the domestic occupation of the dwelling and the garden in which it is located. There is also no suggestion by the Council that other outbuildings including 'X²' are used in the same way.
11. The garden is enclosed effectively by a large row of coniferous trees alongside the boundary with the road that leads across the bridge over the river and through the settlement. There is a dense screen of evergreen shrubs around the parking and driveway of the dwelling close to the outbuilding. The adjoining land to the north-east and south-east also contain dense but informal woodland with substantial trees providing further screening of the garden. The garden is therefore secluded. The lawn area is open through the middle although that is only noticeable when on the site. Both of the outbuildings 'X²' and 'X³' are alongside the respective boundaries.
12. The main parties do not agree on the precise measurements of each of the outbuildings but there is no dispute that the unlawful outbuilding 'X³', is larger in all dimensions than 'X²'. The materiality of the increase in size of the building is influenced by the degree to which those changes are noticeable. The Council's measurements indicate that the magnitude of change between the buildings is an increase in width of 36%, in length of around 32% and the ridge height by nearly 18.5%. Notwithstanding this, when I was on site, those size differences were not clearly apparent to me. Whatever their precise measurements, they are both such modest structures and a purely statistical analysis is not a fair reflection of their respective impacts when looking with the naked eye. I consider that the differences between the 2 buildings are not obviously noticeable from within or from outside of the site even though when measured there is an increase in dimensions. As a matter of fact and degree, the changes are not in my judgement material.

13. Looking at the effects upon openness of the GB, this has both a spatial and visual aspect. The construction of the new outbuilding 'X³', looked at individually has clearly taken up more space on the ground and volume of space above the ground. The construction of an additional 3-dimensional structure as things presently stand, has therefore reduced openness of the site to a degree albeit in a visually subtle manner. When compared with the outbuilding 'X²' and viewed as a replacement, it also takes up a greater amount of space. This is however within a marginal part of the site where, if it can be seen at all, is seen alongside boundary structures and robust planting where it does not impact upon the open part of the site or the openness of the GB outside of the site. As discussed above, the increase in size will be difficult to perceive and there will also be no recognisable impact upon the openness of the GB following the removal of outbuilding 'X²'.
14. In relation to the main issue, the outbuilding is not inappropriate development in the GB as it is a replacement building that is used for the same purpose and is not materially larger than the one it is intended to replace. Furthermore, it does not have any greater impact upon the openness of the GB. This does not result in any encroachment of development within the countryside. As such the development complies with the Framework and LP Policy P2.

Other matters

15. The Council has referred to another shed (marked as 'X1' on Plan 2) on the north-western boundary, close to the adjoining property Tankards which they accepted as being lawful. This was not pointed out to me on site. I am told that this building has been removed but its size, the circumstances and timing of its removal are not provided to me. I have not taken this into account in reaching my conclusions in this case.
16. The appeal site is within the Eashing Conservation Area (CA) and Tankards is a grade II listed building. Tankards is a detached traditional building set within what appear to be spacious grounds within part of the CA containing similarly spaciouly separated, mainly residential properties some of similar design. The filling station to the western end of the CA is an unusual feature of what is otherwise a pleasantly rural settlement. A distinctive bridge close to the appeal site separates the village into 2 parts. The part of the CA on the opposite side of the bridge contains some more densely developed, mainly residential properties. The multi-storey former mill building, now a public house, alongside the river is a distinctive feature also with open land around it. There is an overall spacious and semi-rural feel to the CA.
17. Within the residential grounds including within those of Tankards, there are various outbuildings of an assortment of designs, some with the functional qualities of the outbuilding being enforced against. The outbuilding is also a substantial distance from Tankards with Maple Cottage as well as other screening separating it from the Listed Building. As such, it has no visual impact upon Tankards and if there are any limited views of the building it is within this context where residential outbuildings are not unusual.
18. I have statutory duties under the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990. With respect to s66(1), for the above reasons the outbuilding preserves the setting of Tankards. Furthermore, there is no wider harm to visual or other qualities of the village, its street-scene or

nearby open spaces. With respect to s72(1) of the same Act, the development preserves the character and appearance of the CA.

Planning condition

19. The acceptability of the development is on the basis that only 1 of the outbuildings remains in situ. I canvassed the views of the parties regarding the possible wording for such a condition to secure removal of 1 of the outbuildings. Whilst there were no concerns raised with the wording that I suggested, the Council proposed a different, simplified form of condition but it did not provide a time limit for the removal of the old outbuilding. I have therefore attached a simple condition requiring the removal of the older outbuilding but including a period within which this must be undertaken.

Conclusion

20. For the reasons given above, the proposal would not be inappropriate development within the GB. The development complies with the development plan as a whole, subject to a planning condition.
21. For the reasons given above, I conclude that the appeal succeeds on ground (a), the enforcement notice is quashed and I shall grant planning permission for the erection of an outbuilding at the approximate position shown on the plan edged and hatched in black as described in the notice, as corrected.

Andy Harwood

INSPECTOR