



Appeal Decisions

Site visit made on 1 November 2022

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal A: APP/J1535/C/21/3278107

The Old School, School Lane, High Laver, Ongar, Essex CM5 0EE

- 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 Stephen Shadbolt against a notice issued by Epping Forest District Council.
 - The notice was issued on 7 June 2021.
 - The breach of planning control as alleged in the notice is:
Without planning permission:
the material change of use of the land to residential curtilage and the erection of buildings including a car port, shed, and the laying of hard standing and a driveway.
 - The requirements of the notice are:
 1. Cease the use of the land as residential curtilage
 2. Remove all buildings
 3. Remove all hard standing
 4. Remove the separate driveway
 - The period for compliance with the requirements is three months after this notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.
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Appeal B: APP/J1535/W/21/3284064

Land opposite the Old School, School Lane, Magdalen Laver CM5 0EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Stephen Shadbolt against the decision of Epping Forest District Council.
 - The application Ref EPF/1583/21, dated 3 June 2021, was refused by notice dated 6 September 2021.
 - The development proposed is described as '*Conversion of an existing building into a one bedroom dwelling. Removal of shed, polytunnels and garage building.*'
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Matters concerning the Enforcement Notice (Appeal A)

1. If an enforcement notice does not comply with the various statutory requirements set out in s173 of the 1990 Act, as amended then it will be a nullity and cannot be saved by the curative powers contained in s176(1). Leaving aside the wording of the notice's requirements for the moment it appears that the document contains all the relevant entries so as not to disqualify it at the outset. However, the Town and Country Planning (Enforcement Notices and Appeals)(England) Regulations

2002 under Part 2, 4C specifies that notices shall also show the precise boundaries of the land to which it relates, whether by plan or otherwise. In this instance, the plan provided by the Council along with the Questionnaire documents relates to a completely different site. There is a second plan amongst the Council's papers with the site ringed being the specific area of land targeted by the notice, but the papers would suggest that this relates to an enforcement notice which had been issued in March 2021 but which was later withdrawn on 1 June 2021.

2. The withdrawn notice states the site address to be land adjacent to the Old School whereas the actual address given in the notice of 7 June 2021 (that which has been appealed) refers to 'The Old School, School Lane'. This address is incorrect as that site is actually on the opposite side of School Lane.
3. Section 2 of the Council's appeal Statement also sets out a series of requirements which are inconsistent with those stipulated in the notice appealed. I acknowledge that the Council, by letter dated 1 December 2021, attempted to clarify the problem with the submission of the correct documents. However, the fact that there was no explanation earlier in the appeal process hardly makes for clarity of approach.
4. A further issue is that the enforcement notice, within its Reasons for Issue, refers to policies GB2A and GB7A as being of the Submission Version Local Plan 2017. In fact, these related instead to the now superseded Local plan of 2006.
5. Turning now to the steps identified to remedy the breach of control I will deal with each of these four points, in turn.
6. Firstly, Requirement 1, which stipulates cessation of the use of the land as residential curtilage, is incorrectly worded. The terms 'curtilage' and domestic 'garden' are not interchangeable. Curtilage defines an area of land in relation to a building, and is not a use of land. Further, as indicated here, the piece of land described as 'curtilage' is physically separated from the dwelling known as the Old School by roadway. Although the appeal site is apparently used in connection with the Old School both these areas of land are independent of one another and the Old School dwelling has its own curtilage. It would therefore have been appropriate to instead describe the breach as a change of use to 'residential garden'.
7. Second, Requirement 2 requires the notice's recipient to 'Remove all buildings'. However, the question here involves which particular buildings. Although the breach identified refers to a car port and shed I noted from my site visit that there are three other buildings on the site; two individual polytunnels and the timber framed building the subject of Appeal B. The term 'all buildings' therefore creates uncertainty for the recipient as to what exactly is needed to comply with Requirement 2.
8. Requirements 3 and 4 state, respectively, 'Remove all hardstanding' and 'Remove the separate driveway'. Both parties disagree as to the degree of hardstanding which is potentially subject to planning control. The Council says in its Statement that aerial photographs reveal that the site was heavily overgrown between the years of 2004 and 2014 with no visible buildings or ancillary structures, or areas of hardstanding for the parking of vehicles. However, save for an un-dated aerial 'close-up' photograph attached to its s78 Statement the Council has not provided any aerial photographs to this effect.

9. For his part the appellant, in his Statement, says that the existing access and driveway, hardstanding (and an extension thereto) have existed since at least 1984. He has also provided an aerial photograph from March 2017 which shows two distinct areas within the site; one showing an area of greenery, but with an adjoining L-shaped area which appears to have undergone development. The edge of a driveway off School Lane is also discernible and this is consistent with a photograph, said by the appellant to be from the 1980s.
10. I note also that the lawful development certificate applications from 2019 (Council refs: EPF/0532/19 and EPF/2146/19) related only to the use of the land and ancillary outbuildings, not the hardstanding or driveway.
11. In such circumstances the Council's decision to require the removal of *all* hardstanding and that of the driveway has not been substantiated. The case for such is not compelling and thereby might easily be significantly more onerous than would be lawful with regard to immunity from planning control.
12. None of the requirements in this instance can therefore be considered as sufficiently precise and unambiguous; something one would reasonably expect of a legal document, and certainly one representing a charge on the land. Mindful of the judgement of *Miller Mead v MHLG* [1963] 2 WLR 225 I consider that parallels can here be drawn in that the current notice's construction is so ambiguous and uncertain to the point that the owner or occupier could potentially not tell in what respect the land had been developed without planning permission or further, that they might interpretate, with reasonable certainty, what steps had to be taken to remedy the alleged breach.
13. In weighing up this case I am concerned that the enforcement notice is so littered with errors, admittedly of varying importance, that when taken together, they compound to strongly suggest its invalidity. I, therefore, have serious doubts whether, in the form issued, the notice provides the certainty necessary for it to have a reasonable chance of success.
14. Under the provisions of section 176(1) of the 1990 Act as amended it is open to me to correct any defect, error or misdescription in the enforcement notice or to vary its terms if I am satisfied that the correction or variation will not cause any injustice. It is considered that the Courts interpret the power to correct a notice very widely and that the powers in s176(1) can extend to making significant changes to the terms of the notice so as to put it on a proper footing. However, I cannot here be certain that no injustice would be caused if I were to attempt to make the significant corrections necessary. In other words I find that this notice, as issued, is incapable of correction.
15. In such circumstances it is not open to me to correct the errors in accordance with my powers under s176(1)(a) of the 1990 Act as amended since injustice would likely be caused were I to do so.
16. The enforcement notice is therefore invalid and will be quashed.

Appeal B

Preliminary Matter

17. Further to paragraph 4 of this decision letter, since my site visit was carried out the new Epping Forest District Local Plan 2011 - 2033 (DLP) has been adopted. This replaces the previous DLP which had been in force since 2006. In terms of

the main issues I have identified below the relevant policies are DM4 which is concerned with development in the Green Belt and DM2 which relates, amongst other things, to the Epping Forest Special Area of Conservation.

Background

18. Following the Council refusing planning permission in 2017 for detached buildings including car port, shed, hard-standing areas, driveway and other paraphernalia to create a home gym, art studio and games room' its decision was upheld on appeal in May 2021 (APP/J1535/D/21/3268244).
19. The submitted site plan (as existing) for the application now at appeal shows the main building's internal layout including a gym, shower, games room and studio. Although I wasn't able to inspect the timber building's interior it would appear that notwithstanding the said appeal decision the building remains in such use.

Main Issues

20. Given the site's location in the Metropolitan Green Belt, these concern:
 - 1) Whether the said development is 'inappropriate development' within the Green Belt and, if so, the effect on its openness;
 - 2) any other resultant harm, with particular regard to the development's effect on the Epping Forest Special Area of Conservation; and
 - 3) if it is inappropriate development, whether the harm by reason of inappropriateness and by reason of any other harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development

Reasons

Inappropriate development

21. The National Planning Policy Framework (the Framework) says in its paragraph 147 that the construction of new buildings is inappropriate development within the Green Belt which, by definition is harmful thereto, and should not be approved except where very special circumstances can be demonstrated.
22. There are some limited exceptions to this which are set out in paragraph 149 of the document. These include limited infilling in villages. The general assumption is that such development would not be inappropriate and would not have a significant impact on the openness of the Green Belt. In this connection the appellant indicates that buildings/structures have previously been in situ on the land and argue that the appeal site is previously developed land.
23. In the judgement of *R (Timmins) v Gedling BC* [2015] EWCA Civ 10 Lindblom LJ stated:

"...development appropriate in-and to-the Green Belt is regarded by the government as not inimical to the 'fundamental aim' of Green Belt policy 'to prevent urban sprawl by keeping land permanently open, or to 'the essential characteristics of Green Belts', namely 'their openness and their permanence' or to the five purposes served by the the Green Belt [NPPF 138]. This is the real

significance of a development being appropriate in the Green Belt, and the reasons why it does not have to be justified by 'very special circumstances'."

24. The Inspector, who dismissed the previous appeal in May 2021, considered that the retrospective proposal to retain the site's buildings constituted inappropriate development as it did not accord with any of the listed exceptions in the Framework and says, in paragraph 7 of his decision letter, that cumulatively the development conflicts with the fundamental aim of Green Belt policy in the Framework of keeping land permanently open.
25. The proposal, the subject of the current appeal involves, though, significant material differences. At my site visit I noted that the car-port or garage – which the previous Inspector had described as a substantial structure – had already been removed and, further, the scheme also involves the intended removal of the polytunnels and shed. I acknowledge the presence and extent of the hardstanding but this is not inconsistent with that of the neighbouring dwellings.
26. Further, although the previous Inspector also states that the car-port and "outbuilding" – presumably the latter refers to the single-storey timber building – are visible from School Lane, I must disagree. Whilst the car-port, when in situ, might have been visible the timber building is set significantly into the site and, due to the site's shape and configuration along with significant and effective tree, hedge and shrub planting (both at the site's School Lane boundary and upon the appeal land itself) the said building is not readily visible from School Lane.
27. The timber building at issue is modest relative to the surrounding dwellings, being of limited size. It is certainly visible from neighbouring properties as the site is sandwiched between the dwellings Cobbolds, Frogs Leap and Moonraker set within their respective curtilages but this serves to reinforce my view that the timber building as a single entity, and its use for residential purposes, does constitute limited infill in this village or rural settlement.
28. Taking all relevant matters into account I consider that any impact on the openness of the Green Belt would be minimal due to the contextual setting. By definition it is not, therefore inappropriate development for the purposes of the Framework. Neither is it in material conflict with the aims and requirements of DLP policy DM4. Accordingly, the proposed development satisfies the first main issue.

Epping Forest Special Area of Conservation (SAC)

29. The Epping Forest SAC comprises wood pasture with habitats of high conservation value, including ancient semi-natural woodland, old grassland plains, wet and dry heathland and scattered wetland. DLP policy DM2 requires all development proposals to ensure that there is no adverse effect on the integrity of the SAC. A site-based Transport Statement was produced at the application stage, although I have not seen this document amongst the appeal papers.
30. The Council has taken the view that, although the appeal site lies outside of the 3km recreational zone, it is unable to fully endorse the Statement's findings and recommendations. In the circumstances the Council considers that, in accordance with the policy's requirements, it has not been demonstrated beyond reasonable scientific doubt that the development, and any measures already proposed, would not adversely impact on the SAC. If it would, then in the absence of any planning obligation offering financial contributions in mitigation, the proposal failed to satisfy the requirements.

31. I have seen no material to indicate otherwise and must therefore agree with the Council's approach on this issue.

Conclusion on Appeal B

32. Whilst I have not found harm on the first main issue this is outweighed by the uncertainty as to whether or not the SAC would be unnacceptably impacted upon.
33. For the above reasons, and having had regard to all other matters raised, the appeal does not succeed.

Timothy C King

INSPECTOR