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## Appeal Decision

Site visit made on 11 July 2023

**by Stephen Hawkins MA, MRTPI**

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

**Decision date: 28 July 2023**

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**Appeal Ref: APP/M1520/C/22/3297729**

**57A The Dale, Thundersley, Benfleet, Essex SS7 1TD**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Darren Thorn against an enforcement notice issued by Castle Point Borough Council.
  - The notice was issued on 29 March 2022.
  - The breach of planning control as alleged in the notice is without planning permission, the linking of two caravans with attached corridor to form a new building and the erection of raised timber decking and railings.
  - The requirements of the notice are: (1) Demolish the unauthorised building shown in the approximate position marked 'A' on the plan attached to the notice. (2) Demolish the timber decking and railings also location in the approximate position marked 'A' on the attached plan. (3) Remove from the site all structures, building materials and rubble arising from compliance with requirements (1) and (2).
  - The periods for compliance with the requirements are: (1) & (2) Six months. (3) Eight months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act have lapsed.
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### Decision

1. 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.

### Ground (c) appeal

2. The ground of appeal is that the matters alleged in the enforcement notice do not constitute a breach of planning control. It is for the appellant to show why their appeal should succeed on this ground, the relevant test of the evidence being on the balance of probability.
3. The appeal property contains a detached two storey dwelling. The dwelling occupies a generously sized, triangular-shaped plot which is accessed from a private drive. Two static caravans have been stationed on sloping land towards the end of the rear garden. I am given to understand that whilst a single caravan had been at the property for some years, the second one arrived more recently. The caravans are stationed parallel to, but slightly set apart from, one another. A link extension between the caravans and a raised deck fills most of the intervening space. The external walls of the caravans and the extension are clad in timber board, the deck also being constructed in timber. There are steps leading from the deck down to the rear garden level. The deck

is enclosed by railings on either side of the steps. Part of the deck is raised further, with steps leading up to a doorway in one of the caravans. Raised timber decks and railings are also on the south-facing ends of the caravans.

4. The definition of development set out in s55 (1) of the Act includes the carrying out of building, engineering, mining or other operations in, on, over or under land. The definition of building operations in the Act at s55 (1A) includes the demolition of buildings, rebuilding, structural alterations of or additions to buildings and other operations normally undertaken by a person carrying on a business as a builder. A building is defined in s336 (1) of the Act as including any structure or erection, and any part of a building, but does not include plant or machinery comprised in a building.
5. The extension is a built feature of considerable size, its width and depth being not dissimilar to that of the width of one of the caravans and also being of a comparable height. It is highly likely that the extension was constructed on site from raw materials. It is entirely possible that the construction of the extension including fitting it out internally took place over some time, being significantly longer than a few days' work. The extension is clearly intended to remain in situ indefinitely. The walls and roof of the extension join both caravans together physically to form an assembled structure of substantial scale. The extension roof is contiguous with the new roof fitted over one of the caravans. The extension therefore forms an integral part of the assembled structure and provides it with a considerable measure of permanence. The extension is likely to be of substantial weight, also contributing to the assembled structure having an appreciable element of attachment to the ground. It is unclear whether the extension could be removed easily, or whether doing so would adversely affect the physical integrity of the assembled structure. Similarly, the decking covers a considerable area. The decking is likely to have been constructed on site from raw materials, it is clearly intended to remain in situ indefinitely providing a degree of permanence and it is fixed securely to the ground by timber posts as well as by its own weight.
6. Furthermore, having regard to the other works undertaken to the caravans as well as the extension, including fitting of the cladding and in one case, a new roof, I highly doubt that the assembled structure is capable of being picked up intact and moved in no more than two sections. There was nothing to suggest that the assembled structure met the statutory definition of a caravan or fell within the size limits applicable thereto<sup>1</sup>. Therefore, as a matter of fact and degree, applying the well-established tests of size, degree of permanence and physical attachment, the assembled structure and the decking both have the characteristics of a building. It follows that the matters alleged in the notice have involved the undertaking of building operations falling within the definition of development. Planning permission is required for the carrying out of any development of land, by virtue of s 57 (1) of the Act.
7. The appellant argued that the works involved in forming the building and erecting the decking were 'permitted development.' In the absence of a specific reference, I have assumed that they sought to rely on the planning permission granted by the GPDO<sup>2</sup> at Article 3, Schedule 2, Part 1 for certain development within the curtilage of a dwelling. This includes at Class E, the provision of a building within the curtilage of a dwelling, or the maintenance,

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<sup>1</sup> In s29 of the Caravan Sites and Control of Development Act 1960 & s13(2) of the Caravan Sites Act 1968.

<sup>2</sup> Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

improvement or other alteration of such a building, where it is required for a purpose incidental to the enjoyment of the dwelling as such and subject to the relevant size, locational and other limitations in paragraph E.1 being met.

8. In one caravan, there is a living area together with a fully fitted kitchen, a double bedroom and a toilet. In the other caravan are two further double bedrooms together with a family bathroom. The extension contains a dining room as well as an internal passage between the caravans. The building formed through undertaking the works therefore provides the facilities required for independent day-to-day private existence, i.e., the defining characteristics of a dwellinghouse. In the context of a dwelling however, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it and does not extend to normal residential uses such as separate self-contained accommodation, or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. This leads me to conclude that the works were undertaken to provide primary living accommodation, not for a purpose incidental to the enjoyment of the main dwelling. Furthermore, it is unclear whether the relevant limitations in paragraph E.1, including those pertaining to the maximum height of a building and its eaves at paragraph E.1 (e) and (f), are met. In any event, the provision of raised decking does not satisfy the limitation at paragraph E.1 (h).
9. Therefore, the works involved in forming the building and erecting the decking were not permitted by Class E. No other Class in Part 1 or in another Part of Schedule 2 is relevant in terms of ascertaining whether the works benefit from the planning permission granted by the GPDO. Development that exceeds the tolerances in the relevant Class and Part of Schedule 2 to the GPDO is entirely without planning permission. As far as I was made aware, there has been no express grant of planning permission for the works following the submission of a planning application. A breach of planning control is defined in the Act at s171A (1) (a) as carrying out development without the required planning permission.
10. Consequently, the appellant has been unable to show that the matters alleged in the notice do not constitute a breach of planning control and the ground (c) appeal fails.

## **Ground (a) appeal**

### **Main Issues**

11. The main issues in this ground of appeal are:

- Whether the works involved in forming the building and erecting the decking constitute inappropriate development in the Green Belt, having regard to the Development Plan and the National Planning Policy Framework (the Framework).
- The effect on openness.
- Whether any harm to the Green Belt by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify granting permission for the works.

## Reasons

12. The property occupies a largely rural situation beyond the more built-up part of the settlement. For the most part, dwellings in the vicinity occupy ample sized plots and they are arranged in a loose-knit fashion, with wider areas of woodland and open land lying beyond.

### *Whether inappropriate development*

13. The property is in the Metropolitan Green Belt as defined in the Castle Point Local Plan. As no relevant policies from that document were referred to in the reasons for issuing the notice, it is necessary to rely on the Framework. At paragraph 149, this advises that constructing a new building should be regarded as inappropriate development in the Green Belt. The works do not fall within any of the exceptions listed in that paragraph; there is scant evidence for example that the works involved enlarging or replacing a pre-existing building.
14. Consequently, the works constitute inappropriate development. At paragraph 147 the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

### *Effect on openness*

15. Openness is generally understood as an absence of development; it is the counterpart of urban sprawl and is capable of having spatial and visual aspects. At paragraph 137, the Framework advises that openness is an essential characteristic of the Green Belt.
16. In addition to having a substantial footprint, the works have resulted in the provision of built structures with a considerable volume at the property. The works have led to a significant portion of the property's rear garden being covered by or adjacent to substantial built form. The overall footprint and volume of the works does not compare favourably with the more limited proportions and less permanent characteristics associated with the pre-existing single caravan. Therefore, the works have contributed to a modest erosion in openness from a spatial perspective. Furthermore, although the property occupies a reasonably secluded location the reduction in openness is apparent in views of parts of the works from the adjacent private drive through gaps in the boundary hedge, particularly around the entrance gate.
17. Accordingly, the works have also caused a modest degree of harm to the openness of the Green Belt. I attach substantial weight to the harm to openness, as well as to that caused by reason of inappropriateness.

### *Other considerations*

18. The Council is entitled to take enforcement action against a breach of planning control where they consider it expedient to do so. There is no requirement to await the submission of a planning application prior to issuing an enforcement notice.

### *Planning balance & conclusion-Ground (a)*

19. The works involved in forming the building and erecting the decking constitute inappropriate development in the Green Belt, also failing to preserve its

openness. No other considerations clearly outweigh the totality of the harm to the Green Belt. As a result, the very special circumstances required to justify granting permission for the works do not exist. It follows that the works are inconsistent with the Framework.

### **Conclusion**

20. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

*Stephen Hawkins*

INSPECTOR