



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

Appeal Ref: APP/B1550/C/22/3295018

Land at The Grange, 5 Murrels Lane, Hullbridge, Essex SS5 6AB

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Mr Brian Mitchell against an enforcement notice issued by Rochford District Council.
 - The notice was issued on 10 January 2022.
 - The breach of planning control as alleged in the notice is without planning permission, the erection of a two-storey building intended to be used as a garage, games room and storage (building is shown labelled A and hatched on plan 2 attached to the notice).
 - The requirements of the notice are: 1. Demolish the two-storey building. 2. Remove the building A's foundations and any associated plumbing pipework installed. 3. Infill the foundation trenches and lay appropriate topsoil and seed area with grass seed. 4. Remove from the site all resultant materials and debris arising from carrying out the steps 1 to 3 above.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (f) 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 be corrected by in paragraph 3 the deletion of the words 'intended to be used as a garage, games room and storage'. Subject to this correction 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.

Preliminary Matter

2. At paragraph 3, the enforcement notice alleges a breach of planning control comprising 'the erection of a two-storey building intended to be used as a garage, games room and storage....' The building is incomplete. No doors and windows have been fitted at ground floor level, the internal walls and floors are unfinished, the building has not been fitted out internally and there are no services. At s172 (1), the Act provides that an enforcement notice may be issued where it appears that there *has been* (my emphasis) a breach of planning control. As no provision is made in the Act for issuing an enforcement notice in relation to a prospective breach of planning control, the notice cannot attack a use which has yet to occur. Therefore, I shall exercise the power of correction in s176 (1) of the Act to remove reference to the intended use of the building from the allegation. There would be no injustice caused to the appellant or the Council in doing so.

Ground (a) appeal

Main Issues

3. The appeal property is located within the Metropolitan Green Belt. Therefore, the main issues in this ground of appeal are:
- Whether erection of the building constitutes inappropriate development, 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 planning permission for the building.

Reasons

4. The notice attacks a freestanding two-storey building erected in the curtilage of a modern detached dwelling. Not far from the dwelling are a group of buildings in residential and other uses, including for equestrian purposes. The buildings occupy a definitively rural setting, being enveloped by fields forming part of a wider area of open, gently undulating countryside with occasional belts of maturing vegetation, punctuated by straggles of residential and business development.

Whether inappropriate development

5. Policy GB1 of the Rochford District Council Core Strategy (CS) seeks to direct development away from the Green Belt as far as practicable and to prioritise the protection of land within it. At paragraph 149, the Framework advises that the construction of a new building should be regarded as inappropriate in the Green Belt unless it falls within the exceptions listed at sub-paragraphs (a) to (g) therein.
6. The main parties agree that the building constitutes inappropriate development in the Green Belt. I concur. None of the exceptions in paragraph 149, in particular at (c) the extension or alteration of a building not resulting in disproportionate additions over and above the size of the original building, apply. Therefore, the building fails to accord with CS Policy GB1 and it is inconsistent with paragraph 149 of the Framework. 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

7. Openness is generally understood as an absence of development and is the counterpart of urban sprawl. At paragraph 137, the Framework advises that openness is an essential characteristic of the Green Belt.
8. The building has a significant footprint together with a considerable volume. As there is no suggestion that the footprint had previously been occupied by substantial structures, I have to assume that built development was largely absent from this part of the curtilage prior to erection of the building.

Consequently, the building has significantly increased the spread of structures over the curtilage, considerably more of which is now occupied and enclosed by, or adjacent to, substantial built form. Moreover, the building is further from the group of buildings, representing a significant intrusion of built form into open land. Even during the summer months there are glimpses of the building in the wider area as a substantial built feature, poorly related to the group of buildings and contrasting unfavourably with the largely open and undeveloped characteristics of the surrounding land, thereby adding a visual aspect to the effect on openness.

9. Accordingly, erecting the building has resulted in a moderate erosion of and a corresponding degree of harm to openness from both a spatial and visual perspective. I attach substantial weight to the harm to openness, as well as to that caused by reason of inappropriateness.

Other considerations

10. The GPDO¹ at Article 3, Schedule 2, Part 1, Class E grants planning permission for provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling as such, or the maintenance, improvement or other alteration of such a building or enclosure. This is subject to, amongst other things the limitations in paragraph E.1, including the height limits at sub-paragraph (e), being met. The appellant argued that erecting Class E incidental outbuildings at the property in future would have a greater adverse effect on openness, spatially and visually, compared to the building. Given its largely undeveloped characteristics and the elevated situation relative to the more expansive area of countryside beyond, land within the curtilage of the dwelling makes an appreciable contribution to openness in the locality. A suitable planning condition removing Class E permitted development rights at the property could be attached were I minded to allow the ground (a) appeal and grant permission for the building.
11. Nevertheless, there is little clear and convincing evidence to show that an outbuilding or other similar structures with a comparable or greater footprint and/or volume than the building could be erected in the curtilage within the limits of Class E. The appellant provided little that would enable an assessment as to whether such a building or buildings are genuinely and reasonably required for a purpose or purposes that are incidental to the enjoyment of the dwelling. Consequently, I am not persuaded that the erection of substantial Class E outbuildings within the curtilage of the dwelling represents a realistic fallback position. It follows that there is little evidence of a significant risk of encroachment into the countryside through the future exercise of Class E rights at the property. Accordingly, I afford this matter limited weight.
12. As an alternative to demolishing the building, the appellant proposed reducing its height to no more than 4 m. As this would involve altering the building it would constitute a part of the development described in the notice, for which permission has been sought under the deemed planning application pursuant to ground (a). At s177 (1)(a), the Act provides that planning permission may be granted in respect of the whole or part of the breach described in the notice. Even so, the footprint and scale of the altered structure would not be significantly different compared to that of the building as it currently exists.

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Consequently, this alternative would not reduce the adverse effect on openness to a material extent, nor would it make any material difference to the harm to the Green Belt caused by the building through inappropriateness.

13. As a further alternative, the appellant provided a revised scheme which as well as proposing a reduction in height to 4 m and reducing the eaves height to no more than 2.5 m, would also reduce the footprint so that no part of the building would be forward of the principal elevation of the dwelling. However, that revision includes a proposed side extension to the building. As this is not part of what has been built, it is not part of the development described in the notice and cannot form part of the deemed planning application arising from the ground (a) appeal. Moreover, I am not persuaded that erecting a building materially similar to that shown in the revised scheme represents a realistic fallback position. Although the revised scheme might well meet the dimensional and locational limitations in paragraph E.1, unless such a building is genuinely and reasonably required to accommodate a purpose incidental to the enjoyment of the dwelling it would not fall within Class E. It is unclear whether the Council undertook more than a cursory assessment of the requirement for a proposed incidental outbuilding at the property prior to refusing an application for an LDC in 2021, given that the locational limitation in paragraph E.1 (c) would not have been met². In any event, my findings are based on the current circumstances and the evidence before me.
14. Compared to its retention either as built or in an altered form as set out above, it is entirely possible that additional carbon emissions would arise from demolishing the building and removing the constituent materials, notably from the use of plant and equipment associated with such activity. In addition, a quantity of construction waste is likely to be generated. Even so, given the modest scale and limited duration of the works and the ability for the resulting materials to be re-used or recycled, demolishing the building does not run counter to the objective of supporting the transition to a low carbon future. Moreover, such an argument could easily be repeated in respect of other harmful unauthorised development. Therefore, I attach limited weight to the consequences in terms of climate change of complying with the notice.
15. The Council made no definitive case regarding any failure to accord with CS Policy CP1 and Policy DM1 of the Rochford District Council Development Management Plan, both of which concern the design of new development. The Council's officer delegated report for a planning application made in 2021 in respect of the building³ concluded that there would be no adverse effect on the character and appearance of the area; there is no sound reason to find otherwise. However, this is a neutral factor which weighs neither for nor against granting planning permission for the building.
16. There is little firm evidence to indicate that erecting the building involved intentional unauthorised development. The condition attached to the planning permission for the dwelling⁴ requiring the demolition of a chalet bungalow and garage within the group of buildings is a largely separate matter. Failure to comply with that condition does not necessarily reflect the appellant's awareness of the requirement for planning permission to erect the building. It is entirely possible that following erection of the dwelling the appellant

² Council Ref: 20/00719/LDC.

³ Council Ref: 21/00102/FUL.

⁴ Council Ref: 00/00770/FUL

misunderstood the scope of what could be erected under Class E. Therefore, this matter does not weigh against granting permission for the building.

Planning balance and conclusion-Ground (a)

17. Erecting the building constitutes inappropriate development in the Green Belt, also harming its openness. The other considerations, including permitted development rights in Class E and the effect in terms of climate change of complying with the notice do not clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify granting permission for the building do not exist.

Ground (f) appeal

18. The ground of appeal is that the requirements of the notice are excessive.
19. An enforcement notice can have the purpose of remedying the breach of planning control, including by restoring the land to its condition before the breach took place and making a development comply with the terms of any planning permission granted in respect of the land, or it can remedy any injury to amenity caused by the breach. The notice requires the building to be demolished. It does not require alterations to the building, for example reducing it in size. Therefore, although the notice does not state as such its purpose must be to remedy the breach of planning control by restoring the property to its condition prior to the breach taking place.
20. The proposed alterations to the building have been examined in the ground (a) appeal. In the context of ground (f), for the reasons set out above I am not persuaded that the building could be altered to bring it within the limits of what would otherwise have been permitted by Class E. Not removing the demolition materials would lead to elements of built fabric that are integral to and which support the breach remaining at the property. A requirement which led to part of the building remaining in situ would sustain the breach and would not restore the property to its condition prior to the breach taking place, thereby not achieving the purpose of the notice. Consequently, the lesser steps suggested do not represent an obvious alternative to the notice requirements. No other alternative to those requirements was drawn to my attention and to my mind, nothing else would remedy the breach.
21. Accordingly, the notice requirements are not excessive; they are a proportionate remedy being the minimum works necessary to restore the property to its condition before the breach took place. The ground (f) appeal fails.

Ground (g) appeal

22. The ground of appeal is that the time allowed for complying with the notice requirements falls short of what is reasonable.
23. Given its size and incomplete state, demolishing the building is likely to be a small-scale and relatively straightforward job for a suitably experienced small building contractor. In all probability, there are a significant number of contractors with the relevant skills and expertise to undertake the remedial works who would also be available to do so at reasonably short notice. No firm evidence of any ongoing significant problems with the availability of such

contractors was drawn to my attention. In my estimation, such works would normally take little more than a month or so at most to complete.

24. I appreciate that the appellant may wish to recover as much as possible of the constituent materials from the building for re-use. Nevertheless, I am not persuaded that this necessarily represents a practicable or cost-effective approach or that even if it were, the time needed to carry out the works would be significantly extended as a result. Moreover, there is little assurance that the works would be carried out in the manner suggested by the appellant.
25. Given the above factors, in my view the three-month period specified in the notice strikes an appropriate balance between affording the appellant a reasonable amount of time to arrange for and to have the works carried out whilst ensuring that the breach and the planning harm arising therefrom is remedied as soon as possible. Extending the period for compliance to six months on the other hand would perpetuate the breach and its associated planning harm.
26. Accordingly, the period for complying with the notice requirements is reasonable and not too short. The ground (g) appeal also fails.

Conclusion

27. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice with a correction and refuse to grant planning permission on the deemed application.

Stephen Hawkins

INSPECTOR