



Appeal Decisions

Site visit made on 23 August 2023

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30TH AUGUST 2023

Appeal A: APP/N0410/C/22/3299794

Appeal B: APP/N0410/C/22/3299795

Land at Brynaweton Farm, Swallow Street, Iver, Buckinghamshire SL0 9QZ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - Appeal A is made by Mr Inderjit Singh and Appeal B is made by Mrs Paramjit Kaur against an enforcement notice issued by Buckinghamshire Council.
 - The enforcement notice, numbered EN/19/0600, was issued on 25 April 2022.
 - The breach of planning control as alleged in the notice is the erection of a detached building.
 - The requirements of the notice are 1) demolish the building (shown hatched on the attached plan) and 2) remove all materials and debris resulting from compliance with Step 1 of this Notice from the Land (shown edged in a thick black line on the attached plan).
 - The period for compliance with the requirements is three months.
 - Appeal A is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) and Appeal B is proceeding on the grounds set out in section 174(2) (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended have lapsed.
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Decisions

Appeal A: APP/N0410/C/22/3299794

1. It is directed that the enforcement notice be corrected by deleting '3. *TIME FOR COMPLIANCE*' and replacing it with '6. *TIME FOR COMPLIANCE*' and deleting '4. *WHEN THIS NOTICE TAKES EFFECT*' and replacing it with '7. *WHEN THIS NOTICE TAKES EFFECT*' and varied by deleting the words '*within three months of this Notice taking effect*' for the time for compliance and replacing them with '*within four months of this Notice taking effect*'. Subject to these corrections and the variation, the appeal is dismissed and 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.

Appeal B: APP/N0410/C/22/3299795

2. It is directed that the enforcement notice be corrected by deleting '3. *TIME FOR COMPLIANCE*' and replacing it with '6. *TIME FOR COMPLIANCE*' and deleting '4. *WHEN THIS NOTICE TAKES EFFECT*' and replacing it with '7. *WHEN THIS NOTICE TAKES EFFECT*' and varied by deleting the words '*within three months*

of this Notice taking effect' for the time for compliance and replacing them with *'within four months of this Notice taking effect'*. Subject to these corrections and the variation, the appeal is dismissed and the enforcement notice is upheld.

The Notice

3. There is an error in the numbering of the sections in the Notice. It should say '6. *TIME FOR COMPLIANCE*' instead of '3. *TIME FOR COMPLIANCE*' and '7. *WHEN THIS NOTICE TAKES EFFECT*' instead of '4. *WHEN THIS NOTICE TAKES EFFECT*'. I shall accordingly correct the Notice and in doing so no injustice would be caused to any of the main parties.

Preliminary Matters

4. On my site visit, I was able to see that the building had changed from that which was positioned on the site when the enforcement notice was issued. I was able to compare the current appearance of the building with that shown on the photographs submitted by both the appellant and the local planning authority (LPA). The building had been rendered and the windows were in a different colour (i.e., dark grey rather than white). The lower section of building, including lower ground level window openings, were no longer visible from the garden area owing to the back filling of earth immediately alongside the edges of the building. The main parties agreed on site that an internal staircase had also been removed which previously gave access to the lower ground level floorspace.

Reasons

Appeals on ground (c)

5. The appeal made on ground (c) is that the matters alleged do not constitute a breach of planning control.
6. The appellant considers that planning permission is not required for the breach of planning control by virtue of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
7. Under Class E of the GPDO, outbuildings are permitted development if they are within the curtilage of a dwellinghouse and *'required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'*. This is subject to other limitations including E.1 (d) which states that the development would not be permitted if *'the building would have more than one storey'* and E.1 (e) which refers to the *'height of the building not exceeding 4 metres in the case of a building with a dual-pitched roof'*.
8. There is dispute between the main parties about the height of the appeal building. Paragraph 2(2) of the GPDO states that *'the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph 'ground level' means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it'*.

9. In respect of considering the height of the appeal building it is necessary that I consider this based on the evidence that is before me relating to land levels when the enforcement notice was issued and not based on what exists on the site now. The main parties agreed on site that the building measured 3.9 metres taken from the highest land immediately adjacent to the building. However, the lower section of building was visible from the garden when the enforcement notice was issued and hence the evidence is that the land immediately adjacent to the building was previously lower in height. Based on the ground level immediately adjacent to the building (i.e., the land that was immediately adjacent to the visible lower section of building), I find that the building exceeds 4 metres in height. It is therefore not permitted development by virtue of E.1 (e) of the GPDO.
10. The building is significant in size. While space for the gym is justified in terms of being required for a purpose incidental to the enjoyment of the dwellinghouse, two separate changing rooms positioned off a corridor is, in my judgment, excessive in size. Furthermore, there is no reasonable justification provided in terms of why a lower ground level would be reasonably needed in association with the gym. In correspondence, and following my request for clarification, the appellant comments that the basement *'is only accessible from the interior and space therefore has no practical use other than storage'*. It is not clear whether this would be storage in association with the gym or for a separate use.
11. Overall, I do not consider that the evidence supports a claim that the building is 'required' for a purpose that is incidental to the enjoyment of the dwellinghouse known as Brynaweton Farm. The Courts have held that the term 'required' can be interpreted as meaning *'reasonably required'*. In this case, the appellant has not provided adequate justification that the buildings is reasonably required to be of the size and height as built. For the above reasons, the building is also not permitted development.
12. When the enforcement notice was issued, the building had more than one storey. Therefore, it does not meet limitation E.1. (d) of the GPDO. Reference to 'one storey' means one level or floor and in this case the breach of planning control has two levels or two floors or, put another way, it is two storeys. The appellant claims *'it is clearly single storey, being a bungalow type design and has a height consistent with this'*. The design or appearance of the building is not relevant to whether it has one or more storeys.
13. For the above reasons, I conclude that the matters alleged constitute a breach of planning control. Therefore, the ground (c) appeals fail.

Appeal on ground (a) and the deemed planning application

Main Issue

14. The appeal is made under ground (a) which is that planning permission ought to be granted in respect of the breach of planning control alleged in the notice. I have considered the reasons for issuing the enforcement notice. The appeal site falls within land designated as Green Belt. Therefore, the main issues are: -

- whether or not the development is inappropriate development in the Green Belt including its effect on openness and the purposes of the Green Belt,
- the effect of the development on the character and appearance of the area, and
- if the development is inappropriate in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development.

Whether inappropriate development in the Green Belt

15. The appellant has indicated that the upper floor would be used as a gymnasium, plus two additional rooms to provide separate male and female changing facilities. It is not certain what the lower floor would be used for. The appeal building includes eight dormers and a crown roof and is positioned within an enclosed garden area of the dwellinghouse known as Brynaweton Farm.

Effect on openness and purposes of the Green Belt

16. The free-standing detached building is significant in terms of both its footprint and height. It is appreciated as a large and bulky building when seen in this garden setting. It is not as large as the main dwelling on the site but is nonetheless substantial in scale and this is particularly the case owing to the eight dormers, roof design and as it takes up a significant proportion of the width of the rear garden.
17. The free-standing detached building is about 20 metres from the dwelling. As a matter of fact and degree, it is not an extension to the dwelling. The separation distance involved is such that it is seen as a physically separate outbuilding. In respect of policy GB10 of the South Bucks District Local Plan (adopted 1999 and consolidated 2011) (LP) which relates to '*extensions to dwellings in the Green Belt*', and for the above reasons, I find that the appeal building is not '*small scale*' in relation to the size of the dwelling. While I accept that the garden is large, I nevertheless find that owing to its height, design and footprint, it is not seen as '*small scale*' in relation to the size of the residential curtilage. Therefore, the development does not accord with the Green Belt requirements of policy GB10 of the LP.
18. The above policy is, however, not consistent with Green Belt policy in the National Planning Policy Framework 2021 (the Framework) in so far as considering whether development proposals are inappropriate. Of relevance is paragraph 149 of the Framework which states that the construction of new buildings is inappropriate in the Green Belt save for several exceptions including '*the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building*'.
19. I find, as a matter of fact and degree, that the appeal development does not constitute an extension or alteration to any original building. Instead, it amounts to the erection of a physically separate and free-standing detached outbuilding some 20 metres away from the dwellinghouse on the site. It does

not therefore meet any of the building exceptions listed in paragraph 149 (a) to (f) of the Framework.

20. I accept that the building has been erected on garden land within an area of countryside and not a '*built up area*'. Consequently, the land is previously developed in respect of the definition contained within Annex 2 of the Framework. Even if one were to consider the appeal development as '*the partial redevelopment of previously developed land*' with reference to paragraph 149 (g) of the Framework, it is clear that owing to the scale and position of the building it has had a greater impact on the openness of the Green Belt than the existing development', i.e. the open and essentially undeveloped garden that existed prior to the breach of planning control. Therefore, the breach of planning control does not meet the exception in paragraph 149 (g) of the Framework.
21. For the above reasons, I conclude that the appeal building is inappropriate development in the Green Belt. It is therefore, by definition, harmful to the Green Belt. Paragraph 148 of the Framework makes it clear that substantial weight should be given to any harm to the Green Belt.

Openness and purposes of the Green Belt

22. The effect of the openness of the Green Belt is essentially a localised one. The building can be seen from the lane/public footpath leading to the site and from immediately surrounding land. The building is some distance away from the dwelling on the site and is seen as being an isolated form of development. Overall, I find that the development has had a modest adverse impact on the openness of the Green Belt.
23. The LPA comment that the development is tantamount to the erection of dwelling. The enforcement notice does not allege a material change of use and the appellant has indicated that the building was erected for the purpose of being used as a gymnasium. Nonetheless, the building does very much have the appearance of an imposing dwelling, and, in this regard, it has unacceptably urbanised this part of the countryside. I therefore find that the proposal has, to a limited degree, resulted in conflict with one of the purposes of Green Belt, namely that of assisting in safeguarding the countryside from encroachment.

Effect on the character and appearance of the area

24. This area of countryside does include a sporadic cluster of buildings and storage type uses. Nonetheless, the area also includes a number of fields and, overall, there is a pleasing sense of spaciousness and undeveloped agricultural fields adding positively and distinctively to the character and appearance of the area. While the garden associated with the appeal dwelling is relatively large, it nevertheless contributed positively to the general openness and spaciousness of the area prior to the breach of planning control taking place.
25. In this case, the appeal building is not closely aligned with the appeal property and instead it is seen as an imposing, substantial and separate building that detracts from the otherwise spacious and undeveloped character that prevails in the locality. Furthermore, the building is dominant and imposing and is not appreciated as being subordinate in scale to the dwelling on the site.

26. I therefore find that some limited harm has been caused to the character and appearance of the area. In this regard, the development does not accord with the character and appearance requirements of policy H13 of the LP and paragraph 130 of the Framework.

Other considerations

27. I accept that a lawful development certificate¹ (LDC) for an outbuilding to include a gymnasium, WC and entertainment room has been issued by the Council. The LDC is not a planning permission. It instead confirms that on the given date it was permitted development and, if built, would be immune from enforcement action. The LDC is nonetheless a material planning consideration to weigh in the planning balance. Indeed, the evidence is that an outbuilding occupying a similar footprint to that of the appeal building could be erected on the same part of the garden utilising Class E permitted development rights.
28. However, I do not afford significant weight to the LDC as a fallback position. This is because the appeal building is much higher and bulkier than the building considered and permitted under the LDC. In other words, the effect on the openness of the Green Belt would be less severe if the LDC development were to be constructed.
29. I have my doubts, in any event, if the LDC can reasonably be compared to the appeal development for other reasons. Indeed, the plans that accompany the LDC development do not show changes to the levels of the garden in the same way as the appeal development. Indeed, the evidence in the form of photographs show that when the enforcement notice was issued the building had a lower and upper level and hence a stepping down in land levels. I deal with this matter again as part of the ground (f) appeal.

Planning balance and conclusion

30. The development does not accord with the Green Belt requirements of policy GB10 and H10 of the LP. This weighs against allowing the deemed planning application. Furthermore, in considering up to date national Green Belt planning policy in the Framework, I find that the breach of planning control constitutes inappropriate development in the Green Belt. I afford this harm substantial weight in decision making terms. Moderate harm has been caused to the openness of the Green Belt and there is conflict with one of the purposes of Green Belt. Furthermore, limited harm has been caused to the character and appearance of the area.
31. I conclude that the harm to the Green Belt by reason of inappropriateness, and the other identified harms, is not clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify development. Therefore, the ground (a) appeal fails.

Appeals on ground (f)

32. An appeal on ground (f) makes the claim that the steps required by the notice to be taken exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

¹ Application Ref PL/18/2545/SA dated 30 August 2018

33. The appellant considers that the requirement to demolish the building is excessive as an LDC has been approved for an outbuilding and hence the enforcement notice should permit adaptations to the building so that it reflects that which is permissible under permitted development rights.
34. On the available evidence before me, the unauthorised building is materially different to that permitted in respect of the LDC which is the only development before me which has previously been deemed to be lawful. Indeed, the LDC building does not include steps up to the upper floor level, does not include eight dormers, does not include an upper and lower floor, does not include the same roof design and its internal configuration would be different. Furthermore, I would add that the LDC does not show any changes to land levels, whereas the evidence indicates that breach of planning control includes lower and upper levels to the building. It would therefore appear that some land level changes have taken place to facilitate the erection of the unauthorised building.
35. For the above reasons, I find that the requirements of the notice are not excessive as they remedy the breach of planning control. Therefore, I conclude that the ground (f) appeals fail.

Appeals on ground (g)

36. An appeal on ground (g) makes the claim that the period specified in the enforcement notice in accordance with s173(9) of the Act falls short of what should reasonably be allowed.
37. The appellant makes the claim that three months for compliance with the enforcement notice is not reasonable as he would need more time to both source a contractor and thereafter ensure that the works are completed. The appellant does not, however, indicate what compliance period would be reasonable. However, on the basis that the appeal relates to a large outbuilding, and no doubt a professional contractor would need to be employed, I shall vary the compliance period to four months. I consider that this would offer a reasonable time to both source a contractor and ensure that the building is fully demolished.
38. For the above reasons, I conclude that the ground (g) appeal succeeds. I shall therefore vary the compliance period to four months.

Conclusions

Appeal A: APP/N0410/C/22/3299794

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

Appeal B: APP/N0410/C/22/3299795

40. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice with corrections and a variation.

D Hartley

INSPECTOR