



Appeal Decision

Site visit made on 29 May 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 July 2024

Appeal Ref: APP/W1525/C/23/3319986

Land at The Gallops, Elm Lane, Roxwell, Chelmsford, Essex CM1 4NJ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr John Ansett against an enforcement notice issued by Chelmsford City Council.
 - The notice was issued on 15 March 2023.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a car port, a building, and a hard surface.
 - The requirements of the notice are to:
 - i. Demolish the building outlined in blue in the approximate location on the attached plan.
 - ii. Demolish the building outlined in green in the approximate location on the attached plan.
 - iii. Demolish and otherwise scrape clear from the land the hard surface shown outlined in purple at the approximate location on the attached plan.
 - iv. Restore the land affected by the works carried out in step (iii) to its former condition, by seeding with grass seed.
 - v. Remove from the land all debris and other waste material resulting from the works carried out at steps (i) to (iii).
 - The period for compliance with the requirements is: three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f), (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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Preliminary Matters

1. The appeal was not originally made on ground (d) but there were some suggestions in evidence that the appellant considered enforcement action could not be taken at the date the notice was issued as it had become lawful. I have allowed the parties to comment and, as a result, will consider an appeal under ground (d).

The Appeal on Ground (d)

2. An appeal under this ground is that, at the date when the notice was issued, no enforcement action could be taken in respect of the breach of planning control which may be constituted by those matters. The burden of proof for this ground is on the appellant, with the relevant test of the evidence being on the balance of probability. Case law indicates that evidence does not need to be corroborated by independent evidence to be accepted, but does need to be sufficiently precise and unambiguous, even if there is no evidence to contradict it.

3. The enforcement notice was issued on 15 March 2023. The building operations would become lawful were it to have been substantially completed for a period of 4 years beginning with the date on which the operations were substantially completed.
4. The appellant suggests that the car port, shed or hardstanding had been completed more than four years prior to the issue of the notice. Limited evidence has been supplied in support of that contention.
5. The Council have supplied Google Earth aerial photographs dated 5 September and 4 October 2020 that do not show the car port, shed or hard surface. I have also been supplied with a photograph that I understand was taken in January 2021 prior to the construction of the car port and another showing the car port under construction that I understand was taken on 23 November 2021
6. For these reasons, I conclude that, on the balance of probabilities, the car port, shed and hard standing were not substantially complete until some date after 5 September 2020. As a result, any four year period would not have elapsed prior to the notice being issued on 15 March 2023.
7. On that basis, the appeal under ground (d) should fail.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

8. The development is located within the Green Belt and setting of Mountneys House that is listed Grade II. In determining this appeal involving a listed building or its setting I have had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
9. As a result, the main issues are:
 - Whether the development comprises inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - Whether the proposal would preserve the setting of the listed building; and
 - 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 required to justify the proposal.

Reasons

Inappropriate development

10. The National Planning Policy Framework (the Framework) states that new buildings within the Green Belt should be considered inappropriate with a number of exceptions. Policies S11 and DM6 of the Chelmsford Local Plan (LP) seek to protect the openness and permanence of Green Belts and provides similar exceptions to inappropriate development. These include limited infilling or the partial or complete redevelopment of previously developed sites, whether redundant or in continuing use which would not have a greater impact on the openness of the Green Belt and the purposes of including land within it than the existing development. The Framework confirms that previously developed land includes land which is occupied by a permanent structure, including the curtilage of the developed land. It excludes land in built up areas such as residential gardens.

11. The appellant indicates they consider this land is within the curtilage of The Gallops, but outside a built up area, such that it should be considered previously developed. I understand that The Gallops is a former agricultural or stable building that was converted to residential use following the grant of planning permission and listed building consent references 17/01214/FUL, 17/01215/LBC and 17/01214/NMAT/1. I have not been supplied with a plan showing the extent of the site relating to those applications. However, the site of the car port, building and hard surface appears to be outside the areas identified as garden on the Proposed Site Layout plan. That indicates they are outside the residential curtilage of the dwelling.
12. If the car port, building and hard surface were within the curtilage I would need to consider whether they have an effect on the spatial and visual openness of the Green Belt. The car port and building are located to either side of the access drive to The Gallops and other residential dwellings converted from the former agricultural buildings. There are mature hedges and trees around the open space containing the buildings and hardstanding, other than on the side of The Gallops and its neighbours. There is a public footpath to the side of the site, beyond the hedge. Views into the site from beyond are restricted to a large extent by the hedges and trees.
13. Although small in scale and low in height, the buildings have some effect on the visual openness of the Green Belt, given their visibility on the access drive and in glimpsed views from elsewhere. The car port is adjacent to the drive, within a grassed area, such that it is prominent in views along the drive, visually affecting openness. The other building is tucked into the hedge, which restricts its visibility to a large extent such that its visual harm is limited. The hard standing is at ground level but does provide additional space for turning or parking of vehicles such that the use results in it having a visual effect on the openness of the Green Belt.
14. The development has a spatial impact as the buildings result in encroachment of built development into the Green Belt. Use of the hard standing also results in some harm to spatial openness. That also means the development conflicts with the purpose of the Green Belt relating to safeguarding the countryside from encroachment.
15. For these reasons, I conclude that the car port, building, and hard surface are inappropriate development that harms the openness of the Green Belt and conflicts with the purposes of including land within it, contrary to Policies S11 and DM6 of the LP and the Framework.

Listed building

16. Mountneys House is a late 16th century timber framed house with a steep tiled roof within a rural setting. The Gallops and attached houses are located within buildings that may have been stable or agricultural buildings adjacent to and associated with Mountneys House. The significance of the listed building is derived from its historic appearance within a rural setting, from which it can be experienced.
17. The location of the car port and hard surface is separated from Mountneys House by a mature hedge. The other building is located within the hedge and it is unclear whether it can be seen from Mountneys House, although its size and colour would mean visibility would be limited. As a result, the development

cannot be easily seen from or within the same views as Mountneys House. However, they do introduce domestic development into what has previously been an undeveloped area on the approach to the buildings that may have been associated with the listed building.

18. For these reasons, the car port, building and hard surfacing do harm the setting of Mountneys House. This results in harm to the significance of Mountneys House as a heritage asset. That harm is less than substantial. Nevertheless, it is a matter of considerable importance and weight in considering the desirability of preserving the setting of the listed building.
19. Paragraph 208 of the Framework establishes that, where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. The development would serve the needs of the occupiers of The Gallops and provide a turning space close to the gate to The Gallops and the neighbouring dwellings. These are largely private rather than public benefits for the occupiers of The Gallops. As such, the public benefit is minimal and cannot outweigh the identified harm to the listed building.
20. For these reasons, I conclude that the car port, building and hard surfacing harm the setting of the listed building at Mountneys House, contrary to Policies S3, DM13 and DM23 of the Chelmsford Local Plan (LP). These policies seek high quality design that conserves or enhances the significance, including any contribution made by the setting, of listed buildings and that any harm will be considered against the public benefits arising from the development.

Other considerations

21. The ground (a) appeal and deemed planning application is in respect of the matters stated in the enforcement notice as constituting the breach of planning control (Section 177(5) (s177(5)) of the Town and Country Planning Act 1990 as amended (the Act)). There is power when determining an appeal under s174 of the Act for the Inspector to grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters (s177(1) of the Act).
22. Under the ground (f) appeal, the appellant suggests that they could remove the sides of the car port and the shed retained as a bin store to keep bins hidden and tidy. They suggest they should also retain the hard standing. Retaining part of the development would comprise an obvious alternative to removing the whole development as required by the enforcement notice.
23. Whilst removal of the sides of the car port would have less visual effect on the openness of the Green Belt, it would not wholly overcome that harm, nor the spatial effect on openness, the conflict with the purposes of the Green Belt or the effect on the setting of the listed building.
24. Although retaining the building as a space to store bins would mean bins could be stored more neatly, it results in a permanent building. I consider that benefit is not sufficient to outweigh the harm to the openness of the Green Belt and setting of the listed building.

25. I accept the hard standing is at ground level. However, it does enable use of that space for parking and turning. I have found that would also result in harm to the openness of the Green Belt and setting of the listed building. Allowing the hard standing, even in the absence of the car port and building, to remain would result in those harms continuing.

26. For these reasons, I consider that there are no obvious alternatives that would overcome the conflicts I have found with the development plan and the Framework.

Conclusion

27. I have found that the car port, building and hard standing would harm the openness of the Green Belt and reasons for including land within it. It is inappropriate development within the Green Belt. In addition, the car port, building and hard standing harm the setting of the listed building at Mountneys, thereby affecting its significance as a heritage asset. I have considered whether there are any obvious alternatives that might overcome those conflicts. However, the substantial weight to be given to Green Belt harm and any other harm is not clearly outweighed by other considerations, either individually or cumulatively, sufficient to demonstrate very special circumstances. Therefore, the proposed development is contrary to Policies S11 and DM6 of the LP and the Framework that seek to protect the Green Belt from inappropriate development.

28. For the reasons set out above, I conclude that on balance the development does not accord with the development plan as a whole. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

29. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, 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. In this case, the requirements seek to remove the car port, building and hard surface, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.

30. The appellant suggests that they could remove the sides of the car port and the shed retained as a bin store to keep bins hidden and tidy. They suggest they should also retain the hard standing. However, retaining these elements of the development would not remedy the breach of planning control.

31. I have considered whether there are obvious alternatives to the development completed that formed part of the development under the ground (a) appeal. In this case, I have concluded that no obvious alternatives exist that would overcome the reasons for issuing the notice. As a result, such works would not remedy the breach of planning control.

32. I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

The Appeal on Ground (g)

33. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed. The appellant suggests that the period specified in the notice should be increased from three to twelve months.
34. The car port, building and hard standing are located adjacent to the access drive to The Gallops and neighbouring properties. Works to remove the development may affect access to those properties. Nevertheless, it is unclear why a longer period for completion of the works would affect neighbouring occupiers any less.
35. There is reference to requiring a longer period in order to find a new solution for creating the drive. However, the notice does not require works to the drive, only removal of the car port, building and hard standing that have been identified on the plan attached to the enforcement notice.
36. For these reasons, I conclude that the appeal under ground (g) should fail.

Formal Decision

37. 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.

AJ Steen

INSPECTOR