

UPHELD

- 1227



Appeal Decision

Site visit made on 06 December 2005

by R O Evans BA(Hons) Solicitor MRTPI

an Inspector appointed by the First Secretary of State

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(9)

Date

26 JAN 2006

Appeal Ref: APP/B5480/C/05/2001515

Small Acres, Folkes Lane, Upminster, Essex, RM 14 1TH

- 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 S Lockhart against an enforcement notice issued by the Council of the London Borough of Havering on 16 February 2005.
- The Council's reference is SB/TP 3051.
- The breach of planning control as alleged in the notice is without the grant of planning permission, the erection of a storage building shown cross hatched black on the attached plan hereinafter referred to as "the Building".
- The requirements of the notice are to:
 - i) Remove from the land the building and all concrete foundations
 - ii) Remove from the land all building materials including concrete, bricks and rubble arising from the first requirement above
 - iii) Replace topsoil on the site of the building on the land and re-seed it with grass.
- The period for compliance with all of the requirements is 3 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. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.

Summary of Decision: The appeal is dismissed and the enforcement notice is upheld with a variation.

Ground (a) & the Deemed Application

Introduction & Main Issues

1. The appeal site consists of a roughly rectangular area of land of almost 0.5ha on the western side of the eastern arm of Folkes Lane. It contains a number of buildings or structures, the principal one being a dwelling close to the north eastern corner of the site which I understand from the Council's evidence originally to have been an abattoir. The building subject to the notice stands alongside the western boundary of the site, mostly in the southern half of it. There is no dispute that the site lies within the Metropolitan Green Belt.
2. The main issues are thus whether the development is of a type appropriate in principle in the Green Belt and if not, whether there are any very special circumstances which might outweigh the harm caused by reason of it being inappropriate and any other harm.

Planning Policy

3. The Council rely in the notice principally on Policies ENV1 and GRB2 of their Unitary Development Plan ("the UDP"), adopted in 1993, and on national guidance in PPG2 (Green Belts), published in 1995. Policy ENV1 seeks to ensure that all new development is

satisfactorily located, and sets out general criteria including that the appearance of new development be compatible with the surrounding area and that it does not impair important public views, panorama and skylines. UDP Policy GRB2 contains a presumption against development in the Green Belt in order to meet specified objectives and describes the uses of land generally regarded as appropriate within it. As above however, the policy pre-dates the advice in PPG2 which remains current, though that is not to say, for present purposes, that there is any significant inconsistency between them.

Inspector's Reasons

4. PPG2 advises that the construction of new buildings inside a Green Belt is inappropriate unless for specified purposes. These include the limited extension or alteration of an existing dwelling, but not the construction of outbuildings. Permitted development rights may exist for such structures under the Town and Country Planning (General Permitted Development) Order 1995, but that does not make them appropriate development in the Green Belt where, as here, the building exceeds the size limits contained in Class E.1(d) of Part 1, Schedule 2 of the Order. I agree fully with the Appellant's statement that this structure is not an extension to the dwelling, so that incidentally, it does not fall to be considered against UDP Policy GRB14. It is an entirely separate building with a stated purpose for storage incidental to the residential use of the site. As such, its erection is for the above reasons inappropriate in principle in the Green Belt.
5. PPG2 goes on to advise that inappropriate development is, by definition, harmful to the Green Belt and it is for the applicant, and thus this Appellant, to show why permission should be granted. From the plan attached to the notice, which I have no reason from my visual inspection to think is inaccurate, the building is some 17m long by about 8m wide. The Appellant states that its ridge height is 4m or below at the northern end, but more than that at the southern end, because of the downward slope of the land in that direction. The Council put the ridge height at 5.1m but do not say at which point the measurement was taken.
6. I have not been provided with a copy of any plans from an earlier refused application, but again from my visual inspection alone, I am not convinced of the lower figure. Be that as it may, there is no dispute, as above, that the 4m limit in Class E is exceeded. Further, while I cannot formally determine the matter in the context of this appeal, the Appellant's assertion that the building would otherwise be permitted development is dependent not only on the use made of it, but also on it being "within the curtilage of the dwellinghouse".
7. As well as the main dwelling, at the time of my visit there was what appeared to a timber clad mobile home in line with and behind it to the west, and a block built outbuilding beyond this, set approximately at a right angle to it. There was then another small timber outbuilding a little to the south, opposite the subject building, which at its closest, is about 45m from the main house. In front of that building and the mobile home (if such it be) is a large, fenced lawn with a parking area serving the house to the south east of it, next to the road. A separate driveway however, fenced on both sides, leads to the rear part of the site, which extends across it beyond the lawn. Much of it, in front of the storage building, is roughly hard-surfaced, with 2 storage containers in the south western corner of the site. As a question of fact therefore, the storage building is not 'within' the main group of buildings but stands apart from them and as described below, is of a different character.

8. The Appellant's representations contain no discussion, for example, of the commentary on the GPDO provisions in the Encyclopaedia of Planning Law. I consider it highly unlikely however, given these physical arrangements, that the building would be found to be within the curtilage of the dwellinghouse. Further, while the Council do not presently allege any material change of use, the size and capacity of the building, as well as the quantity and range of building materials and other items I saw there, strongly suggest that its purposes go beyond those described in Class E, or at the least have the potential to do so. I thus attach no weight to the argument that permission should be granted because the building would be permitted development were it not for the slope of the land.
9. Apart from the present white entrance door, the building's construction, in corrugated sheet or panels, may not be untypical of modern agricultural buildings, but its purpose is not agricultural and its appearance is essentially utilitarian. Similar structures might indeed be readily found on urban industrial estates. Its visual impact is certainly mitigated by its light green colour, but it remains a substantial and obtrusive structure easily visible in a variety of places on Folkes Lane, from north, east and west. Expansive views are also possible across open agricultural land towards the Thames valley to the south, so even if only from longer distances, the building would appear relatively prominent from below. The scope for landscaping around it is limited to the west, but even elsewhere, is not likely to result in it being fully screened. Even if that could be achieved, it would not overcome the objection in principle, not least as the same could be said of a great many buildings and potential building sites.
10. Given the presence of the M25 motorway some 200m to the east and a number of buildings at least partly in commercial use to the south east, the lack of other readily visible buildings in the vicinity might be regarded as surprising but demonstrates both the purpose and effectiveness of Green Belt policy. So too do the publicly accessible land and/or footpaths beyond Folkes Lane. In such a location, this is a significant further built encroachment into the countryside, detrimental both to its surroundings and to the openness of the Green Belt. I have taken full account of the Appellant's representations but find no considerations that come even close to amounting to the very special circumstances necessary to overcome the strong presumption against this development. The appeal on this ground therefore fails. —

Ground (f)

11. As indicated, I do not consider that a reduction in height will bring this building within the above GPDO provisions. The foundations and raised concrete floor would still be a visible built encroachment and are an integral part of the building. I see no reason for them to be excluded from the notice requirements. Removal of materials and debris resulting from the removal of a subject building is a common additional requirement. The need to retain any such materials is not made out on the information before me. Given the general duty on local authorities to act reasonably, it is all but inconceivable that the Council would institute a prosecution in relation to the retention of materials genuinely and legitimately required elsewhere on the site.
12. With no firm evidence of the former condition of the site of the building itself however, I agree that requiring the topsoil to be 'replaced' and for it to be 're-seeded' with grass is excessive. I shall therefore vary the third requirement to require simply restoration to the land's former condition.

Ground (g)

13. There is nothing to suggest that the necessary works involved in removing the building should take any longer than the 3 months specified. The Appellant may wish to make some further application to the Council but given my assessment of the GPDO position, and in the absence of any other proposal, I do not see that as a reason for extending the compliance period. I take account also of the Council's powers of extension under section 173A(1)(b). I can however find no grounds for such an extension at present.

Conclusion

14. For the reasons given above and having taken account of all other matters raised, I conclude that the appeal should not succeed. I shall uphold the enforcement notice subject to a variation and refuse to grant planning permission on the deemed application.

Formal Decision

15. I direct that the enforcement notice be varied by replacing paragraph 5(iii) with "restore the surface area of the site of the building to its condition prior to the building's erection". Subject to that variation I dismiss the appeal, 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.

R.O.Evans

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