



Appeal Decisions

Site visit made on 8 December 2010

by **K Nield BSc(Econ) DipTP CDipAF MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 27 January 2011

Appeal A Ref: APP/H2265/C/10/2132236

Napps Farm, Long Mill Lane, Platt, Sevenoaks, Kent, TN15 8QG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued by Tonbridge and Malling Borough Council.
- The appeal is made by Ms¹ Sally Rutherford.
- The Council's reference is 10/00111/UNAWKS².
- The notice was issued on 8 June 2010.
- The breach of planning control as alleged in the notice is without planning permission the erection of a building within the curtilage of the property known as Napps Farm, Long Mill Lane, Platt, Sevenoaks, Kent.
- The requirements of the notice are stated as "The building shown hatched on plan TMBC 1 shall be demolished and all arisings shall be removed from the site".
- The period for compliance with the requirements is six calendar months from the date when the notice takes effect.
- 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.

Summary of decision: The appeal is dismissed and the enforcement notice upheld with variation

Appeal B Ref: APP/H2265/A/10/2129452

Napps Farm, Long Mill Lane, Platt, Sevenoaks, Kent, TN15 8QG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Sally Rutherford against the decision of Tonbridge and Malling Borough Council.
- The application Ref TM/09/00136/FL, dated 21 January 2010, was refused by notice dated 16 April 2010.
- The development proposed is described as a "Retrospective application under Section 73A of the Town and Country Planning Act 1990 for the erection of an outbuilding for the private ancillary use by the occupiers of the single dwelling within the site at Napps Farm, Long Mill Lane, Platt".

Summary of decision: The appeal is dismissed

¹ The name of the appellant is stated in this form ("Ms") in Appeal A and as "Mrs" in Appeal B

² The Council's Reference is stated as TM/09/00136 on its Written Statement

Appeal Decisions: APP/H2265/C/10/2132236 and APP/H2265/A/10/2129452

The appeal on ground (a) and the s78 appeal

The appeal site

1. The disputed detached building is sited about 15 metres (m) south of Napps Farm, a cottage style dwelling within a substantial plot in the open countryside to the east side of Long Mill Lane. Within the plot are a number of other buildings to the east and north sides of the dwelling.
2. The site is within the Metropolitan Green Belt.

Main issues

3. I consider that the main issues are:
 - (i) whether the building would be inappropriate development in the Green Belt;
 - (ii) whether there would be any other harm to the Green Belt; and
 - (iii) if it is inappropriate development, 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 the development.

Reasons

Issue (i): Inappropriateness

4. Policy CP3 of the Tonbridge and Malling Borough Council Local Development Framework Core Strategy (CS) and its supporting text reflects the aims of national planning guidance in Planning Policy Guidance 2: *Green Belts* (PPG2) in keeping land in the Green Belt primarily open in character and free from building development.
5. Paragraphs 3.1 and 3.2 of PPG2 explain that there is a general presumption against inappropriate development in the Green Belt which is, by definition, harmful. Paragraph 3.2 states that "*It is for the applicant to show why permission should be granted. Very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering any planning application or appeal concerning such development*".
6. Paragraph 3.4 of PPG2 lists categories of built development that are not inappropriate in the Green Belt. Amongst other matters these include the limited extension, alteration or replacement of existing dwellings.
7. The appeal scheme is a new outbuilding approximately 15m from the original dwelling. It is not a replacement of an existing "dwelling" and in view of the substantial distance of the proposed site of the building from the dwelling the proposed scheme cannot in practical terms be regarded as an extension or alteration of the existing dwelling. Since it is a free standing building as such,

Appeal Decisions: APP/H2265/C/10/2132236 and APP/H2265/A/10/2129452

it does not fall into that category of development (limited extension, alteration or replacement of an existing dwelling) which is not inappropriate. The building is therefore inappropriate development in the Green Belt and conflicts with CS policy CP3 and with paragraph 3.4 of PPG2. The intention to use the building as ancillary accommodation for the main house does not affect this finding. The appeal scheme would run counter to one of the purposes of including land in Green Belts (set out at paragraph 1.5 of PPG2) of safeguarding the countryside from encroachment.

Issue (ii): Any other harm

8. PPG2 makes it clear that the most important attribute of Green Belts is their openness. The appeal outbuilding is substantial and due to its scale and height it reduces the openness of the area to the south of the dwelling in conflict with the aims of PPG2.
9. The appellant contends that the new building would not have a materially greater effect on the openness of the Green Belt than did the stable building and some other outbuildings which have been removed. I do not have full details of the other buildings that were removed. However, the evidence before me indicates that the outbuilding has a larger footprint, height and volume than the former stable building at the site. Although the amount of increase is disputed both parties accept that the original floor slab of the stable building was increased to accommodate the new building. The stable building appears of modest proportions in photographs and had an overhanging low pitched roof. The building now at the site has a steeper pitch with a hipped end facing Long Mill Lane. Taking these factors into account I am of the view that the appeal building would have a greater impact on openness than the previous stable building. Notwithstanding the above, the previous modest stable building, unlike the present building, was not likely to have been inappropriate development in the Green Belt.
10. I noted at my visit that the appeal building is not dissimilar in scale and height to Napps Farm house. It has a domestic appearance with a series of windows and a door in its north elevation. A window in the east elevation is within the roof space. There are no windows in either the south or west elevations.
11. The upper part and roof of the building is visible viewed from Long Mill Lane on approach from either direction but most prominently from the south where it is seen above a boundary fence which provides some screening. I also noted that glimpses of the building are gained through shrubs which adjoin the road to the south-west of the site although I accept that such glimpses may be reduced when the shrubs are in full growth. Due to its roof height and location the building has a harmful effect on the character and appearance of the rural locality in conflict with the aims of policy DC2³ of Managing Development and the Environment - Development Plan Document and CS policies CP1, CP14 and CP24.
12. In addition to the harm through inappropriateness, to which I attribute substantial weight, I also conclude that the development causes significant

³ Incorrectly stated as policy DC1 on the Reason for Refusal of Application TM/09/00136/FL and the Enforcement Notice

Appeal Decisions: APP/H2265/C/10/2132236 and APP/H2265/A/10/2129452

harm to openness and has a harmful effect on the character and appearance of the area.

Issue (iii) Other considerations

13. Some other considerations are brought to my attention by the appellant. I am mindful that there was a previous stable building on the site in the past but there is no indication within either CS policy CP3 or PPG2 that such an assessment should outweigh the effect of a new and inappropriate outbuilding on the openness of the Green Belt. Consequently, I do not attach significant weight to the appellant's claims in that respect.
14. It is contended that there is a "fall-back" position provided by permitted development provisions within Class E, Part 2 of Schedule 2 to the GPDO⁴. The appellant considers that the disputed building could be reduced in height to fit within the limitations imposed by Class E or alternatively a building of the same or larger dimensions (other than roof height) could be built at the site. The appellant considers her view on this matter is supported by the Council's decision to grant planning permission in 2004 for a scheme for a replacement dwelling at Napps Farm which included within the application site boundary the land upon which the disputed building is sited.
15. Amongst other matters, Class E allows for the provision within the curtilage of the dwellinghouse of a building 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. The Council accepts that the building is within the curtilage of the dwellinghouse.
16. However, I have reservations regarding such an assessment. The stable building is clearly shown on an aerial photograph⁵ dated 2008 as being outside of a brick wall which at that time appears to provide enclosure to a piece of ground attached to the dwelling. The plan attached to the enforcement notice also appears to indicate the line of a wall in broadly the same position. The existence of the wall is referred to in the officer's report to the Area 2 Planning Committee on the application dated 31 March 2010 where it is indicated it was most likely in place "some time before 1999". In addition, an interested party notes the previous existence of the wall. Whilst I note the previous planning permission referred to by the appellant I do not consider that factor alone would be the determining factor in establishing the curtilage of the existing dwelling. It would be a matter of fact and degree.
17. I noticed at my visit that the framework of some internal walls of the building is in place but the walling is not completed. The scheme drawings provide an internal layout of the building. These indicate that the ground floor would contain an office and two storage areas with a sizeable WC. The central part of the ground floor of the building (amounting to about a third of the width) does not have a stated use and would be open. Some additional storage space would be provided in the loft. Whilst these uses may, as the appellant contends, be incidental to the enjoyment of the dwellinghouse as such it is not

⁴ Town and Country Planning (General Permitted Development) Order 1995 (GPDO), as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No. 2) (England) Order 2008

⁵ Part of a submission from an interested party

Appeal Decisions: APP/H2265/C/10/2132236 and APP/H2265/A/10/2129452

clear from the evidence why a building of these dimensions is reasonably required for such purposes in this case.

18. Taking the above factors into account, whilst I consider that the appellant's contentions in this regard provide material considerations in the determination of the appeals, I consider that there are considerable doubts whether a building of a broadly similar scale to the disputed building could be provided within the conditions and limitations of Class E in this position at the site and this greatly reduces the weight I attach to these matters.

Conclusions

19. None of the other considerations put forward by the appellant either individually or cumulatively amount to very special considerations that clearly outweigh the harm to the Green Belt and other harm I identified to the character and appearance of the rural locality.
20. Accordingly the appeal under ground (a) and the s78 appeal fail.

The appeal on ground (f)

21. The appellant contends that the requirements of the notice are excessive and lesser steps could be implemented which would remedy the breach of planning control.
22. The appellant has suggested a number of lesser steps put forward which she claims would reduce the effect of the breach of planning control. However, the requirements of the notice are not excessive as the only way to remedy the breach of planning control that is attacked is to remove the development. No lesser steps would achieve that purpose. Consequently, it is not open to me to consider lesser measures that would not remedy the breach. Notwithstanding the above the Council has power under s173A(1)(b) of the Act to waive or relax any requirement of the notice.
23. The appellant makes a further point that the outbuilding utilises the same foundation slab and lighting supply as the previous stable building and considers it unreasonable that those items be removed. The Council confirms that it has no objection to the retention of those matters and I can vary the notice to that effect without injustice.
24. To the limited extent described above the appeal under ground (f) succeeds.

The appeal on ground (g)

25. The appeal under ground (g), simply put, is that the period allowed for compliance with the notice is too short. The appellant requests a period of compliance of 9 months.
26. Subject to the variation outlined above in respect of the original slab foundation and lighting supply the requirements of the notice are clear, which is the demolition of the building and the removal of all arisings from the site. The period specified for compliance with the requirements is reasonable. The appeal under ground (g) fails.

Appeal Decisions: APP/H2265/C/10/2132236 and APP/H2265/A/10/2129452

Formal decisions

Appeal A: The s174 Appeal

27. I direct that the enforcement notice be varied by the deletion of the word "The" at the start of paragraph 5 and the substitution therfor of the words "With the exception of the original floor slab and lighting supply the .." Subject to this variation I dismiss the appeal and uphold the enforcement notice.

Appeal B: The s78 Appeal

28. I dismiss the appeal.

Kevin Nield

INSPECTOR