

Appeal Decision

Hearing held on 6 October 2015

Site visit made on 6 October 2015

by **P Willows BA DipUED MRTPI**

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

Decision date: 30 October 2015

Appeal Ref: APP/B5480/C/15/3004904

The land at Yard 3, Clockhouse Lane, Collier Row RM5 3PH

- 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 Mr Liaqat Ali against an enforcement notice issued by the Council of the London Borough of Havering.
- The Council's reference is ENF/10/14.
- The notice was issued on 14 January 2015.
- The breach of planning control as alleged in the notice is, *'Without planning permission, the erection of a boundary fence, adjacent to the public highway at Clockhouse Lane, Collier Row, in excess of 1 metre high and the construction of 4 buildings and structures as identified hatched black on the attached Plan 2'*.
- The requirements of the notice are:
 - (i) *Remove the four identified buildings/structures;*
 - (ii) *Reduce the height of the boundary fence which is adjacent to the public highway at Clockhouse Lane to 1 m high.*
 - (iii) *Restore the land to the condition prior to the construction of the buildings/structures.*
- The period for compliance with the requirements is 6 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.

Decision

1. The enforcement notice is corrected by:
 - the substitution of the plan annexed to this decision for Plan 2 attached to the enforcement notice;
 - the deletion of the postcode in section 2 (The Land Affected) and its replacement with *'RM5 2RR'*;
 - the deletion of Paragraph 3 (the Breach of Planning Control Alleged) and its replacement with, *'Without planning permission, the construction of the 3 buildings shown hatched on Plan 2'*;
 - the deletion of *'four'* from Paragraph 5(i) and its replacement with *'three'*;
 - the deletion of Paragraphs 5(ii) and 5(iii) in their entirety.
2. Subject to these changes 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.

The notice

3. It is agreed that the notice does not accurately set out the unlawful development on the site on 2 counts. First, the Council now accepts that the fence has been in place for more than 4 years and is therefore immune from enforcement action. Second, one of the buildings has now been removed. In view of this, the Council asks that the notice be corrected, and has submitted a revised plan identifying the 3 buildings it now wishes to target. The appellant has confirmed that he would not be prejudiced as a result of the notice changing in this way. In view of this, and bearing in mind that the notice would not be more onerous as a result of the changes, no injustice would be caused. I will therefore correct the notice as suggested by the Council. I have also corrected the postcode for the site, which is wrong on the notice. The deemed planning application arising from the ground (a) appeal changes in accordance with the revised allegation.

The appeal on ground (a)

Main Issues

4. The site falls within the Metropolitan Green Belt. The main issues are:
 - Whether the proposal is inappropriate development within the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - The effect of the development on the openness of the Green Belt and on the character and appearance of the area; 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 necessary to justify the development.

Planning policy

5. The development plan includes the London Plan and the Council's Core Strategy and Development Control Policies Development Plan Document (the 'DPD').
6. London Plan policies 7.4, 7.6 and 7.16 deal with local character, architecture and Green Belt respectively.
7. DPD Policy CP14 is concerned with the boundary of the Green Belt but does not assist in the determination of proposals. Policy DC45 deals with appropriate Development in the Green Belt but predates current national Green Belt policy, which limits the weight I give it. Policies CP17 and DC61 deal with design and urban design.
8. Policies DC 53 and DC55, which relate to noise and contaminated land, are not relevant to the issues raised in this appeal. The Council also refers to Policy W2 of the Joint Waste Development Plan Document, but accepted during the Hearing that this was not relevant.

Inappropriateness

9. It is common ground between the parties that, for the purposes of planning policy, this is inappropriate development in the Green Belt. I agree with that

business could not continue without a building and was of the view that it would not be possible to find an alternative site. There would clearly also be a harmful effect on the business using the other buildings. The Framework supports business development, including in rural areas. I attach significant weight to the benefits of the businesses and the employment they provide.

17. The appellant argues that the site would not be materially different without the buildings. The same parts of the site could continue to be lawfully used in connection with the businesses and the buildings help give the site a more ordered appearance. Any intensification of use of the site could result in it having a denser, more harmful appearance, and it is particularly relevant that there are no restrictions on the height to which items can be stored.
18. However, I have no clear indication that any more intensive use of the site is likely if the notice is upheld. Indeed, the appellant's evidence that it would not be viable for his business to continue at the site without a building suggests otherwise. Thus, while I have taken account of the fact that the current use of the site could lawfully continue without the buildings, their loss would be unlikely to cause any further harm to the appearance of the site.
19. The appellant says that he has improved the site by hard-surfacing it and adding drainage. However, the appeal before me has no bearing on those matters and they do not weigh in favour of or against the development.
20. It was suggested at the Hearing that the appearance of the site could be improved with landscaping. Yet there is no land within the appellant's control between the appeal site and Clockhouse Lane, which would be essential in order to make any significant improvement to the appearance of the site using landscaping.

Conclusion

21. I have attached substantial weight to the harm arising due to the inappropriate nature of the development and have also found harm in respect of the openness of the Green Belt. Weighed against this are the business and employment benefits of the development. Considering the case as a whole I find that the other considerations do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist and the proposal is contrary to the Framework and London Plan Policy 7.16. Accordingly, the appeal on ground (a) fails.

The appeal on ground (f)

22. The gist of the appellant's case is that the buildings could be reduced in height.
23. Section 173 of the Act indicates that there are two purposes which the requirements of an enforcement notice can seek to achieve. The first (s173(4)(a)) is to remedy the breach of planning control which has occurred. The second (s173(4)(b)) is to remedy any injury to amenity which has been caused by the breach. In this case the Council states that the purpose of the notice is to remedy the breach of planning control under s173(4)(a). That is consistent with the requirements of the notice. Since the breach of planning control is the erection of the buildings, it can only be remedied by requiring them to be removed. Thus, the appellant's proposal would not meet the purpose of the notice.

24. That said, the enforcement regime is intended to be remedial rather than punitive. However, there are no details of the proposed alterations to the buildings, which means that I am unable to judge their visual effect or be sure that they would be feasible. In any event, while reducing the height of the buildings would lessen their impact on openness, it would not alter the fact that they are inappropriate development in the Green Belt.

25. I conclude that the requirements of the notice are not excessive and that the purpose of the notice would not be met by the appellant's proposal. Accordingly, the appeal on ground (f) fails.

The appeal on ground (g)

26. It is argued in the appellant's statement that the 6 months specified in the notice is inadequate and that a 12 month period should be substituted to allow sufficient time to relocate the appellant's business. Time is said to be needed to find an alternative site, secure planning permission on it and move the business.

27. However, the appellant's evidence at the Hearing was that he would not in fact seek to relocate the business. The reasons given for this included the difficulty of finding a site and the cost of doing so, particularly given the investment that has already taken place at the appeal site.

28. But even if the businesses at the site did seek to relocate, I have no clear justification for the 12 months sought. While I accept that relocation would be no easy matter, in the absence of any evidence to show that it has been considered to any significant extent I am unable to conclude that 12 months is a more appropriate period than the 6 months specified by the notice. Moreover, it is desirable that the breach of planning control is remedied without unnecessary delay. Accordingly, the appeal on ground (g) fails.

Peter Willows

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Phillip Williams, of Counsel Trinity Chambers, Chelmsford
Matthew Letten Spectrum Town Planning Consultants
Liaqat Ali Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Scott Davison MRTPI Planner

DOCUMENTS SUBMITTED AT THE HEARING

1	London Plan policies
2	Core Strategy and Development Control DPD Policies
3	Aerial Photograph - 2002
4	Google Streetview 2008
5	OS Plan dated 5 October 2015

Plan

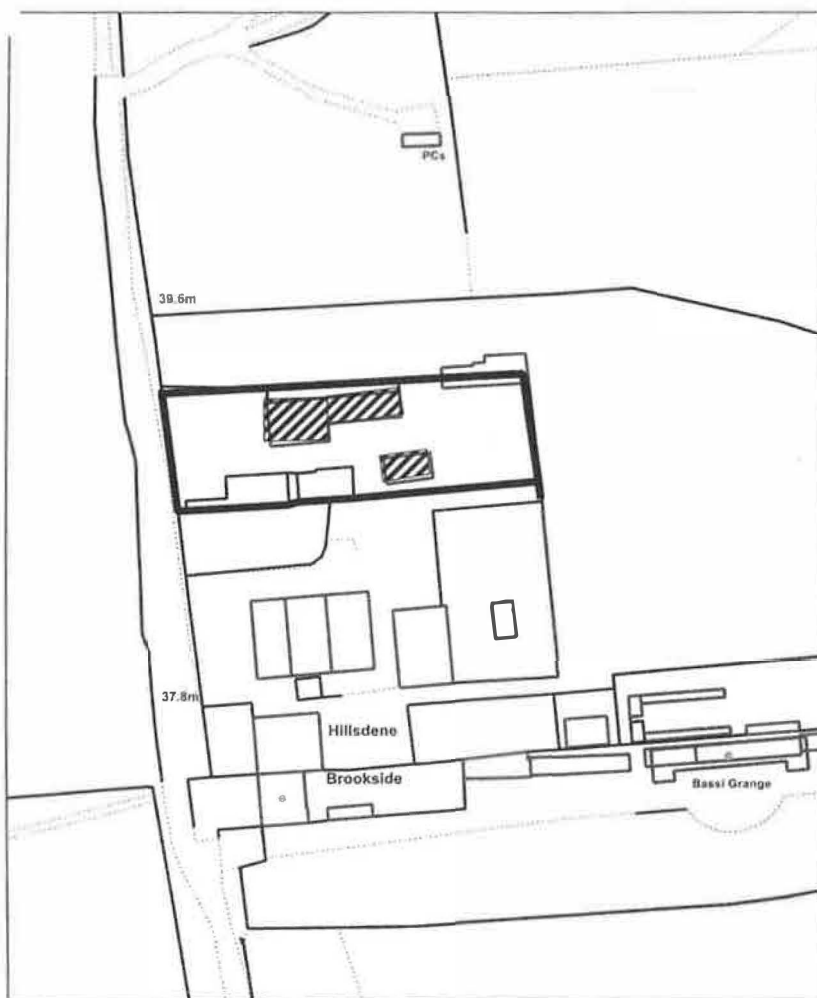
This is the revised Plan 2 referred to in my decision dated: 30.10.2015




by **P Willows BA dipUED MRTPI**

Land at: Yard 3, Clockhouse Lane, Collier Row

Reference: APP/B5480/C/15/3004904

Scale: Not to Scale



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		Scale: 1:1000 Date: 25 June 2015 0 0.5 1 1.5 metres 
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