The Planning Inspectorate

Appeal Decision

Site visit made on 24 January 2017

by Chris Preston BA(Hons) BPl MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/J3720/C/16/3159691
Land at Clarkes Green Farm, Hardwick Lane, Clarks Green, Studley B80 7DX

- 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 Mark J McCann against an enforcement notice issued by Stratford on Avon District Council.
- The enforcement notice, numbered 15/00569/COUENF, was issued on 11 August 2016.
- The breach of planning control as alleged in the notice is: Without planning permission:
  a) The change of use of agricultural land and associated pond (in the area hatched in black on Plan 1) to private domestic/ private amenity use in connection with the dwelling known as Clarkes Green Farm;
  b) Engineering works to enlarge the existing pond (in approximate positions 'A' on Plan 2) and erection of pontoon bridge(in approximate position 'B' on Plan 2) also resulting in a material change of use from agricultural use to domestic/private amenity use in connection with the dwelling;
  c) erection of the following extensions or outbuildings for purposes ancillary to the dwelling:
     - A garage/cart shed (in the approximate position 'C' on Plan 2);
     - Side extension (in the approximate position 'D' on Plan 2);
     - Rear gable extension (in the approximate position 'E' on Plan 2);
     - swimming pool building and extension linking dwelling to swimming pool building (in the approximate position 'F' on Plan 2);
     - Cabin (in the approximate position 'G' on Plan 2);
     - Other outbuilding (in the approximate position 'H' on Plan 2);
     - Decking/raised platform area (In the approximate position 'I' on Plan 2).
  d) The operational development identified as structures 'F', 'G' and 'H' above and identified on Plan 2 also amount to a material change of use of agricultural land to domestic/private amenity use without planning permission
- The requirements of the notice are:
  a) Cease the use of the land hatched in black on Plan 1 for domestic/private amenity purposes and only use the land for agricultural purposes;
  b) Remove the enlarged section of pond (in approximate positions 'A' on Plan 2) and reinstate the land to grassland at the same level as before pond was enlarged);
  c) Remove the pontoon bridge (in approximate position 'B' on Plan 2);
  d) Remove the garage/cart shed (in the approximate position 'C' on Plan 2)
  e) Remove/demolish the side extension (in the approximate position 'D' on Plan 2);
  f) Remove/demolish the rear gable extension (in the approximate position 'E' on Plan 2);
  g) Remove/demolish the swimming pool building and the extension linking the dwelling to the swimming pool building (in the approximate position 'F' on Plan 2);
  h) Remove the Cabin (in the approximate position 'G' on Plan 2);

i) Remove the outbuilding (in the approximate position 'H' on Plan 2);
j) Remove the Decking/raised platform area (in the approximate position 'I' on Plan 2).
k) Remove from the Land all materials arising from compliance with 5.c) to 5.j) above

- The period for compliance with the requirements is: For steps (a) to (k) inclusive – Within 6 months of the date the Notice takes effect
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended.

Decision

1. The enforcement notice is varied by:

   i) The deletion of the words "5.c) to 5.j)" from paragraph 5(k) and the substitution of the words "steps 5.d), 5.g) and 5i)";

   ii) The insertion of a new paragraph 5(l), immediately following paragraph 5(k) including the words "remove from the Land all materials arising from compliance with steps 5b), 5c), 5h) and 5j) above"

   iii) The deletion of the words "a) to k) inclusive" from section 6 and the substitution of the words "For steps 5a), 5d), 5g), 5i) and 5k)";

   iv) The insertion of a new sentence into section 6 including the words "For steps 5b), 5c), 5h), 5j) and 5l) – within 18 months from the date this notice takes effect".

2. The appeal is allowed insofar as it relates to the erection of a side extension (in the approximate position 'D' on Plan 2) and the erection of a rear gable extension (in the approximate position 'E' on Plan 2) and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection of a side extension (in the approximate position 'D' on Plan 2) and the erection of a rear gable extension (in the approximate position 'E' on Plan 2).

3. The appeal is dismissed and the enforcement notice is upheld as varied insofar as it relates to:

   i) The change of use of agricultural land and associated pond (in the area hatched in black on Plan 1) to private domestic/ private amenity use in connection with the dwelling known as Clarkes Green Farm;

   ii) Engineering works to enlarge the existing pond (in approximate positions 'A' on Plan 2) and erection of pontoon bridge(in approximate position 'B' on Plan 2) also resulting in a material change of use from agricultural use to domestic/private amenity use in connection with the dwelling;

   iii) The erection of:

   - the garage/cart shed (in the approximate position 'C' on Plan 2);
   - the swimming pool building and extension linking dwelling to swimming pool building (in the approximate position 'F' on Plan 2);
   - the Cabin (in the approximate position 'G' on Plan 2);
   - the outbuilding (in the approximate position 'H' on Plan 2);

- the decking/raised platform area (In the approximate position 'I' on Plan 2).

4. Planning permission is refused in respect of those matters identified in paragraphs 3i, 3ii and 3iii, above, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Procedural Matters

5. The description of the alleged breach of planning control is set out in the banner heading above. There are numerous individual components. In relation to the appeal on ground (a) the appellant has requested that planning permission be granted for the use of the accommodation above the swimming pool extension (marked as F on Plan 2 attached to the notice) for business purposes, in connection with his business. Also, if I were to grant planning permission for the garage and cart shed (building C) the appellant states that building H would be redundant for domestic storage purposes and asks that permission be granted to use that building for business purposes.

6. An appeal on ground (a) is made on the basis that planning permission should be granted for the breach of planning control stated in the notice. The notice does not allege that a material change of use for business purposes has occurred. In the response to the Planning Contravention Notice, the appellant stated that that the swimming pool extension was used for 'living' accommodation and building H was used as a domestic garage. The notice was served on that basis and no ground (b) appeal has been submitted to suggest that the alleged breach did not take place. Consequently, the evidence suggests that the extension and outbuilding were constructed for domestic purposes and were not in business use at the point the notice was served. It is not open to me to grant planning permission for a different use that does not form part of the alleged breach and I have therefore considered the appeal on ground (a) on the basis that permission is sought to use the buildings for residential purposes.

7. Although an appeal has been made on ground (a) in respect of the enlarged pond, raised deck, timber cabin and pontoon bridge, the appellant contends that planning permission cannot be granted for those elements in the absence of detailed plans. However, the ground (a) appeal relates to the development, as constructed, and I was able to observe the completed development at my site visit and I am satisfied that I can make my decision in the absence of scaled plans.

The Appeal on Ground (c)

8. An appeal on ground (c) is made on the basis that the matters stated in the notice do not constitute a breach of planning control. In this case, the alleged breach relates to both operational development and a material change of use, as set out in the banner heading above. The appellant's case in relation to ground (c) is related solely to the side and rear extensions to the dwelling, as marked 'D' and 'E' respectively on Plan 2 which was attached to the enforcement notice[1]. The appellant contends that the extensions constituted 'permitted development' under the terms of Class A, Part 1, of Schedule 2 of

[1] As confirmed in the letter of clarification from the appellant's agent, Mr R.A. Watkins, dated 14 October 2016

the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).

9. The Council considers that the extensions cannot benefit from 'permitted development' rights because the works to extend the building are unauthorised. Article 3(5) of the Order identifies that any permission granted by Schedule 2 does not apply if, "in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful". For example, if a new dwellinghouse was erected unlawfully, it would not be possible to extend that property by virtue of any planning permission that may be granted through the terms of the GPDO.

10. In this case, there is no suggestion that the original dwellinghouse was unauthorised. It was erected following the grant of planning permission in 2003. Permitted development rights were not withdrawn by virtue of any condition attached to that approval and, providing the extensions met the detailed conditions or limitations of Class A or Part 1, they would benefit from planning permission under the terms of the GPDO.

11. Further to receipt of the Council's statement, the appellant now accepts that the side extension (D) is more than half the width of the width of the original dwellinghouse; that being the limitation set by sub-section (j)(iii) of paragraph A.1 of Part A. His initial calculation had not taken account of the external chimney breast on the gable wall of the original dwelling. The parties agree that the width of the dwelling, including the chimney breast is 21.3m. Half that width would be 10.65m. The extension is 11m wide and therefore 0.35m in excess of the permitted limit.

12. The appellant has referred to an appeal decision where an Inspector apparently concluded that an increase of 8cm over a height limitation of 2m was *de minimis*; in other words, too minor or trivial to merit consideration. I have not been provided with a copy of that decision and cannot be certain of the context within which it was made. Moreover, I have not been directed to any reference within the terms of the GPDO, or the Technical Guidance (the TG)[2], that would support such an approach.

13. It seems to me that precision is built into the GPDO. For example, in the requirement for prior approval for certain residential extensions, as set out at paragraph A.4 of Class A. In the case of a detached house paragraph A.1(g) permits an extension of up to 8 metres beyond the rear wall of a dwelling. However, a prior approval process is required for any extension with a depth greater than 4 metres. In that context a precise measurement is required to determine whether an application for prior approval is required. It seems to me that arguments about whether a measurement was *de minimis* would make the system unworkable.

14. Consequently, the GPDO includes very specific criteria and a development either meets those criteria or it does not. The side extension does not meet the criteria set out in paragraph A.1(j)(iii) and does not benefit from planning permission granted by the GPDO. The appeal in relation to that element must fail.

[2] Permitted Development Rights for Householders: Technical Guidance, DCLG, April 2016

15. The extension to the rear is clearly a two storey structure containing living space at ground floor level and a first floor balcony. There is no dispute that it complies with the limitations of paragraph A.1(h) in terms of the depth from the rear wall of the dwellinghouse. However, the Council contend that the extension also extends beyond a wall forming a side elevation, thereby contravening the terms of paragraph A.1(j)(i) and (ii) which restricts side extensions to a single storey of no more than 4 metres in height. The original dwelling has a two-storey rear wing and, having regard to the TG, I consider that the side wall of that wing amounts to a "wall forming a side elevation of the original dwellinghouse". Page 23 of the TG makes clear that the rules on side extensions and rear extensions will apply to extensions that fill the space between a side elevation and a rear wall. In this case, the extension does not 'fill' the space but intrudes into it.

16. The extension is not physically attached to the original side wall but having regard to the TG, the term "extends beyond a wall" does not equate to being physically attached to it. The diagram at the bottom of page 24 includes an example of an extension which "extends beyond the rear wall of a dwellinghouse" (shown as wall B). It is not physically attached to that wall. In effect, if that diagram was flipped through 90 degrees, such that the rear wall became the side wall, the scenario would be very similar to the one before me. Consequently, even though the two storey side extension is not physically attached to the side wall of the original dwellinghouse, it extends into space beyond that wall. As such, anything other than a single storey extension would require planning permission under the terms of paragraph A.1(j)(i) and (ii). Thus, the two storey extension does not benefit from permission granted through the GPDO. Accordingly, the appeal on Ground (c) must fail.

The Appeal on Ground (a)

17. The appeal on ground (a) is multi-faceted due to the nature of the alleged breach, which includes a material change of use, a number of building operations and the enlargement of the pond which amounts to an engineering operation. The letter of clarification from the appellant's agent identifies which aspects for which planning permission is sought and those are the detached garage and cart shed; the swimming pool and associated link to the dwelling; and outbuilding H. He also requests that planning permission be granted for a temporary period of not more than two years for the enlarged pond and associated pontoon bridge; the raised decking; and the timber cabin.

18. The appellant does not specifically request that planning permission be granted for the side (D) and rear extensions (E). However, it appears to me that is based on an assumption that his appeal on ground (c) would be successful in relation to those elements. It is clear from the totality of his submissions that the appellant seeks to retain those elements and I have considered the ground (a) appeal on that basis. The Council has considered the planning merits within its statement and I am satisfied that no prejudice will result.

19. The site is located within the West Midlands Green Belt and the main issues in relation to the appeal on ground (a) are:

    i) Whether the development represents inappropriate development within the Green Belt;

    ii) The effect of the development on the openness of the Green Belt;

iii) The effect of the development on the character and appearance of the area; and

iv) If the development does represent inappropriate development within the Green Belt, whether any harm caused by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify the development.

Whether the development represents inappropriate development within the Green Belt

20. Paragraph 87 of the National Planning Policy Framework (the Framework) identifies that 'inappropriate development' is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 89 states that new buildings should be regarded as inappropriate in the Green Belt, save for a limited number of exceptions. Paragraph 90 identifies other forms of development that are not inappropriate.

The Material Change of Use

21. The appellant does not dispute that a material change of use from agricultural land to residential use has occurred on the area shown hatched in Plan 1, as appended to the enforcement notice. A material change of use is an act of development and not one that falls within limited number of exceptions listed at paragraphs 89 and 90 of the Framework. Accordingly, the material change of use of that land represents 'inappropriate development' in the Green Belt.

The Extensions and Outbuildings

22. The third bullet point of paragraph 89 of the Framework identifies that the extension or alteration of a building will not be inappropriate, provided that it does not result in disproportionate additions over and above the size of the original building. Policy CS.10(b) of the Stratford-on-Avon District Core Strategy (2016) (the CS) states that small-scale alterations to existing buildings will not be inappropriate. Further explanation of how that policy will be interpreted is given under the heading 'Development Management Considerations'. Sub-section (1) states that any extension "should not cause material (i.e. significant) harm to the openness of the Green Belt". I find that terminology somewhat contradictory in that an extension that has a "material" effect on openness would not necessarily have a "significant" effect. The two terms mean different things.

23. In any event, sub-section (2) clarifies that an extension must not result in a building that is disproportionately larger than the original building and I am satisfied that the policy applies the same test as the Framework in that regard. The text in sub-section (2) also identifies that any curtilage building, such as a garage, should be within 5 metres of the dwelling. Paragraph 89 of the Framework does not make any specific exception for detached buildings such as domestic garages but case law has held that such structures are normal domestic adjuncts that are capable of being considered as an extension to a dwelling. It seems that the text in sub-section (2) is written with that in mind with the intention being that any domestic outbuildings must be within 5 metres of the dwelling to be capable of consideration as an extension to the property. That is how I have interpreted the policy which is consistent with the aims of the Framework, having been adopted as recently as July 2016.

24. The two outbuildings (marked as C and H) are both set more than 5 metres from the dwelling, as it would have existed prior to the unauthorised extensions being erected. As noted, paragraph 89 of the Framework provides no exception for outbuildings and, having regard to the terms of Policy CS.10, I consider that those structures should not be considered as extensions to the dwelling but as stand-alone buildings. In addition, aside from being more than 5 metres from the pre-existing dwelling, the outbuilding marked 'H' on Plan 2 is located on land that was outside of the residential curtilage of the property. The material change of use of the land is inappropriate development and the building should not be considered as a 'new curtilage building' under the terms of Policy CS.10. As such, the outbuildings amount to inappropriate development within the Green Belt.

The Extensions to the Dwellinghouse

25. The extensions to the dwelling comprise the side addition (marked D on Plan 2), the rear extension (E), the swimming pool and link extension (F) and the timber cabin (G). The timber cabin is attached to the swimming pool which is itself attached to the dwelling such that the two elements form a continuous extension on the eastern side of the house. In totality, the extensions to the dwelling have resulted in a substantial increase in the size of the original property.

26. The appellant estimates that the dwelling, as originally built, had a footprint of 174m² and an external volume of 1,074m³. Extensions 'built within PD rights' according to the appellant (including extensions 'D' and 'E') are estimated to have a footprint of 92m² and a volume of 382m³; the swimming pool building a footprint of 143m² and volume of 650m³; and the cabin a footprint of 55m² and volume of 141m³. The Council has not disputed those figures and I have no reason to doubt them. It is clear from the numerical data presented that the extensions represent an increase of significantly greater than 100% in footprint and volume. Moreover, the pool is a two storey building with a significant visual presence from the roadside and the extensions have significantly increased the bulk and mass of the dwelling. Viewed in totality, I have no doubt that the extensions represent a disproportionate addition, over and above the size of the original dwelling, such that they represent inappropriate development having regard to paragraph 89 of the Framework and policy CS.10(b).

27. It is open to me to grant planning permission for the whole or any part of the matters stated in the notice under the terms of section 177(1)(a) of the Town and Country Planning Act 1990. The extensions are made up of four readily severable elements and I have considered whether one or more of those elements would amount to inappropriate development if considered individually. The Council considers that the single storey side extension and two storey rear extension may have been acceptable if applied for through a formal planning application. However, the absence of a planning application should not impair a judgement as to whether a particular extension would amount to inappropriate development.

28. The single storey addition is just over half the width of the dwelling, as set out above, but the way in which the roof is designed, with a double pitch and valley gutter in the centre, helps to keep the height down to a minimum. The two storey extension to the rear has a modest depth and is set down below the

ridgeline of the main dwelling. The scale is modest in proportion to the much larger rear wing that formed part of the original dwelling. Thus, if considered individually or in combination, extensions D and E would not represent a disproportionate addition to the dwellinghouse of themselves.

29. The swimming pool and associated link is a much larger structure with a footprint that is broadly comparable to the original dwelling. Given the two storey height and the significant increase in the width of the dwelling I consider that the building would represent a disproportionate addition, even if viewed individually. The timber cabin adds to the overall bulk and the appellant does not seek to argue that element should be retained beyond a temporary period. In addition, the majority of the swimming pool extension and the timber cabin have been erected on land that was outside the residential curtilage of the dwelling and their construction has been facilitated by a material change of use in the land that is inappropriate development of itself. Therefore, I consider that the swimming pool and timber cabin would represent inappropriate development within the Green Belt if considered individually.

The extension to the pond and erection of pontoon bridge and raided timber deck

30. Engineering operations are not inappropriate in the Green Belt, as set out in paragraph 90. The works involved in extending the pond would amount to an engineering operation and, if viewed in isolation would not amount to inappropriate development. However, prior to the works, the smaller pond was located outside the residential curtilage on agricultural land. It was not in residential use. The works have removed the delineation between the garden of the dwelling and the pond and resulted in an extended residential curtilage where the pond is essentially being used as part of the domestic garden. In other words, the engineering operations have facilitated and were an integral part of the unauthorised change of use of the land. In that context, I consider that the extension of the pond amounts to inappropriate development within the Green Belt.

31. The raised decking is a substantial building operation of itself. In the absence of full plans it is not entirely clear how high above ground level the raised deck is but it is well above the 0.3m limit that would constitute permitted development under Class E, Part 1 of Schedule 2 of the GPDO. Having regard to paragraphs 89 and 90 of the Framework, and the terms of policy CS.10 I consider that the decking represents inappropriate development within the Green Belt. Similarly, the pontoon bridge which extends from the raised deck onto the island in the middle of the pond represents operational development of a kind that is not excluded from the definition of inappropriate development.

32. The appellant has not disputed the Council's position in those respects or sought to argue that the pond, pontoon bridge and decking are not inappropriate. For the reasons given I see no reason to take a different view.

The Effect of the Development on the Openness of the Green Belt

33. Openness is one of the key characteristics of the Green Belt. Taken as a whole, the various elements of the development have significantly reduced the openness of the Green Belt. The extensions to the dwelling have resulted in a significant increase in terms of footprint and volume. The extensions to each side have more than doubled the width of the house; a change that has resulted in a much more prominent and substantial building when viewed from

the road to the front of the site. The extension on the eastern side incorporating the pool with accommodation above is particularly noticeable as a result of its height and overall scale.

34. The two outbuildings are also of significant scale, particularly Building C which is prominently located in the garden between the front of the dwelling and the roadside. The calculations provided by the appellant show that the footprint of the building is greater than that of the original dwelling and, although the building is single storey, the steeply pitched roof results in a large building with a significant ridge height. Building H is of a more modest scale, compared to Building C, but is not insignificant and adds to the conglomeration of buildings and extensions to the east of the dwelling, thereby contributing to a significant effect on the openness of the Green Belt.

35. The timber decking is located to the rear of the house and is not prominent from any public vantage points. Nonetheless, an effect on openness is not limited to visual impact but may be represented in the physical form of a structure. Irrespective of any visual impact, the raised decking has resulted in the incursion onto land that was previously free from built development, with a consequential and harmful effect on the openness of the Green Belt.

36. Whilst the extension of the pond and the extension of the domestic garden have altered the character of the area, those elements have not had any effect on the openness of the Green Belt. Nonetheless, the impact of the development, as a whole, has caused significant harm to the openness of the Green Belt.

The Effect of the Development on the Character and Appearance of the Area

37. The property is situated directly next to Hardwick Lane, a narrow country road which passes through an attractive rolling landscape of enclosed fields and hedgerows. Individual farmhouses and farmsteads, many of which now appear to be in purely residential use, are scattered throughout the landscape and I noted a number of substantial residential properties with outbuildings in the local area. The site is within the Arden Special Landscape Area, as designated by the CS. The general pattern of development at the appeal site fits with that pattern and, whilst the extensions and outbuildings that have been constructed are of a substantial scale, they do not appear out of kilter with the general pattern of development in the area.

38. Moreover, the undulating nature of the topography and the presence of established hedgerows along field boundaries help to screen the site which is set down in the landscape. I viewed the site from local footpaths on the morning of my site visit and medium range views from those vantage points were limited. The principal views are from the road at close quarters. From that aspect, the buildings appear to be well designed and of a quality that reflects the character of the relatively modern dwelling. The extension of the pond and garden has resulted in the domestication of agricultural land and is at odds with the prevailing land use. However, those elements are not prominent for the reasons given above.

39. As such I find that the visual effects are localised and the development has not had an unduly harmful effect on the distinctive character of the SLA or the countryside in general, such that there is no conflict with the aims of policies CS.5 and CS.12 of the CS.

If the development does represent inappropriate development within the Green Belt, whether any harm caused by way of inappropriateness, and any other harm, is clearly outweighed by other material considerations such that very special circumstances exist to justify the development.

40. Taken as a whole, the extensions to the dwelling represent a disproportionate addition to the existing property and are inappropriate development within the Green Belt. I have also concluded that the outbuildings, raised timber decking and pontoon bridge are inappropriate development, as is the material change of use that has taken place as a result of the extension of the domestic garden onto agricultural land and the extension and incorporation of the pond within the garden. By definition, inappropriate development is harmful to the Green Belt, as set out at paragraph 87 of the Framework. Inappropriate development should not be approved except in very special circumstances. Such circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.

Potential Fall-Back Scenarios

41. The appellant contends that the fall-back scenario of buildings and outbuildings that could be constructed under the 'permitted development' regime amounts to a material consideration in favour of the retention of the extensions and outbuildings, with the exception of the timber cabin. Three fall-back scenarios are presented.

42. Whether any of the suggested extensions or outbuildings proposed would, in fact, constitute permitted development is not a matter for me to determine. The correct approach to ascertain whether the buildings would be permitted development would be to apply for a lawful development certificate (LDC) under s192 of the Act. Such considerations would include an assessment of whether the buildings would fall within the scope of permitted development rights under Classes A and E of Part 1, Schedule 2 of the GPDO. I have some doubts as to whether any of the suggested extensions to the rear of the dwelling would be permitted development, having regard to my conclusions that those extensions would project beyond a side wall of the original house. That would exclude two storey additions and the single storey option would appear to be more than half the width of the original dwelling. Similarly, I have concluded that the single storey side extension is not permitted development on account of its width, albeit that a slightly smaller extension would fall within the scope of permitted development rights. Whether the large outbuildings would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse is not for me to determine in the absence of a certificate of lawfulness.

43. However, setting those issues aside, I am not satisfied that any of the scenarios presented would have a comparable impact in terms of the effect on the openness of the Green Belt as the development for which planning permission is sought. Outbuilding 1 on the three scenarios is shown to be set behind the principal elevation of the dwelling[3]. That would appear to be intended as a garage building in place of Buildings C and H. The suggested location would be much less prominent than Building C which is between the house and the road. Building C is also significantly more than 4 metres in height; that being the maximum that would be allowed for an outbuilding

[3] In order to meet the terms of paragraph E.1(c) of Class E, Part 1, Schedule 2 of the GPDO

under Class E. Consequently, whilst I note the dimensions of 'Outbuilding 1', I am not satisfied that the impact on the openness of the Green Belt would be as significant as Building C or the combined effect of Buildings C and H.

44. Similarly, Outbuilding 2 on the scenarios shows a detached pool building, with a height of no more than 4m. That is much lower than the side extension that incorporates the pool and accommodation above and the fact that the building would be detached would lessen the impact by providing a visual break between buildings, as opposed to the current arrangement where the extension has resulted in a wide, unbroken, front elevation with substantially greater mass and presence. The swimming pool extension has a greater overall volume and impact on openness and represents a disproportionate extension to the dwelling. The impact of the detached alternative on the openness of the Green Belt would be significantly less in my view. In addition, the majority of the swimming pool extension has been constructed on land that was outside the residential curtilage of the property and, as set out above, the material change of use in that respect represents inappropriate development. The potential fall-back of an outbuilding within the residential curtilage does not represent justification for the unauthorised material change of use.

45. Having regard to the above, whilst I accept that it may be possible to erect alternative buildings under the terms of the GPDO, the scenarios presented do not amount to a material consideration in favour of retaining the extensions and outbuildings as built.

46. The Council has previously granted a certificate of lawfulness, under s192 of the Act in relation to a single storey, detached swimming pool building. That building was shown to be situated outside of the curtilage of the dwelling, as agreed by the parties, and it is not immediately clear how the Council came to the conclusion that it would be lawful; any permitted development rights relating to householder developments only apply to the curtilage of the dwelling. In any event, the detached pool was significantly smaller than the extension to the building and, for the same reasons set out above, I do not consider that the effect on the openness of the Green Belt would be comparable.

Flood Risk

47. The appellant has suggested that the extension to the pond has helped to alleviate flooding on Hardwick Lane adjacent to the site. However, no evidence has been presented to demonstrate that flooding was a problem. Even if it was, no details have been presented that would show that the extended pond will lessen the likelihood of localised flooding occurring in future. Consequently, I can attach little weight to the appellant's claims in that regard.

Protected Species

48. Planning permission is sought under ground (a) for the extension of the pond and the associated works relating to the erection of the pontoon bridge and timber decking which has been erected up to the edge of the extended pond. It would appear that no ecological surveys were carried out prior to the work being undertaken and no licence was obtained from Natural England in relation to protected species. The appellant did undertake a Great Crested Newt

Assessment (the GCN Assessment)[4] in August 2016, after the enforcement notice was served. Full surveys are planned for the period between March and July 2017. GCNs are protected under the terms of The Conservation of Habitats and Species Regulations 2010 (the Habitats Regulations) and the Wildlife and Countryside Act 1981 (the W&C Act). The GCN Assessment includes a 'Habitat Suitability Index' which concludes that there is a moderate likelihood of GCNs being present. Photographs of two GCNs taken by the owner of the property are appended to the report but it is not clear when or where those photographs were taken. Equally, it is not clear if any GCNs were identified by the authors of the GCN Assessment.

49. Whilst the GCN Assessment relates to the pond, as extended, no assessment is made of the quality of the habitat within the pond prior to enlargement. In that sense the information provided by the appellant relates to the potential effects on protected species stemming from the requirements of the notice, as opposed to the effects of the development for which planning permission is sought i.e. the enlargement of the pond and associated works. It is not clear if the habitat has been disturbed or made less suitable for any protected species as a result of the development which brings the pond within the domestic garden of the property with the potential for greater levels of disturbance. Equally, it is not clear if the works were undertaken at an appropriate time of year so as not to disturb the breeding and/or nesting patterns of any protected species.

50. Under section 3.3 the GCN Assessment notes that ponds between 500 and 750m² are the optimal size but limited data is available for larger ponds over 2000m². The report identifies that the extended pond has an area greater than 2000m² and I cannot rule out the possibility that it provides less optimal conditions than the smaller pond prior to extension. In addition, the report notes that the pond has been stocked with carp and that, in general, fish populations are detrimental to newt populations. The fish are also associated with turbid water quality in the report and the water quality is described as poor. Moreover, there was no emergent or floating cover or 'macrophyte content' to provide habitat for prey organisms or cover from predators.

51. Consequently, whilst the GCN assessment identifies that it is possible that the extended pond may provide suitable habitat, including the banks of the pond and the damp shaded areas underneath the decking and pontoon bridge, it does not demonstrate that the works have been carried out without causing harm to protected species or their habitat. In other words, the original pond may well have provided more suitable conditions for protected species, including the GCN.

52. The strict protection for European Protected Species (EPS) is transposed into the Habitats Regulations by way of a licensing regime. Natural England is the licensing authority and licence applications are determined separately from the planning system. In determining whether to grant a licence Natural England must be satisfied that three tests have been met: that the works are necessary to preserve public health or safety or other imperative reasons of over-riding public interest; that there is no satisfactory alternative; and that the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.

[4] Worcestershire Wildlife Consultancy Great Crested Newt Assessment, project number 2016/184, dated August 2016

53. Whilst the licencing regime operates separately to the planning regime, Regulation 9(3) of the Habitats Regulations places a duty on Inspectors, as the competent authority, to have regard to the requirements of the Habitats Directive in the exercise of their functions. In effect, that requires an assessment of the likelihood of a licence being granted. No comments from Natural England are before me and the development was not subject to a consultation process due to the absence of a planning application before the works commenced. However, there is no over-riding public health or safety rationale for extending the pond and other alternatives would have been available, for example creating a new pond within the existing garden and leaving the existing pond in its former condition. For the reasons given above, the information before me is not sufficient to rule out the possibility that the works have been detrimental to the aim of maintaining the population of GCNs.

54. Accordingly, I find it unlikely that a licence would have been granted on the basis of the information presented by the appellant. In that context, it would be inappropriate for me to grant planning permission for the enlargement of the pond and associated development, having regard to legislation that affords strict protection to GCNs and their habitat. The appellant contends that planning permission should be granted for a temporary period of two years to allow further survey work to be carried out with regard to the presence of GCNs. However, given the possibility that the works for which permission is sought have caused harm to GCNs and their habitat I can see no justification for a grant of planning permission, temporary or otherwise.

55. It is possible the requirements of section 5(b) of the notice could have adverse effects on GCNs and their habitat if any were found to be present. At the time of writing, the surveys have not been carried out and the results are therefore unknown. In effect, the requirements of the notice would be to restore the pond to its former size and remove domestic paraphernalia. If GCNs were found to be present then a licence, under the Habitats Regulations to carry out any work affecting the species or associated habitat would be required from Natural England.

56. Correspondence provided from the Assistant Ecologist at Warwickshire County Council would appear to indicate that it would be possible to carry out the required works under licence, providing that those works were carried out at an appropriate time of year. The correspondence suggests that the work to the pond itself would be best undertaken in winter when GCNs would be more likely to be hibernating outside of the water and that works to remove the decking, pontoon bridge and timber cabin should be undertaken in the summer months when GCNs are likely to be active in the water. The end result would be that the pond would be restored to its former state before the unauthorised development took place.

57. The licencing regime is separate from the planning regime and I cannot be certain of the outcome of that process but the comments of the County Ecologist would indicate that the outcome required by the notice could be achieved. Whilst I am mindful of the potential effects of the requirements on protected species the appellant's submissions in that regard do not amount to a reason to grant planning permission for the retention of a development may have caused harm to protected species and their habitat. Having regard to the importance of protected species I consider that it is appropriate to apply a precautionary principle and the potential harm that I have identified is such

that a grant of planning permission would be contrary to the aims of the statutory legislation identified above and section 11 of the Framework, with regard to the protection of the natural environment.

Very Special Circumstances

58. For the reasons given above, the unauthorised works represent inappropriate development within the Green Belt. The extensions and outbuildings have also caused harm to the openness of the Green Belt. In line with paragraph 88 of the Framework I must attach substantial weight to that harm. Whilst it may be possible that certain extensions and outbuildings could be erected through the exercise of permitted development rights I am not satisfied that the fall-back scenarios presented in that regard would have a comparable impact to the development that has taken place. Consequently, the fall-back position does not amount to a positive material consideration in favour of the retention of the development. Furthermore, little information has been provided to support the assertion that the enlarged pond has reduced the likelihood of flooding on the adjacent carriageway and I attach little weight to the suggested benefit in that regard. The works to the pond were undertaken without planning permission and without the benefit of a licence from Natural England. The pond has been stocked with fish, the water quality is described as poor and there is a lack of vegetative cover. For the reasons given I am not satisfied that the potential presence of GCNs represents a justification for the disturbance and potential harm to the habitat that existed within the pre-existing pond.

59. In view of the above, no other considerations have been put forward that would amount to the very special circumstances required to outweigh the harm to the Green Belt that I have identified in relation to the development as a whole.

Whether planning permission should be granted for part of the development

60. Under the terms of s177(1)(a) of the Act it is open to me to grant planning permission for the whole or part of the matters stated in the notice. In this case. In this case, nine individual building or engineering operations are listed in the notice (A-I as shown on Plan 2, attached to the notice) in addition to the unauthorised change of use shown on Plan 1.

61. The material change of use of agricultural land represents inappropriate development and the appellant has not put forward any material considerations that would outweigh the harm to the Green Belt in that respect. The timber cabin, outbuilding H and the swimming pool extension were all constructed on agricultural land that was outside the residential curtilage of the property, amounting to building operations that have helped to facilitate the material change of use. Furthermore, that extension and those outbuildings materially harm the openness of the Green Belt and, for the reasons given above, the potential fall back of a detached swimming pool building within the curtilage does not represent a material consideration in favour of keeping the extension, nor does the potential fall-back of a detached garage that may be constructed under permitted development rights justify the retention of outbuilding H which is situated on land outside the residential curtilage.

62. I have also found that Outbuilding C would have a greater impact on the openness of the Green Belt than the suggested fall-back of a detached garage and no considerations have been presented that would amount to very special

circumstances to outweigh the harm of that individual structure. Similarly, the very special circumstances needed to justify a grant of planning permission for the extension to the pond, the erection of the pontoon bridge or the raised timber deck have not been demonstrated.

63. Extensions D and E are more modest in scale and I am satisfied that those two elements together would not represent a disproportionate addition to the dwellinghouse, having regard to paragraph 89 of the Framework and policy CS.10 of the CS. The design is sympathetic to the host dwelling and I can find no reason to withhold planning permission for those individual elements. I am mindful that the appellant has stated a preference for the retention of the swimming pool link and Outbuilding C but, even if viewed individually, those elements would represent inappropriate development that would harm the openness of the Green Belt and no considerations have been put forward to outweigh the harm in those respects.

Conclusion in relation to Ground (a)

64. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for the erection of the single storey side extension and two-storey rear extension but otherwise I will uphold the notice, as corrected, and refuse to grant planning permission in relation to the other elements of the breach.

65. The requirements of the upheld notice will cease to have effect so far as they are inconsistent with the permission that I shall grant by virtue of the terms section 180 of the 1990 Act. In other words, the notice will cease to have effect insofar as it relates to the single storey side extension and two storey rear extension.

The Appeal on Ground (f)

66. An appeal on ground (f) is made on the basis that the steps required by the notice to be taken, or the activities required 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 the breach. The Council has not specified whether the aim of the notice is to remedy the breach of planning control or to remedy any injury to amenity. However, having regard to the terms of the notice it appears to me that the aim is to remedy the breach of planning control and restore the land to its former condition.

67. The appellant's case in respect of Ground (f) was clarified in a letter from the agent, dated 14 October 2016. That case is that planning permission be granted for the enlargement of the pond and the erection of the pontoon bridge, timber decking and timber cabin for a period of two years so that the results of further surveys in respect of GCNs can be considered. I have addressed the question of whether planning permission should be granted for the enlargement of the pond under ground (a) and concluded that it would be inappropriate for me to grant planning permission for a development that may have caused harm to protected species and their habitat.

68. I noted the possibility that a licence from Natural England may be required as a result of the works required by the notice. Whilst the comments from the County Ecologist would indicate that it may be possible to carry out the works

under licence I cannot be certain that a licence would be granted. Under section 179(3) of the Act, it is a defence for an appellant to demonstrate that he did everything he could be expected to do to secure compliance with a notice, in response to any subsequent proceedings. That may apply if a licence was required but could not be obtained. However, on the information before me, there is no reason to conclude that a licence could not be granted, if one was necessary at all, and the requirements of the notice are not unreasonable in that context and do not exceed what is required to remedy the breach.

69. The appellant has also suggested that the requirement at 5(a) of the notice to cease the use of the land for domestic/ private amenity purposes should be quashed and replaced with a requirement that a retrospective planning application should be submitted, no later than 01 September 2017, to redefine the domestic curtilage, as part of an application to regularise the pond decking and bridge. The making of such an application would not remedy the breach of planning control and it is not clear that planning permission would be granted by the Council. The fact that the enforcement notice has been served would indicate otherwise. Moreover, I have concluded that those matters represent inappropriate development within the Green Belt and that the very special circumstances needed to justify them have not been demonstrated.

70. Consequently, no lesser steps have been put forward by the appellant that would remedy the breach of planning control and the appeal on ground (f) must fail.

The Appeal on Ground (g)

71. The submissions in relation to ground (g) relate to the requirements to remove the enlarged section of the pond and to remove the pontoon bridge, raised timber deck, and the timber cabin which sits on top of the timber deck. Further survey work for GCNs is planned from March through to June 2017 and the appellant indicates that the report is not likely to be ready before September 2017. If GCNs, or any other protected species, were found to be present then a licence for the work to remove and fill in the enlarged section of the pond would be required from Natural England. I cannot pre-empt the outcome of that process or predict the outcome of the additional survey work.

72. As noted, the County Council's Ecology Services team indicate that the optimum time of year to carry out work to the pond would be in the winter months, when any GCNs are more likely to be hibernating out of the water. Conversely, it is suggested that the best time of year to remove the timber decking and pontoon bridge would be in the summer months, when any GCNs are more likely to be active in the pond itself. Having regard to those matters it appears to me that a compliance period longer than the six months set out within the notice would be reasonable.

73. Assuming the survey work is completed by the end of June 2017 any results could be compiled shortly after that point. I can see no reason why it would take three months to produce a report of the survey findings. It is reasonable to assume that the results would be available within two months, by the end of August. Given the need to digest those results, the possible need to seek a licence for any work, and the need to take account of the optimal conditions for carrying out the work it would seem reasonable to provide for a further 12 month period to carry out the required works, such that the structures could be removed in the summer months and the enlarged pond filled in over winter. As

such, I find that a period of 18 months from the date of my decision would be reasonable within the circumstances of the case.

74. I am mindful of the need to ensure expediency in the enforcement of the planning system and a period longer than 12 months will seldom be appropriate. However, given the importance of protected species I am satisfied that 18 months represents a reasonable period in this case. Whilst it would be a matter entirely for the discretion of the Council the powers in s173A(1)(b) of the Act permit a local planning authority to extend any period for compliance formally at any point, should such action be deemed appropriate.

75. In view of the above, the appeal on ground (g) succeeds to a limited extent and I shall vary the terms of the notice such that the time period for compliance with steps 5(b), (c), (h) and (j) is extended to 18 months from the date the notice takes effect. Given that will result in a phased approach to the compliance period the removal of materials in association with the required works, as set out at 5(k) will also need to be phased such that the materials are removed from the land in a timely fashion, in association with the respective compliance periods. I shall vary the terms of the notice accordingly.

Chris Preston

INSPECTOR