The Planning Inspectorate

# Appeal Decision

Hearing held on 12 February 2014
Site visit made on 12 February 2014

**by Ron Boyd BSc (Hons) MICE**

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

**Decision date: 1 April 2014**

**Appeal Ref: APP/Q5300/A/13/2204402**
**Pear Tree House, Cattlegate Road, Enfield, Middlesex EN2 9DS**

- 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 Mr Martin Newport against the decision of the Council of the London Borough of Enfield.
- The application Ref P13-00308PLA, dated 6 February 2013, was refused by notice dated 15 April 2013.
- The development proposed is erection of a replacement dwelling house.

## Decision

1. The appeal is allowed and planning permission is granted for the erection of a replacement dwelling house at Pear Tree House, Cattlegate Road, Enfield EN2 9DS in accordance with the terms of the application, Ref P13-00308PLA, dated 6 February 2013, subject to the conditions in the attached schedule.

## Application for costs

2. At the Hearing an application for costs was made by Mr Martin Newport against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

## Procedural matters

3. On 5 December 2013 the Council sent out notification of the Hearing to the 16 occupants of local properties, who had previously been notified of the appeal. The date of the Hearing was stated incorrectly in the notification. The error was not realised until 7 February 2014 on which date a corrected notification was sent by first class post to 15 of those parties. In respect of the only party who had objected to the planning application in March 2013 the letter was delivered by hand on that day to his premises and a copy sent by first class post to his Agent. No response to any of the letters was received prior to the Hearing and I am satisfied that no interests were prejudiced by the reduced period of notice. As is referred to below I have taken the objection to the application into account in my determination of this appeal.

4. Since the Hearing the Department of Communities and Local Government published its Planning Practice Guidance (PPG) on 6 March 2014. Both parties have been given the opportunity to comment on the relevance of the PPG to their cases. I have had regard to their responses and to the PPG in determining this appeal.

5. Reasons Nos. 2 and 3 for the Council's refusal of the application were that insufficient details had been submitted to demonstrate the overall energy efficiency of the proposed development or to enable the Council to assess it against the Code for Sustainable Homes. Subsequent to determination of the application the appellant submitted a revised Sustainable Design Statement and Energy Assessment dated 12 July 2013. At the Hearing the Council advised of its conclusion that the revised document met its concerns in respect of Reasons 2 and 3 subject to conditions to secure the proposals contained within it should the appeal succeed. I have no reason to disagree with the Council's conclusion and thus consider the only issue to be as described below.

## Main issue

6. I consider the main issue to be whether the proposal is inappropriate development in the Green Belt and, if so, whether the harm, by 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

7. The appeal site comprises a roughly elliptically shaped area of around 0.1 hectares within the Green Belt and located on the east side of an unmade track off the north side of Cattlegate Road. The track serves as the sole point of access for a number of businesses to the rear of development fronting Cattlegate Road. The site is occupied by a single-storey static-caravan-style dwelling for which a lawful development certificate for its use as a dwellinghouse was issued in 2003. The proposal is to demolish the existing dwelling and erect a west-facing, two-storey, four- bedroom detached dwelling with rooms in the roof and an attached garage.

*Inappropriateness*

8. The policies referred to in the Council's refusal notice, including emerging Policy 82 of the Council's Proposed Submission Development Management Document are broadly consistent with the National Planning Policy Framework (the Framework) which advises that the Government attaches great importance to Green Belts. The Framework states that the construction of new buildings in the Green Belt should, with certain exceptions, be regarded as inappropriate development, which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. One of those exceptions is the replacement of an existing building, provided the new building is in the same use and not materially larger than the one it replaces. The proposed replacement building would be in the same use as the existing dwelling but it would be substantially larger.

9. The existing single-storey dwelling has a footprint of around 82 sqm and a floor area of some 78 sqm. The proposed two-storey dwelling would have a footprint of some 230 sqm and a floor area of around 306 sqm. It would not satisfy the criterion of not being materially larger than the building it would replace. I conclude that it would be inappropriate development and as such would be harmful to the Green Belt.

*Openness, character and appearance*

10. The site is bordered on three sides by substantial buildings. To the north, the appellant's detached residence, Brambleberry Farmhouse; to the east, two storage barns, one used in connection with the appellant's building business, the other occupied by a dog-training operation; and to the south a further large storage barn used in connection with the building business. The increase in built bulk which would result from replacement of the existing dwelling by the proposed two-storey house would have some impact on the openness of the Green Belt but in the context of its surroundings I consider this would be of limited harm.

11. The proposed house would be of traditional design, reflective of that of the adjacent farmhouse, with first floor rooms served by dormer windows set into a half-hipped roof around a central crown. It would sit comfortably in the centre of the site, set back from the access track and would be compatible with the surrounding built form. Compared with the existing situation, I consider it would have a positive effect upon the character and appearance of the surrounding area.

*Other considerations*

12. The appellant explained that the proposed house was to accommodate family members, and that were the appeal to fail he would enlarge the existing dwelling through permitted development rights for which a lawful development certificate was issued in 2011. This permits single-storey extensions to all four existing elevations, the dwelling having no frontage to a public highway. Such implementation would increase the footprint of the existing dwelling to around 363 sqm. The Council acknowledged that work on the extensions had commenced and could be resumed at any time.

13. Implementing the permitted development extensions is a realistic fallback position for the appellant. I am satisfied that if the proposed house were not to be erected there is every likelihood that the fallback scheme would be built. This is a material consideration. A comparison of the proposed house against the fallback scheme is therefore appropriate to identify what other considerations arise from such a situation.

14. In terms of sustainability the proposed house would be conditioned to achieve at least Level 3 of the Code for Sustainable Homes and to deliver carbon dioxide emission reductions in excess of the requirements of Part L of the Building Regulations as required by the development plan. This would be a superior performance than could be required of the fallback scheme. I attach substantial weight to the comparative superiority of the proposal in respect of sustainability.

15. The fallback scheme, in providing the required accommodation on a single-storey basis, would result in a significantly greater footprint than that of the proposed two-storey dwelling. Clearances to the front and side boundaries, amenity space, and opportunity for planting, would be less than that of the proposal. In contrast to the proposed house with its traditional coherent appearance, the extended single-storey dwelling would appear incongruous within its surroundings. In view of the proximity of its extended front elevation to the access track, it would be more intrusive in views from outside the site. It would detract from the character and appearance of the surrounding area.

The Framework advises that the Government attaches great importance to the design of the built environment. I attach substantial weight to the superiority of the proposal in respect of the above aspects.

16. The fallback scheme and the proposal would occupy broadly similar volumes and both would have limited overall effect upon the overall openness of the Green Belt. However, I consider that the greater extent of site coverage with built form resulting from the fallback scheme would have a more harmful effect than the proposed house upon the openness of the immediate area.

17. Measures to ensure the assimilation of the proposed house into its surroundings in respect of materials used for external surfaces and landscaping could be secured by conditions. Similarly, permitted development rights could be curtailed to avoid any effect upon openness from further development within the site. In this respect the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2013 are relevant in that these offer the potential for a further 50 sqm of permitted-development rear extension to the fallback scheme which would increase the footprint of built development to some 413 sqm to the further detriment of the openness of the site. I attach significant weight to the comparative benefits of the proposed development in respect of the above.

18. In the light of the above I conclude that the fallback scheme would be more harmful than the appeal proposal. Whilst the proposal would cause harm to the Green Belt by means of inappropriateness, to which substantial weight must be attached, together with limited additional harm to the openness of the Green Belt, there are other considerations, identified above, to be weighed against this harm. Together I consider these other considerations clearly outweigh the harm the proposed development would cause through inappropriateness and impact upon openness. I therefore conclude that the very special circumstances necessary to justify the proposed development exist.

*Other matters, conclusion and conditions*

19. I note the objection to the application submitted by the owner of the neighbouring horticultural business expressing concern about the size of the proposed dwelling and particularly its two-storey form. The Council's officers report concluded that there would be no loss of outlook, daylight or privacy that would be detrimental to the living conditions of the occupants of neighbouring dwellings. I agree, and note that there is a substantial barn between the appeal site and the adjoining business effectively precluding intervisibility between the two.

20. I have taken account of all the other matters raised in the evidence but have found nothing to outweigh my conclusions on the main issues which have led to my decision on this appeal. For the reasons given above I conclude that the appeal should succeed.

21. I have considered the conditions suggested by the Council in the light of the PPG and Annex A of Circular 11/95. I do not consider a condition requiring compliance with the Wildlife and Countryside Act (1981) to be necessary. Nor that on–site facilities for the cleaning of construction vehicle wheels are required, in view of the distance of the appeal site from the public highway, or that the provision of bat and bird-nesting boxes have been justified. I consider

that the conditions in the attached schedule, which includes a condition to secure the landscape planting, referred to in the appellant's statement, meet the six tests referred to in the PPG. They deal with:

- design and energy use, compliance with the Code for Sustainable Homes and Lifetime Homes standards, surface water drainage ,and the provision of facilities for cycle parking and storage for waste and recyclable material, in the interests of achieving a sustainable development;
- details of existing ground levels and levels proposed for the development, materials for paving and other external surfaces, and provision of landscape planting, in the interests of a satisfactory appearance for the development and assimilation into the surrounding area;
- the use of car parking areas, in the interests of the living conditions of occupants of neighbouring property; and
- restriction of permitted development rights in the interests of protecting the openness of the Green Belt.

22. In addition, other than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

*R.T.Boyd*

Inspector

**Schedule of conditions**

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawings numbered NWA/12/025/LOCE – Rev A; NWA-12-025-2; and NWA-12-025-3.

3) Notwithstanding the submitted documentation no development shall take place until the submitted '*Sustainable Design Statement and Energy Assessment – REVISED*' has been approved in writing by the local planning authority. The dwelling hereby approved shall not be occupied until details of the internal water consumption of potable water have been submitted to and approved in writing by the local planning authority. Submitted details shall demonstrate reduced water consumption through the use of water efficient fittings, appliances and recycling systems to show consumption equal to or less than 105 litres per person per day. Within three months following practical completion of the works a final Energy Performance Certificate shall be submitted to the local planning authority for approval in writing. Where applicable a Display Energy Certificate shall be submitted to the local planning authority within 18 months following occupation of the development. The development shall be carried out as approved and shall be maintained as such thereafter.

4) Notwithstanding the submitted documentation:

- No development shall take place until evidence that the development hereby permitted would achieve a Code for Sustainable Homes rating of no less than Code Level 3 has been submitted to and approved in writing by the local planning authority.
- No commencement of superstructure works on site shall take place until a design stage assessment conducted by an accredited Code Assessor and supported by a relevant BRE interim certificate have been submitted to and approved in writing by the local planning authority.
- A post construction assessment conducted by an accredited Code Assessor and supported by the relevant BRE accreditation certificate. shall be submitted within six months following the practical completion, and prior to occupation of, the development hereby permitted.

  The development shall be carried out as approved and shall be maintained as such thereafter.

5) No development shall take place until details confirming compliance with all of the Lifetime Homes standards have been submitted to and approved in writing by the local planning authority. The development shall be carried out as approved and shall be maintained as such thereafter.

6) No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) No development shall take place until details of the surfacing materials to be used in the development hereby permitted, including in the footpaths, access roads, and parking areas, have been submitted to and approved in writing by the local planning authority. The surfacing shall be carried out as approved prior to occupation of the development.

8) The parking areas forming part of the development hereby permitted shall be used for no other purpose than for the parking of private motor vehicles and shall be permanently retained for that use.

9) No development shall take place until plans detailing the existing and proposed ground levels, including the levels of any proposed buildings, roads and/or hard surfaced areas have been submitted to and approved in writing by the local planning authority. The development shall be constructed in accordance with the approved details.

10) The development hereby permitted shall not be occupied until details of the siting and design of storage facilities for refuse and recyclable materials in accordance with the *London Borough of Enfield - Waste and Recycling Planning Storage Guidance ENV 08/162* have been submitted to and approved in writing by the local planning authority. The facilities shall be provided in accordance with the approved details prior to occupation of the development.

11) The development hereby permitted shall not be occupied until details of the siting and design of secure cycle parking have been submitted to and approved in writing by the local planning authority. The cycle parking facilities shall be provided as approved prior to occupation of the development and shall be retained for such use thereafter.

12) No development shall take place until details of surface water drainage works have been submitted to and approved in writing by the local planning authority. The details shall be based on an assessment of the potential for disposing of surface water by means of a sustainable drainage system and shall include a continuing management and maintenance plan to ensure its continued function over the lifetime of the development. The drainage system shall be installed and operational with the maintenance plan put in place in accordance with the approved details prior to occupation of the development and shall be maintained as such thereafter.

13) No development shall take place until there has been submitted to and approved in writing by the local planning authority a scheme of landscaping. This shall include indications of all existing trees and hedgerows on the land; details of any to be retained, with measures for their protection in the course of development; planting plans, noting species, plant sizes, and proposed numbers/densities where appropriate; and an implementation programme. The scheme shall be implemented as approved.

14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no works that fall under Classes A,B,C,D or E, of Schedule 2 Part 1 of the above Order, shall be erected without the prior approval of the local planning authority.

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## APPEARANCES

FOR THE APPELLANT:

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| Mr Graham Fisher BSc, MA, MRTPI | gfplanning Ltd |
| Mr Neil Cook C Eng MCIBSE | Director New World Architectural |
| Mr Martin Newport | Appellant |

FOR THE LOCAL PLANNING AUTHORITY:

Mr Andrew Ryley BA (Hons) MSc, MRTPI

## DOCUMENTS

1 Suggested conditions
2 Sustainable Design Statement and Energy Assessment date 30/01/2013
3 Costs application

The Planning Inspectorate

# Costs Decision

Hearing held on 12 February 2014

Site visit made on 12 February 2014

**by Ron Boyd BSc (Hons) MICE**

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

**Decision date: 1 April 2014**

**Costs application in relation to Appeal Ref: APP/Q5300/A/13/2204402**
**Pear Tree House, Cattlegate Road, Enfield, Middlesex EN2 9DS**

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Martin Newport for a full award of costs against the Council of the London Borough of Enfield.
- The hearing was in connection with an appeal against the refusal of planning permission for the erection of a replacement dwelling house.

## Decision

1. The application for an award of costs is refused.

## Procedural matter

2. Since the Hearing the Department of Communities and Local Government published its Planning Practice Guidance (PPG) on 6 March 2014. In particular this replaced Circular 03/2009 which was cancelled on that date. Both parties have been given the opportunity to comment on the relevance of the PPG to their cases. I have had regard to their responses and to the PPG in determining this application for a costs award.

## The submission for Mr Martin Newport

3. The submission was made in writing. In a verbal reply to the Council's response the appellant confirmed his claim that it was unreasonable to give the fallback position only limited weight. As to the Council's concerns regarding energy use and sustainability these could have been dealt with by appropriate conditions.

## The response by the Council of the London Borough of Enfield

4. The response was given verbally. The site was visited by a Council officer who saw no evidence of a start of work on the extensions. The Council considers the fallback position can only be given limited weight. Not withstanding the Council's doubts as to the appellant's intention to proceed with the permitted development proposals the appeal scheme would, in any event, be more harmful than the fallback. The Council's stance is reasonable.

5. As to the Energy and Sustainability issues the report submitted with the application was insufficient for the Council to assess the scheme's credentials. Once sufficient information was provided in the revised report submitted with

the appeal the Council advised the appellant by e-mail on 28 January 2014 that its concerns as to those aspects were satisfied, subject to conditions.

## Reasons

6. The PPG advises that costs may be awarded where a party has behaved unreasonably and that the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

*The fallback position*

7. The Council's first reason for refusing the application was that in view of the size and scale of the proposed dwelling it would be inappropriate development in the Green Belt and would encroach into the openness and rural character of the surrounding area. The officer's report attached very limited weight to the appellant's fallback position of implementing the permitted development largely, it seems, on the contention that the lawful development status of the permitted extensions was not extant as the Council had not witnessed any start of work on the extensions.

8. In fact work had commenced in the form of limited foundation lengths, evidenced by photographs dated 23 and 25 March 2013. The foundation work was not spotted by the Council in a site visit on 11 April 2013, prior to determination of the application. To my mind, whether or not work had started would not have affected the status of the permitted development extensions which could have commenced at any time unless so precluded by a change in the Town and Country Planning (General Permitted Development) Order 1995 subsequent to the issue of the lawful development certificate.

9. However, the officer's report also concluded that the size, scale and form of the proposed replacement dwelling would result in significant encroachment into the openness and rural character of the site and surrounding Green Belt and would have a detrimental impact upon the character and appearance of this part of the Green Belt. At the Hearing the Council confirmed that it considered the appeal scheme would be more harmful than the fallback. This being the case it is clear to me that even had greater weight been attached by the Council to the fallback scheme in recognition that work had commenced this would have been insufficient to outweigh the Council's assessment of the harm of the appeal proposal in terms of inappropriateness and the other harm referred to above. The application would still have been refused as is indicated in the Council's e-mail to the appellant dated 7 May 2013 written in the light of the Council having received the photographic evidence of a start of work.

10. My allowing the appeal is in the light of my conclusion that the fallback scheme would be more harmful than the appeal proposal. Whilst I disagree with the Council regarding the relative merits of the appeal proposal and the fallback scheme the Council's judgement does not amount to unreasonable behaviour.

11. In the light of the above I conclude that the Council's refusal of the application did not turn on the degree of weight it attached to the fallback position. Accordingly the very limited weight ascribed by the Council to the fallback position, notwithstanding that this was, at least in part, influenced by an erroneous assumption that work on the permitted development had not commenced, did not directly cause the appellant to incur the cost of appealing.

*Energy and sustainability*

12. I consider that the Council's concerns in respect of these issues could have been dealt with by conditions compliant with the six tests referred to in the PPG. No convincing evidence to the contrary has been put forward by the Council. Circular 03/2009 included the failure of a planning authority to impose conditions on a grant of planning permission, where conditions could have overcome the objection identified, as an example of circumstances which may lead to an award of costs against an authority. No such example is specified in the PPG. However, the document advises that the list of circumstances it does identify is not exhaustive and I consider the failure to impose conditions which would overcome objections remains a circumstance which may lead to an award of costs.

13. I note that following the submission of the report '*Sustainable Design Statement and Energy Assessment – REVISED'* in August 2013 the Council advised the appellant by e-mail on 28 January 2014 that its concerns as to those aspects were satisfied subject to conditions. The notification was given some five months after submission of the report which I consider to be unreasonable. However the additional information provided by the appellant in the revised report over and above that in the earlier version of 30 January 2013, which was submitted with the application, is information which would have had to have been produced in any case to comply with the conditions had they been imposed. The PPG advises that an application for costs will need to clearly demonstrate how any alleged unreasonable behaviour has resulted in unnecessary or wasted expense. I am not satisfied that abortive costs have been incurred in respect of providing the additional information and no specific claim that they have has been made.

*Conclusion*

14. In the light of the above I conclude that the circumstances which would justify an award of costs as set out in the PPG and referred to in paragraph 6 above have not been demonstrated. Accordingly I refuse the application for an award of costs.

*R.T.Boyd*

Inspector