

E/08/0538/B - The erection of an unauthorised outbuilding at Bevils Croft, Marshall's Lane, Sacombe Green, SG12 0JQ

Parish: SACOMBE

Ward: HERTFORD RURAL - NORTH

RECOMMENDATION

That the Director of Neighbourhood Services, in consultation with the Director of Internal Services, be authorised to take enforcement action under Section 172 of the Town and Country Planning Act 1990 and any such further steps as may be required to secure the removal of the unauthorised outbuilding.

Period for compliance: 6 months

Reason why it is expedient to issue an enforcement notice:

1. The application site lies within the Rural Area Beyond the Green Belt, as defined in the East Hertfordshire Local Plan, where development will only be allowed for certain specific purposes. There is insufficient justification for the outbuilding and its erection disproportionately alters the size of the original dwellinghouse and also intrudes into the openness of the surrounding area. It is therefore contrary to Policies GBC3 and ENV5 of the East Herts Local Plan Second Review April 2007.
2. The unauthorised outbuilding by reason of its siting and excessive size in relation to the existing dwelling is out of keeping with and detrimental to its character and appearance and that of the area as a whole. Accordingly the development is contrary to Policies GBC3 and ENV1 of the East Herts Local Plan Second Review April 2007.

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1.0 Background

- 1.1 The site is shown on the attached Ordnance Survey extract. It is located on the northeast side of Marshall's Lane, Sacombe Green about 100 metres southeast of the junction with Rowney Lane. Photographs of the site will be available at the meeting.
- 1.2 In November 2008 a concern was expressed to the Authority regarding the construction of an outbuilding that obscured the front of the dwellinghouse at the site.

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- 1.3 The enforcement officer visited the site on 10th November 2008 and found that a considerable single storey outbuilding 18 metres by 6 metres had been built between the dwellinghouse and the highway. It was of brick and blockwork construction, with cavity wall insulation and a slate roof. Approximately half of this building was set out as garages and the remainder contained residential style UPVC windows and door. The building was not fitted out internally at this stage.
- 1.4 The officer spoke to the owner who stated that he had commenced the development in mid September 2008 to take advantage of the permitted development 'rights' then available under Class 'E'. The reason for this, he explained, was that such developments were not permitted under the 2008 Order that came into force on 1st October 2008.
- 1.5 The development had all the characteristics of a residential annexe and, at 108m², had a larger footprint than the main dwellinghouse. Accordingly the officer wrote to the owner and his agent detailing officers' concerns and informing them that it was the initial view of officers that the building did not benefit from deemed permission under the Class E of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995. The officer further advised that all works continued at their own risk.
- 1.6 An application for a certificate of lawful use for the building was submitted in November 2008 under application number 3/08/1984/CL. This was refused on 19th January 2009 for the following reason:-

“The proposed outbuilding would be nearer to the highway which bounds the west curtilage of the dwellinghouse, and within 20 metres of that highway, and, by reason of the primary accommodation provided, could not reasonably be considered incidental to the enjoyment of the dwellinghouse. As such the proposed outbuilding fails to comply with the criteria set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995. A planning application will therefore be required.”
- 1.7 On his site visit the planning case officer noted that there was a footpath, a 'highway' for the purposes of the GPDO, running up the western boundary of the property. The outbuilding was both closer to this than was the original dwellinghouse and within 20 metres of the highway. Furthermore upon examination of the outbuilding the planning officer found that the internal layout of the outbuilding differed from the submitted plans. As built the outbuilding contained primary residential accommodation in the form of a bathroom (containing a free standing bath), a lavatory and three other rooms of a size and layout that suggested use as a study, bedroom and

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workshop/living area. The officer did not consider that this was incidental to the enjoyment of the dwellinghouse.

2.0 Planning History

2.1 The recent planning history is as follows: -

3/08/1187/FP - Two-storey side and rear extension, single storey front and rear infill and hipped roofs to front dormers. – Refused

3/08/1984/CL - Single storey outbuilding to the front of the dwelling house – Refused

3.0 Policy

3.1 The relevant policies in this matter are:-

GBC3 – Appropriate development in the Rural Area Beyond the Green Belt

ENV1 – Design and Environmental Quality

ENV5 – Extensions to Dwellings

4.0 Considerations.

4.1 In this matter, the main issues to be considered are a) whether the outbuilding was erected with deemed planning permission under the terms of Class E of Part 1 of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995, and b) whether the size of the outbuilding is appropriate in relation to the existing dwelling, and the character and appearance of the area as a whole.

Whether planning permission required for the outbuilding

4.2 The applicants agent has commented that, in his view, the building was lawfully erected with deemed planning permission under the terms of Class E of the above Order.

4.3 However, Class E “permitted development” rights only extend to the erection of buildings within the curtilage of a dwellinghouse that are required for purposes incidental to the enjoyment of the existing dwelling on the site. Incidental uses are those that are secondary to a main residential use – such as leisure or hobby activities. The provision of primary residential accommodation, such as bedrooms or bathrooms, is not permitted. The High Court has held that the term “incidental to the

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enjoyment of the dwellinghouse" should not rest solely on the unrestrained whim of a householder and there should be some connotation of reasonableness in the circumstances of each case (*Emin v S.O.S. & Another* 3/2/89).

- 4.4 The footprint of the dwellinghouse is about 105m². The outbuilding has a footprint of 108m². Officers consider that such a building, particularly one that was constructed to an extremely high standard for such a building, is not "incidental to the enjoyment of the dwellinghouse".
- 4.5 Furthermore, outbuildings were not permitted under Class E of Schedule 2 to The Town and Country Planning (General Permitted Development) Order 1995 if any part of them were closer to any highway than 20 metres or closer to any highway than the part of the original dwellinghouse nearest to that highway. This outbuilding is both less than 20 metres from the highway (the public footway running up the to the west of the site) and is closer to it than the original dwellinghouse.
- 4.6 Officers therefore consider that the building itself has clearly been erected unlawfully and represents a breach of planning control.

Impact of development on character and appearance of existing dwelling and surrounding area

- 4.7 Development within the Rural Area Beyond the Green Belt is controlled by Local Plan policy GBC3. Paragraph (c) of that policy allows limited extensions or alterations to existing dwellings in accordance with policy ENV5. In turn, policy ENV5 requires that the erection of outbuildings will be expected to be of a scale and size that would not cumulatively with other extensions disproportionately alter the size of the original dwelling nor intrude into the openness of the surrounding area.
- 4.8 Officers consider that the outbuilding in this case does disproportionately alter the size of the dwelling and is visually intrusive to the detriment of the openness of the surroundings. It is, therefore, contrary to policies GBC3 and ENV5.
- 4.9 Policy ENV1 relates to design and environmental quality. Paragraph (c) of that policy requires that developments relate well to the massing (volume and shape) of adjacent buildings and to the surrounding townscape.
- 4.10 Officers consider that unauthorised outbuilding is of an excessive scale and size that does not relate well to the massing of adjacent buildings and to the surrounding area

5.0 Recommendation

- 5.1 It is therefore recommended that authorisation be given to issue and serve a Planning Enforcement Notice requiring the removal of the unauthorised development from the land and the restoration of the land to its condition prior to the unauthorised development.