



# Appeal Decision

Inquiry held on 30 October 2007  
Site visit made on 31 October 2007

The Planning Inspectorate  
4/11 Eagle Wing  
Temple Quay House  
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by **George Mapson** Dip TP Dip LD MRTPI

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

Decision date:  
10<sup>th</sup> December 2007

PLANNING DEPARTMENT  
11 DEC 2007  
APPROVED  
RECEIVED

Ref: APP/C1950/C/07/2034177  
Park Farm, Northaw Road West, Northaw, Hertfordshire EN6 4NT

- 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 [redacted] against an enforcement notice [Ref No. EN/14/2006] issued by Welwyn Hatfield District Council on 7 December 2006.
- The breach of planning control as alleged in the notice is "Without planning permission, the building of walls in excess of one metre high adjacent to the highway together with hard surfacing of the highway verge."
- The requirements of the notice are "(i) Demolish the walls and dig up the foundations along the front boundaries of the land and around the entrances from Northaw Road West. (ii) Remove from the land all materials resulting from the demolition specified in (i) above. (iii) Plant a replacement hedge along the highway boundary of the land in the first planting scheme following the required demolition in accordance with a scheme of landscaping to be agreed in writing with the Local Planning Authority. (iv) Remove the hard-surfacing and base layers of materials from the highway verge and reinstate the verge by seeding with grass in the first seeding season following the required demolition."
- The periods for compliance with the requirements are: "(i) One month after this notice takes effect. (ii) One month after this notice takes effect. (iii) Landscaping scheme to be submitted one month after this notice takes effect. With the planting as agreed to take place in the first planting season following the required demolition. (iv) The seeding shall take place in the first seeding season following the required demolition."
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Appeals that had been made on grounds (c) and (e) were withdrawn at the start of the inquiry.

## DECISION

1. First, I direct that the notice be corrected by adding Plan A, annexed to this Decision, to the plan that accompanied the notice.
2. Second, I direct that the requirements, as set out in paragraph 5 of the notice, be varied as follows:
  - 1) by deleting requirement (i) and substituting the following requirement which is stated in the alternative:  
 "(i) **EITHER** (a) demolish the walls and dig up the foundations along the front boundaries of the land and around the entrances from Northaw Road West  
**OR** (b) reduce the walls to a height not exceeding 1 metre above ground level."
  - 2) by deleting requirement (iii).
3. Subject thereto, I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

## PROCEDURAL MATTERS

### *Correction to the notice - additional plan*

4. An enforcement notice and its plan should be consistent. The plan that accompanied the notice shows edged red part of the appellant's land holding, but it does not show the location of the walls and paved verges that are the subject of the alleged breach of planning control. The parties agreed that an additional plan showing the location of the unauthorised development would be beneficial and that the notice could be corrected to include such a plan without causing injustice. I propose to correct the notice by adding Plan A, annexed to my Decision, which shows the position of the unauthorised walls.

### *Variation to the notice - deletion of requirement (iii)*

5. At the inquiry the Council asked me to vary the notice by deleting requirement (iii). The parties agreed that this variation would not cause injustice.

## THE APPEAL ON GROUND (a) AND THE DEEMED APPLICATION

### Planning policy

6. The appeal site lies outside the main built up area of Northaw, within the Metropolitan Green Belt. Policy RA1 of the adopted Welwyn Hatfield Local Plan sets out a presumption against inappropriate development and indicates that permission will not be given, except in very special circumstances, for inappropriate development in the Green Belt. The aim of local plan policies D1 and D2 is to ensure that all development respects and relates to the area in which it is proposed, mirroring local character, being sensitive to it and not harming it.
7. National Green Belt policy is set out in PPG2. Its fundamental aim is to prevent urban sprawl by keeping land permanently open. Paragraph 3.12 refers to the statutory definition of development and explains that development that falls within these categories is inappropriate unless it maintains openness and does not conflict with the 5 purposes of including land within the Green Belt, as set out in paragraph 1.5. They include assisting in 'safeguarding the countryside from encroachment'. Each case is assessed on its merits and on the basis of these two criteria.
8. PPG2, paragraph 3.2, explains that very special circumstances to justify inappropriate development will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

### Main issues

9. There are 4 main issues in this appeal.
  - 1) Whether the walls should be regarded as a building for the purposes of PPG2 and development plan policy;
  - 2) If so, whether the unauthorised development as a whole constitutes inappropriate development within the Green Belt;
  - 3) If so, whether it harms (i) the openness of the Green Belt; (ii) the character and appearance of the area; and (iii) the purposes of including land in the Green Belt;
  - 4) If so, whether there are other considerations which clearly outweigh the harm to the Green Belt and any other harm thereby justifying the development on the basis of very special circumstances.

## Reasons

*Issue 1 – are the walls a 'building' for the purposes of PPG2 and development plan policy?*

10. In seeking to apply the advice in PPG2 and the policies in the development plan, it is important to first establish what type of development is involved and therefore which part of PPG2 is relevant. Paragraph 3.4 lists the types of new buildings which would not be inappropriate in the Green Belt. 'Buildings' here are as defined in s.336 of the 1990 Act and includes 'any structure or erection, and any part of a building as so defined, but does not include plant or machinery comprised in a building'. This definition normally includes any man-made above-ground structures, such as walls and fences.
11. The appellant's case is that in Article 1 of the GPDO the definition of 'building' does not include any fence, gate, wall or other means of enclosure - the erection of which is permitted by the GPDO<sup>1</sup>, subject to certain limitations. If a wall is not a building for the purposes of the GPDO, why should it be one for the purposes of PPG2?
12. I share the Council's view that the GPDO definition of 'building' should be taken within the context of the GPDO only, because there would be no need for those words in the GPDO if the general definition of a building could not include walls. The boundary walls at Park Farm are about 2m high and extend, in sections, to over 100m in length. They comprise a building for the purposes of PPG2 and development plan policy.

*Issue 2 – Is the unauthorised development inappropriate development in the Green Belt?*

13. The first matter to be addressed when dealing with any Green Belt appeal is whether the development is either 'inappropriate' or 'not inappropriate' for the purposes of PPG2 and development plan policy. Guidance on whether a development is inappropriate is found principally within paragraphs 3.4, 3.8, 3.11 and 3.12 of PPG2.
14. In this case, the scale, nature and location of the unauthorised development have a profound effect on the Green Belt. It significantly reduces the openness of the Green Belt, because it provides a strong visual barrier where once, for the most part, there was a length of mature hedgerow. In so doing it gives the appearance of encroachment of the built up area into the open countryside, contrary to one of the 5 purposes of the Green Belt. Consequently, it constitutes inappropriate development.

*Issue 3 - Assessment of harm*

15. According to PPG2, paragraph 3.1, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Added to that harm, the harm caused to openness of the Green Belt and the conflict with the purposes of including land in the Green Belt, is the harm that the unauthorised development causes to the rural character and appearance of this important and busy route into Northaw.
16. The agricultural worker's dwelling that was approved on this site is a relatively modest, understated building. Its lawful curtilage was also modest and the former boundary treatment along Northaw Road West, mainly hedgerow, did not attract attention. The boundary treatments of the houses that stand on the opposite side of the road are likewise inconspicuous.
17. The extensive new walls, with their herringbone pattern of brickwork, yellow pointing and curved recesses, and the expansive areas of granite sett paving to the verges and accesses, make an uncompromising and emphatic statement in the countryside. The

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<sup>1</sup> Class A in Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 [GPDO]

development has replaced, for the most part, attractive hawthorn hedges and grass verges that are typical of the attractive rolling countryside hereabouts. Sliding gates have recently been installed, which further erode the rural appearance. These gates post-date the enforcement notice and are not caught by its provisions.

18. The appeal development fails to respect the character of the locality. I saw a number of substantial brick boundary walls within the main built up area of the village, and some more discreet ones outside the village framework, but - unlike the appeal development - the design, scale, alignment, materials, pattern of bonding and pointing of those walls harmonise and blend in with the prevailing local character. The appeal development is not sensitive to the rural character of its surroundings. It has been designed to stand out and command attention.
19. The site is prominently located on the approach to the village and the appeal development has changed public perceptions of the site and the area for those travelling along this country road, giving it an altogether more urban feel. Permitting walls and paving of this scale to remain in their entirety would significantly harm the Green Belt and undermine the policies that seek to protect it. Even if I had come to the view that the appeal development was not inappropriate in the Green Belt, the damaging consequences arising from it would have led me to conclude that significant harm had been caused to the visual amenities of the Green Belt.

*Issue 4 - Other considerations advanced to justify the development on the basis of very special circumstances*

20. I now turn to the factors that have been put forward as 'other considerations' which might weigh in favour of it. These do not have to be 'special' or 'very special' to be considered or to have weight, but collectively they should clearly outweigh the totality of the harm. If they do, then very special circumstances are likely to exist and the development can be justified, but if very special circumstances do not exist, the appeal should be dismissed.
21. Three main factors have been advanced in support of the development. Firstly, that one section of the new wall replaced a former wall and fence that were accidentally damaged by a lorry. Secondly, that the walls provide security and contain the horses that are stabled at Park Farm. Thirdly, the 'fallback' position; that permitted development rights would allow walls of a certain height to be built in any case.
22. Dealing first with the history of walls and fences on the site, the photographs that were submitted by the parties show a timber panelled fence at the bell-mouth entrance to the farm - the part of the appellant's holding used for stabling horses. There is no photographic evidence of the former wall, but plans submitted by the appellant show that it stood behind a hedge. The evidence suggests these structures were relatively inconspicuous. They would not have had such an intrusive effect on the street scene of Northaw Road West and would not have detracted from the rural appearance of the approach to the village. Moreover, any damage to the old wall could have been rectified by a shorter, more discreet and sensitively designed wall than has been erected.
23. Turning next to the matter of security, although some means of enclosure of the site - or that part of it where horses are kept or exercised - might be justified, there is no good reason for a wall of this height and length, or indeed a wall at all to achieve this aim. Post and rail fencing with hedges are the traditional means of containing animals in the countryside, and whilst a more robust enclosure might be needed on some parts of this site where horses might escape or be vulnerable to theft, there is no strong justification for a wall of these proportions.
24. Thirdly, regarding the arguments about the 'fallback' position, the GPDO grants planning permission for *"the erection, construction, maintenance, improvement or*

alteration of a gate, fence, wall or other means of enclosure" up to a height of 1 metre adjacent to a highway.

25. The existence of a planning permission granted by the GPDO is a material consideration and 'fallback' arguments of this sort may be relevant in assessing and comparing the practical effect of the scheme on the openness of the Green Belt. However, in this case, these 2m high walls have a significantly greater adverse effect on openness than 1m high walls would have done. The 'fallback' position is not an argument of great weight in the context of the appeal on ground (a), but I shall deal with the question of the reduction in the height of the wall, rather than its complete removal, in my consideration of the appeal on ground (f).

#### *Planting*

26. In addition to those factors advanced in support of the development, the appellant proposed a planting scheme, which he contended would assist in softening the hard edges of the walls and help them to blend in with their surroundings. The scheme included planting ivy, or some such trailing plant, in irrigated containers on the top of some parts of the walls. Once established, this planting would tumble over the walls, mitigating the starkness of the large panels of brickwork.
27. However, even if this proposal were to be successful, much of the walls would still remain exposed to view and the Council could not control pruning of the planting to reveal the walls. The impression that I formed is that these walls and the accompanying hard paving are intended to make a strong visual impact; to register the significance of this site in the consciousness of passers-by, rather than simply to merge with the rural background. Given the scale, colour and degree of embellishment of the development, the proposed planting would do little to screen it or diminish the harm that it causes.

#### *Other matters - Need to protect the rights and freedoms of the appellant*

28. I now turn to consider the point made in the closing submissions on behalf of the appellant relating to his human rights. In effect, these submissions related to Articles 8 and 1 of the First Protocol of the ECHR<sup>2</sup> about the rights of all people to respect for their homes and the protection of property rights.
29. Whilst the dismissal of the appeal would result in an interference with the appellant's wishes to build boundary walls of his choice and to pave highway verges, this interference must be balanced against the legitimate aims that are stated in these Articles.
30. Having applied the tests of proportionality in *Gosbee*<sup>3</sup>, I believe that the public interest can be safeguarded only by the removal of the unauthorised development (subject to the variation of the requirements, as set out at paragraph 2 above) and that these objectives could not be achieved by means that were less interfering with the appellant's rights. I consider that this is reasonable and no more than is necessary in a democratic society in order to further the legitimate objective of development plan and national planning policies. Dismissal of the appeal would not have a disproportionate effect on the appellant.
31. The public interest factors that these policies seek to protect are neither slight nor general. They entail protecting the Green Belt from inappropriate development, upholding its openness and safeguarding the countryside from encroachment. These are strong and clear-cut planning objections to the appeal development that outweigh the Article 8 and 1 interest in the circumstances of the case.

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<sup>2</sup> *European Convention on Human Rights*, Articles 8 and 1 of the First Protocol.

*Conclusion on ground (a) and the deemed application*

32. I have taken all material considerations into account, but on balance I have come to the view that the combined weight of those considerations, including the suggested conditions relating to landscaping, does not clearly outweigh the totality of the harm arising from the appeal development.
33. I find that the dismissal of the appeal would not result in an interference with the appellant's rights under Articles 8 and 1 of the ECHR, and is necessary in the pursuit of the public interest. That is not to say that ECHR matters carry no weight here, but that they are not decisive on the particular facts of the case. I therefore conclude that the need to protect the appellant's rights and freedoms do not outweigh my findings on the other main issues. Accordingly, the appeal on ground (a) fails and planning permission on the deemed application is refused.

**THE APPEAL ON GROUND (f)**

*Requirement (i)*

34. The first strand of the appellant's case is that the requirements of the enforcement notice should be matched up to the allegation. If they do not, it is open to me to exercise my powers to delete anything extraneous or obviously excessive. The appellant argued that the requirements cannot seek the removal of the entire wall because that would exceed the breach. The notice alleges the "...building of walls in excess of one metre high adjacent to the highway...". This infers that the unauthorised development is that part of each wall that exceeds 1 metre. Had that not been the case, the Council could have expressed the breach simply as the "building of walls" and left it at that, but it did not do so.
35. In my view the breach of planning control is, "without planning permission, the erection of the walls, and the hard surfacing of highway verges". The words "... in excess of one metre high adjacent to the highway..." have been added for clarification. The appellant could have built a 1m high wall relying on a permission granted by the GPDO, but he built something different - a wall that is about 2m high. That wall, in its totality, is an unlawful structure; it is not just the part above 1m high that is unlawful.
36. The second strand of the appellant's case relates to the 'fallback' position. This was one of the other considerations advanced by the appellant as part of the planning merits of the ground (a) appeal. As I have explained, the combined weight of those considerations did not clearly outweigh the totality of the harm arising from the development, and consequently did not justify the retention of unauthorised walls in their entirety. However, the 'fallback' position is of relevance in my consideration of the ground (f) appeal, because where permitted development rights would allow re-instatement of works prohibited by the notice I must assess the likelihood of this happening in practice<sup>4</sup>. The appellant was explicit in his intention to rebuild the wall to a height of 1m if he is required to remove it completely. I cannot disregard lightly that stated intention. Where GPDO provisions apply, as in this case, a requirement to reduce the height of the wall to 1m would be appropriate, to accord with s.173(4)(a).
37. One way to deal with this matter is to give the appellant a choice between two requirements. The first is the total removal of the walls, the second is to reduce their height to fall within the limits permitted by the GPDO. Expressing the requirements of a notice in the alternative is generally avoided, because it can be at risk of being found to be uncertain. However, in this case I believe that it would be appropriate to give the appellant a choice of how to comply. I am satisfied that the minimum requirement is quite clear and that no uncertainty would arise.

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<sup>4</sup> Breckton v ...

*Requirement (iv)*

38. Turning to the highway verges, I do not propose to vary the requirements by deleting requirement (iv) of the notice. These works are reasonable and necessary to restore the verges to their natural condition prior to the implementation of the unauthorised paving. I was told that the verges are likely to carry public utility services and that the unauthorised paving could present difficulties with maintenance.
39. The appellant claimed that he would have difficulty in complying with the requirement (iv). I was told that when he instigated the paving of the verges he thought that this land fell within his ownership, or at least within the ownership of a company that appears to belong to him. At the inquiry I was told that he now thinks that the verges might be part of the highway (i.e., within the ownership or control of the highway authority). That being the case, he would be unable to go onto the land to rectify the unauthorised work.
40. The appellant handed in a copy of a Land Registry Certificate and plan, dated 16 November 2006, which shows the highway verges to be outside the appellant's ownership. That document predates the service of the enforcement notice. Whether or not he was aware of this when the paving works commenced, the possibility that the land might lie within the ownership or control of the highway authority should have occurred to him. It was not an impediment to him carrying out the paving of the verges and I am not persuaded that it is necessarily an impediment to him restoring them to their previous condition. I see no good reason to vary requirement (iv) to address this matter.

*Conclusions on ground (f)*

41. I propose to vary the wording of requirement (i) in respect of the walls. Together with the deletion of requirement (iii), as requested by the Council, this results in the variation of the notice as set out in the Formal Decision, at paragraph 2 above. To this extent the appeal on ground (f) succeeds. Requirements (ii) and (iv) remain unchanged.

**THE APPEAL ON GROUND (g)**

42. The gist of the appellant's case is that one month to comply with requirements (i) and (ii) is too short and that 3 months should be permitted. I agree. Given the extensive nature of the works that have to be carried out and the time of the year through which the compliance period would run, I believe that 3 months would be a reasonable period. The appeal on ground (g) succeeds.

**CONCLUSIONS**

43. For the reasons given and having regard to all the material considerations, the appeals on grounds (f) - in part - and on ground (g) succeed. The appeal on ground (a) fails and the enforcement notice, as corrected and varied, is upheld. Planning permission on the deemed application is refused.

*George Mapson*

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

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Queen's Counsel  
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He called

Miss Jane R Osborn  
BA(Hons) DipTP MRTPI

The appellant's agent, associated with  
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FOR THE LOCAL PLANNING AUTHORITY:

Mr Wayne Beglan

Of Counsel  
Instructed by the Solicitor to  
Welwyn Hatfield Borough Council

He called

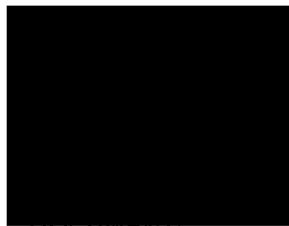
Mrs Lisa Hughes  
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Principal Planning Officer  
Welwyn Hatfield Borough Council

Mr James Robson

Senior Planning and Enforcement Officer  
Welwyn Hatfield Borough Council

INTERESTED PERSONS:



103 Northaw Road West, Northaw, Herts, EN6 4NS

Northaw and Cuffley Parish Council

42 Station Road, Cuffley, Herts EN6 4NX

DOCUMENTS

- 1 The Council's letters of notification of the appeal (dated 28 February 2007) and list of those notified
- 2 The documents submitted on behalf of the appellant
  - 2.1 Instructing Solicitor's details
  - 2.2 Statement of Common Ground
  - 2.3 Land Registry Title Number HD437604 - 10 November 2006
  - 2.4 Bundle containing a plan and 3 photographs of the appeal site (Dec 2005 and Feb 2006)
  - 2.5 Reported case - Garland v MHLG and Another (Court of Appeal) October 14 and 15 1968
  - 2.6 Land Registry Search on land adjoining Park Farm - Certificate Date 16 November 2006
- 3 The documents submitted on behalf of the Welwyn Hatfield Council
  - 3.1 List of appearances for the Council.
  - 3.2 Email and Direction letter from Government Offices for the East of England, relating to 'saved policies, and the Schedule of Saved



- Policies.
- 3.3 Extract from GPDO - Definition of "building" for the purposes of the GPDO.
  - 3.4 Extract - JPL 2002 - Reported Case R (oao) Westminster City Council and SSETR and Market Café [2001] EWHC Admin 270.
  - 3.5 Transcript of Handed Down Judgment; Case Ref: QBDOF 1999/1243/C - Ronald M Duguid v SSETR and West Lindsey District Council.
  - 3.6 Report of the Chief Planning and Environmental Health Officer to Welwyn Hatfield Council Planning Committee Meeting of 23 November 2006 - Re: Land at Park Farm, Northaw Road West, Northaw.
  - 3.7 SP Policy E.2 - the 'saved' development plan policy

#### PLANS

- A Plan Ref No: 38-07.1 Landscape proposals along front boundary wall - submitted on behalf of the appellant.

#### PHOTOGRAPHS

- A Aerial photograph of the appeal site (Google Image) - submitted by Mrs Brook



# Plan A

This is the plan referred to in my decision dated: 10<sup>th</sup>. December 2007.

by George Mapson DipTP DipLD MRTPI

Land At Park Farm, Northaw Road West, Northaw, Hertfordshire EN6 4NT

Reference: APP/C1950/C/07/2034177

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Scale: Not to scale

