

Report to District Development Control Committee

Date of meeting: 4 August 2009



**Epping Forest
District Council**

**Subject: Erection of a dwellinghouse without planning permission at
 Red Cottage, New Farm Drive, Abridge, RM4 1BU**

**Officer contact for further information: Stephan Solon (01992 564103)
Committee Secretary: Simon Hill (01992 564249)**

Recommendation:

That the Committee decide whether to issue an enforcement notice under s.172 of the Town and Country Planning Act 1990 (as amended) requiring the removal of a dwellinghouse.

Report:

1. This matter was the subject of a report to the meeting of Area Plans Sub-Committee East on 1 July 2009. The Sub-Committee voted in equal numbers for and against the recommendation of Officers to issue an enforcement notice. The Chairman declined to cast his vote and the Sub-Committee therefore referred the matter to the District Development Control Committee for decision. The original Officer report is appended to this report.
2. Members are reminded that in the event of an enforcement notice being issued, the owner of the land would have a right of appeal against it to the Secretary of State and, in the event of that appeal being dismissed, a further right of appeal against the Secretary of States decision to the High Court.

Appended report:

Report to Area Plans Sub-Committee East

Date of meeting: 1 July 2009



**Epping Forest
District Council**

**Subject: Erection of a dwellinghouse without planning permission at
Red Cottage, New Farm Drive, Abridge, RM4 1BU**

**Responsible Officer: S Solon, Principal Planning Officer (01992 56 4103)
Committee Secretary: M Jenkins (01992 56 4607)**

Recommendation:

1. That, having regard to the provisions of the development plan and to all other material considerations an enforcement notice be issued by the Director of Corporate Support Services under section 172 of the Town and Country Planning Act 1990.
2. That the notice require the following within 12 months of it taking effect:
 - 1) The removal of the dwellinghouse erected on the land from 1 metre below immediately adjacent ground level up, and
 - 2) The infilling of the remaining part of the basement with inert material, and
 - 3) The making good of the remaining excavation by infilling it with top soil to a level matching that of the immediately adjacent land and seeding it with grass, and
 - 4) The removal from the land of all debris and material remaining on the land at finished ground level and above as a consequence of compliance with requirements 1 – 3.
3. That authority for the issue of the enforcement notice also include authority to vary or withdraw any such notice and to issue further notices if it becomes necessary to do this in order to remedy the breach of planning control referred to in this report.
4. That in the event the enforcement notice is not complied with, the Director of Corporate Support Services, subject to being satisfied as to the evidence and the expediency of such action be authorised to commence criminal and/or civil proceedings to remedy the breach of the enforcement notice.

Report Detail:

1. SUMMARY

- 1.1 A part single, part two storey 8 bedroom detached house with basement has been built without planning permission on land within the Metropolitan Green Belt.
- 1.2 The house replaces a small single storey house. Although planning permission was granted in 2004 for a replacement dwelling with amendments to this approval granted in August 2005,

the building constructed is considerably larger and of significantly different design to the approved houses. It therefore does not benefit from those consents.

- 1.3 A retrospective planning application to retain the two storey part of the house (on the basis of it being an alteration to the house approved in 2005) together with a separate retrospective planning application for the retention of the single storey part (described as a conservatory) were both refused under delegated powers on 18 May 2009. The applications were refused on the basis that the development causes unjustifiable harm to the green belt.
- 1.4 Although the owner split the house in 2 for the purposes of seeking retrospective planning permission, it is a matter of fact that the house as a whole was built within the last 4 years without planning permission. Since the house as a whole does not have planning permission, it is necessary to consider it as a whole when considering the expediency of taking enforcement action against it.
- 1.5 The house built is inappropriate development in the green belt and therefore is by definition harmful to it. This is more than a matter of principle in this case since the house causes clear harm to its openness, has an undesirable urbanising effect on its wider setting and consequently is also harmful to the rural environment. Moreover, no very special circumstances exist that outweigh the harm caused by the new house. Accordingly, the retention of the house is contrary to policies CP2, GB2A, GB7A, GB15A and DBE4 of the Epping Forest District Local Plan and Alterations.
- 1.6 Any steps short of requiring the demolition of the house would not remedy the harm caused by house therefore such a requirement is necessary and proportionate.
- 1.7 A requirement to partially demolish the house and thereby give planning permission for the remaining part would amount to granting planning permission for a house without any conditions limiting permitted development rights to extend the house. In that scenario, it would be possible for the house to then be extended to its full permitted development allowance following compliance with the requirements of the notice. That would defeat the purpose of taking enforcement action.
- 1.8 However, if Members do prefer to consider the option of only securing the demolition of the single storey rear projection that can be done in the context of considering a planning application to retain the two storey element of the house. If consent were given it could include appropriate conditions to prevent further harm being caused. In that event, it is recommended the owner be given an appropriate time scale to submit a valid planning application which would be presented to Members for decision. For the reasons set out in this report, Officers would recommend such a proposal be refused planning permission but the final decision would rest with Members. If Members decide they would like to consider such a proposal in the context of a planning application, they would not be making any decision on its merits and therefore would not be fettering their discretion to make a decision on such an application.
- 1.9 If Members do decide to give the owner a further opportunity to make a planning application within a specific timescale, in order to protect the Councils' position and to encourage the timely submission of an application Members could authorise the taking of enforcement action as recommended in the event that no application is submitted. Members would be notified of the intention to take enforcement action through the Members Bulletin. Alternatively, Members could simply refuse to authorise enforcement action, in which case if no application is submitted in the timescale given, Members would be asked to give authority for taking enforcement action by way of the presentation of a report to this Sub-Committee for consideration.

2 BACKGROUND INFORMATION

2.1 Notification of Members

2.1.1 Members were notified of the intended action in the weekly list dated 26 May 2009. Such action is normally delegated to officers however Cllr Rolfe requested this matter be reported to the Sub Committee for decision.

2.2 Description of Property to which the Enforcement Notice Will Apply

2.2.1 Land on the west side of New Farm Drive where it is a private way serving North Lodge, Red Cottage and North Barn. The registered title identifies the way as forming a private drive to Bishops Hall. The title also includes 1 hectare of land to the south and west of the site that is lawfully used as a kennels and cattery and a further 5.6 hectares of land beyond the site on the east side of the way that is used for agriculture.

2.2.2 The ground level of the site varies, increasing in height slightly gradually from north to south. Levels increase more steeply from the boundary with New Farm Drive due to made up ground levels on the site. North Lodge, a large detached house with garden is located at lower level immediately to the north of the site, beyond which is an open field. Beyond the kennels and cattery to the south and west of the site are open fields.

2.2.3 The land was previously a landfill site that, according to Council records, contained household waste, munitions and hazardous industrial waste. Any development therefore needs to deal with potential for harmful landfill gas to impact on it.

2.3 Listed Building

2.3.1 Not listed.

2.4 Conservation Area

2.4.1 Not in a Conservation Area.

2.5 Green Belt

2.5.1 Within the Metropolitan Green Belt.

2.6 Preserved Trees

2.6.1 There are no preserved trees on the property.

2.7 Relevant Planning and Enforcement History

12.10.93 Application EPF/0854/93 to retain a conservatory – Approved.

02.06.89 Application EPF/0577/89 for replacement bungalow refused and subsequent appeal dismissed on grounds of harm to green belt.

22.01.01 Application EPF/1981/00 for use of land as extension to domestic curtilage of chalet. – Approved subject to condition removing permitted development rights for the erection of outbuildings.

05.07.04 Application EPF/0973/04 for replacement dwelling – Refused on grounds of harm to green belt.

- 10.11.04 Application EPF/1618/04 for replacement dwelling (2 bedroom) – Approved subject to condition removing permitted development rights for the erection of extensions.
- 02.03.05 Application EPF/2298/04 for demolition of existing building and erection of replacement dwelling – Refused on grounds of harm to green belt.
- 17.08.05 Application EPF/0747/05 for amendment to planning permission EPF/1618/04 to insert additional dormer windows to front and side elevations and provide 1 additional bedroom - Approved subject to condition removing permitted development rights for the erection of extensions.
- 16.07.08 Complaint received that “conservatory” built without permission. Subsequent inspection confirms larger rear addition to recently constructed house had been erected (investigation ENF/0433/08).
- 28.08.08 Site visit made to measure the house as initial visit highlighted discrepancies from the plans approved under planning permissions EPF/0747/05 and EPF/1618/04. From measurements taken of the dwelling it was 2 metres longer and wider. Retrospective planning application requested.
- 18.05.09 Application EPF/0531/09 for amendments to replacement dwelling approved under planning permission EPF/0747/05 – Refused on grounds of harm to green belt.
- 18.05.09 Application EPF/0533/09 for rear conservatory – Refused on grounds of harm to green belt.
- 11.05.09 Complaint received alleging extension of curtilage and erection of outbuildings (investigations ENF/0293/09 & ENF/0294/09).
- 02.06.09 Site visit by enforcement officers investigating outbuildings on the site. Established substantial outbuildings/stables erected without permission. Retrospective planning application requested (investigation ENF/0294/09).

2.8 Lawful Use

2.8.1 A single dwellinghouse.

2.9 Description of Unauthorised Development

- 2.9.1 Without planning permission, the erection of a dwellinghouse. It comprises a part single, part two storey 8 bedroom detached house with basement.
- 2.9.2 The new house is of traditional design with an L shaped foot print. It is part two storey and part single storey. The first floor of the two storey element is included within a deep roof that includes dormer windows to all elevations. The two storey element includes a basement that closely approximates the ground floor footprint. Due to variations in site levels and due to a variation in roof height the height of the two storey element above ground level varies between 7.5m at the rear to 8.5m at the front.
- 2.9.3 The two storey element has a width of 14.5m across the front elevation and a total depth of 17.5m. The single storey element has a depth of 12.5m a width of 6.2m and height of 5m. A 3m by 3.5m and 4m high link structure connects it to the two storey part of the house. The total depth of the house is 33m.
- 2.9.4 The total approximate volume of the house based on external dimensions is 1900 cubic metres. The volume of the basement is approximately 600m³ and the volume of the single

storey element (excluding the link structure) is 300m³. The approximate volume of the two storey element above ground level is 1000m³.

- 2.9.5 Although planning permissions have previously been granted for the erection of a two storey detached house to replace a pre-existing house, Ref EPF/1618/04 & EPF/0747/05, the house now built is materially different to those approved because it is considerably larger and has a significantly different design.
- 2.9.6 Planning permission EPF/1618/04 is for a 2 bedroom house and permission EPF/0747/05 is for a 3 bedroom house. Approved drawings relating to both permissions show a house of traditional design with an L shaped foot print with the first floor within a deep roof. There is no basement and no single storey rear projection. The height of the approved houses is shown as 6.5m above ground level. The width across the front elevation is shown as 14m and the total depth as 15m. The total approximate volume of the approved houses is 670 cubic metres.
- 2.9.7 The house actually built therefore at least 1m higher and up to 2m higher than those approved. Its width is similar, deviating by 0.5m, while its length is much greater, deviating by 18m (an increase of 120%). The total volume of the new house is approximately 1230m³ larger than those approved, amounting to an increase of 185%.
- 2.9.8 Having regard to the considerable deviation in size and to the deviation in design of the existing house from the approved houses, it is absolutely clear the existing house in no way benefits from the previous planning permissions to erect a replacement house.

2.10 Evidence of When the Breach Occurred

- 2.10.1 Building Control records show that work commenced on the site on the 25th July 2006. Accordingly, the house is less than 4 years old and consequently is not time immune from enforcement action.

3. REASONS FOR ISSUING THE ENFORCEMENT NOTICE

3.1 Relevant Planning Policy

Local Plan and Alterations:

CP2	Protection the Quality of the Rural and Built Environment
GB2A	Development in the Green Belt
GB7A	Conspicuous development
GB15A	Replacement dwellings in the Green Belt
DBE1	Design of new buildings
DBE4	New buildings in the Green Belt
DBE9	Impact on Amenity
ST4	Road Safety
ST6	Vehicle Parking
I4	Enforcement Procedures

3.2 Assessment of the Development

- 3.2.1 The main issues raised by the erection of the house are:

- Whether it is appropriate development in the green belt.

- If it is inappropriate development, whether any very special circumstances exist that outweighs the harm caused by reason of inappropriateness and for any other reason.
 - Impact on the openness of the green belt.
- 3.2.2 Planning policy for the Green Belt as set out in PPG2 and the Epping Forest District Local Plan and Alterations makes it clear the erection of new buildings in the green belt is inappropriate development that is, by definition, harmful to it. However, green belt policy does allow for the erection of replacement houses provided they are of a similar scale and would not have a greater impact on the openness of the Green Belt than the house replaced. In such cases therefore, the erection of a new building would not be inappropriate.
- 3.2.3 Policy GB15A is the main policy of the Local Plan against which such development is assessed. It sets out a number of criteria that it should meet, the two most important being the new house should not be materially greater in volume than that replaced and it should not have a greater impact on the openness of the green belt than the house replaced.
- 3.2.4 In this case, the house replaced was an extended single storey house with a rectangular footprint having a width of 13m, depth of 7.5m and maximum height of 4m. It had a total volume of 315 cubic metres.
- 3.2.5 A comparison of those dimensions with those of the existing house, as described in section 2.9 of this report at paragraphs 2.9.2 to 2.9.4, reveals that while the width is 1.5m greater, the depth is 25.5m greater, a 170% increase. Its height is an average of 4m greater, a 100% increase.
- 3.2.6 With regard to the critical comparison of volume, the new house is approximately 500% larger. Even when the comparison is restricted solely to the difference between the house replaced and the above ground part two storey element of the existing house, that part of the new house has a volume over 200% larger than that of the house replaced.
- 3.2.7 Having regard to the considerable increase in height and depth when compared to the house replaced, the new house is clearly more prominent and has a far greater impact on the openness of the green belt. As such it is an excessively conspicuous development.
- 3.2.8 Given the very great increase in built volume and the considerably greater impact on the openness of the green belt of the new house when compared to the house replaces, it clearly fails to comply with Local Plan and Alterations policies GB15A and GB7A. It therefore also fails to comply with the requirements of policy GB2A. Accordingly, the development is demonstrably in clear conflict with all relevant policies within the development plan that relate to development in the green belt. As such the new house is inappropriate development in the green belt.
- 3.2.9 Inappropriate development may be allowed in the green belt where there are very special circumstances that outweigh any harm caused by it. Such circumstances by definition should not be readily capable of being repeated in any other location in the green belt.
- 3.2.10 In this case, the only material consideration that could possibly amount to a very special circumstance is existence of planning permissions for the erection of a two storey house given in 2004 and 2005, however, in practice it is very unlikely that planning permission EPF/1618/04 could be taken up since it expires on 10 November 2009. Planning permission EPF/0747/05 will be capable of being taken up until 17 August 2010. To assess how much weight should be given to planning permission EPF/0747/05, it is necessary to compare the house approve under that consent with that built. This is described in section 2.9 of this report at paragraphs 2.9.5 to 2.9.7. That exercise reveals the total volume of the new house is 185% greater than that approved. It also reveals its depth is 120% greater and its height is approximately 20% greater.
- 3.2.11 This comparison can be refined further by comparing only the above ground part of the two storey element of the existing house with the house under approved planning permission

EPF/0747/05. That exercise reveals its depth is 2.5m greater, an increase of 17%, and that its volume is approximately 330m³ greater, an increase of 50%.

3.2.12 Having compared the existing house with that approved it is clear that even the above ground part of the two storey element is considerably larger than the approved house. In the circumstances, no matter the basis on which the existing house is compared with the house approved under planning permission EPF/0747/05, it is considerably larger. Consequently, there is no merit in any argument that the extant planning permission for a replacement house can amount to a very special circumstance in this case.

3.2.13 Since the house built is inappropriate development in the green belt it is by definition harmful to it. This is more than a matter of principle in this case since the house causes clear harm to its openness, has an undesirable urbanising effect on its wider setting and consequently is also harmful to the rural environment. Moreover, no very special circumstances exist that outweigh the harm caused by the new house. Accordingly, the retention of the house is contrary to local Plan and Alterations policies CP2, GB2A, GB7A, GB15A and DBE4.

3.3 Procedural Matters

3.3.1 Turning to the requirements of any possible enforcement action to remedy the harm caused by the new house, consideration has been given to requiring it be modified to accord with the house approved under planning permission EPF/0747/05. However, the opinion of the Councils' Building Control Manager is that it would be extremely difficult to modify this building at a reasonable cost due to its method of construction. Any such requirement would therefore amount to a requirement to demolish the house and then go on to build a different house. In the event of an appeal against the issue of an enforcement notice, which is likely in this case, a requirement to in effect construct a new house would undoubtedly be found to go beyond what is reasonably required to remedy the harm caused by the development. The Secretary of State may then also find that varying the requirements of the notice to omit the requirement to build a new house would be such a significant change it went beyond the scope of his powers to vary an enforcement notice. In that case it would only leave Secretary of State the option of allowing the appeal on the basis that the requirements of the notice are excessive and consequently quashing the notice. While that would not go so far as to give the house planning permission, it would leave the Council in the position of having to start its enforcement action afresh. It may also leave it open to a costs claim.

3.3.2 The option of requiring a partial demolition of the house, the single storey rear projection, has in effect been considered at paragraph 3.2.11 of this report. That would still leave a house on site that is disproportionately larger than the house it replaced. The resulting house would also be considerably larger than either of the houses previously approved and be unacceptable for the reasons summarised in paragraph 3.2.13. Furthermore, such a requirement would amount to granting planning permission for a house without any conditions limiting permitted development rights to extend the house. In that scenario, it would be possible for the house to then be extended to its full permitted development allowance, defeating the purpose of the enforcement action.

3.3.3 If, notwithstanding the recommendation of this report, Members prefer to consider the option of only securing the demolition of the single storey rear projection that is best done in the context of considering a planning application to retain the two storey element of the house. If consent were given it could include appropriate conditions to prevent further harm being caused and deal with other matters such as mitigation of the impact of any landfill gas. In that event, it is recommended the owner be given an appropriate time scale to submit a valid planning application which would be presented to Members for decision. For the reasons set out in this report, Officers would recommend such a proposal be refused planning permission but the final decision would rest with Members. If Members decide they would like to consider such a proposal in the context of a planning application, they would not be making any decision on its merits and therefore would not be fettering their discretion to make a decision on such an application.

- 3.3.4 If Members do decide to give the owner a further opportunity to make a planning application within a specific timescale, in order to protect the Councils' position and to encourage the timely submission of an application Members could authorise the taking of enforcement action as recommended in the event that no application is submitted. Members would be notified of the intention to take enforcement action through the Members Bulletin. Alternatively, Members could simply refuse to authorise enforcement action, in which case if no application is submitted in the timescale given, Members would be asked to give authority for taking enforcement action by way of the presentation of a report to this Sub-Committee for consideration.

4. HUMAN RIGHTS CONSIDERATIONS

- 4.1 The issue of an enforcement notice in this case would amount to interference with the rights of the owner/occupier of the land given under Article 8 and the First Article of the First Protocol of the European Convention of Human Rights. The Article 8 rights affected are his right to respect for private family life and his home. The First Article of the First Protocol states persons are entitled to the peaceful enjoyment of their possessions. These rights are qualified rights and in both the case of Article 8 and the First Article of the First Protocol interference with rights by a public authority are permitted in accordance with the law as necessary for the protection of the rights and freedoms of others and the general interest. Accordingly, there is a fair balance to be struck between individual's rights, the public interests protected by the planning system and those of other persons.
- 4.2 In this case it is considered that since the unauthorised house causes clear harm to the green belt and rural environment the balance falls against the rights of the owner/occupier of the property. The Council has already refused retrospective planning applications for the development and the owner still has time to submit an appeal against those decisions. The owner would also have a right of appeal against the issue an enforcement notice. The requirement of the notice to remove the dwelling is considered to be the minimum necessary step to remedy the harm caused by it as identified in this report and therefore it is considered to be proportionate.

5. CONCLUSION

- 5.1 That it is considered expedient to take enforcement action for the above reasons.