

Previous Enforcement report 10 March 2011, including Late Observations – APPENDIX A

Development Control Committee: 10 March 2011

310/05/085 Item 6.01

6.01 - Reference: 310/05/085

ENFORCEMENT OF PLANNING CONTROL

Four Winds, Farley Common, Westerham

ITEM FOR DECISION

This matter has been referred to Development Control Committee at the discretion of the Community and Planning Services Director.

The completion of this enforcement report has been held in abeyance since August 2010 to enable the applicant time to respond to the recommendations set out below. However, no further response has been received to date setting out his intentions regarding rectifying the unauthorised works.

Planning permission was refused and subsequently dismissed on appeal for the retention of a replacement dwelling including a basement double garage and a 2.5m high boundary wall. The boundary wall and the basement remain on site without the benefit of planning permission. This report seeks to consider the expediency of enforcement action to remove the basement garage and boundary wall.

RECOMMENDATION:

That authority is given to serve an Enforcement Notice requiring the:

- (a) Demolition and removal of brick boundary wall along the eastern boundary of the site between Four Winds and Farleyside.
- (b) Back filling of the garage with inert material and permanent closure of any internal access.
- (c) Breaking up and removal of the retaining walls adjacent to the access ramp to the garage and;
 - (i) The restoration of the original ground levels to the front north-eastern corner of the site, or;
 - (ii) The restoration of the original ground levels incorporating the approved parking layout under ref: SE/07/03532/FUL & SE/08/01003/DETAIL, or;

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- (iii) The implementation of an alternative scheme of restoring this part of the site to include a car parking layout (i.e. not at the original ground level) details of which shall first have been submitted to and approved in writing by the District Planning Authority. Such details to include cross sections (both north-south and east-west) to show the original and proposed levels.

FOR THE FOLLOWING REASONS:

1 The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The developments comprising the retention of a 2.5m high wall and basement garage with access ramps, add to the built form on the land to a degree that is harmful to the character and appearance of the area. This conflicts with PPG2 (Green Belts) and policy H14A of the Sevenoaks District Local Plan.

2 The land lies within an Area of Outstanding Natural Beauty. The developments comprising the boundary wall and basement garage with access ramps, detract from the character and appearance of that area. This conflicts with policy EN6 of the Sevenoaks District Local Plan.

Compliance period: Six months

Development Plan

Planning Policies

Sevenoaks District Local Plan Policies:

- 1 EN1 General principles
- 2 EN6 Areas of Outstanding Natural Beauty
- 3 H13 Replacement dwellings in the Green Belt

Others

- 4 Core Strategy Development Plan Document: LA08 The Countryside and the Rural Economy
- 5 Planning Policy Statement 1: Delivering Sustainable Development
- 6 Planning Policy Guidance 2: Green Belts

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- 7 Planning Policy Statement 3: Housing
- 8 Planning Policy Statement 7: Sustainable Development in Rural Areas

Planning History

- 9 SE/07/02532/FUL: Demolish existing house and erect one single house. Approved 12.2.08
- 10 SE/08/00877/FUL: Demolish existing house and erect one single house and integral garage. Amendment to planning application SE/07/03532/FUL; Refused on 19.6.08 on the following grounds:
 - “1) The land lies within the Metropolitan Green Belt where strict policies of restraint apply. The proposal would add to the built form on the land to a degree that would be harmful to the character and appearance of the area. This conflicts with PPG2 and policy SS2 of the Kent & Medway Structure Plan 2006, as amplified by policy H14A of the Sevenoaks District Local Plan.
 - 2) The land lies within an Area of Outstanding Natural Beauty. The proposal would detract from the character and appearance of that area. This conflicts with policy EN4 of the Kent & Medway Structure Plan 2006 and policy EN6 of the Sevenoaks District Local Plan.
 - 3) The land lies within a Special Landscape Area. The proposal fails to give long term protection to the landscape and would harm its character. This conflicts with policy EN5 of the Kent & Medway Structure Plan 2006 and policy EN7 of the Sevenoaks District Local Plan.”
- 11 SE/09/00672: Erection of replacement detached dwelling (amendment of planning permission SE/07/03532) to include basement double garage and new 2.5m boundary wall on eastern boundary. This application was refused for the same reasons as set out above, and subsequently dismissed on appeal. The appeal decision is attached in full as Appendix A.

Head of Development Services Appraisal

Description of site

- 12 The application site is located to the south of a private access road leading from Farley Lane. The site is within the Metropolitan Green Belt and AONB. The area is characterised by low density, large detached houses set in extensive grounds. Four Winds formally comprised a detached property of no significant architectural merit, which was in poor condition. It has an extensive

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plot bounded by mature trees and hedges. The original dwelling has now been demolished and the new dwelling constructed, including the construction of a double garage attached to the house but at basement level. It is approached via a sloping driveway visible from the adjacent roadway and has a substantial visual impact, despite being in the main below ground level. In addition a 2.5m high boundary wall has been constructed along the eastern boundary.

Breach of Control

- 13 The continued retention of the garage, associated retaining walls and the boundary wall following the dismissal of the appeal against the refusal of planning permission constitutes a breach of planning control.

Determining Issues

- 14 The determining issues are set out in full in the report presented to members to consider the relevant planning application, a copy of which I attach as Appendix B. The only significant point to note at this stage is that the South East Plan policies are no longer relevant. However the thrust of the policies protecting the openness of the Green Belt remain in place in the Local Plan Policies and in the relevant national policies. The main issues therefore remain:

Green Belt Implications.

Visual Impact.

Impact on residential amenity.

Considerations

- 15 The detailed consideration of the impact of the development is again set out in full in the attached report of the planning application, and is assisted by the conclusions of the Inspector. The appeal gave the applicant the opportunity to fully present his case for special circumstances to outweigh the usual presumption against inappropriate development in the Green Belt, but this case was not accepted. The appeal Inspector considered that both the basement and the wall constituted inappropriate development, by definition harmful to the openness of the Green Belt. In addition he concluded that the basement together with the associated construction of the access ramp, turning area and retaining walls resulted in "a visible upstanding presence", which clearly adversely affected the openness of the Green Belt.
- 16 In terms of the impact of the unauthorised developments on the visual amenities of the area the Inspector considered that the site had been "transformed to a scene of almost solid urbanity". He also considered that additional works including cladding the retaining walls with sandstone would "increase rather than diminish this significant and entirely adverse visual impact".

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- 17 As no works have been carried out to remove the unauthorised development, it is necessary to consider what steps should be taken to remedy the breach of control and restore the openness of the Green Belt, the visual amenities of the area and the rural character of the site. I consider that the boundary wall should be demolished in its entirety. Its continuing presence adversely affects the rural character of the area to an unacceptable degree. Whilst in some situations it may be possible to consider the lesser remedy of reducing the height of the wall to 2m, which would be permitted development, in this instance permitted development rights for all enclosures were removed by virtue of condition 4 on the original planning permission, therefore any boundary wall would require planning permission. In this instance a lightweight structure such as a fence or trellis might be more acceptable, but preferably a substantial hedge and tree screen could be established along the boundary with no loss of privacy or security.
- 18 The retention of the garage and access ramp continues to adversely affect the openness of the Green Belt and the character of the area, therefore I consider its removal to be expedient. To this end, I consider the void created by the garage should be backfilled with inert material and original garden levels restored. The filling of the space with inert material should not prejudice the structure of the main house, nor of the drainage issues which the applicant claimed necessitated the creation of the basement in the first instance. The space could in effect act as a soakaway to control any excess water on the site, rather than as a space which in itself would require additional drainage to keep dry. The retention of the space but the filling of the access ramps to render it completely underground would also potentially exacerbate any drainage problems. I consider that the filling of the space with the restoration of ground levels to be a reasonable action which could be taken to remedy the ongoing harm caused by the unauthorised development.
- 19 I would also note the comments made by the appeal Inspector in considering whether there were very special circumstances in support of the garage which would outweigh the harm to the Green Belt. At paragraph 21 he comments as follows:

“In light of all I have heard and seen in this case, I do not doubt that the excavation of the ground to the east of the permitted replacement dwelling was carried out in response to a genuine emergency and not as a deliberate attempt to flout Green Belt planning control. Nonetheless, the Appellant had plainly been made aware that an almost identical basement garage would be problematic before planning permission for the replacement dwelling was granted, and I am far from convinced that the construction of such a large reinforced concrete subterranean box was the only way in which ground stability and water flows, when unexpectedly encountered, could have been handled relative to the construction of the basement of the main house alone.”

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Human Rights Act:

- 20 Article 8 of the Human Rights Act provides for everyone to have the right to respect for their family life, home and correspondence. This is subject to the proviso that there shall be no interference by public authority with the exercise of this right except when pursuing a legitimate aim in law as is necessary in a democratic society, in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedom of others. Article 8 applies even if the erection of the creation of the basement garage/store, associated access works and brick boundary wall are unauthorised. However, in my opinion any rights of the owners of the site to erect the garage and wall is outweighed by the public interest. I am satisfied that the serving of an enforcement notice is expedient in this case. The site lies within the Metropolitan Green Belt and an Area of Outstanding Natural Beauty. The primary objectives in this area are to protect the character, amenity and openness of the Green Belt and the countryside in general.

Conclusion

- 21 In light of the recent planning history, including the recent appeal decision, I am of the view that the basement garage/store, the associated access ramp and retaining walls and brick boundary wall represent inappropriate development harmful to the maintenance of the Green Belt and to its openness. Furthermore, these works adversely affect the visual amenities of the Green Belt and this part of the Area of Outstanding Natural Beauty.
- 22 I therefore recommend enforcement action as set out above.

Contact Officer(s): Jim Sperryn Extension 7179

Kristen Paterson
Community and Planning Services Director

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To; The Officers of the Planning Department and Members of Sevenoaks District Council Development Control Committee – 10th March, 2011.

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Dear Sir / Madam,

Sevenoaks Planning Reference: 310/05/085

Site Reference: Four Winds, Farley Common, Westerham, Kent. TN16 1UB.

Late Observation Note.

- Members can reasonably expect me to present new information, but in this case the crucial information relating to the engineering necessary to surmount the site conditions is not new, as the matters have always been available. These engineering matters are provable facts and materially pivotal, but have been inadequately represented to Members and the appeal inspector. They are not being presented this evening.
- The Green Belt is a fundamental planning issue, but the real site circumstances that led to the engineering solution are sufficient to constitute very special circumstances. Without knowledge of them Members are not fully informed.
- I appreciate that I have had extended time already but I respectfully request the Committee defer the pursuit of Enforcement proceedings at this time so that a full consideration of the position can be made. I accept that compromises may have to be made, but I am confident that a negotiated solution can be reached and put before Members.
- Mr Sperryn will be able to confirm to Members that the wall was withdrawn as a material factor (subject to the 2m height restriction) by Mr Richard Morris at a meeting on 25th August 2010.

Yours sincerely,

Mark Banister.

Memo to Members relating to matters of fact for the Site Visit to Four Winds, Farley Lane.

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Date 10th March 2011

The determination of enforcement action you are charged with making this evening flows from the merits of the engineering matters relating to the integrity of the structure. On the one hand I received the professional and insured advice of my consulting engineer to build it as a single structural unit in response to the extraordinary site circumstances: on the other hand the two engineers (Mr Haime and Mr Hook) instructed by SDC believe it to be two separate structures. Over the ensuing months I have supplied your officers with all the geotechnical and engineering details and justifications, and you are now able to see for yourselves. Neither of the SDC's engineers has ever visited the site.

There are four main factual matters originally proposed by Mr Haime and subsequently supported by Mr Hook which have been accepted by your officers:

- i) The house and garage have separate foundations.
Incorrect - the house and garage foundations are one single slab and are entirely contiguous with no separation as claimed.
- ii) The retaining walls of the house resist the lateral forces applied by the subsoil and ground water.
Incorrect – the external garage and house walls junction off the same continuous slab. Similarly the walls are continuous and interlinked for strength. The walls between the house and garage have no reinforcing and are only designed to take vertical load and are not capable of taking lateral load as the proposed enforcement demands.
- iii) The house has sufficient mass to resist flotation in water-saturated sub-soils.
Incorrect - This site has immense hydrological problems and avoidance of the risk flotation of the structure is the main driving design factor.
- iv) None of the above requires the garage construction to augment the design of the original house.
Incorrect – the construction of an extended slab and box section to match the design of the approved built form was a technical solution derived in compliance with the best practice and the guidance offered in the definitive text on the subject “Structural Foundations Manual for low rise buildings” by MF Atkinson (second edition). SDC's engineers have offered no technically-based rebuttal.

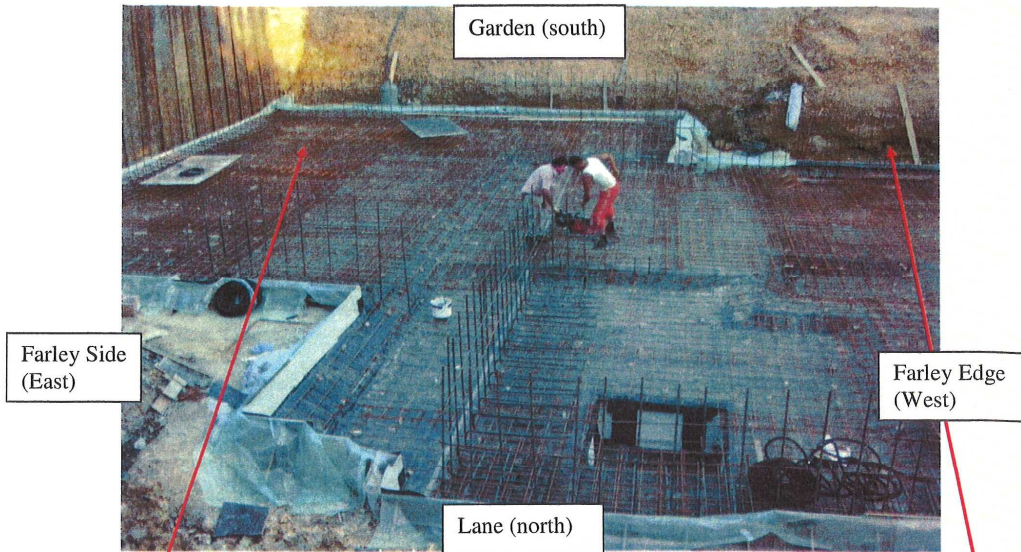
There are numerous other technical issues of fact, all of which my engineer Mt Pont can prove as matters of calculation and accordance with best professional engineering practice.

You will note that as another matter of fact the boundary wall was withdrawn as a material planning matter by SDC (at a meeting with various witnesses with Mr Morris on the 25th August 2010).

I cannot tell you how grateful I am that you are visiting the site and can now see for yourself that all we have presented is factually correct. Mr Pont has kindly agreed to attend this morning and is happy to answer any questions relating to fact that you may wish to ask of him.

Yours sincerely,

Mark Banister.

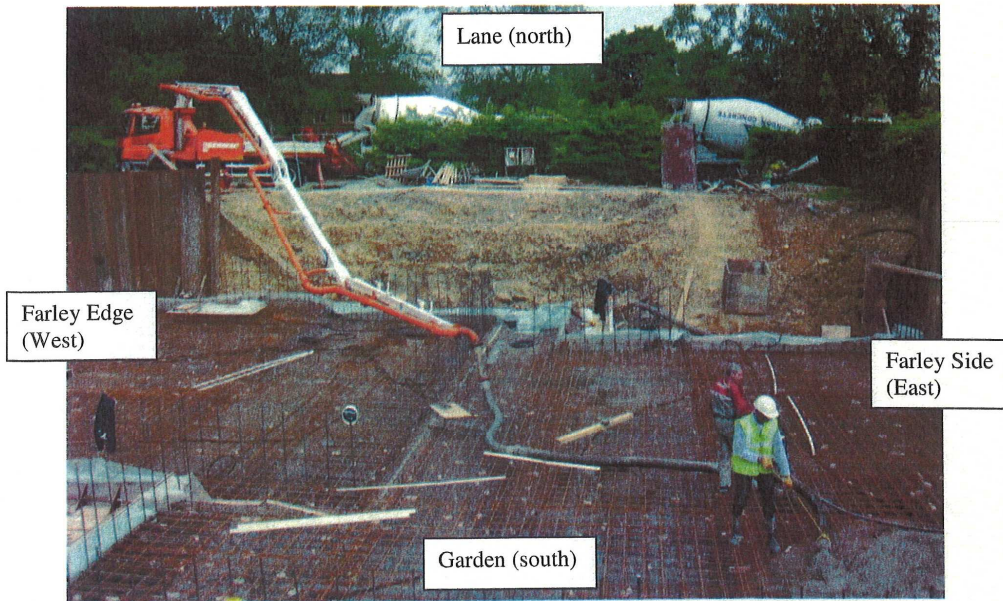


Blown up to show vertical reinforcing bars of continuous garage and house walls fixed to single garage and house foundation slab.



Replica picture free of labels





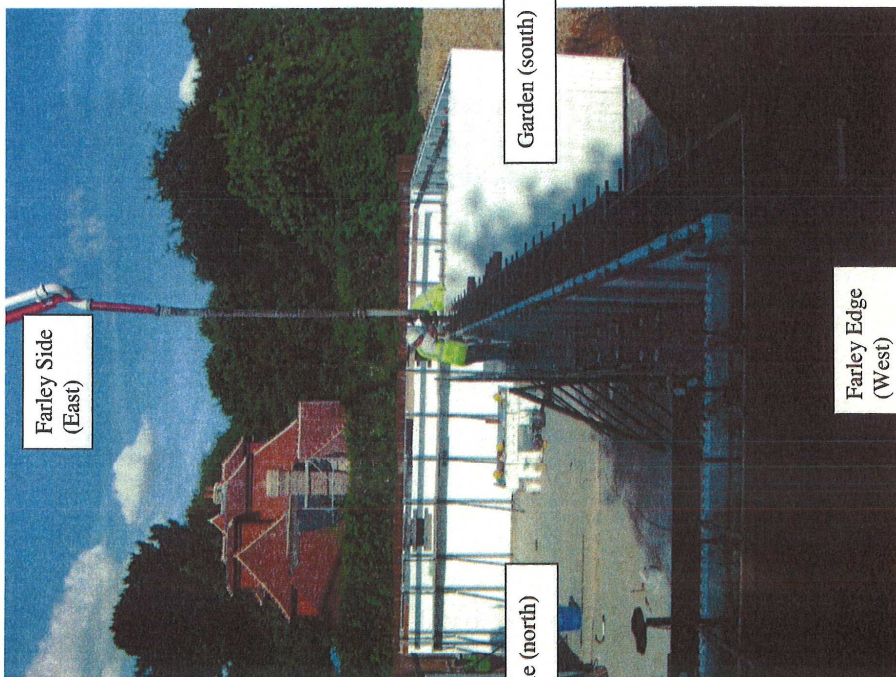
Start of continuous pour of concrete for entire single house and garage slab

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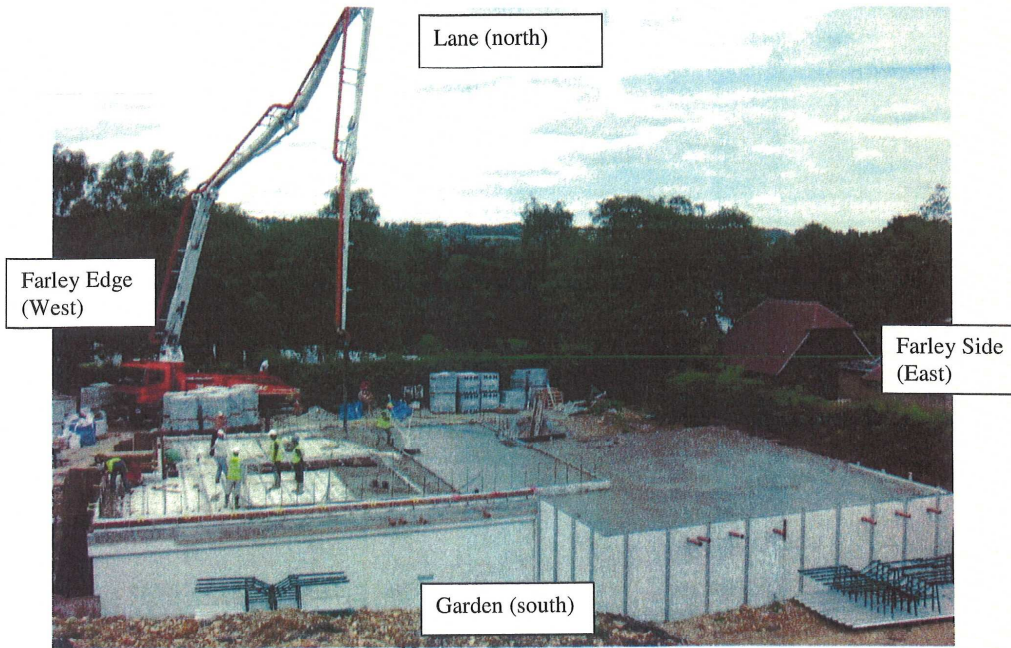




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Two weeks later single pour of continuous house and garage basement walls



Single continuous concrete pour of garage roof and house ground floor deck

Replica picture free of labels

