

Appeal Decisions

Site visit made on 19 September 2016

by Anthony J Wharton BArch RIBA RIAS MRTPI

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

Decision date: 22 September 2016

Appeal Refs: APP/A4710/C/16/3146631 & 3146632

**Land to South West of Allswell Farm,
Parrock Lane, Old Town, Hebden Bridge HX7 8TF**

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeals are made by Mr Darren Clithero and Mrs Karen Clithero against an enforcement notice issued by Calderdale Metropolitan Borough Council.
 - The enforcement notice was issued on 8 March 2016.
 - The breach of planning control as alleged in the notice is the excavation of the land and the depositing of soil/earth on the land.
 - The requirements of the notice are:
 - I. Cease the excavation of the land.
 - II. Cease the depositing of soil/earth on the land.
 - III. Remove the soil/earth from the land.
 - IV. Make good permanently all areas of land exposed by excavation and deposition of material referred to above to integrate with surrounding pre-existing landform.
 - The period for compliance with the requirements is one (1) day for requirements set out at 5(I) and 5 (II) and one (1) month for requirements 5(III) and 5(IV).
 - The appeals are proceeding on grounds (a) and (c) as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.
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Decisions

1. The appeals are dismissed and the enforcement notice is upheld. See formal decision below.

Matters of clarification and background information

2. I am only empowered to deal with the enforcement notice as issued and on the grounds pleaded. This is an unusual case in that it involves a dispute relating to a planning application decision. I set out the details below.

3. The appeal site is agricultural pastureland at Allswell Farm which is located at the top of a steep access road called Parrock Lane. As well as the farm buildings there are other buildings relating to an equestrian centre. The land is located approximately 0.5km north of Wadham, close to Old Town Reservoir and the Pennines Site of Special Scientific Interest (SSSI). It lies within the Green Belt as well as within a Special Landscape Area.

4. The appellants wish to construct a partially earth sheltered eco house on the appeal land and had previously held pre-application discussions with the local planning authority (LPA). One LPA officer is said to have been enthusiastic about the proposal and considered that it was innovative in terms of its design. An application was submitted (13/00088/FUL).

5. The LPA informed the appellants that, although the design was considered to be environmentally innovative, in their view, it did not meet all of the criteria set out in paragraph 55 of the National Planning Policy Framework (NPPF). There was also a change in officer dealing with the application. The NPPF indicates that LPAs should avoid new isolated homes in the countryside unless there are special circumstances including, amongst other things, that the design be exceptional or innovative; that it be truly outstanding, reflecting the highest standards in Architecture; that it would enhance its setting and that it would be sensitive to the characteristics of the area.

6. The LPA had reservations about the proposal and seemingly intended not to grant planning permission. I have before me a LPA decision notice dated 28 March 2013 refusing the application and setting out 4 Reasons for Refusal (RRs). These referred to the effect on the visual amenity and openness of the Green Belt; the effect on the SLA; the proximity to an existing wind turbine and insufficient information relating to sewerage facilities and effect on the water environment.

7. However, by post, a short time after the 28 March 2013, Mr Clithero received a notice from the LPA relating to application 13/00088/FUL. On the first page it stated '*PLANNING PERMISSION*' and went on to say '*This Council hereby grants approval for Construction of partially earth sheltered dwelling*' and then set out the appeal land address. It then gave a list of '*plans approved by the Council*'. On the second page it gave a time of '*THREE YEARS*' for the development to begin. The next section stated '*The reasons for the Council's decision to grant approval...subject to the above additional conditions*'.

8. Bizarrely it then sets out the wording of the reasons for refusal in the Council's submitted copy of the Refusal Notice before then setting out a heading which reads '*Reasons for Granting Approval*'. Apart from the wording of the RRs, it would appear to any lay person that the Council had indeed granted permission for the eco dwelling.

9. On behalf of the appellant a planning consultant requested a copy of the decision notice from the LPA and an e-mail from the Council had another copy of an '*Approval notice*' attached. Further communications with the Council took place including a meeting in the LPA offices. It would appear however, that at that time, Calderdale refused to accept that an '*Approval notice*' (whether in error or not) had been issued. Following professional advice the appellants then proceeded to commence excavating the land in accordance with the submitted drawings. The advice also appeared to confirm that the only notice issued to the appellants was an '*Approval Notice*': the Council's version (the refusal) only being set out on its website.

10. The works which are the subject of the enforcement notice were then carried out and I saw the site and the works during my site visit. Irrespective of whether or not they relate to an '*Approved*' or '*Refused*' development, having seen the works I consider that, as a matter of fact and degree, they amount to an engineering operation and constitute development.

11. Before I turn to the two grounds of appeal, I reiterate what I have stated above that I am only empowered to deal with the enforcement notice as issued. I am not empowered to deal with the question of whether or not planning permission was or should be granted for the eco dwelling. This remains a matter between the appellants and the Council and possibly the courts.

The appeals on ground (c)

12. I have concluded above that the works carried out, as set out in the allegation to the notice, constitute development. In a ground (c) appeal the onus is on an appellant to conclusively show that there has not been a breach of planning control either

because the works already have planning permission or that the works constitute permitted development (PD). In this case the works do not fall into any category of development that is permitted under the Town and Country Planning (Permitted Development)(England) Order 2015.

13. That leaves the question therefore of whether the excavation of the land and the depositing of soil already have planning permission. Whilst acknowledging that the appellants relied upon the 'Approval Notice' notice issued, this related to the construction of the eco house and not specifically to what is set out in the notice. At this stage, the appellants have not, in my view, conclusively shown that there is a permission in place, whether it be for the eco house or the works which are subject to the notice. In the absence of any form of approval for the excavations and soil deposition (whether related to the plan area of the dwelling or not), I can only conclude that the appeals on ground (c) must fail

The appeals on ground (a)

14. In this ground of appeal I can only consider whether or not the works carried out (the excavation and deposition of soil) should be granted planning permission.

15. The main issues are as follows:

- whether the development as carried out is inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (NPPF) and development plan policy;
- the effect of the development on the openness of the Green Belt;
- the effect of the development on the character and appearance of the SLA and,
- if the proposal does represent inappropriate development, whether the harm, by reason of 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 within the Green Belt.

16. As indicated in the NPPF planning law requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise (section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990).

Whether the use constitutes inappropriate development in the Green Belt

17. Paragraph 87 of the NPPF states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 states that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The development is not one of the exceptions set out in paragraph 89.

18. Paragraph 90 sets out some other forms of development which might also not be inappropriate in the Green Belt, provided that they preserve its openness and do not conflict with the purposes of including land within the Green Belt. I deal with openness below but one of the five purposes which Green Belt serves is to assist in safeguarding the countryside from encroachment. In this case, having seen the excavation and the spoil heaps, despite the fact that they are relatively small, I consider that they do encroach into the open nature of the pastureland and, therefore into the countryside

19. This, and the fact that the purpose of the excavation and deposition of soil is said to relate to the proposal to build the eco house, makes this particular engineering operation in my view inappropriate development. It follows, therefore, that for the

purposes of the development plan and the NPPF, the proposal constitutes 'inappropriate' development within the Green Belt. This means that it is 'harmful in principle' and contrary to Green Belt policy CN3 of the UDP and part 9 (Protecting Green Belt Land) of the NPPF.

The effect of the development on the openness of the Green Belt

20. There is no definition of openness in the NPPF but, in the Green Belt context, it is generally held to refer to freedom from, or the absence of, development. The essential characteristics of Green Belt are their openness and their permanence and one of the purposes of the Green Belt is to keep land permanently open.

21. In this case the excavations and the piling up of soil has changed the physical nature of the pastureland. Whilst accepting that nothing has been imported on to the land and that the volume of soil relates to the dimensions of the excavation, the three-dimensional perception of the land is distinctly different. Instead of a regular unbroken swathe of agricultural land there is a gaping hole and various mounds of earth. In my view and as a matter of fact and degree, I consider that this has a detrimental effect on the openness of this part of the Green Belt. The land has clearly not been kept open. Instead it has been physically altered.

The effect on the character and appearance of the SLA

22. Having seen the works carried out from both near and more distant viewpoints I share the Council's concerns about their effect on the character and appearance of the SLA. In accordance with the requirements of policy NE12 of the Replacement Calderdale UDP, which is up to date with the NPPF, the works do not enhance the visual qualities of the area. In my view the opposite is the case and the environmental impact is significant. Paragraphs 17 and 109 of the NPPF refer to the necessity to protect valued landscapes. In this case the works have resulted in considerable visual harm to this part of the SLA.

Whether there are very special circumstances to justify the development

23. I have concluded above that the development is inappropriate and thus it is harmful in principle to the Green Belt. I have also identified that it is both harmful to the openness of the Green Belt and to the character and appearance of the SLA.

24. I now turn, therefore to the balancing exercise to assess whether there are any other considerations which would be sufficient to clearly outweigh the totality of harm caused through inappropriateness; the harm caused to the openness of the Green Belt and the harm to the SLA. The courts have held that such 'other considerations' do not have to be 'rare' or 'common' to be 'special' and that the word 'special' connotes not a quantitative test but a qualitative judgement as to the weight to be given to the particular factors, or considerations, for planning purposes.

25. The appellants have not put forward any other specific considerations other than those relating to the planning history but clearly the issue regarding the disputed planning approval is material. I have taken all of the points raised into account in this balancing exercise. However, there is no conclusive evidence that there is a planning approval in place and there are no other significant considerations to weigh in the balance. I can only conclude, therefore, that the totality of harm to the Green Belt and to the SLA far outweigh any other considerations or matters in favour of the works carried out. It follows that the very special circumstances required to justify the development carried out do not exist.

26. The appeals also fail, therefore, on ground (a) and planning permission will not be granted for the excavation of the land and the depositing of soil/earth.

Other Matters

27. I can fully understand the appellants' frustrations, perplexity and confusion which has been caused by the Council's actions/error in issuing the '*Approval Notice*'. However, this is not a matter which I can deal with and nor can I consider any grievances which the appellants might have against the manner in which the Council has dealt with this unusual case. These are all matters for others.

28. In reaching my decision on the appeals before me I have taken into account all of the other matters raised in support of the appellants' case. These include the full planning history; the detailed initial statement; the final comments and all other written submissions. However, none of these carries sufficient weight to alter my conclusions on the grounds of appeal and nor is any other factor of such significance so as to change my decision.

Formal Decision

29. The appeals are dismissed and the enforcement notice is upheld. The application deemed to have been made under section 177(5) of the Act is refused.

Anthony J Wharton

Inspector