
Appeal Decisions

Site visit made on 15 December 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 December 2016

Appeal A - Ref: APP/J4525/C/16/3154538

The Gables, Sunderland Road, Newbottle, Houghton-Le-Spring DH4 4HH

- 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 Mr Alexander Duncan against an enforcement notice issued by Sunderland City Council (the LPA).
- The enforcement notice was issued on 15 June 2016.
- The breach of planning control as alleged in the notice is the material change of use of the land from agriculture to private garden incidental to the use of the adjacent dwelling and the undertaking of operational development associated with the use.
- The requirements of the notice are as follows:
 - (i) Cease the use of the land as private garden.
 - (ii) With reference to the attached plan EN1, remove from the land the section of boundary wall between points A and B, including any foundations and sub-base to depth of not less than 30 centimetres below ground level.
 - (iii) With reference to the attached plan EN1, excavate and remove from the land the stone retaining wall and raised planter between points A and B and between points B and C, including any foundations and sub-base to depth of not less than 30 centimetres below ground level.
 - (iv) With reference to the attached plan EN1, excavate and remove the tarmac and loose stone hard surfacing and the strip drain, the approximate extent of which is marked by points A, B, D and E on the plan.
 - (v) With reference to the attached plan EN1 remove the post and rail fencing and conifers on the eastern boundary of the land.
 - (vi) With reference to the attached plan EN1, erect an open post and rail timber fence of approximate height 1.2 metres, consistent with that of the adjoining agricultural land between points A and B and a wall or fence no more than 2 metres in height, measured from ground level between points A and F.
 - (vii) Following (ii) to (vi) above, restore all the land affected by any excavation and the siting of structures to its condition prior to the breach of planning control, using topsoil and grass seed as necessary to match the contours and gradient of the surrounding land.
 - (viii) Remove any chattels or objects relating to the use of the land as a private garden. This is not exhaustive.
 - (ix) Remove any resulting materials and debris from the land.
- The period for compliance with the requirements is Three Calendar months.
- The appeal is proceeding on ground (a) only, as set out in section 174(2) of the Town and Country Planning Act 1990 as amended.

Appeal B - Ref: APP/J4525/W/16/3154539

The Gables, Sunderland Road, Newbottle, Houghton-Le-Spring DH4 4HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Alexander Duncan against the decision of Sunderland City Council (LPA).
 - The application Ref 16/00344/FUL, dated 4 April 2016, was refused by notice dated 9 June 2016.
 - The development proposed is retention of part of brick wall to front garden.
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Summary of Decisions

1. Appeal A is dismissed but the notice is varied. Appeal B is allowed in part.

Matters of clarification

2. Appeal A relates to the change of use of the land from agricultural use to use as a private garden (ancillary to the dwelling) and the associated operational development which included the front brick wall and piers. The application form relating to Appeal B refers to the description of the proposal as '*retention of part of the brick wall to front garden*'. However, in its decision (for 16/00344/FUL) the LPA changed the description of the proposal to '*Change of use from open space to private garden, to include extension to boundary wall to front and associated landscaping*'.

3. From the representations it is clear that the appellant is not simply wishing to retain just part of the brick wall to the front. I have, therefore, dealt with Appeal B on the basis of the LPA's description. I am satisfied that this will not cause any injustice and, in any case. However, I have referred below specifically to the frontage wall and piers. The main issues with regard to the merits of the cases are the same for both appeals.

Background information and relevant planning policies

4. The appeals land is agricultural land within the Sunderland Green Belt. It was once part of the land relating to Over the Hill Farm and is approximately 5.5m wide and runs the full length of the original boundary to The Gables. This detached dwelling house is located on the south side of Sunderland Road and on the very edge of the built-up area of Newbottle. The land formerly formed part of a field (now used for the grazing of horses) which bounded the property and which also extends around the southern boundary of the house and those located to the west. Part of the brick wall and piers to the frontage have also extended development into the Green Belt.

5. The Green Belt boundary is the original east boundary to The Gables and was formed by a post and rail field boundary fence. This has been re-located and now forms the eastern boundary to the appeal land. The southern boundary is a similar field fence and the northern boundary is formed by the brick and pier walling. I noted small tree and shrub planting to the inside of the eastern boundary fence.

6. The northern most part of the 5.5m strip was part tarmacked and part gravelled and was being used as an extension to the hardstanding area in front of the garages to the property. This is accessed to the west across a wide grass verge which fronts on to Sunderland Road. The strip of appeal land differs in character to the open field beyond in that it is clearly perceived as an extension of the domestic curtilage to The Gables.

Appeals A and B

7. The main issues in both Appeals are as follows:
 - whether the use of the land and associated development 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;
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- the effect of the development on the character and appearance of the area 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.

8. 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 development constitutes inappropriate development in the Green Belt

9. 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 and nor is it included in the other forms of development set out in paragraph 90 which are not inappropriate.

10. Thus, the use of land as an extension to a residential curtilage is inappropriate. It follows, therefore, that for the purposes of the development plan and the NPPF, the change of use and the operational developments constitute 'inappropriate' development within the Green Belt. This means that they are '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

11. 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.

12. In this case, most of the land is grassed and, other than the tarmacked area, the other hardstanding and the front wall and piers, the land is free from any other built form. Nevertheless, when seen from both and near distant viewpoints it is still perceived as garden land, rather than as an open field. The fence, the planting and the frontage works all combine to reduce, albeit not significantly, the openness of this part of the Sunderland Green Belt. The courts have held that '*openness means the absence of buildings or development*' and that there is a clear distinction between Green Belt openness and visual impact. The front wall has hardly had any impact on openness and, in itself, is complimentary, rather than visually harmful to the street scene.

13. As well as checking unrestricted sprawl, another purpose of the Green Belt is to assist in safeguarding the countryside from encroachment. In this case, there is clear encroachment into the agricultural field (the Green Belt) and although the Appellant indicates that the land is not being used as garden, this is not the perception one gets by viewing the land from near and afar. Overall I consider that material change in use of the land and the operational development carried out (with the exception of the front boundary wall), do result in an unacceptable encroachment into the open countryside. For the reasons set out above I conclude, therefore, that the openness of the Green Belt is harmed by the overall unauthorised development.

The effect on the character and appearance of the area

14. This appeal site is on the edge of Newbottle and having seen the whole of the area to the south and east, it is clear that large fields have been subdivided into many smaller

grazing areas. The resulting fencing has clearly become part of the character of the landscape. However, the resulting enclosures are quite large and still give an overall impression of open fields, agricultural and grazing land.

15. The appeal land, on the other hand, is perceived in my view as what it is, and what it was intended to be. That is, a cramped strip of land added to the east side of the residential curtilage of The Gables. Although relatively narrow I consider that it is a noticeable and obtrusive incursion into the open countryside in this part of the Sunderland Green Belt. The only element I find to be acceptable is the front wall.

16. Overall, therefore, in my view, the development as carried out conflicts with policies CN1 (iii) and CN5 of the UDP. These respectively, seek to resist development that is inappropriate due to the land use concerned (or which impacts adversely on the landscape) and, secondly, seek to ensure that the visual amenities of the Green Belt will not be injured by proposals. It is also contrary to Chapter 9 of the NPPF which seeks to protect the Green belt from inappropriate and harmful development.

Whether there are very special circumstances to justify the development

17. 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 the openness of this part of the green belt would be harmed. With regard to the effect on the character and appearance of the area I have concluded that the development also causes harm do to its cramped appearance between The Gables and the open fields to the east, south and south east.

18. As referred to above, paragraph 88 of the NPPF 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.

19. In this case, there are no very special circumstances pleaded by the Appellant, although I acknowledge that there is local support for, and reference to, the improvements that the boundary front wall has had on the appearance of the approach and exit from this part of Newbottle. I agree with these views and, even though the new front wall extends beyond the original boundary of the property into the green belt I find the effect to be positive, rather than negative.

20. However, my favourable finding in this regard does not affect my conclusion that very special circumstances do not exist. This is because the harm to the green belt by reason of inappropriateness and the other harm which I have identified are not outweighed by any other considerations. It follows that very special circumstances do not exist and both Appeals A and B must fail. Planning permission will not be granted for the unauthorised works carried out in full (see below regarding front wall).

Other Matters

21. Although I have found that planning permission should not be granted for the change of use of the land, including the operational developments which cause harm, I have concluded that the front wall, in itself, does not materially affect the openness of the green belt and nor does it harm the character and appearance of this entrance/exit into and out of Newbottle. I consider it appropriate, therefore, in upholding the enforcement notice, to exclude omitting the necessity to demolish this section of walling (by omitting requirement 5(ii)). It should, therefore, be allowed to remain in place. I accept that the Appellant has not specifically made a ground (f) appeal but, within the representations there are clearly implied ground (f) arguments in relation to the wall.

22. There are similar ground (f) implication arguments relating to the timber fence which is not in his ownership. I acknowledge that this has facilitated the unauthorised use, but this does not belong to the Appellant. However, planning permission would not

be required for this stretch of fence since any owner of the land could build this as a fall-back position. Again, I consider the removal of this fence should be omitted from the requirements of the notice. But, that does not apply to the planting of the boundary since, in my view, this was clearly carried out to establish a new residential boundary.

23. I consider that requirements: 5(i); 5(iii); 5(iv); 5(vii); 5(viii) and 5(ix) are all reasonable and necessary to ensure that the original residential curtilage is separated physically and visually from the field and open countryside to the east and that this land reverts back to being open countryside within the Sunderland Green Belt. Requirement 5(vi) will need to be amended with regard to the enclosure between points A and B.

24. In reaching my conclusions I have taken into account all of the other matters raised by the Appellant, the LPA and those in support of the Appellant's case. These include the full planning history of the site; both of the LPA's delegated reports; the contents of Appellants statement dated August 2015; the planning statement in support of the enforcement appeal; the Appellant's final comments dated 27 September 2016 and the letters of support from a Councillor and neighbours.

25. The comments of the latter parties reinforce my view that the front (south) brick wall and pier boundary is acceptable. However, none of the other matters raised alters my conclusions on the main issue for both appeals. Nor is any other factor of such significance so as to change my decisions on both Appeals A and B.

Formal Decisions

Appeal A

26. I direct that the enforcement notice be varied by deleting/changing the requirements, as set out in section 5 of the notice (WHAT YOU ARE REQUIRED TO DO):

1. Requirement 5(ii), delete in full.
2. Requirement 5(v) delete the words '*the post and rail fencing and*'
3. Requirement 5(vi) delete the words '*an open post and rail timber fence of approximate height 1.2 metres, consistent with that of the adjoining agricultural land between points A and B and*'

27. Otherwise the appeal is dismissed and the enforcement notice is upheld as varied. Planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Appeal B

28. The appeal succeeds in part and Planning permission is granted for the retention of the north boundary brick walling and piers at The Gables, Sunderland Road, Newbottle, Houghton-le-Spring DH4 4HH. (For reference see Plan EN1 in Appeal A). Otherwise the appeal is dismissed.

Anthony J Wharton

Inspector