



Appeal Decisions

Site visit made on 26 July 2017

by Wendy McKay LLB Solicitor (Non-practising)

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

Decision date: 10 August 2017

Appeal A Ref: APP/D3640/X/16/3160980

Brickmakers Arms, Chertsey Road, Windlesham, GU20 6HT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr S Coveney against the decision of Surrey Heath Borough Council.
- The application Ref SU/16/0643, dated 28 June 2016, was refused by notice dated 23 September 2016.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is the siting of a caravan for use as ancillary accommodation.

Summary of Decision: The appeal is dismissed.

Appeal B Ref: APP/D3640/C/16/3152935

Brickmakers Arms, Chertsey Road, Windlesham, GU20 6HT

- 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 S Coveney against an enforcement notice issued by Surrey Heath Borough Council.
- The enforcement notice was issued on 26 May 2016.
- The breach of planning control as alleged in the notice is without planning permission operational development comprising of the following works on the land: i) the laying of an extended tarmac parking area marked A on the plan attached to the notice; ii) the construction of a gravel hardstanding marked B on the plan attached to the notice; iii) the erection of a timber storage shed marked C on the plan attached to the notice, and iv) the erection of a single storey timber building marked D on the plan attached to the notice.
- The requirements of the notice are: i) break up and remove from the land the tarmac surface and materials associated with the extended parking area marked A on the plan attached to the notice; ii) remove all materials comprising and associated with the area of hardstanding from the land from the area marked B on the plan attached to the notice; iii) remove the building marked C on the plan attached to the notice and remove all associated materials from the land; iv) remove the building marked D on the plan attached to the notice and remove all associated materials from the land.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal C Ref: APP/D3640/W/16/3160988

Brickmakers Arms, Chertsey Road, Windlesham, GU20 6HT

- 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 S Coveney against the decision of Surrey Heath Borough Council.
- The application Ref 16/0603, dated 14 June 2016, was refused by notice dated 28 September 2016.
- The development proposed is the extension of the existing car park and the erection of two electric car trickle charging posts.

Summary of Decision: The appeal is dismissed.

Preliminary matters

1. The Appellant originally appealed against the enforcement notice the subject of Appeal B on grounds (a), (e) and (g). The appeal on ground (e) was subsequently withdrawn by the Appellant, as explained in his 'Enforcement Appeal Statement of Case'. This means that Appeal B is therefore proceeding on grounds (a) and (g) only.

Appeal A – the s195 appeal

Main Issue

2. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development (LDC) was well-founded.

Reasons

3. Neither the identity of the Appellant, nor the planning merits of the operation, use or activity is relevant to the purely legal issues which are involved in determining an LDC appeal. The onus of proof in an LDC appeal is on the Appellant and the relevant test is "*the balance of probability*".
4. The LDC application was refused by the Council on the grounds that the proposed development would contravene Condition 2 of planning permission SU/15/0155 granted for 'the retention and continued use of caravan as staff accommodation in association with the brickmakers public house'.
5. Condition 2 states: "*No residential curtilage shall be created (either by fencing, planting or hardstanding) to the caravan and no ancillary chattels, structures or moveable buildings or structures shall be erected, sited or created anywhere on the application site.*"
6. The reason given for imposing Condition 2 is: "*In the interest of ensuring the residential accommodation remains ancillary in nature to the public house and in the interest of limiting the harm to the Green Belt and to comply with the NPPF.*"
7. The Appellant draws support from the National Planning Policy Guidance (NPPG) and the advice set out therein in relation to the use of planning conditions¹. In particular, it advises that planning conditions should, amongst other things, be: "*relevant to the development to be permitted*".

¹ Paragraph 003 Reference ID: 21a-003-20140306

8. He asserts that there was no intention within Condition 2 to impose a blanket ban on lawful ancillary development related to the public house. He contends that, if such an intention had been implicit in Condition 2, then it would have been inappropriate as it would have sought to control matters which are not 'relevant to the development to be permitted'. He submits that Condition 2 merely controls chattels and structures that are ancillary to the permitted staff accommodation caravan. Since the LDC application relates to the provision of a caravan that would be ancillary to the public house, Condition 2 would not prevent such development taking place.
9. In his appeal statement, the Appellant quotes only the first part of the reason given for imposing Condition 2. The Council contends that the reason given for imposing Condition 2 has a wider interpretation than that put forward by the Appellant and is indeed 'relevant to the development to be permitted'.
10. The Council submits that Condition 2 serves three purposes, first, to ensure that the accommodation provided by this caravan remains ancillary in nature to the public house, secondly, to limit the harm to the Green Belt and, thirdly, to comply with the National Planning Policy Framework (the "Framework"). It contends that the condition not only seeks to control the residential use of the caravan but also the siting of other ancillary chattels, structures or moveable buildings within the application site. That site included the whole of the public house site and not just the area for the permitted caravan, as shown on the site location plan which formed part of the original planning application.
11. Condition 2 falls to be construed in the context of the planning permission as a whole in a common sense way and in conjunction with the reason given for its imposition. Looking objectively at the condition in that context, I believe that a reasonable reader would construe it as having been designed to exercise general control over ancillary or moveable structures and the like across the site as a whole and not just the area immediately around the caravan. The intent of the condition clearly was and is to prevent the creation of a separate residential use within the site and also to restrict the provision of the specified ancillary items across the wider area of the application site, including what would otherwise be lawful development ancillary to the public house, thereby limiting the potential harm to the Green Belt in accordance with the NPPF. I find that to be the clear purpose and meaning of Condition 2.
12. I have no doubt that following the grant of permission for the staff accommodation caravan the control of future ancillary development within the site in this way represents a legitimate objective that is relevant to that development. In my view, Condition 2 fully complies with the advice set out in the NPPG in relation to the use of planning conditions. Furthermore, the permission has been implemented and no appeal has been made against the imposition of the Condition 2 which has come into effect. The Council in opposing this appeal has not misunderstood its scope.
13. I conclude that the proposed siting of a caravan for use as ancillary accommodation would represent a clear and obvious breach of Condition 2 and would not therefore be lawful. The LDC appeal must therefore fail.

Appeals B and C – the s174 appeal on ground (a) and the s78 appeal

The Main Issues

14. The main issues are:

- Whether the development is inappropriate in the Green Belt for the purposes of the Framework and Development Plan policy.
- The effect on the openness of the Green Belt.
- The benefits of the development.
- If inappropriate development, whether it can be justified on the basis of very special circumstances?

The Development Plan and other policies

15. The Development Plan includes the Surrey Heath Core Strategy and Development Management Policies 2012. The appeal site is shown as being located within the Green Belt on the proposals map.
16. Turning to national policy, the Government issued the Framework in March 2012. It explains that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence.

Reasons

Background matters

17. The appeal site is located on the northern side of Chertsey Road (B386) within the Green Belt. The Brickmakers Arms public house is positioned towards the front of the site. There is a beer garden to the rear of that building and a car park along the western side that extends towards the rear of the plot. There is a staff caravan sited within the rearmost part of the site adjacent to the buildings the subject of Appeal B.
18. In 2016, an appeal against the Council's refusal of planning permission for "*the erection of a community building and storage shed, with additional parking in association with the Brickmakers public house*" was dismissed². The Inspector concluded that the development constituted inappropriate development in the Green Belt and it had not been adequately demonstrated that the harm to the Green Belt was 'clearly outweighed' by other considerations.

Whether the development would be inappropriate in the Green Belt

19. The Framework, paragraph 87, states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
20. At paragraph 89, the Framework indicates that the construction of new buildings is inappropriate in the Green Belt but lists a number of exceptions including the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. The contention that the development falls into this category was considered and rejected by

² APP/D3640/W/15/3129866

the previous Inspector in 2016. The Appellant does not now seek to suggest that the buildings represent appropriate development pursuant to this exception. I do not consider that the erection of the timber storage shed and the single storey timber building (the "Orchard Room") fall within any of the exceptional categories of appropriate built development set out in paragraph 89 of the Framework.

21. As regards the gravel hardstanding on Area B, the Appellant explains that the use of this hard surface is incidental to the Orchard Room providing all-weather pedestrian access. He does not seek to suggest that it represents appropriate development in this location but relies upon the same very special circumstances as those put forward in support of the Orchard Room to justify its retention.
22. Turning to the provision of the car park extension, the previous Inspector regarded it as comprising an engineering operation and I find no reason to disagree with that approach. Paragraph 90 of the Framework states that such operations are not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.
23. I concur with the findings of the 2016 Inspector that the extension of development onto a previously undeveloped part of the site and the parking of cars on it for at least part of the day would result in some harm to openness. In reaching that conclusion, I have borne in mind the ability for some car parking to take place at certain times of year without the benefit of a hard surface. Since the extension of the car park would not preserve the openness of the Green Belt, it constitutes inappropriate development.
24. I conclude that the development the subject of Appeals B and C would be inappropriate in the Green Belt. The Framework, at paragraph 87, explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It advises, at paragraph 88, that substantial weight should be given to any harm to the Green Belt.

The effect on the openness of the Green Belt

25. The Framework, paragraph 79, explains that the essential characteristics of Green Belts are their openness and permanence. The openness of the Green Belt has a spatial aspect as well as a visual aspect.
26. The previous Inspector stated that: "*The new buildings are modest in scale but nevertheless their siting has had a small, negative effect on the openness of the Green Belt. The extension of the car park onto a previously undeveloped part of the site and its regular use for the parking of vehicles adds to the harm in this respect.*"
27. Those views largely coincide with my own on this topic. I consider that there would be some, albeit very limited, harm to the openness of the Green Belt as a result of the car park extension and modest harm due to the erection of the buildings in addition to the harm by reason of their inappropriateness.

Other considerations - the benefits of the development

28. The Appellant has put forward a number of claimed benefits in support of these appeals. In relation to the Orchard Room, the previous Inspector attached a

moderate degree of weight to the community benefits associated with that structure but gave only limited weight to the economic arguments put forward. He also attached minimal weight to the submission that the development had tidied up the rear section of land and improved the general setting and appearance of the Brickmakers Arms site.

29. I have had regard to the claimed benefits of the development including the contribution made to the local economy, suppliers and spin-off business and the social opportunity provided to users of the facilities. However, the available evidence does not lead me to attach greater weight to such factors or to the improvement in the appearance of the site than the previous Inspector.
30. The Appellant now principally relies upon the fall-back position which forms the substance of the Appeal A case. The Orchard Room would provide a reserved space for discrete dining/drinks and nibbles events that would be ancillary to the main use and not a separate use in its own right. He submits that the same purpose could be served by the siting of a caravan on the land which potentially could be larger in size than the Orchard Room and would not require planning permission. He indicates that the incidental hard surfaces providing pedestrian access to the Orchard Room and the storage building 'C' also fall within the ambit of this submission.
31. In the light of my findings on Appeal A set out above, I consider that the provision of such an ancillary caravan on the land would contravene Condition 2 of planning permission SU/15/0155. It would therefore require planning permission and does not represent a valid fall-back position.
32. For the car park extension, the previous Inspector considered the argument then being advanced that the additional car parking would help to remove some of the overspill parking on Chertsey Road. He concluded that: *"...there is no evidence to indicate the scale or frequency of the problem. I am also mindful that the extended parking area was intended to accommodate users of the building and consequently may not always be available to customers of the public house. The highway safety benefits are not proven and therefore carry limited weight in support of the development."*
33. The Appellant points out that the current car parking extension differs from the original parking proposal in that it includes car parking spaces that are larger than the sub-standard ones previously shown and this means that the number of car parking spaces within the extended area is nine and not ten spaces. In addition, the Appeal C proposal includes the provision of two electric charging posts within the existing car park layout.
34. The Appellant draws support from the Surrey County Council Vehicular and Cycle Parking Guidance dated January 2012 which includes the relevant car parking standards. He contends that the actual car parking provided on the site (38 spaces) represents about half the recommended maximum provision for this type of development. He submits that the inadequate on-site car parking provision results in the displacement of vehicles from the site onto Chertsey Road or into the adjacent small private car park which serves the woodland walks forming part of Sunningdale Golf Course. These vehicles park on both sides of Chertsey Road, although the larger number typically park partly on the verge and partly on the carriageway on the south side of the road. The Appellant contends that the on-street parking arising from The Brickmakers Arms is detrimental to the free flow of traffic, highway safety and

- the amenity of the area. He submits that the considerable undersupply of existing parking together with a long-term recognised problem of on-street parking amount to very special circumstances.
35. The local highway authority has carried out a County-wide parking review that includes consideration of the issue of on-street parking arising from The Brickmakers Arms. The Parking Review reported that: *"...When the Brickmakers Arms Pub car park becomes full, additional visitors park on Chertsey Road on one or both sides of the road. This creates a hazardous situation for through traffic having to park these parked cars as it can reduce a two lane road into one lane."*
36. In relation to the County Council's adopted parking standards, the Council indicates that the application of those standards to all functional areas including the beer garden would require a maximum of about 77 spaces, but the maximum parking demand which is measured against the floorspace of the public house building only would be some 46 spaces. Furthermore, these are maximum and not minimum operational standards and therefore a reduced parking level would still comply with the standard.
37. Nevertheless, the Council accepts that there is a recognised issue with parked cars over-spilling onto Chertsey Road. When cars park on both sides of the carriageway this reduces its width to single lane causing a highway hazard. The Council is critical of the fact that the Appellant has not provided a parking survey to assist in assessing the frequency of over-spilling. However, it is clear from the available evidence, including the comments of third parties, that the over-spill parking on Chertsey Road has been a regular occurrence and has largely been caused by patrons of the public house.
38. Following the Parking Review, the County Council has recommended restrictions on parking/waiting in the vicinity of the public house. The approved version of the Traffic Regulation Order (TRO) only limits parking on the north side of the road for a distance of about 235m. This restriction has now been put in place. This still allows some over-spill parking on the south side of the road but provides a wider available carriageway and two-way traffic movements close to the premises.
39. The parking restriction initiative has already provided an obvious and immediate improvement to highway safety in relation to the over-spill parking. However, there remains a demand for customer car parking close to the premises. The Appellant makes it clear that the extended car parking area is intended to be available to all customers of the public house and not just those using the Orchard Room. The net gain in on-site parking spaces would therefore reduce the overspill parking on Chertsey Road to some extent. However, relying on the Appellant's own figures, it is clear that all the demand generated by the business would not be accommodated by the new spaces and there would still be on-street parking associated with the public house at peak times. In my view, the TRO represents a far more effective means of improving the safety of people using the road than would be achieved by the car park extension.
40. Nevertheless, I consider that there would be a modest highway safety benefit to be gained from providing the additional on-site parking spaces. I also recognise that the inclusion of electric vehicle charging posts would provide something that the local highway authority considers desirable but which would

not otherwise be achieved. This benefit is a factor to which I attach limited weight.

41. Whilst my attention has been drawn to other nearby development, these schemes do not seem to me to be directly comparable to the development the subject of these appeals which I have considered on their own merits.

Whether the development can be justified on the basis of very special circumstances

42. The Appellant needs to show very special circumstances to justify the development in this location. Very special circumstances can arise from a combination of circumstances. It is necessary to balance all factors that weigh in favour of the grant of permission in each case against the harm to the Green Belt by reason of inappropriateness, and any other harm, and assess whether the harm identified is clearly outweighed by other considerations.
43. For both appeals, there would be the harm to the Green Belt by reason of inappropriateness. The Framework advises that substantial weight should be given to any harm to the Green Belt. There would also be a small adverse effect on the openness of the Green Belt that would result in additional harm as set out above.
44. To weigh against these factors, the Appellant has put forward a number of other considerations which I have already evaluated. As noted by the previous Inspector, there are some social and economic benefits that accord with the objectives of the Framework and Development Plan to support community facilities and the rural economy. The extended car park would also provide a modest benefit in highway safety terms and the electric charging posts offer a limited sustainability benefit. However, for each appeal the material considerations in support of the various developments do not, either on their own or in combination, clearly outweigh the harm to the Green Belt and the other harm identified. They do not amount to very special circumstances in the context of these cases. The appeal development would be contrary to national Green Belt policy set out in the Framework and the enforcement appeal on ground (a) and the s78 appeal should therefore fail.

Appeal B - the appeal on ground (g)

45. On ground (g), the Appellant explains that the Orchard Room is used for small group meetings. The bookings are taken well in advance; in some cases up to a year. He submits that the three month compliance period should be extended to one year to allow reasonably held bookings to proceed. He asserts that for higher value events such as these the need for long-term certainty of availability is typically expected.
46. The Council considers that the three month compliance period would allow sufficient time for the Appellant to appoint an appropriate demolition contractor and ground workers to carry out the required demolition/site clearance and land reinstatement. It submits that the time period between the dismissal of the previous appeal in 2016 and the service of the notice should have been sufficient to clear any outstanding bookings.
47. Notwithstanding the previous appeal decision, I consider that the Appellant was entitled to await the outcome of this appeal before taking steps to comply with the notice. However, he does not seek to suggest that the buildings, extended

parking area, hardstanding and associated material could not be physically removed from the land in compliance with the requirements within a three month period. Furthermore, few details have been provided as regards the potential adverse impact upon the business and customers that would result from cancellation of the bookings already made in support of his case for a longer compliance period. He acknowledges that the buildings provide only a 'slightly more' private space than within the restaurant/pub.

48. Although the Appellant states that there is case law on this specific subject, he has not put forward details of any such cases for my consideration save for a passing reference to County Court proceedings. Whilst I have regard to the Appellant's desire to honour bookings already made for the Orchard Room, given the continuing harm to the Green Belt I believe that to extend the compliance period beyond three months would be excessive. The compliance period allows sufficient time for the necessary works to be carried out and it seems to me that it is not unreasonable in all other respects. The appeal fails on ground (g).

Formal Conclusions

Appeal A

49. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the siting of a caravan for use as ancillary accommodation was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Appeal B

50. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal C

51. For the reasons given above, I conclude that the appeal should be dismissed.

Formal Decisions

Appeal A Ref: APP/D3640/X/16/3160980

52. The appeal is dismissed.

Appeal B Ref: APP/D3640/C/16/3152935

53. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal C Ref: APP/D3640/W/16/3160988

54. The appeal is dismissed.

Wendy McKay

INSPECTOR