

Appeal Decisions

Site visit made on 18 July 2017

by Jean Russell MA MRTPI

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

Decision date: 21 August 2017

Appeal A: APP/A4520/X/16/3160789

10 Follonsby Terrace, Gateshead, Tyne and Wear, NE36 0BZ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the 1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Anthony Galsworthy against the decision of South Tyneside Metropolitan Borough Council.
 - The application ref: ST/0963/15/CLU, dated 21 September 2015, was refused by notice dated 14 December 2015.
 - The application was made under section 191(1)(a) of the 1990 Act.
 - The use for which a LDC is sought is described as 'existing garden/car parking area adjacent to 10 Follonsby [sic] Terrace, Gateshead'.
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Appeal B: APP/A4520/W/16/3160804

Vacant Site/Garden, 10 Follonsby Terrace, East Boldon, Gateshead, Tyne and Wear, NE36 0BZ

- 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 Anthony Galsworthy against the decision of South Tyneside Metropolitan Borough Council.
 - The application ref: ST/0039/16/FUL, dated 28 December 2015, was refused by notice dated 20 September 2016.
 - The development proposed is described as 'new (end of terrace/continuation of Follonsby [sic] terrace) to provide a private dwelling with 3 car detached garage'.
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DECISIONS

1. Appeal A (ref: APP/A4520/X/16/3160789) is dismissed.
2. Appeal B (ref: APP/A4520/W/16/3160804) is dismissed.

PRELIMINARY MATTERS

The Site Address

3. I have spelt 'Follonsby' correctly except where quoting from the LDC and planning application forms.

The Site and Surrounding Area

4. I shall refer to the site 'edged in red' on the plans submitted with the LDC and planning applications as the 'whole site'. It includes a two storey dwellinghouse at 10 Follonsby Terrace with a conservatory and outbuilding on its eastern side; an enclosed yard to the back and south of the house; and land to the east and south east currently used for garden and parking space.

5. Follonsby Terrace contains ten consecutively numbered dwellings, set down from the A184 and A194(M) to the north and west respectively. There are dispersed properties to the east of the terrace; garages or other outbuildings to the south; commercial properties to the south west; and then expansive fields to the south.
6. A lane from the A184 forks around the side of 1 Follonsby Terrace. The northern spur serves the front of the terrace and properties to the east, while the western limb leads south to the commercial properties and fields. It also leads to a 'private road' which runs to and between the back yards and garages at Follonsby Terrace, and terminates at gates which open into the land at no. 10.
7. Thus, no. 10 is at the east end of the terrace. The whole site adjoins a spacious bungalow plot to the east and a field to the south. It is within a Green Belt.

The Appeals

8. The LDC application subject to Appeal A concerns the land to the south east of no. 10; I shall refer to this as the 'LDC site'. The northern line of the LDC site is shown on the plans as immediately to the south of the gates to the private road. The appellant essentially seeks to establish that the land has a lawful residential use connected with the use of the dwellinghouse at no. 10.
9. The planning application subject to Appeal B concerns the land to the east and south east of no. 10, including the LDC site; I shall describe this as the 'planning site'. It is proposed that the existing conservatory and outbuilding to the side of no. 10 would be demolished, and a dwellinghouse would be built in their place. A garage and parking area to serve the new dwelling would be laid out to the rear, past the existing gates, and the remaining land would be laid out as garden.

APPEAL A: APP/A4520/X/16/3160789

Main Issue

10. Appeal A is only concerned with matters of lawfulness; the planning merits of the use of the LDC site for residential purposes do not come into this determination. The main issue is whether the use of the land as a residential garden and car parking area has taken place for a continuous ten year period, so as to become lawful through immunity from enforcement action.

Reasons

Legal Context

11. Where a LDC is sought in respect of an existing use or development, it is for the appellant to make their case on the balance of probabilities. The appellant argues that the residential use of the land to the south east of 10 Follonsby Terrace is lawful because the use has taken place for more than ten years.
12. Under s191(2) of the Town and Country Planning Act 1990, a use of land is lawful if, amongst other reasons, no enforcement action may be taken in respect of it because the time for doing so has expired. The time limit set out under s171B(3), in respect of a breach of planning control consisting in the material change of use of land, is the end of the period of ten years beginning with the date of the breach.
13. The LDC application was dated 21 September 2015. It must be shown that the use commenced by 21 September 2005 at the latest, or has taken place for a ten year period 'beginning' with an earlier date. Whenever the use began, it would need to have continued without substantial interruption for ten years in order to be found immune from enforcement action.

14. The Council refused the LDC application partly on the basis that the appellant 'has failed 'to demonstrate precisely and unambiguously the date of the commencement of the residential use'. It is right that the appellant's evidence should be precise and unambiguous, but only to show that the use probably took place for a continuous ten year period.

The Evidence of Lawfulness

15. There is no dispute that the LDC site, as suggested above, is currently being used as a garden with a parking area. Equally, however, the appellant does not claim that the LDC site has always been in residential use. I have seen no evidence as to what the lawful use is, but I saw that there is a gate in the southern boundary of the LDC site, providing a direct link to the adjacent field.
16. The appellant wrote that he has lived 'in Follonsby Terrace for 30 years and...the [LDC site]...has always been used as residential garden'. His former agent wrote in a letter dated 2 October 2015 that the land had been passed to the 'client' from his parents in 1981, and used as a part of the garden at no. 10 for over 34 years.
17. However, the plan attached to the title no. TY24562 shows the house and yard at no. 10 plus the land to the east as coloured blue, and the LDC site coloured pink. The blue land (TY24562) was transferred to R and N Dickinson on 23 March 1976, and then to the appellant on 22 January 2014. A separate title to the LDC site (TY88885) was transferred to R and P Lundy on 31 March 1981. The titles were not combined until 29 June 2015; the LDC application form confirms that the appellant had 'only recently' become aware that there were two.
18. Thus, the LDC site and the rest of the whole site were separate in conveyancing terms for many years until 2015. It does not automatically follow that the LDC site was not in residential use, or that there was no functional relationship between its use and that of the dwellinghouse at no. 10. However, the land register does not show any such connection. No matter what the names of the appellant's parents, or why he did not know sooner of the two titles, the register does not set out the lawful use of the LDC site.
19. The occupiers of 9 Follonsby Terrace wrote in support of the LDC application on 16 October 2015. They had lived at their property for over 16 years, and said that no. 10 'has always had the garden that runs around the side and back of the property which can be accessed by the double gates down the private road...The previous occupier's children also had a large trampoline and football goal posts situated in the garden to play on during the 12 years they also lived in the property'.
20. The person who lived at no. 10 between October 1999 and August 2013 sent a letter that was received by the Council on 8 December 2015. He said that the land at the side and rear was always used as a garden while he lived there, and there was a trampoline and goal posts. He believed that the owner prior to him had used the land as a garden, and permission had been granted for the erection of garages.
21. I have no record of any such permission, or further information regarding the owner prior to October 1999 – but neither of those points is fatal to Appeal A. Of greater concern, I have little evidence to justify a grant of a LDC beyond the title deeds and the letters described and they give few details to substantiate or flesh out how the residential use took place continuously for more than ten years.
22. The Council has submitted aerial photographs of the site, said to have been taken between May 2001 and September 2010. The Council has not stated how the dates given for the photographs are known to be true, but the appellant has not disputed their veracity. Although produced at a small scale and with annotations, it can be

seen from the photographs that, in or around May 2001, October 2003 and August 2005, the LDC site was substantially separated from the land at no. 10 by a hedge which no longer exists.

23. On the 2001, 2003 and 2005 aerial photographs, the LDC site is shown as grassed over with shrubs being the only features. There was no hard surfaced area, as there is now, and there were no structures or chattels of any kind; an outbuilding which is now removed was to the north of the LDC site boundary. The October 2003 photograph seems to show a line of trodden grass, but leading from the private road to the field gate. It does not suggest a physical or functional connection between the LDC site and no. 10.
24. The aerial photograph dated September 2008 shows what is likely to be the trampoline mentioned above on the LDC site, and breaches in the hedge to the pre-existing garden at no. 10. The photograph dated September 2010 probably shows, from the correspondence above, the goal posts on the land. Thus, it seems highly likely that the residential use of the LDC site had commenced by September 2008. I see no reason to dispute that the use continued from then.
25. However, September 2008 was considerably less than ten years before the date of the LDC application. The 'August 2005' aerial photograph was likely taken closer to the material date, and it suggests that the LDC site was not then in residential use, and not connected to the use of the dwelling at no. 10.

Conclusion

26. The Council claims that the lawful residential land to the east of no. 10 should exclude a strip running across from the gates to the private road, even though that is shown on the plans as outside of the LDC site. I cannot adjudicate on this matter, since my remit is to determine the lawfulness of the use of the LDC site.
27. I am satisfied that a material change of use of the LDC site to a residential garden and parking area has occurred, but the appellant has failed to demonstrate that the use has taken place for a continuous ten year period. On the balance of probabilities, I conclude that the use had not become lawful by the date of the LDC application through immunity from enforcement action. The Council's decision to refuse to grant a LDC was well-founded and Appeal A must fail.

APPEAL B: APP/A4520/X/16/3160804

Planning Policy

28. The National Planning Policy Framework (the Framework) states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development in the Green Belt is harmful to the Green Belt by definition and should not be approved except in very special circumstances. When considering planning applications, substantial weight should be given to any harm to the Green Belt. '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.
29. The Framework further seeks to ensure that development incorporates good design by responding to local character and reflecting the identity of its surroundings.
30. Policy EA1 of the South Tyneside Core Strategy (CS) seeks to conserve the best qualities of South Tyneside's built and natural environment, including by protecting the openness of the Green Belt. Policy DM1 of the South Tyneside Development Management Policies (DMP) seeks to ensure that development is designed to

convey sensitive consideration of its surroundings, and where possible reinforce local identity, having regard to matters including form and architectural detailing.

Main Issues

31. The main issues for Appeal B are:

- Whether the proposed development would amount to inappropriate development in the Green Belt, with regard to the Framework;
- Its effect on the character and appearance of the surrounding area;
- The considerations in favour of the proposed development, including the appellant's personal circumstances; and
- Whether any harm by reason of inappropriateness and any other harm would be clearly outweighed by the other considerations, with regard to the provisions of the Human Rights Act 1998 and the Equality Act 2010, so as to amount to the special circumstances necessary to justify the development.

Reasons

Green Belt

32. The Framework advises that the construction of new buildings in the Green Belt should be regarded as inappropriate development except in specified instances. None of the exceptions are relevant, save perhaps for 'limited infilling or the partial or complete redevelopment of a previously developed site...which would not have a greater impact on the openness of the Green Belt...than the existing development'.
33. The Framework defines 'previously developed' land as 'land which is or was occupied by a permanent structure, including the curtilage of developed land' but not 'land in built-up areas such as private residential gardens'. The existing garden is likely to be within the curtilage of no. 10 – but not within a built-up area, given its Green Belt location. I find that this part of the planning site is previously developed land but, with no lawful residential use, the LDC site is not.
34. It could therefore be said that the proposed house would stand upon a previously developed site, and represent the partial redevelopment of that land. However, that finding does not assist the appellant. The proposed house would be larger and higher than the outbuilding and conservatory to the side of no. 10 which it would replace, and it would plainly cause a loss of openness within the Green Belt.
35. The proposed dwelling would be visible from the front lane. Being greater in size and height than the existing conservatory, it would reduce perceptions of openness in the Green Belt for local residents and visitors. Members of the public in the wider area would only have fleeting views of the house; vehicles on the trunk roads are driven at speed, and a nearby bus stop is out of use. It should still be said, however, that the dwelling would cause an actual loss of openness in the Green Belt, and that harm would be exacerbated by a limited loss of visual openness.
36. The proposed garage would be sited on the LDC site and not on previously developed land. It would be inappropriate development in the Green Belt by definition. As a moderately-sized building, large enough for three cars, it would also add to the loss of openness in the Green Belt caused by the proposed house.
37. It should be finally noted that, from my findings on Appeal A, the proposed development would involve a change of use of the LDC site; the appellant recognised this in his description of the proposal on the Appeal B forms. The

making of a material change of use of land is inappropriate development in the Green Belt by definition. I consider that vehicles parked on the proposed hard surface, and outdoor toys, furniture and other residential chattels used on the garden part of the LDC site would again reduce the openness of the Green Belt.

38. I conclude that the proposed development would be inappropriate development in the Green Belt as described by the Framework and it would cause a loss of openness in the Green Belt. It would conflict with CS Policy EA1. The harm that would be caused to the Green Belt carries substantial weight against Appeal B.

Character and Appearance

39. Follonsby Terrace appears to be at least a century old. The houses are well-built in red brick, and they have two storeys beneath their slate roofs. Most of the dwellings are flat-fronted, but there are square stone bays at ground floor level at nos. 1 and 10, which serve to bookend the terrace.
40. I saw that most houses in the terrace have stone lintels, chimney stacks and windows (original or reproduction) with panelled upper panes. Some dwellings now include roof lights, and two have been extended to the front – but the terrace as a whole is well-preserved. In my view, the appearance of the street and individual houses are enhanced to the extent that they retain their identity and integrity. With the verge by the front lane, the terrace has a spacious setting which means that its design can be readily appreciated – and alterations can be plainly seen.
41. The plans suggest that the proposed house would be similar to those existing in the terrace. It would respect the building and ridge lines. It would include a chimney stack to match those at adjacent properties, and a ground floor bay like those at nos. 1 and 10. However, any intention that the dwelling would respect its context is not achieved because of lack of attention to design details.
42. I saw that, while there is an existing dormer at the back of the terrace, there are none which face the front. I agree with the Council that the proposed front dormer would cause the new house to appear unacceptably out of keeping with the adjacent properties. It would give the dwelling an incongruously top-heavy façade and appear as an obtrusive and alien feature within the street.
43. Although the Council has not raised this matter, I also observe that the windows in the proposed dwelling would not be designed to respect local identity or convey sensitive consideration of the surroundings. The house would have two windows at first floor level, whereas adjacent properties have one. The front facing window in the ground floor bay would be divided into three panes rather than two – and none of the windows would have a cross-bar or upper level panelling.
44. In my view, the number, arrangement and style of windows add significantly to the character of the terrace and individual houses within it. I accept that there have been and could be further alterations to nearby dwellings, but still find that the proposed house would have a markedly different façade. It would not assimilate with or improve upon, but instead detract unacceptably from the identity and character of the terrace.
45. I conclude that the proposed development would cause unacceptable harm to the character and appearance of the surrounding area. It would conflict with DMP Policy DM1, the Framework – and with the Council's Supplementary Planning Document 9: Householder Developments (SPD9), which seeks to ensure that new dwellings created through 'plot subdivision' have a detailed design which is sympathetic to the character of the area.

Other Considerations

Personal Circumstances

46. A letter dated 28 December 2015 stated that part of the ground floor of the proposed house would be allocated for the appellant's mother. The 'Design Statement' describes that she is elderly, dependent upon the appellant and his family, and in need of professional care.
47. However, the Planning Practice Guidance (PPG) states that planning permission runs with the land and it rarely appropriate to provide otherwise. While there may be exceptional occasions when development that would not normally be permitted on the site may be allowed because of who would benefit from the permission, this will scarcely ever be justified for the erection of a permanent building¹.
48. I am sympathetic to the appellant and his mother's situation, but there are many families now who wish to live in extended accommodation so that older relatives can stay with them for health care and support. In this situation, and since the site is within a Green Belt, it would need to be shown that the appellant's mother has a clear and compelling need to live in the proposed dwelling, with regard to its location and design, in order for me to allow Appeal B.
49. As it is, I have been given little information about the appellant's mother's health or the role(s) that the appellant and other relatives play in her care. The family might wish to stay at Follonsby Terrace, but it is not clear whether this is the only place they could live, or why they need a new house of the size proposed. It has been stated that the appellant's mother requires a 'full time day assistant', but not why a bedroom should be provided for 'any' carer to stay overnight. There is no explanation of the need for a triple garage plus separate parking spaces.
50. The submitted plan no. L(2-)18F confirms that the ground floor of the dwelling would be fully accessible to a wheelchair user. However, I also note that the bedroom for the 'disabled person' would be the only one that is not en-suite; the proposed 'wet room' would be across the hall. I am not persuaded that this layout would meet the needs of an older person who requires full-time day care. I also note that, again unlike the others, the 'disabled person's bedroom' is depicted on the plan without any bed in it, reflecting that the building would stand in posterity.
51. The appellant made no submissions in relation to personal circumstances in his grounds of appeal. Overall, I find that his need to accommodate and care for his mother could not be an overriding consideration in favour of Appeal B.

Green Belt and Other Matters

52. The appellant has questioned whether Follonsby Terrace should remain in the Green Belt, given the proximity of other buildings and the nearby trunk roads. However, the extent of designated Green Belts is a matter for development plans. I understand that the Council is reviewing the Green Belt boundaries, but I have no information as to the implications (if any) for Follonsby Terrace, and no remit to address the matter in the determination of these appeals.
53. The appellant suggests that, again given existing developments in the area, the proposed dwelling and garage would not significantly impact upon the openness of the Green Belt. However, most nearby buildings appear well-established, and the appellant has not shown that any were permitted in such circumstances as to set a

¹ PPG paragraph ref ID: 21a-015-20140306

precedent for Appeal B. It follows that the existing buildings would not justify my deciding to allow a new development which would harm the Green Belt.

54. I accept the findings of the survey which shows that the proposed development, including demolition works, would cause no unacceptable harm to bats or barn owls, subject to a condition requiring that the works take place in accordance with the method statement recommended by the surveyor. I also agree with the Council that the proposed development would cause no unacceptable harm to the living conditions of adjoining occupiers – including those remaining in no. 10 – or in respect of highway safety.
55. However, the absence of harm on those counts cannot be taken as a positive consideration in favour of Appeal B. Imposing a condition to withdraw permitted development rights for extensions or outbuildings on the planning site would not reduce the harm caused by the development as it is proposed.

The Planning Balance, including Human Rights and Equality

56. I have found that the proposed development would be inappropriate development in the Green Belt and cause a loss of openness within the Green Belt. I attach substantial weight to the harm that would be caused to the Green Belt, and significant weight to the harm to the character and appearance of the area.
57. The Framework is clear that very special circumstances will not exist unless potential harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. For the reasons given, I find that the appellant's personal circumstances and other considerations raised – taken individually or together – would not justify or outweigh the harm that the proposed development would cause to the Green Belt.
58. The Council suggests that allowing Appeal B would make it more difficult to resist similar developments in the wider area, which would cause cumulative harm to the Green Belt. I attach little weight to this objection, since I am not aware of any other proposals for development – and any decision to permit the proposed house would have been made on the merits of the case. As it is, however, there are no considerations which would support a grant of planning permission.
59. I conclude that the harm that would be caused by the proposed development would not be clearly outweighed by the other considerations advanced. Looking at the case as a whole, in accordance with the Framework, very special circumstances do not exist to justify any grant of planning permission for the development and override the conflicts with CS Policy EA1 and DMP Policy DM1.
60. Under the Human Rights Act 1998, Article 8 affords the right to respect for private and family life, home and correspondence. This is a qualified right, and interference may be justified where in the public interest. The concept of proportionality is crucial. Dismissing Appeal B would interfere with the rights of the appellant and his mother under Article 8, but the interference would be in accordance with the law and pursuance of a well-established and legitimate aim: the protection of the Green Belt.
61. The appellant has given limited information as to why the proposed dwelling is needed – or the implications of a denial of planning permission. I realise that the appellant's mother's existing home does not provide ground floor wheelchair access – and dismissing Appeal B would deprive her of daily support from her family. However, but there is no evidence that she would suffer any adverse consequences in terms of professional care, or that she could not be re-housed in suitable accommodation elsewhere.

62. Having regard to the legitimate and well-established planning policy aims to protect Green Belts, I find that a refusal of permission would be proportionate and necessary in this case. It would not unacceptably violate the appellant's or his mother's rights under Article 8. The protection of the public interest cannot be achieved by means that are less interfering of their rights.
63. The Public Sector Equality Duty (PSED) as set out under the Equality Act 2010 concerns the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. Since the appellant's mother is elderly and/or disabled, she will have a protected characteristic or characteristics for the purposes of the PSED.
64. However, dismissing this appeal would not amount to unlawful discrimination. A grant of permission for inappropriate development in the Green Belt which is not justified by other considerations would undermine relations between people who do and do not share protected characteristics. The PSED adds a little further weight to my conclusion that Appeal B should be dismissed.

Conclusion

65. For the reasons given and with regard to all other matters raised, I conclude that Appeals A and B should be dismissed.

Jean Russell

INSPECTOR