
Appeal Decision

Site visit made on 21 November 2017

by Elizabeth Jones BSc (Hons) MCTP MRTPI

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

Decision date: 09 January 2018

Appeal Ref: APP/P0119/C/17/3180762

Land at Greystones 213 Down Road, Winterbourne Down, Bristol BS36 1AU

- 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 D Jenkins against an enforcement notice issued by South Gloucestershire Council.
- The enforcement notice was issued on 6 July 2017.
- The breach of planning control as alleged in the notice is erection of green fencing and associated floodlights and netting (Marked A in enclosed photograph) without the benefit of planning permission.
- The requirements of the notice are permanently remove the green fencing and associated floodlights and netting from the land.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act as amended.

Summary Decision: The appeal is dismissed and the enforcement notice is upheld with correction and variation.

Preliminary Matters

1. The address on the enforcement notice is incomplete. I can correct the notice without causing injustice to the full address of 'Land at Greystones 213 Down Road, Winterbourne Down, Bristol BS36 1AU' as shown on the appeal form and other appeal documentation.
2. The Council adopted the Policies Sites and Places Plan (PSP) in November 2017. This has replaced the saved policies in the South Gloucestershire Local Plan (2006) (Local Plan). As a result of subsequent clarification from the Council, Local Plan Policies L1 and H4 referred to in the Council's reasons for issuing the enforcement notice have been replaced with PSP Policies PSP2 and PSP38. The appellant has had the opportunity to comment on this. No party has therefore been prejudiced by this change.
3. The appellant makes reference to a Green Belt SPD (2007). I give this document no weight as the appellant acknowledges it is out of date. Also, the appellant refers to Council guidance¹. I have not been provided with a copy of this document and therefore afford it little weight.

¹ Council's Technical Advice Note "Assessing Residential Amenity June 2016" & Green Belt SPD 2007.

Application for costs

4. An application for costs was made by Mr D Jenkins against South Gloucestershire Council. This application is the subject of a separate Decision.
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Appeal on ground (a)

Main Issues

6. The main issues are:
 - i) Whether the development represents inappropriate development in the Green Belt for the purpose of the National Planning Policy Framework (the Framework) and development plan policy;
 - ii) The effect of the development on the character and appearance of the area;
 - iii) The effect of the development on the living conditions of nearby residents; and
 - iv) If the development is inappropriate, 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.

Reasons

7. The appeal site is a residential dwelling set in a generous sized plot located outside the settlement boundary and predominantly surrounded by open fields. It lies within the Bristol and Bath Green Belt.

Whether the development is inappropriate development

8. Policy CS5 of the South Gloucestershire Local Plan: Core Strategy 2006-2017 (2013) (CS) states that development in the Green Belt will need to comply with the provision in the Framework or relevant local plan policies in the Core Strategy.
9. Paragraph 89 of the Framework states that the construction of new buildings is inappropriate in the Green Belt unless it is for one of six specified exceptions. Paragraph 90 then goes on to say that certain other forms of development are not inappropriate provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in the Green Belt. These other forms of development are then specified in a closed list of 5 bullet points. Consequently any development which does not fall within the scope of the specific exceptions set out in paragraphs 89 and 90 is inappropriate.
10. The term 'building' in planning refers to any structure or erection² and it therefore includes fences. Because of this it is reasonable to determine that fencing and netting constitutes a building for the purposes of assessing whether or not it is inappropriate development in the Green Belt.

² Section 336 Town and Country Planning Act 1990.

11. The third bullet point in the exceptions listed in paragraph 89 is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. The appellant contends that the development is not disproportionate. However, from the information provided the development does not involve an extension or alteration of an original building but is a fresh building operation comprising the erection of new fencing and associated floodlighting. Consequently, the development does not fall within this exception.
12. At the second bullet point in the exceptions listed in paragraph 89 is the provision of appropriate facilities for outdoor sport and outdoor recreation as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it.
13. Albeit the fencing serves as an appropriate means of enclosure for the appellant's leisure/sport facilities and is partially screened by vegetation it introduces a large permanent form of development. Despite its permeability, due to the height and scale of the development it causes harm to openness in this location. Thus, it does not preserve the openness of the Green Belt.
14. Moreover, the introduction of this development where none existed previously fails to assist in safeguarding the countryside from encroachment which is identified as one of the five purposes of the Green Belt in paragraph 80 of the Framework. In addition, the development fails to prevent urban sprawl by keeping land permanently open which the Framework advises is the fundamental aim of Green Belt policy. For these reasons, the development does not fall within the second bullet point in the exceptions in paragraph 89.
15. Consequently, the development does not fall within any of the exceptions set out in the Framework and thus represents inappropriate development in the Green Belt. The Framework advises that inappropriate development is harmful to the Green Belt and should not be permitted except in very special circumstances. In this case I find a conflict with CS Policies CS5 and CS34 which amongst other things, seek to protect the designated Green Belt from inappropriate development. I attach significant weight to the harm arising due to the inappropriate nature of the development.
16. Due to the way in which the Framework is structured I have assessed the effect of the development on openness of the Green Belt as part of the first main issue in respect of one exception but not the other. I have little further to add except attributing significant weight to the harm to openness.

Character and appearance

17. Policy CS1 of the CS states that development proposals will be required to demonstrate that siting, form, scale, height, massing, detailing, colour and materials, are informed by, respect and enhance the character, distinctiveness and amenity of both the site and its context. CS Policy CS9 seeks to conserve and enhance the character, quality, distinctiveness and amenity of the landscape.
18. Policy PSP2 of the PSP states that new development proposals will be acceptable where they conserve and where appropriate enhance the quality, amenity, distinctiveness and special character of the landscape.

19. I accept that a tennis court can be found in gardens of large residential properties set in generous sized plots. However, albeit located towards the rear of the appeal site, the fencing with the netting and floodlights is significantly higher than the existing boundary wall and despite the existing vegetation and intervening field is evident in the locality and can be seen from the public highway. Due to its height, size, material and form the development appears particularly urbanising and out of character in this semi-rural location.
20. Accordingly, I conclude that the development is materially harmful to the character and appearance of the area. Consequently, there is conflict with CS Policies CS1 and CS9 and PSP Policies PSP2 and PSP38 which amongst other things, seek to conserve and enhance the district's distinctive landscapes.

Living Conditions

21. Policy PSP38 of the PSP states that development within existing residential curtilages will be acceptable where they would not prejudice the amenities of neighbours.
22. I note the appellant's reference to existing lighting along the A4174 and M32 and golf course. However, these light sources are some distance from the appeal site. I have taken into account the appellant's comments regarding keeping light spillage to a minimum. However, due to their height, design and location, the light spillage from the floodlights in my judgement is likely to have a harmful impact on the living conditions of nearby residents. Based on all I have seen and read I am not convinced that the imposition of a condition to control the hours of operation regarding the floodlights would overcome the identified harm.
23. Thus, the development is contrary to Policy PSP38 of the PSP and one of the core planning principles of the Framework which seeks to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other Considerations

24. Paragraph 87 of the Framework says inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 of the Framework says 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.
25. The appellant draws attention to a potential fall-back – that is: that the development be reduced in height to correspond with what might have been erected as permitted development under Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). However, there is a dispute between the parties regarding whether or not permitted development rights have been removed from the appeal site.
26. The planning history includes a previous appeal decision³ in which the previous Inspector considered that a 2004 planning permission⁴ has been implemented and therefore the land is subject to a condition restricting permitted

³ APP/P0119/C/09/2103370.

⁴ PT04/2948/F for the "demolition of existing house and erection of replacement dwelling on 1.42 hectares of land".

development rights (paragraph 47 of the previous appeal decision). Moreover, I note in the Council's evidence that submissions made in connection with a previous planning application acknowledge the implementation of the 2004 planning permission⁵.

27. The appellant has drawn my attention to case law⁶ and argues that although commenced, "the existing house has not yet been demolished and erection of the replacement dwelling has not been started", thus, the 2004 planning permission has yet to be implemented. I am informed by the appellant that works to 'commence' development included "the stripping out of the original dwelling and the demolition of a small rear porch". Therefore according to the appellant the condition removing certain permitted development rights imposed on the 2004 permission does not bite.
28. I note the appellant's reference to the case of *Silver v Secretary of State for Communities and Local Government* [2014] EWHC 2729 (Admin) which concerned a planning permission permitting demolition of an existing single storey rear extension and erection of a two-storey rear extension at basement and ground floor level. The demolition works and some of the basement excavation works were carried out just before the permission expired. Thereafter, the works undertaken differed in a number of ways from the permitted scheme and it was determined that they were sufficiently materially different that the planning permission had not been implemented. There is no suggestion in this particular case that the works carried out are not in accordance with the permitted scheme (the 2004 planning permission) and so a clear distinction can be drawn with the facts of that case.
29. The appellant has also referred me to the case of *Impey v Secretary of State for the Environment* [1984] 47 P. & C.R. 157 concerning the change of use of a dog kennels into two residential units and argues that whilst the operational development to prepare a unit for residential use can commence a consent, the change of use will not be implemented until the building is substantially ready for occupation. The appeal before me does not involve a material change of use and thus is not directly comparable with *Impey*.
30. In determining whether a planning permission has been implemented, it is necessary to look at what has been done as a whole to see whether it is materially different from what was permitted. The evidence in this particular case indicates that the works carried out were consistent with the 2004 planning permission. However, the works rendered the building uninhabitable and so whilst still living on the site, the appellant no longer occupies the existing dwellinghouse. Consequently, when considering what has been done as a whole it is my opinion that the works go beyond merely 'keeping the 2004 planning permission alive'. Rather, having regard to s56 of the 1990 Act, these works constituted a material operation effective to implement the 2004 planning permission.
31. I therefore consider that as the 2004 planning permission has been implemented the land is subject to the planning condition restricting certain permitted development rights. This is consistent with the findings of the previous Inspector.

⁵ Appendix 3 of the Council's appeal statement 'Applicant's submission PT10/0731/F'.

⁶ *Impey v SSE and Lake District SPB* [1984] 47 P and CR 157, *Silver v SSCLG* [2014] EWHC 2729 (Admin).

32. In the event that I am incorrect and the land is not subject to such a condition, I accept that Class E if it were applicable in this instant could result in a fence up to 3 metres. However, I am informed by the appellant that the current fence was erected to a height of 7 metres as a health and safety measure by preventing balls going over the appeal site boundary and causing a nuisance to the neighbours. Reduction to 3 metres would not in any way at all serve that purpose and thus I am not convinced that the fall-back position is realistic. Thus, I afford the fall-back position limited weight.
33. The appellant has drawn my attention to a planning permission for the "Construction of 4 no. porous tarmac surfaced tennis courts. Erection of 12 no. floodlights, 5.0m and 2.75m high chain link fencing and wooden shed." on land at Frenchay Cricket Club⁷. Although I have not been provided with the full details, I am informed that this permission relates to an existing sports ground located within the North Fringe of the Bristol Urban Area next to a golf range where there is floodlighting and fencing and adjacent to the A4174 and M32 motorway both of which have lighting. Thus, I do not consider this site is directly comparable to the appeal site which is a residential property located outside the settlement boundary. In any event, I do not consider that reducing the height of the development to 5 metres would overcome the identified harm in this particular case. I therefore afford this matter limited weight.
34. I note the appellant's comments regarding the health benefits as a result of providing leisure facilities to family members. However, I am mindful that the harm identified would be permanent and is not outweighed by the appellant's particular circumstances. I afford this matter little weight.

Conclusion

35. I conclude that the development is inappropriate development within the Green Belt. By definition inappropriate development is harmful and paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt. I consider that no considerations of sufficient weight amount, either individually or cumulatively, to the very special circumstances that are required to clearly outweigh the totality of the harm by reason of inappropriateness, and any other harm, which is the test they have to meet. Consequently, the very special circumstances that are necessary to justify inappropriate development in the Green Belt do not exist.
36. For the above reasons, having regard to all other matters raised, I conclude that the appeal on ground (a) should fail.

Appeal on ground (f)

37. The ground of appeal is that the steps required by the notice to be taken or the activities required by the notice to cease, exceed what is necessary to achieve the purpose. Section 173(3) of the Act says an enforcement notice shall specify steps in order to achieve, wholly or partly, any of the purposes set out in section 173(4) of the Act. These include remedying the breach by making any development comply with the terms (including conditions and limitations) of any planning permission which has been granted in respect of the land or by restoring the land to its condition before the breach took place.

⁷ PT14/0601/F

38. In this case the steps specified require the permanent removal of the fencing, associated floodlights and netting from the site. The appellant suggests either reducing the height of the fence to 3 metres in line with permitted development under Schedule 2 Part 1 Class E of the GPDO, or reducing the height of the fence to 5 metres, the same height as the fencing granted planning permission at Frenchay Cricket Club, would remedy the harm caused to the Green Belt. I have considered these matters under ground (a) and come to the opposite conclusion. Moreover, for the reasons given above, there is no fallback position in relation to s173(4) in terms of the deemed planning permission.
39. In order to remedy the breach, it is not excessive to require the complete removal of the development. To require that does not, therefore, exceed what is necessary and the appeal on ground (f) must fail.

Appeal on ground (g)

40. The ground of appeal is that the time to comply with the requirements is too short. The appellant seeks 3 months to comply with the notice, on the grounds that a suitably qualified contractor has to be found and the impact of the winter weather. Given that the vagaries of the weather could hinder the remedial works I consider that the compliance period should be increased to 3 months. This would also enable the appellant to look for a contractor to carry out the work. To this limited extent the appeal on ground (g) succeeds.

Formal Decision

41. It is directed that the enforcement notice be corrected by the insertion of the words "Bristol BS36 1AU" after the words "Winterbourne Down" in paragraph 2 headed 'The Land to which the Notice Relates'.
42. It is also directed that the enforcement notice be varied by the deletion in paragraph 6 headed 'Time for Compliance' of the words "1 month" and the substitution therefore of the words "3 months" as the time given to comply with the requirements of the notice.
43. Subject to this correction and variation, the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR