
Appeal Decision

Site visit made on 1 May 2018

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 18 May 2018

Appeal Ref: APP/W4223/C/17/3181519

Land to the rear of 34 Arncliffe Rise, Oldham OL4 2LZ

- 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 Andrew Bowker against an enforcement notice issued by Oldham Metropolitan Borough Council.
- The enforcement notice was issued on 30 June 2017.
- The breach of planning control as alleged in the notice is without planning permission the making of a material change of use of the Land from open land to land for use as part of a residential garden beyond the curtilage of a dwellinghouse.
- The requirements of the notice are:
 1. Permanently remove from the Land the timber decking, the pond, all timber fencing (including concrete posts) and all domestic paraphernalia.
 2. Remove all resultant materials from the Land and restore the Land to its former condition before the breach took place by grassing and reseeding.
 3. Discontinue the use of the Land for the purposes of a residential garden beyond the curtilage of the dwellinghouse and reinstate the rear fence of 34 Arncliffe Rise to its original position.
- The period for compliance with the requirements is 3 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.

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

Preliminary Matters

1. Although the notice was served against an alleged material change of use, "open land" does not constitute a use of land. Whilst it is preferable to recite the previous use, the Courts have held that a notice need not do so. No party would be prejudiced if the previous use was omitted from the allegation and I will correct the notice accordingly.
2. The term "curtilage" defines an area of land in relation to a building. It does not describe a use of land. Whilst the notice correctly identifies the breach of planning control in terms of a material change of use to residential garden, the extent of the curtilage of the appeal property is not a matter for my determination under this appeal. The inclusion of the term "beyond the curtilage of a/the dwellinghouse" is therefore superfluous and I will correct and vary the notice by deleting the phrase without causing injustice.
3. I was able to see on my site visit that a blockwork planter had been constructed on the Land. This is not specified for removal in the notice. Therefore, there is a clear inconsistency between the retention of the blockwork

planter and the requirements of the notice to restore the Land to its former condition and discontinue its use as residential garden. Having regard to relevant case law, it is open to me to vary the notice to eliminate the inconsistency and to provide for the removal of the planter which is in my view an element of the works that have facilitated the alleged breach.

4. As the appellant has made clear in evidence that the planter was built as part of the overall works, and it is apparent from my own observations that it has partly facilitated the use of the Land as residential garden, I am satisfied that I can vary the notice to require its removal without injustice to the appellant or the local planning authority. I will do so accordingly.
5. The requirement to both grass and reseed the Land would essentially amount to the same thing. It would be better phrased as "by reseeding with grass" to ensure clarity. As such, I will vary the notice and can do so without causing injustice.
6. The requirement to reinstate the rear fence to its original position would go beyond what is necessary to remedy the breach and ensure the restoration of the Land to its former condition. I will therefore vary the notice to delete that requirement and can do so without injustice.

The Appeal on ground (a)

Main Issues

7. The main issues are: whether the development is inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies; the effect of the development on the openness of the Green Belt; and, if the development is inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the development.

Reasons

Whether the development is inappropriate development

8. The Land lies within the Green Belt. Policy 22 of the Oldham Local Development Framework Development Plan Document – Joint Core Strategy and Development Management Policies 2011 (CS) sets out that the main purpose of the Green Belt is to keep land permanently open. Although the CS pre-dates the Framework, Policy 22 is consistent with paragraph 79 of the Framework which states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open.
9. CS Policy 22 goes on to state that the Green Belt boundary will be maintained and development will be permitted provided it does not conflict with national policies on Green Belt in Planning Policy Guidance Note 2: Green Belts. National policies on Green Belt are now contained within the Framework which superseded PPG2 upon publication.
10. Paragraph 87 is clear that, as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is to 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.

11. The allegation relates to a material change of the land to residential garden. The varied requirements also specify the removal of the timber decking, the pond, all timber fencing, the blockwork planter and all domestic paraphernalia. Whilst those works do not form part of the alleged breach, case law has established that a notice directed at a material change of use may require the removal of operational development integral to and solely for the purpose of facilitating the unauthorised use so that the land is restored to its condition before the change of use took place. From my observations, I am satisfied the works referred to in the requirements are integral to and solely for the purpose of facilitating the use of the Land as a residential garden and are not distinct operational development that need be explicitly addressed in the allegation.
12. Paragraph 89 of the Framework states that, other than in the case of a number of specified exceptions, the construction of new buildings within the Green Belt is inappropriate development. The Courts have established that any development falling outside the exceptions explicitly laid out in paragraphs 89 and 90 of the Framework would be inappropriate development. Paragraphs 89 and 90 do not include a material change of use of land to residential garden and facilitating operational development within the exceptions.
13. Consequently, the development is inappropriate development in the Green Belt and is in conflict with CS Policy 22 and the Framework. I attach substantial weight to the harm arising due to the inappropriate nature of the development.

Openness

14. The Land is not widely perceptible within the public realm. Views from the street to the front are restricted by the properties themselves. I was also able to see from my site visit that post and rail fencing had been erected around the adjacent land, whilst the rear garden of 40 Arncliffe Rise extends much further out into the surrounding fields. There is also housing under construction to the north of the site which extends further into the countryside than the appeal site. As a result, the visual impact of the development is minimal.
15. However, the concept of openness has both a visual aspect and a spatial aspect and the absence of visual intrusion does not in itself mean there would be no impact on openness. The concept of "openness" equates to land remaining, on the whole, free from development. The development involves the change of use of land which, the evidence before me suggests was previously free of built form, to use as a residential garden. Timber decking, fencing, a planter and a pond have been constructed to facilitate that use. It has, therefore, resulted in an incursion of development where previously, there was very little. As such, I find the development has an impact on openness, in that it is reduced.
16. The appellant indicates that a building or wall of some description previously existed on the Land. However, I have been provided only with photographs of brickwork buried beneath soil which do not show the Land in context. Thus, I have little substantive evidence to support the appellant's indication and cannot be sure that a building or wall existing previously. As such, I am unable to afford the presence of previous development any more than little weight.

17. I conclude, therefore, that the proposal would lead to a loss of the openness of the Green Belt, contrary to the fundamental aim and purpose of Green Belt policy as set out in CS Policy 22 and paragraph 79 of the Framework. Whilst the overall loss of openness would be limited when taken in isolation, it nevertheless adds to the harm through inappropriateness identified above.

Other Considerations

18. I recognise the appellant's desire to retain the Land and complete the work to facilitate the provision of a larger garden area. I also note the presence of other gardens which extend into the Green Belt, the planning history of adjacent properties and the significant financial cost of the works.

Conclusion on the Ground (a) appeal

19. The development is inappropriate development and the Framework establishes that substantial weight should be given to any harm to the Green Belt. It also results in harm to the openness of the Green Belt, albeit such harm is limited. However, whilst I have considered all matters in support of the development, I conclude that, collectively, they do not clearly outweigh the harm I have identified in relation to the Green Belt by reason of inappropriateness and the harm to openness. Accordingly, very special circumstances do not exist and the proposal would conflict with CS Policy 22 and the Framework.
20. Consequently, I conclude that the appeal on ground (a) should not succeed and the deemed application therefore fails. Subject to the corrections and variations set out in the formal decision below, I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Formal Decision

21. It is directed that the enforcement notice be corrected by:

- deleting the words "from open land" in section 3; and,
- deleting the words "beyond the curtilage of a dwellinghouse" in section 3;

22. It is further directed that the enforcement notice be varied by:

- inserting the words "the blockwork planter" before the word "and" in section 5(1);
- deleting the words "by grassing and reseeding" in section 5(2);
- inserting the words "by reseeding with grass" after the word "place" in section 5(2); and,
- deleting the words "beyond the curtilage of the dwellinghouse and reinstate the rear fence of 34 Arncliffe Rise to its original position" in section 5(3).

23. Subject to these corrections and variations the appeal is dismissed and 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.

Jason Whitfield

INSPECTOR