



Appeal Decision

Site visit made on 11 June 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 July 2019

Appeal Ref: APP/H2265/C/18/3207286

Land south west of Claygate House, Winfield Lane, Borough Green, Sevenoaks, Kent TN15 8PX

- 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 M Murrell against an enforcement notice issued by Tonbridge & Malling Borough Council.
- The enforcement notice was issued on 18 June 2018.
- The breach of planning control as alleged in the notice is without planning permission the erection of a new building within the Metropolitan Green Belt.
- The requirements of the notice are to demolish the unauthorised building and remove from the land to an authorised place of disposal all resulting demolition debris and materials.
- The period for compliance with the requirements is one calendar month.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (b) of the Town and Country Planning Act 1990 as amended.

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

Ground (b) appeal

1. The ground of appeal is that the matter alleged in the enforcement notice has not, in fact, occurred. The onus of proof in this respect rests with the appellant, the relevant test of the evidence being on the balance of probability.
2. A 'building' is defined in s336 (1) of the Act as including any structure or erection, and any part of a building. A building operation falls within the definition of development at s55 (1) of the Act. In order to determine whether a building has been erected at the appeal site as a result of building operations, it is necessary to apply the tests of size, degree of permanence and physical attachment established in relevant case law¹.
3. I am given to understand that the footprint of the structure is around 64m² and it has an overall height of around 2.8 metres. It is unlikely to have been practical to transport a structure of that size in a pre-assembled state. Therefore, the structure is of a size indicative of it having been constructed on site. The structure has a metal frame with timber bracing. Timber pallets clad with corrugated metal sheet panels form the walls. Corrugated plastic panels cover the timber roof joists. Consequently, the materials of construction are also consistent with the structure having been built on site from constituent components. The appellant did not argue otherwise.

¹ *Cardiff Rating Authority v Guest Keens* [1949] 1 KB 385, *Skerritts of Nottingham Ltd v SSETR & Harrow LBC (No.2)* [2000] JPL 1025.

4. According to the appellant, the structure has a wheeled frame and it had been moved within the site in July 2018. He suggested that the structure was unlikely to be in one place on the site for more than a few months at a time. The structure has an earth floor, so is not on a permanent base. Nevertheless, there was no firm evidence to indicate that the structure had been moved to different parts of the site. A photograph supplied by the Council showed that the structure was in a similar position in mid-April 2018 to that on the date of my visit. Moreover, the appellant did not explain why it would be necessary or desirable in terms of the function of the structure to move it around the site.
5. During my site visit, I observed that an item of plant could raise one side wall of the structure off the ground. However, it appeared that a part of the wall had been damaged in lifting the structure. Moving the structure across uneven ground is likely to cause further damage. This suggests that in practice, there would be considerable difficulties with moving the structure. Whilst the structure might have been assembled in a day and it could be dismantled in a similar timescale, these are not relevant factors in terms of its movability as assembled. Consequently, I have considerable doubts as to whether the structure is moved in practice.
6. Due to its overall size and materials of construction the structure is likely to have a substantial weight, which has in turn affixed it to the ground. My findings regarding the likelihood of the structure being moved reinforce this conclusion. The structure does not have a base or any connection to utilities. However, it is likely that the ground on which it is situated was prepared to form a roughly levelled surface prior to its erection, thereby making some change to the physical character of the land. As a result, the structure also has a significant amount of physical attachment to the ground.
7. Consequently, as a matter of fact and degree and on the balance of probability, I find that having regard to the size and permanence of the structure as well as its physical attachment to the ground, it is a building within the statutory meaning. As a result, setting the structure up on the site has involved building operations falling within the definition of development.
8. Therefore, the available evidence does not show that the erection of a building has not occurred and the ground (b) appeal must fail.

Ground (a) appeal

Main Issues

9. As the site is in the Metropolitan Green Belt, the main issues in this ground of appeal are:
 - Whether there has been inappropriate development in the Green Belt, having regard to the National Planning Policy Framework (the Framework).
 - The effect on Green Belt openness.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the development.

Reasons

Whether inappropriate development

10. The site is in open countryside. I understand that it is registered as an agricultural holding with DEFRA and that pigs have been bred and kept there. Although the documentation supplied was some years old, during my visit I saw that a small number of pigs were being kept at the site. Therefore, whilst such use was not referred to by the appellant in his previous appeals², it appears that there has been some small-scale activity falling within the definition of agriculture at s336 (1) of the Act taking place at the site. Such activity is not conclusive of any permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015.
11. The Framework paragraph 145 states that the construction of new buildings should be regarded as inappropriate in the Green Belt apart from a limited range of exceptions, one of which is buildings for agriculture. According to the appellant, the structure was erected for agricultural use, providing covered storage for a tractor and machinery.
12. When I visited, there was a tractor and trailer inside the structure. I fully appreciate the appellant's desire to protect a valuable agricultural vehicle, trailer and other machinery from inclement weather. However, those items occupied about a third of the structure's floor area. There were few other large items inside the structure which had an obvious association with agriculture. The rest of the items were largely tools and equipment associated with the repair and maintenance of vehicles. No assessment of the requirement for covered floorspace at the site based on the level of agricultural activities being undertaken was submitted. Although there appeared to be limited space available in the pre-existing barn, it was not immediately apparent as to why it could not be adapted to provide covered accommodation for the tractor, trailer and other agricultural machinery.
13. During my visit, I also saw that other agricultural vehicles and items of machinery were being kept in the yard outside the structure. However, there were non-agricultural vehicles present, including around 20 cars, in varying states of repair. According to the appellant, the structure is used for working on the vehicles and machinery on the site. Therefore, I find it likely that the structure is also being used to repair and maintain non-agricultural as well as agricultural vehicles.
14. The above factors lead me to conclude that based on the available evidence, including the limited scale of agricultural activity on the appellant's holding, there is not a reasonable agricultural requirement for the structure. It follows that the structure cannot be regarded as benefitting from the exception for agricultural buildings in the Green Belt and its construction therefore amounts to inappropriate development.
15. The appellant suggested that he would accept a 12-24 month temporary permission for the structure whilst he sought permission for and subsequently erected a permanent storage building at the site. However, a temporary permission would perpetuate an inappropriate development in the Green Belt. The material considerations to which regard must be had in granting planning

² Appeal Refs: APP/H2265/C/16/3160621 & APP/H2265/C/16/3160623.

permission are not limited or made different by making a permission temporary.

16. The Council did not refer to any relevant Development Plan policies concerning development in the Green Belt. However, inappropriate development is inconsistent with the Framework paragraph 145. Moreover, at paragraph 143 the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I afford substantial weight to the harm to the Green Belt.

Effect on openness

17. The Framework paragraph 133 advises that openness is an essential characteristic of the Green Belt. As the structure occupies a reasonably secluded position and is open to limited public views, a reduction in openness due to the presence of built form is not obviously apparent in the surroundings. However, openness has a spatial as well as a visual element. The structure has a considerable sized footprint and a significant overall bulk. Prior to the structure being erected, this part of the site is likely to have been open, but it is now occupied and enclosed by, or adjacent to, a substantial built form. Accordingly, the structure has considerably reduced and caused a significant degree of harm to, the openness of the Green Belt.

Other considerations

18. The site is surrounded by undulating open countryside, interspersed with scattered development. As the scale, form and external materials of the structure are not untypical of the simple functionality of modern agricultural buildings, it is not at odds with its rural setting. Moreover, as noted above the structure occupies a secluded location in the landscape, with limited public views due to its position towards the back of the site and proximity to mature trees and hedges, as well as high landscaped bunds. Therefore, the structure has had a limited effect on the character and appearance of the area and there is no failure to accord with Policy CP1 of the Tonbridge and Malling Borough Core Strategy (CS), as the natural environment is protected. Also, the structure has been designed to respect the site and its surroundings in accordance with CS Policy CP24. Moreover, the structure protects the local character and distinctiveness in accordance with Policy SQ1 of the Council's Managing Development and the Environment Development Plan Document.
19. The appellant referred to several thefts as having taken place from the site in recent years. I can sympathise with the costs and inconvenience caused by such incidents. Even so, the structure offers little practical benefit in this regard as being open on one side, it is not secure. Therefore, I give this matter little weight.

Green Belt Balance

20. Erecting the structure has involved inappropriate development in the Green Belt which harms openness. The other considerations, including the absence of harm to the character and appearance of the area, do not clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify permitting the structure do not exist.

Conclusion on ground (a)

21. The failure to protect the Green Belt is inconsistent with the Framework.

Overall Conclusion

22. 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.

Formal Decision

23. 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.

Stephen Hawkins

INSPECTOR