
Appeal Decision

Site visit made on 1 August 2019

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 August 2019

Appeal Ref: APP/Z3635/C/18/3215550

Land to the south-east of The Ranges, Chertsey Road, also known as land to the north of Chertsey Road, and now addressed as 1A Priory Stables, Chertsey Road, Shepperton, Surrey TW17 9NU

- The appeal is made by Edward Cash under section 174 of the Town and Country Planning Act 1990 against an enforcement notice (ref: 18/00102/ENF) issued by Spelthorne Borough Council on 5 October 2018.
- The breach of planning control alleged in the notice is "the construction of two brick walls with piers, at the access way, with the instal[I]ation of metal entrance gates and close boarded fencing to southern boundary, on Green belt land".
- The requirements of the notice are as follows: -
 - Remove the walls.
 - Remove the close-boarded fencing along the southern boundary of the site.
 - Remove the metal entrance gates from the site.
 - Remove all resultant debris from the site."
- The period for compliance with these requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (f). Since the appeal has been brought on ground (a), an application for planning permission is deemed to have been made by section 177(5) in respect of the matters stated in the notice as constituting a breach of planning control.

Decision

1. The appeal is allowed insofar as it relates to the fencing. Planning permission is granted on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for the construction of close-boarded fencing on the southern boundary of land to the south-east of The Ranges, Chertsey Road, also known as land to the north of Chertsey Road, and now addressed as 1A Priory Stables, Chertsey Road, Shepperton, Surrey TW17 9NU.
 2. The appeal is dismissed insofar as it relates to the walls and the gates. Planning permission is refused on the application deemed to be made by section 177(5) of the Town and Country Planning Act 1990 for development on land to the south-east of The Ranges, Chertsey Road, also known as land to the north of Chertsey Road, and now addressed as 1A Priory Stables, Chertsey Road, Shepperton, Surrey TW17 9NU consisting of the construction of two brick walls with piers, at the access way, with the installation of metal entrance gates.
 3. The enforcement notice is upheld.
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Reasons for the decision

The appeal on ground (a) and the deemed planning application

The main issues

4. The main issues in deciding whether planning permission should be granted for the construction of the walls, gates and fencing are as follows: -
 - (i) Whether they constitute inappropriate development in the Green Belt for the purposes of the Spelthorne Borough Local Plan 2001 ("the Local Plan"), the National Planning Policy Framework 2019 ("the Framework") and the Government's current planning practice guidance "(the PPG)".
 - (ii) Their effect on the openness of the Green Belt and on the character and appearance of their surroundings.
 - (iii) If they do constitute inappropriate development in the Green Belt, whether the harm by reason of their inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, does this amount to the very special circumstances required to justify their construction?

Planning policies

5. Policy GB1 of the Local Plan states that development in the Green Belt that conflicts with the purposes of the Green Belt and the maintenance of its openness will not be permitted. It lists the uses that are "appropriate to the Green Belt". These include agriculture, appropriate engineering operations and essential facilities for outdoor recreation.
6. Policy EN1 of the Spelthorne Core Strategy and Policies Development Plan Document 2009 ("the CS&PDPD") indicates that development should achieve a high standard of design and layout. Amongst other matters, it should make a positive contribution to the street scene and the character of the area in which it is situated, provide for suitable boundary treatment and create a safe and secure environment in which opportunities for crime are minimised.
7. Policy GB1 has become outdated following the publication of revised Government policies about inappropriate development in the Green Belt, the latest of which is contained in the Framework. The Framework sets out the kinds of development that may be permitted in the Green Belt as exceptions. They include (i) engineering operations, provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land within it, (ii) the construction of new buildings for agriculture and (iii) the construction of new buildings that provide appropriate facilities (in connection with the existing use of land or a change of use) for outdoor recreation, as long as the facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

Details of the walls, gates and fencing to which the notice relates

8. The walls are in two sections, 13.2m and 13.8m in length, on either side of the entrance gate. They range in height from 1.73m to 2.18m and have piers between 2.05m and 2.43m high. They are built in brick and are partially screened by planting.

9. The vehicular entrance gate is between the walls and is about the same height overall as the walls. It is a solid-metal structure, coloured black, which slides open and has a row of rotary security spikes above it. There is in addition a pedestrian security gate.
10. The notice also relates to a short section of fencing along the southern boundary beyond the section of wall to the west and a longer section of fencing along the southern boundary beyond the section of wall to the east. Both sections of fencing are about 2.2m high and constructed from vertical close-boarded timber. They are very well screened by dense vegetation. The section to the east joins up with the fence that is the subject of Appeal Decision APP/Z3635/C/19/3224740.

Consideration of the main issues

11. Walls, gates and fencing are not specifically mentioned in the exceptions listed in the Framework, but they are allowed in the Green Belt as permitted development up to the height limits. However, permitted development rights for fences, gates and other means of enclosure on this land were withdrawn by a planning condition when planning permission was granted for stables and a tack room on the land in 2017. The guidance in the PPG states that permitted development rights should only be withdrawn in exceptional circumstances, which have not been shown by the Council to exist here in respect of these matters, but in any event the walls, gates and fencing referred to in the notice exceeds the height limits.
12. No part of the walls, gates and fencing is, in my opinion, an engineering operation for planning purposes, since their construction has not altered the profile of the land. If they are treated as buildings (on the basis that buildings are defined in the Town and Country Planning Act 1990 to include any structure or erection) they could potentially be within one of the exceptions listed in the Framework. The appellant has, however, not pursued his initial claim that they have an agricultural purpose supporting the use of the land for the grazing of horses or maintained that they are appropriate facilities for outdoor recreation in connection with the use of the land for the stabling of horses. He has agreed with the Council that they constitute inappropriate development in the Green Belt, as defined in the Local Plan and the Framework, and in the circumstances I accept this standpoint.
13. The Framework states that the Government attaches great importance to Green Belts and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It adds that the essential characteristics of Green Belts are their openness and their permanence. The PPG states "openness is capable of having both spatial and visual aspects – in other words, the visual impact of the proposal may be relevant, as could its volume".
14. The Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It indicates that, when planning applications are considered, substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt

- by reason of inappropriateness, and any other harm resulting from the development, is clearly outweighed by other considerations.
15. It is an inescapable outcome of the 2017 planning permission that the land would have to be secured in some way by suitable means of enclosure. It appears to me to be particularly vulnerably situated for stabling and associated paddocks and grazing. The surroundings consist of large areas of open land on three sides and Chertsey Road on the fourth side. The M3 motorway is a short distance away across open land to the north. There is little natural surveillance. Policy EN1 of the CS&PDPD calls for suitable boundary treatment and the creation of a safe and secure environment in which opportunities for crime are minimised. Substantial means of enclosure are needed in order to discourage horses from straying and to deter intruders, who may be intent on the theft of horses or tack, malicious damage to property or harm to horses' welfare. Any perceived harm to the Green Belt or to the character and appearance of the area should take into account the changes that have already been made by the 2017 planning permission and the consequential need for suitable means of enclosure.
16. In my opinion, the fencing to which the notice relates does very little harm to the openness of the Green Belt, including its visual impact, and it is not in conflict with any of the purposes of including land in the Green Belt. I attach considerable weight to the considerations set out in paragraph 15 above. In my planning judgement, after giving substantial weight to the harm to the Green Belt, including the potential harm by reason of inappropriateness, and after assessing the impact of the fencing on the character and appearance of its surroundings, these considerations clearly outweigh the totality of the harm that I have identified, so as to amount to the very special circumstances required to justify the construction of the fencing.
17. There are insufficient reasons to withhold planning permission for the fencing. No planning conditions have been suggested in this event and I do not consider that any are needed. The appeal has therefore succeeded on ground (a) as far as the fencing is concerned.
18. The walls and gates, however, have a significant visual impact because of their scale and appearance. As a result, they detract from the openness of the Green Belt and from the character and appearance of the street scene here, where there are no comparable features. Although I attach considerable weight to the considerations set out in paragraph 15 above, in my view these walls and gates are not suitable boundary treatment within the meaning of Policy EN1, because they go beyond the means of enclosure, albeit substantial, that are needed here. The considerations set out in paragraph 15 above do not clearly outweigh the harm that I have identified to the Green Belt and to the street scene.
19. Consequently, the very special circumstances required to justify the walls and gates do not exist. Planning permission has been refused for them in order to preserve the openness of the Green Belt and the street scene. The appeal on ground (a) has therefore failed as far as the walls and gates are concerned.

Note

20. Although planning permission has been granted for the fencing, the notice has been upheld without changing the requirements relating to the fencing, since

this would give rise to two planning permissions, namely the one that has been granted here and the one that would be deemed to be granted by section 173(11) due to under-enforcement. Attention is drawn to the provisions of section 180(1) as to the effect on the notice of the permission that has been granted.

Ground (f)

21. Under ground (f), the appellant draws my attention to the possibility of approving certain elements of the development if I conclude that other parts are unacceptable. This is the course of action that I have adopted, for the reasons given under ground (a) above.

D.A.Hainsworth

INSPECTOR