

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/19/3224740

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: 18/00282/ENF) issued by Spelthorne Borough Council on 8 February 2019.
 - The breaches of planning control alleged in the notice are "the construction of a bund along the south boundary and east boundary of the land (approximate position hatched black on the plan), and construction of a close boarded wooden fence on these bunds to a height of approximately 2.2 metres from the top of the bunds, on land within a flood plain and on Green belt land".
 - The requirements of the notice are as follows: -
 - Removal of the close boarded fences and all resultant debris from the site.
 - Removal of the bunds and all resultant debris from the site."
 - The period for compliance with these requirements is three 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 breaches of planning control.
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Decision

1. The appeal is allowed, the enforcement notice is quashed and planning permission is granted 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 bunds along parts of the southern and eastern boundaries of the land and the construction of a close-boarded wooden fence on these bunds to a height of approximately 2.2 metres from the top of the bunds.

Reasons for the decision

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

The main issues

2. Although the allegation in the enforcement notice refers to the flood plain, the Council have stated that they do not consider that the bunds and the fence
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referred to would have an adverse impact on flooding, and I agree. The main issues in deciding whether planning permission should be granted for their construction are as follows: -

- (i) Whether the bunds or the fence 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) The effect of the bunds and the fence on the openness of the Green Belt and on the character and appearance of their surroundings.
- (iii) If the bunds or the fence 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 the construction of the bunds or the fence?

Planning policies

- 3. 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.
- 4. 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.
- 5. 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.

The bunds

- 6. The bunds referred to in the notice are small mounds of earth, a maximum of 0.8m high and 4m wide, on the parts of the southern and eastern boundaries of the land that are shown hatched in black on the plan attached to the notice. In my opinion, they are engineering operations for planning purposes, since they have altered the profile of the land, albeit on a very minor scale.

7. The bunds are not discernible from beyond the boundaries of the land and have very little impact when viewed from within its boundaries. They do not harm the openness of the Green Belt or conflict with any of its purposes. Nor do they detract from the character of the area or its visual amenities.
8. I have therefore concluded that the bunds do not constitute inappropriate development in the Green Belt and that planning permission should not be withheld for them. No planning conditions have been suggested in this event and I do not consider that any are needed. The appeal has succeeded on ground (a) as far as the bunds are concerned.

The fence

9. Fences 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 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 fences, but in any event the fence referred to in the notice exceeds the height limits.
10. If the fence is treated as a building (on the basis that buildings are defined in the Town and Country Planning Act 1990 to include any structure or erection) it could potentially be within one of the exceptions listed in the Framework. The appellant has, however, not pursued his initial claim that it has an agricultural purpose supporting the use of the land for the grazing of horses or maintained that it is an appropriate facility for outdoor recreation in connection with the use of the land for the stabling of horses. He has agreed with the Council that the fence constitutes inappropriate development in the Green Belt, as defined in the Local Plan and the Framework, and in the circumstances I accept this standpoint.
11. 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".
12. 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.
13. It is an inescapable outcome of the 2017 planning permission that the land would have to be fenced off in some way. 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. A substantial fence is 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.

14. The notice relates only to the fence that has been erected on the tops of the bunds referred to above. It reaches a height of approximately 2.2m from the top of the bunds and is therefore about 3m high when measured from land next to the bunds. It is constructed from vertical close-boarded timber and is dark coloured. Little can be seen of it from Chertsey Road because of the dense vegetation on the wide roadside verge.
15. In my opinion, this fence 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. 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 fencing.
16. 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. For the reasons given in paragraph 13 above, there is a need for more secure fencing here than might be called for elsewhere. I attach considerable weight to these considerations. 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 fence on the character and appearance of the area, 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 fence.
17. For the above reasons, I have come to the conclusion that there are insufficient reasons to withhold planning permission for the fence. No planning conditions have been suggested in this event and I do not consider that any are needed. The appeal has succeeded on ground (a) as far as the fence is concerned.

The appeal on ground (f)

18. Following the outcome of the appeal on ground (a), planning permission has been granted and the enforcement notice has been quashed. Ground (f) no longer falls to be considered.

D.A.Hainsworth

INSPECTOR