



Appeal Decisions

Site visit made on 25 June 2019

by Mrs H M Higenbottam BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 November 2019

Appeal A: APP/K0425/C/18/3212734

Land at Hill View (also known as Lodge Hill View), Lee Road, Saunderton, Buckinghamshire HP27 9NU

- 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 Ms Natasha Seidel against an enforcement notice issued by Wycombe District Council.
 - The enforcement notice was issued on 7 August 2018.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the erection of close boarded timber fencing and a pedestrian gate all exceeding 1 metre in height and adjacent to a highway used by vehicular traffic.'
 - The requirements of the notice are:
 1. Demolish the close boarded timber fencing and the pedestrian gate (shown as a green line on the attached plan); and
 2. Remove all materials and debris resulting from carrying out Step 1 of this Notice from the Land outlined in red on the attached plan.OR
 3. Reduce the height of the close boarded timber fencing and the pedestrian gate (shown as a green line on the attached plan) so that the height of the fencing and the pedestrian gate do not exceed 1 metre when their height is measured from the natural ground level immediately adjacent to the fencing and the pedestrian gate; and
 4. Remove all materials and debris resulting from carrying out Step 3 of this Notice from the Land shown outlined in red on the attached plan.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a) and (f) of the Town and Country Planning Act 1990 as amended.
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Appeal B: APP/K0425/C/18/3212737

Land at Hill View (also known as Lodge Hill View), Lee Road, Saunderton, Buckinghamshire HP27 9NU

- 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 Ms Natasha Seidel against an enforcement notice issued by Wycombe District Council.
- The enforcement notice was issued on 7 August 2018.
- The breach of planning control as alleged in the notice is 'Without planning permission, the erection of a detached building (shown outlined in blue on the attached plan) and the external rendering of the dwellinghouse 'Hill View'.
- The requirements of the notice are:
 1. Demolish the entire building (shown outlined in blue on the attached plan); and
 2. Removal all materials and debris resulting from carrying out Step 1 of this Notice from the Land shown outlined in red on the attached plan.
- The period for compliance with the requirements is six 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.
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Appeal C: APP/K0425/C/18/321278
Hill View (also known as Lodge Hill View), Lee Road, Saunderton,
Buckinghamshire HP27 9NU

- 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 Ms Natasha Seidel against an enforcement notice issued by Wycombe District Council.
 - The enforcement notice was issued on 7 August 2018.
 - The breach of planning control as alleged in the notice is 'Without planning permission, the erection of a timber and plastic verandah.'
 - The requirements of the notice are:
 1. Dismantle the verandah (shown outlined in blue on the attached plan); and
 2. Remove all materials and debris resulting from carrying out Step 1 of this Notice from the Land shown outlined in red on the attached plan.'
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended.
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Decisions

Appeal A

1. 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.

Appeal B

2. 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.

Appeal C

3. 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.

Appeals A, B and C on ground (a)

4. The appeal site is within the designated Green Belt and Chilterns Area of Outstanding Natural Beauty (AONB).

Main Issues for Appeals A, B and C

- Whether the development would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (the Framework) and the development plan;
- The effect of the development on the landscape and scenic beauty of the AONB, character and appearance of the area and openness of the Green Belt; and

- Whether any harm by way of inappropriateness, and any other harm, is clearly outweighed by other considerations and, if so, whether there exist very special circumstances that justify the development.

Planning Policy Appeals A, B and C

5. The development plan includes the Wycombe District Local Plan (LP) (adopted 19 August 2019). The most relevant policies for the appeals are Policies CP8, DM30, DM42 and DM43.
6. LP Policy CP8 protects the Green Belt, including protecting it from inappropriate development. LP Policy DM42 requires development to be appropriate within the Green Belt. This comprises development in Wycombe District which accords with a made Neighbourhood Plan or classified as not inappropriate by the National Planning Policy Framework (the Framework) but only when subject to certain clarifications including the replacement or extension of dwellings when they accord with LP Policy DM43.
7. LP DM43 is entitled '*The replacement or extension of dwellings in the Green Belt (including outbuildings)*' and includes a framework to determine decisions relating to the erection of outbuildings serving dwellings within the Green Belt. The policy states that residential outbuildings are considered appropriate development within a built-up village identified on the Policies Map or in accordance with a made Neighbourhood Plan¹. Elsewhere any increase in the volume of residential outbuildings is only appropriate development when conditions 2 a to e of the policy. Condition 2 a requires the total volume of all existing and proposed outbuildings not to exceed 25% of the volume of the original building. Condition 2 b requires it to not exceed 140 cubic metres. Condition 2 c requires that no more than 50% of the curtilage outside the dwelling would be occupied by outbuildings. Condition 2 d requires that no part of the building has more than a single level and condition 2 e requires that no part of it would exceed 4m in height. The policy also requires the outbuilding to respect the open character of the Green Belt and appear proportionate to the original dwelling, taking particular account of visual impact.
8. LP Policy DM30 conserves and where possible enhances the natural beauty of the AONB.
9. The Framework states that inappropriate development in the Green Belt is by definition harmful and should not be approved except in very special circumstances.

Appeal A

Whether it is inappropriate development?

10. The Council state that the fence, and pedestrian gate within it, are 2m in height. The fence and pedestrian gate are set back behind a verge from the metalled road and a hedge has been planted in front of the fencing.

¹ The appeal site has not been demonstrated to be within a built-up village identified in the Policies Map or in an area with a Neighbourhood Plan. I have therefore taken it that Appeals B and C fall to be considered under the 'elsewhere' part of the policy.

11. Paragraphs 145 and 146 of the Framework and LP Policies DM42 and DM43 set out the range of development that is not inappropriate. The Council consider that the fence is appropriate development but does not expressly state why.
12. Section 336 of the 1990 Act as amended defines 'buildings' as 'any structure or erection'. The fencing is therefore a building for this purpose. In my view, it is not an outbuilding for the purposes of LP Policy DM43, and it does not fall within the range of development that is not inappropriate set out in the Framework. I therefore find that the fencing as erected is inappropriate development which is contrary to LP Policies CP8 and DM42. Paragraph 143 of the Framework records that this is, by definition harmful and should not be approved except in very special circumstances.

AONB, character, appearance and openness

13. The appeal site comprises a detached dwelling and outbuildings on an irregular piece of land on the east side of Lee Road. The development along the road is sporadic and there are significant areas of hedges and trees on boundaries to properties, including fields. While there are some examples of close boarded/solid fencing along the road, these do not make up the predominant boundary treatment. They appear harsh and urban compared to the more traditional fencing and landscaping that, in my view, is the dominant form of boundary treatment and which is an important element in the rural character and appearance of the area.
14. The fencing and pedestrian gate that have been erected are clearly visible in approaches from both directions along Lee Road. While there is hedge planting in front of the fence this is relatively recent and not fully established. The height and length of the fencing and gate result in a very hard, urban appearance and detract from the rural feel of the immediate area. They diminish the openness of the Green Belt by reason of their height and extent visual impact. In addition, they detract from the rural character of the lane, which harms the natural beauty of the AONB.
15. A hedge has been planted between the fence and the road. The appellant considers that when the hedge has grown to a sufficient height it will screen the fence from view. The appellant considers it complies with all relevant Local Plan policies.
16. The planting of hedging may soften the visual impact of the fencing in the future, however, I am not convinced that seeking to hide/cover up an inappropriate form of fencing would make an inappropriate form of boundary treatment appropriate. It would also necessitate the hedge being maintained, if it were to thrive, at a significant height to attempt to mitigate the visual impact of the fencing. Retention of a hedge at a specified height in perpetuity would be unreasonable and would fail the statutory test for the imposition of a condition. Therefore, a condition could not be imposed to require the retention of the hedge at the height of the fence in perpetuity.
17. As such, I do not accept that the hedge is adequate mitigation for the harm that results from the erection of this height of fencing and gate on the AONB, character and appearance of the area and the openness of the Green Belt. This is contrary to LP DM30 and the Framework which seeks to protect the landscape and scenic beauty of the AONB.

Other considerations

18. The appellant has stated that the close boarded timber fence was erected to improve privacy and the security of the dwelling. There has been no substantiated evidence of security issues at the property. As such, this does not weigh in favour of the development.
19. Class A of Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) sets out the circumstances in which the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure may be classified as permitted development (PD) and thus benefit from deemed planning permission pursuant to Article 3. Paragraph A.1 limits the height of any gate, fence, wall or other means of enclosure erected or constructed to two metres, unless it is adjacent to a highway used by vehicular traffic where it must not exceed one metre in height.
20. The Notice permits, as an alternative to removal, the fence to remain at 1m and thus comply with the PD rights stated above. Clearly a close boarded fence and pedestrian gate 1m high would still have some visual impact within the street scene. In my view, the reduction in height to 1m would result in significantly less harm than the existing height which results in a visually dominant structure. As such, while close boarded fencing at 1m in height would detract somewhat from the area, the greater height of fencing and pedestrian gate the subject of the Notice does have a significant and detrimental visual effect. The appellant has also suggested within his ground (f) appeal that a fence of 1.8m should be allowed to be retained. In my view, this height of fencing would still have a significant and detrimental visual effect and be only minimally less harmful than the existing height. As such, this slightly lower height would not overcome the harm I have identified.
21. I have also considered other fencing in the locality. While there are some examples of close boarded and higher fencing, the predominant character of the area is of boundaries comprising hedges and trees with limited intermittent solid fencing. As such, I consider retaining an inappropriate form of fencing and pedestrian gate would not be justified by other examples of fencing that themselves detract from the predominantly rural character of trees and hedges on boundaries within the immediate area.

Conclusion on Appeal A

22. The fencing is inappropriate development which is by definition harmful to the Green Belt. The Framework states that inappropriate development should not be approved except in very special circumstances. I have also found harm to the openness of the Green Belt, the AONB and the character and appearance of the area. In contrast the other considerations do not outweigh the harm I have identified. I therefore conclude that there are no considerations sufficient to clearly outweigh the harm to the Green Belt. There are therefore no very special circumstances to justify the fence and pedestrian gate. It conflicts with LP Policies CP8, DM30, DM42 AND DM43 and the guidance in the Framework.

Appeal B

23. Appeal B alleges not only the erection of a building but the rendering of the dwelling. However, I note that there is no requirement to remove the render

and as such, if the Notice were upheld and complied with the render would be granted unconditional planning permission by virtue of s173(11) of the Act. As such the ground (a) appeal is only concerned with the erection of the building.

24. The deemed planning application is in relation to the 'erection of a detached building'. While the Council refer to the building having at one time had all the facilities necessary for a self-contained dwelling this is not what has been alleged in the Notice. The appellant disputes that it is a self-contained dwelling and the plans submitted with the appeal documentation show a bedroom with ensuite, a study and a living room.
25. At the time of my site visit there were no discernible facilities for cooking food within the building. I will therefore deal with the deemed application on the basis it is seeking planning permission for a detached building which does not have facilities for cooking food within it. The appellant has described it as ancillary residential accommodation. It is stated it provides accommodation for a member of the appellant's family who relies on the main dwelling for cooking facilities.
26. The appellant refers to it as a Class E building. Even if the appeal building complied with the limitations on location and size in Class E, Part 1, Schedule 2 of the GPDO, which it does not, bedrooms and living space are not ancillary to a residential use, they are primary uses. Therefore, I do not accept the appellant's contention that an outbuilding for the uses stated could be erected within 20 m of the dwelling under this class of the GPDO as the use the building which has been erected or would be erected for is not an 'ancillary or incidental' use.

Whether it is inappropriate development?

27. The building is dimensioned on drwg No H-02 submitted with the appeal as having a length of 9180mm and a width of 6170mm. It is sited to the right of the dwelling, 6580mm from the single storey element of the dwelling. Its front gable is in line with the front elevation of the two-storey element of the dwelling. It is a sizeable building and is prominent when viewed through the vehicular entrance from the road. I accept its prominence is slightly mitigated by the unauthorised fencing and gate the subject of Appeal A. However, in light of my conclusions on that case, the removal of the fencing and gate would increase its prominence.
28. The appellant states that the volume of the existing dwelling is approximately 975 cubic metres and the volume of the outbuilding is approximately 155 cubic metres. This is stated to represent 16% of the volume of the existing dwelling. Condition 2 a of LP Policy DM43 requires outbuildings to not exceed 25% of the volume of the original dwelling. While there is a note on the drwg No H-01 stating the original footprint and new footprint of the dwelling, it is not clear if that original reference corresponds to the definition of original building as set out in the Framework². It is not clear from the submitted evidence whether the existing dwelling is the original dwelling.
29. However, the building exceeds 140 cubic metres on its own and is therefore contrary to condition 2 b of LP Policy DM43.

² Original building: A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

30. The appellant states that the proportion of the curtilage occupied by outbuildings is approximately 7% and that the detached building is single storey and its height is 3.7m. As such, it would comply with conditions 2 c, d and e of LP Policy DM43.
31. LP Policy DM43 requires all conditions 2 a to e to be complied with. The building fails to comply with all the conditions and as such it is contrary to the policy. It is thus inappropriate development within the Green Belt.
32. I therefore find that the building fails to comply with LP Policy DM43 and is inappropriate development in the Green Belt. It is therefore contrary to LP Policies CP8, DM42 and DM43. Furthermore, paragraph 143 of the Framework records that inappropriate development is, by definition harmful and should not be approved except in very special circumstances.

AONB, character, appearance and openness

33. The appeal building extends the run of built structures fronting onto Lee Road. It is visible within the street scene and that visibility would be increased with the removal of the fence and pedestrian gate the subject of Appeal A. It results in a reduction of openness of the Green Belt as a result.
34. The simple form of the structure with a gable roofed construction and materials complementary to the main dwelling does not of itself detract from the area. As such, I consider it does not materially harm the character or appearance of the area or the landscape and scenic beauty of the AONB and conserves it. This complies with LP Policy DM30.

Other considerations

35. The appellant considers the building is not inappropriate and has not put forward any other considerations that would justify the retention of the building.

Conclusion on Appeal B

36. The building the subject of Appeal B is inappropriate development which is by definition harmful to the Green Belt. The Framework states that inappropriate development should not be approved except in very special circumstances. I have also found harm to the openness of the Green Belt. While I have not found harm to the AONB and the character and appearance of the area this is neutral in the planning balance. There are no other considerations to outweigh the harm I have identified. I therefore conclude that there are no considerations sufficient to clearly outweigh the harm to the Green Belt. There are therefore no very special circumstances to justify the building. It conflicts with LP Policies CP8, DM42 AND DM43 and the guidance in the Framework.

Appeal C

37. The structure being attached by the Notice comprises a roofed structure with a timber floor and timber posts supporting the roof. The roof is plastic sheeting.

Whether it is inappropriate development?

38. The appellant states that the volume of the existing dwelling is approximately 975 cubic metres and the volume of the verandah is approximately 250 cubic metres. This is stated to represent 25% of the volume of the existing dwelling.

Condition a of LP Policy DM43 requires outbuildings to not exceed 25% of the volume of the original dwelling. While there is a note on the drwg No H-01 stating the original footprint and new footprint of the dwelling, it is not clear if that original reference corresponds to the definition of original building as set out in the Framework³. It is not clear from the submitted evidence whether the existing dwelling is the original dwelling. It has therefore not been demonstrated that the verandah complies with condition 2 a of the policy.

39. The verandah exceeds 140 cubic metres on its own and is therefore contrary to condition 2 b of LP Policy DM43.
40. The appellant states that the proportion of the curtilage occupied by outbuildings is approximately 7% and that the verandah is single storey and its height is 2.5m. As such, it would comply with conditions 2 c, d and e of LP Policy DM43.
41. LP Policy DM43 requires all conditions 2 a to e to be complied with. The outbuilding fails to comply with all the conditions and as such is contrary to the policy. Thus, it is inappropriate development within the Green Belt.
42. The appellant considers that the verandah is a facility for outdoor recreation and is used by the appellant's family for such purposes. While I appreciate it is a structure in the garden of a dwelling and is used for purposes ancillary or incidental to the residential use, paragraph 145 (b) of the Framework does not apply to a structure in residential use. The exception is only in relation to the provision of appropriate facilities in connection with the existing use of the land, or a change of use, for outdoor sport or outdoor recreation. The principal use of the property is for residential purposes and thus the exception does not apply.
43. I therefore find that the verandah fails to comply with LP Policy DM43 and is inappropriate development in the Green Belt. It is therefore contrary to LP Policies CP8, DM42 and DM43. Furthermore, paragraph 143 of the Framework records that inappropriate development is, by definition harmful and should not be approved except in very special circumstances.

AONB, character, appearance and openness

44. Openness of the Green Belt has a spacial and visual aspect. The verandah is at the rear of the plot and is of basic construction. While it adds to the built structures on the appeal site, and therefore results in some loss of openness in a spatial sense, it is not readily visible from any public vantage area. It therefore has no real visual impact on the area. Nevertheless, openness is one of the Green Belts most important attributes and loss of openness, however minor, must be added to the harm to the Green Belt by way of inappropriateness.
45. The verandah extends the depth of development on the plot to the rear boundary and thus affects the character of the area by having a built structure at the rear of the plot. However, I do not find this to cause material harm to the character or appearance of the area.

³ Original building: A building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally.

46. Due to the lack of visual impact outside of the appeal site I consider it maintains the landscape and scenic beauty of the AONB and conserves its natural beauty. This complies with LP Policy DM30.

Other considerations

47. The appellant considers the verandah is not inappropriate but has not put forward any other considerations that would justify the retention of the verandah.

Conclusion on Appeal C

48. The verandah the subject of Appeal C is inappropriate development which is by definition harmful to the Green Belt. The Framework states that inappropriate development should not be approved except in very special circumstances. I have also found harm to the openness of the Green Belt. While I have not found harm to the AONB or the character and appearance of the area this is neutral in the planning balance. There are no other considerations to outweigh the harm I have identified. I therefore conclude that there are no considerations sufficient to clearly outweigh the harm to the Green Belt. There are therefore no very special circumstances to justify the building. It conflicts with LP Policies CP8, DM42 AND DM43 and the guidance in the Framework.

Appeal A on ground (f)

49. The ground of appeal is that the requirements of the Notice are excessive and lesser steps would overcome the objections. The Council states that the requirements are to overcome the breach of planning control. As such, I consider the purpose of the Notice is to remedy the breach of planning control.
50. There are two requirements to the Notice. The first would remove the unauthorised development in its entirety and, in my view, is not excessive taking into account the purpose of the Notice. However, the alternative requirement to reduce the height of the hedge to one metre would bring what is retained within what is permitted by the GPDO.
51. The appellant considers that a requirement to remove the whole of the fence and gate is excessive and disproportionate given that a one metre high boundary enclosure could be erected as PD under Class A, Part 2, Schedule 2 of the GPDO. I see nothing unreasonable about the requirements which are set out as an alternative allowing a choice between removal or reduction. It may not be practical to reduce the height of the fence and gate and thus removal is reasonable.
52. The appellant considers the alternative requirement to reduce the height to 1m to also be unreasonable as it is stated that the existence of a substantial boundary hedge provides an effective screen between the road and the property in the appellant's view. As an alternative requirement the appellant considers that the fence and gate should be reduced to 1.8m in height and that this would not appear out of place as there are many front boundary enclosures (fences, walls or hedges) that are well in excess of one metre in height. I have found in considering the ground (a) appeal that neither the hedge nor the reduction in height to 1.8m would make the development acceptable for the reasons stated.

53. I do not find the requirements of the Notice would exceed what is necessary to remedy the breach of planning control that has occurred. The appeal on ground therefore (f) fails.

Appeal C on ground (g)

54. The Council have given a compliance period of two months. The appellant considers that this is too short and have requested a compliance period of four months.
55. The verandah is constructed of timber and plastic sheeting and is of lightweight appearance. The appellant has provided no substantive evidence as to why this simple construction could not be demolished and removed within two months. Due to the nature of the construction and in the absence of substantiated evidence to the contrary, I consider that it would be reasonable to demolish the structure and remove the materials resulting from that demolition from the site within two months of the date of this decision. As such, on the evidence available, the appeal on ground (g) fails.

Other Matters

56. Local residents have referred to the erection of an advert and one local resident has referred to building supplies, plant and machinery and other items being brought on to the curtilage of the appeal dwelling and adjacent agricultural holding. These are not matters that are before me as part of appeals A, B or C.

Overall Conclusions on Appeals A, B and C

57. For the reasons given above I conclude that Appeals A, B and C should not succeed. I shall uphold the enforcement notices and refuse to grant planning permission on the deemed applications.

Hilda Higenbottam

Inspector