



Appeal Decision

Site visit made on 5 November 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 3rd December 2019

Appeal Ref: APP/B1550/C/18/3216376

Land at Eastwood Nurseries, also known as Land at end of Bartletts, Rayleigh.

- 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 by Barrie Stone against an enforcement notice issued by Rochford District Council.
- The enforcement notice, ref. 18/00110/BLDG, was issued on 19 October 2018.
- The breach of planning control alleged in the notice is:
 - The erection of a 1.8 metre steel palisade fence and double gates.
- The requirements of the notice are to:
 1. Completely remove the steel palisade fence, fence supports and double gates.
 2. Completely remove any concrete used in the erection of the palisade fence, fence supports and gates.
 3. Reinstall the Essex County Council 'Public Footpath 45' sign and post.
 4. Upon completion of steps 1 to 3, restore the land to its condition before the planning breach took place, by planting a mixed native hedgerow, adjacent to the highway known as Bartletts, within the next planting season October to March.
- The periods for compliance with the requirements are:

Steps 1 to 3 - within 2 months.

Step 4 - within the next planting season after completion of steps 1 to 3.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended fall to be considered.

Decision

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.

Preliminary matters

2. The appeal was originally made on grounds 174(2)(a), (b), (c) and (d). However, the appellant has subsequently confirmed that it is pleaded solely on ground (a).

Background matters

3. The appeal site is an open field with access from the southern end of Bartletts – a short residential cul-de-sac off Eastwood Road, developed with detached houses. The site lies within the Metropolitan Green Belt. It was formerly used

as a nursery, but has clearly not been so for some long time. The fence and gates subject of the notice extend across the northern part of the field boundary at the end of Bartletts. The boundary of this part of the Green Belt runs along the southern boundaries of nos. 15 and 16 Bartletts, a few metres to the north of the field boundary.

4. Planning permission has been refused on a retrospective application for retention of the fence and gates¹.

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

5. This ground is that planning permission should be granted for the matters stated in the notice.
6. From my inspection of the appeal site and surroundings, and all that I have read I consider the main issues in this case to be:
 - Whether the development is appropriate within the Green Belt, and its effect on Green Belt interests in the light of prevailing national and local policy.
 - The effect of the development on the character and appearance of the appeal site and the area in its vicinity.
 - Whether any harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations amounting to the very special circumstances necessary to justify the development.
7. The appellant says the field is in agricultural use. By default, that is probably the case. However, the land is rough and uncultivated and there was no apparent agricultural activity taking place, nor were there any animals on the site at the time of my visit.
8. The construction of a fence and gates does not entail construction of any new building and does not therefore fall for consideration under National Planning Policy Framework (NPPF) paragraph 145, nor is it one of forms of development regarded as not inappropriate set out in paragraph 146 of the NPPF. It follows that it amounts to inappropriate development in the Green Belt, unless it preserves openness and does not conflict with the purposes of including land within it. The Council's statement that the fence and gates are inappropriate development in the Green Belt is not in any case disputed.
9. Looking from Bartletts, the steel palisade fence and gates appear as a prominent barrier, cutting off land in the Green Belt from the surroundings. Given that the line of the fence is a few metres within the Green Belt it makes a distinct visual separation between one part of the Green Belt and another. This is to some extent an inevitable effect of fencing off a piece of land. I understand there was previously a well-established hedge with trees along this boundary, which in my opinion would probably have been sympathetic to the surroundings. However, in this case the steel palisade fence and gates are incongruous, urban/industrial features that cut off the field from its surroundings, and limit openness.

¹ Decision notice ref. 19/00040/FUL dated 13 March 2019.

10. NPPF paragraph 133 sets out that the essential characteristics of the Green Belt are openness and permanence. In this case I consider the fence and gates significantly reduce the openness of the Green Belt land. Furthermore, they do not assist in preserving the countryside from encroachment – one of the five purposes of the Green Belt set out in NPPF paragraph 134. The development does not accord with development plan aims, notably with respect to Policy GB1 of the Council's Local Development Framework (LDF) Core Strategy of 2011. This policy includes aims to prioritise the protection of Green Belt land. It is consistent with current NPPF advice even though it refers to government Green Belt policy that was relevant prior to the first publication of the NPPF.
11. Although this part of the Green Belt is narrow piece of land between residential areas and a trunk road, it retains a rural character, which is in distinct contrast to the developed urban character of adjoining land. As I have found above, the fence and gate are incongruous features. They are out of place in the context both of the rural Green Belt land, and the residential character of Bartletts. I consider the unauthorised fence and gates cause significant harm to the character and appearance of the appeal site and the area in its vicinity. The development does not accord with development plan aims, notably with respect to Policy CP1 of the LDF Core Strategy of 2011, and Policy DM1 of the LDF Development Management Plan of 2014. These seek to promote high quality design that has regard to local flavour, and to ensure the design of new development promotes the character of the locality, including the careful consideration of boundary treatments.
12. I have found that the development is inappropriate in the Green Belt and causes significant harm to openness. Furthermore, there is significant harm to the character and appearance of the area. I must therefore go on to consider whether any harm to the Green Belt by reason of inappropriateness, and any other harm is clearly outweighed by other considerations amounting to the very special circumstances necessary to justify the development.
13. The appellant suggests that landscaping might be provided, and the fence and gates might be painted green. While this may have potential to reduce the visual impact of the development, I have no detail of any landscaping, and I consider that in any case these measures would do little to mitigate the incongruous materials used and the form and height of the fence.
14. It is also suggested that if the fence were re-located 300mm back into the appeal site from its present position it would become permitted development. I assume this is under the provisions of Class A of Part 2 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). That class includes permission to erect a gate or fence. However, such development is not permitted under the provisions of paragraph A.1(a)(ii) which precludes gates and fences exceeding 1 metre in height above ground level if adjacent to a highway used by vehicular traffic.
15. The term 'adjacent' is open to interpretation. However, in my opinion, with a set-back of 300mm the fence would still effectively form the boundary between the road and the site and should be considered as adjacent to the highway. I do not therefore consider this to be a realistic fall-back that would overcome the harm caused.
16. I do not consider the matters put forward relating to landscaping and painting the fence, and to moving it to a new position, when taken together, would be

sufficient to outweigh the harm to Green Belt interests and to the character and appearance of the area. They do not amount to the very special circumstances necessary to justify the development. The appeal on ground (a) must therefore fail.

Conclusions

17. For the reasons given above and having regard to all other matters raised, I consider the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR