
Appeal Decisions

Site visit made on 3 December 2019

by **B.S.Rogers BA(Hons) DipTP MRTPI**

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

Decision date: 16 December 2019

Appeal A Ref: APP/V1505/C/18/3209815

Appeal B Ref: APP/V1505/C/18/3226153

Land at Oak Paddock, Southbourne Grove, Wickford, SS12 0JT

- Both appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- Both appeals are made by Ms Lucy Boniface against enforcement notices issued by Basildon District Council.

Appeal A:

- Enforcement notice A was issued on 17 August 2018.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a residential dwellinghouse shown in cross hatching on the notice plan.
- The requirements of the notice are (in brief): (i) cease using the building for residential purposes; (ii) remove from the land all residential paraphernalia and chattels; (iii) demolish the building and remove the resultant debris; (iv) break up the hardstanding on which the building stands and remove the resultant debris; (v) restore the land to its former condition by levelling and rotovating the ground.
- The period for compliance with the requirements is 9 months for steps (i) & (ii), 10 months for steps (iii) & (iv) and 12 months for step (v).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Appeal B:

- The enforcement notice was issued on 6 March 2019.
- The breach of planning control as alleged in the notice is without planning permission, the unauthorised change of use of vacant/agricultural land to residential use.
- The requirements of the notice are: (i) cease using the land for residential purposes; (ii) remove all residential paraphernalia and chattels; (iii) demolish all buildings and other structures and remove resultant debris; break up the hardstandings and remove resultant debris from the land; and (iv) restore the land to its former condition by levelling and re-cultivating with grass seed.
- The period for compliance with the requirements is 9 months for steps (i) & (ii), 10 months for steps (iii) & (iv) and 12 months for step (v).
- The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (d), (f) & (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decisions:

Appeals A & B are dismissed and the enforcement notices are upheld

Preliminary matters

1. Both appeals relate to the same plot of land sited to the west of Wickford, within the area termed the Newhouse Farm and Castledon Road Plotland. The site is at the southern end of Southbourne Grove, on the northern bank of the River Crouch. To the west and north lie detached dwellings, Riverview and St

Arthurs. The subject of Appeal A is a single storey dwelling which has been built close to the northern boundary of the site. The residential use of the land, which extends to some 1500 sq.m. and the domestic buildings thereon, are the subject of Appeal B.

Appeal B ground (b)

2. This ground is that the breach of control alleged in the notice has not taken place as a matter of fact. However, irrespective of the indication in the notice that the land was formerly 'vacant/agricultural', the site is indisputably now in residential use, as alleged in the notice, and the appeal on ground (b) fails.

Appeal B ground (c)

3. The appellant contends that the appeal site was simply an undeveloped part of the plotlands and was therefore 'dormant' residential land, as evidenced by the title deeds. As such, there was no material change of use and no breach of planning control.
4. The layout of the plotlands before WW2 conferred no planning status on the land. The plots were sold off piecemeal and put to a variety of leisure, agricultural and other uses, including residential, some of which took place prior to the regime of planning control similar to that which operates today and the designation of the Green Belt. Neither do the title deeds give an indication of lawful planning status – they simply indicate what potentially may or may not be done, in accordance with the private covenant.
5. The use of the appeal site for residential purposes comprises a material change of use from its former status as vacant or agricultural land and the appeal on ground (c) fails.

Appeal B ground (d)

6. The onus is on the appellant to demonstrate, on the balance of probability, that residential use has taken place continuously for 10 years prior to the issue of the notice i.e. since before 6 March 2009. The appellant claims that the site has a long established use as recreational and amenity land associated with the adjacent dwelling, Riverview.
7. Both the appellant and Ms Slater, who lives in Riverview, have provided statutory declarations. The former land owner, Mr Myers, has provided a witness statement. All have long term knowledge of the site. Mr Myers bought Riverview in 1976 and bought the adjacent appeal site shortly afterwards. It was very overgrown but he subsequently had it cleared and grassed and, after moving house, he let the children living in Riverview use the paddock to ride their horses. A caravan on site was used to store tools, hay and feed for the horses. Until he sold the paddock to the appellant in 2012, he also used the land for storage of vehicles, including a recovery truck, in connection with his vehicle recovery business.
8. Both the appellant and Ms Slater confirm that the paddock was used by Mr Myers in connection with his business, as well as for their family's horse riding. All three describe the land as 'the paddock', rather than a 'garden' or other residential terminology. Whilst the land appears to have been used at times by children for play, it has not been shown that this was the predominant use of the land or that such a use was continuous throughout the relevant 10 year

period. If anything, it appears to me that the land was in a mixed use, used by Mr Myers for business purposes as well as used for exercising horses, during the relevant period. It has not been demonstrated that the land has been used continuously for residential purposes over the relevant period and the appeal on ground (d) fails.

Appeal A ground (d)

9. The appellant claims the land has been in ancillary residential use for in excess of 4 years, although the requisite period to establish a material change of use of land is 10 years (see above). The enforcement notice, dated 17 August 2018, is directed at operational development i.e. the erection of a dwellinghouse, for which a 4 year period is relevant. However, the appellant's own statutory declaration states that the dwelling was completed by November 2015, substantially less than 4 years prior to the date of the notice. The appeal on ground (d) fails.

Appeals A and B ground (a) and the deemed applications

10. The appeal site is within the Green Belt and is identified on the Basildon Council Saved Policy Document Proposals Map as being within a Plotlands area, in which saved Policies GB1 to GB6 apply. The only one of relevance to this case is GB1, which defines the Green Belt boundary. The relevant policy background is therefore to be found in the National Planning Policy Framework (the Framework). The Basildon Borough Revised Publication Local Plan 2018 has been submitted for examination but I can only afford this limited weight as its outcome is uncertain, having been subject to a number of objections.

Main issues

11. The main issues in both appeals are i. whether the development is inappropriate development in the Green Belt; and ii. if the development is inappropriate, whether harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Whether inappropriate development

12. The Framework states that the fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belt are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
13. The appellant submits that the dwelling would comprise infilling under the terms of para.145 of the Framework; both subsections e) and g) are relevant to such a claim. Turning first to para.145 e), infilling is only applicable to villages. Although this plotland contains a significant number of dwellings, some are sited fairly closely together and others are strung out somewhat intermittently along a small network of narrow, rural roads. There is no apparent centre and there are no facilities which would lead me to conclude it should be regarded as a village. My view on this matter is reinforced by noting that the development plan distinguishes between the Sugden Avenue area of this plotland, which is more densely built up and is considered an exception, compared to the rest of the plotland, in which the appeal site is located and which is subject to Green Belt policy.

14. Under para.145 g), limited infilling of previously developed land (PDL) would be permitted in defined circumstances. However, PDL is defined as land which is, or was, occupied by a permanent structure. The caravan on site is not a structure for these purposes and the outbuildings, even if lawful, are not of such size or extent as to lead me to regard the site as a whole as PDL. In any event, as the dwelling is of a substantial scale, it falls foul of the criterion that it should not have a greater impact on the openness of the Green Belt than the existing development. The dwelling is therefore an inappropriate form of development in the Green Belt.
15. Turning to the residential use of the land, para.146 indicates that certain other forms of development are also not inappropriate, provided they preserve its openness and do not conflict with the purposes of including land within it. The material change of use to residential is not one of the uses listed in para.146(e) and it conflicts with the purpose of assisting in safeguarding the countryside from encroachment. The presence of associated outbuildings also reduces its openness and its rural character. This, too, is an inappropriate form of development in the Green Belt.
16. Although the site is fairly well contained by vegetation along its southern and eastern boundaries, and by dwellings on the other two sides, the dwelling and the outbuildings are visible from the public domain and they clearly diminish the openness of the site. They have also introduced a residential character into what was simply a grassed paddock. Accordingly, in addition to the harm arising from the inappropriateness of the developments, both developments have failed to prevent urban sprawl and have failed to keep the land permanently open.

Other considerations

17. Turning to the circumstances of this case, the appellant submits that the policy background is changing in that background studies of the plotlands in the area were carried out by the Council to inform the production of the emerging local plan. These indicated the capacity for infill residential development on a fairly significant scale, leading to the conclusion that there was no need for a specific plotland policy as it could be incorporated more generally into the emerging Green Belt Policy. Emerging Policy GB4 would permit some limited infilling but this appears to be inconsistent with para. 145 of the framework, as indicated in para. 13 above. There is no indication in the emerging local plan that the plotlands are to be regarded as 'villages' and, in its representations, the Council maintains its position that this plotland is not a village.
18. The emerging plan proposes a substantial housing allocation (H15) of some 300 homes on the south side of the River Crouch. On this basis, the appellant argues that the appeal site would be virtually surrounded by development. However, I note that the allocation proposes a landscape buffer to the River Crouch to maintain its rural character and the appeal site would remain in the Green Belt, with the river as a clear and defensible boundary. Furthermore, it remains to be seen whether this proposed allocation will indeed progress to the adopted plan following the examination process.

Conclusion

19. The developments which are the subject of both notices are harmful to the Green Belt by way of inappropriateness, by reducing its openness and by

diminishing its rural character. They are therefore in conflict with the development plan and with the Framework, which requires substantial weight to be given to any harm to the Green Belt. I have taken into account all the other considerations raised by the appellant but they do not clearly outweigh this harm and therefore the very special circumstances required to permit the developments do not exist. Accordingly, both Appeals A and B fail.

Other matters

20. The appeal site is located within a zone 3 flood plain, where flood water has to be stored on the land in times of flood. The appellant has submitted a flood risk assessment, whose conclusions are unchallenged by the Council. It appears that the floor level of the dwelling is high enough so that the residents would not be at undue risk. Moreover, adequate compensation for its impact on the storage capacity of the land could be provided by demolishing the remaining outbuildings and structures on site. The appellant would be content to agree a planning condition to that effect. This is therefore a matter that weighs neither for or against the development.

Appeal A ground (f)

21. The appellant submits that it is unnecessary to require the demolition of the dwelling as it could be retained as an ancillary domestic outbuilding in the curtilage of Riverview. However, the site is neither within the curtilage, nor even the same ownership as Riverview. Given my conclusions on grounds (c) and (d) of Appeal B, it has no status as residential land. Retention of the building in whatever use would not address the breach, in that the openness of the Green Belt would remain diminished. The appeal on ground (f) fails.

Appeal B ground (f)

22. The appellant indicates that the notice is unnecessary regarding the structures and built development, as they would be removed as part of the retention of the dwelling which is the subject of Appeal A. However, I have decided to dismiss that appeal and I have concluded that Appeal B should also fail. As such, the appeal site has no residential status and the demolition of the outbuildings which are integral to its use as such appear to be no more than is required to address the breach. The appeal on ground (f) fails.

Appeals A and B ground (g)

23. The Government in 2015 sought to strengthen Green Belt policy by making intentional unauthorised development a material consideration that should be taken into account. Here, the development in question was carried out without seeking planning permission. However, I also recognise the rights of the appellant and the serious financial and other consequences she now faces in complying with the notice. Interference with the way the appellant uses land must be proportionate, taking into account the competing public and private interest.
24. The notices require extensive and expensive works to be undertaken and the appellant will need to find alternative accommodation. Nonetheless, the timescale set out in the steps contained in both notices appears to me to allow sufficient time to carry out the requirements. To my mind, the timescale strikes a suitable balance between competing public and private interests and

is proportionate, so as not to violate individual rights. The appeals on ground (g) therefore fail.

Formal Decisions

Appeal A

25. 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

26. 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.

B.S. Rogers

Inspector