
Appeal Decision

Hearing Held on 11 February 2020

Site visit made on 11 February 2020

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2020

Appeal Ref: APP/T2215/C/18/3213003

Land at north side of Bob Dunn Way (also known as University Way), Dartford

- 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 Mr Henry Webb against an enforcement notice issued by Dartford Borough Council.
- The enforcement notice, numbered 17/00257/ENF, was issued on 14 September 2018.
- The breach of planning control as alleged in the notice is carrying out a development in the form of erecting a building without the benefit of planning permission; shown hatched blue on the attached plan.
- The requirements of the notice are:
 - a) Demolish the building, shown hatched blue on the attached plan
 - b) Restore the land to the condition it was in prior to the carrying out of the development, and
 - c) Remove all resulting materials and debris from the land.
- The period for compliance with the requirements is 28 days.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since the prescribed fee has been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act also falls to be considered.

Summary Decision: The appeal succeeds in part and the enforcement notice is upheld with a variation in the terms set out below in the Formal Decision.

Preliminary Matters

1. In my pre-hearing note I set out that the ground (a) appeal and deemed planning application is in respect of the matters stated in the enforcement notice as constituting the breach of planning control (Section 177(5) (s177(5)) of the Town and Country Planning Act as amended (the Act)). That is the erection of a building that comprises a metal frame and roof.
2. I understand that an application for planning permission (reference 18/00248/FUL) was made seeking permission for a building that was reduced in size and enclosed by walls. That was subsequently refused and is not subject of an appeal, but I understand the appellant would like me to consider that as an alternative to the development described in the breach of planning control. I will return to this matter in the ground (a) appeal.

The Appeal on Ground (a) and the Deemed Planning Application

Main issues

3. The main issues are:

- Whether the development constitutes inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
- The effect of the development on the intrinsic character and beauty of the landscape;
- Whether there are other considerations weighing in favour of the proposal; and
- Whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development

4. The National Planning Policy Framework (the Framework) states that new buildings within the Green Belt should be considered inappropriate with a number of exceptions. This includes buildings for agriculture. In addition, it would include the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport or 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. Policy CS13 of the Dartford Core Strategy (CS) and DP22 of the Dartford Development Policies Plan (DPP) reflect the Framework in resisting inappropriate development, but enable new agricultural buildings where needed and require stables and associated facilities to be carefully considered.
5. The land on which the building is constructed is used for the keeping of pigs and sheep, and for grazing of horses and ponies. The appellant intends to cut hay from the land and expand the number of animals and introduce other animals, such as chicken and cattle, in due course.
6. I accept that there may be a need for a building for the agricultural use of the land. It is disputed whether the building is an appropriate design and size for the agricultural purposes suggested. As currently constructed, the building would not provide secure storage for machinery and would provide only limited shelter for animals or storage of hay and straw. Consequently, its construction, at present, is not suitable for the manner in which the appellant would like to use it. In addition, it is a large building of six bays that the appellant accepts is larger than is necessary for his purposes. On this basis, I consider that the building as constructed should not be considered an agricultural building.
7. The keeping of horses and ponies within the building would not be an agricultural use of the land. However, this may be considered as an outdoor sport or outdoor recreation use. As such, provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it, a building may fall within that exception to inappropriate development. Nevertheless, the building as constructed would not be suitable to enable the

keeping of horses as it is open and provides very limited shelter. It is a large and prominent building that is highly visible in views across the surrounding open countryside. As a result, it harms both the visual and spatial openness of the Green Belt.

8. Taking account of all the above, I consider that the building as constructed comprises inappropriate development within the Green Belt. As such, it would conflict with Policy CS13 of the Dartford Core Strategy (CS) and DP22 of the Dartford Development Policies Plan (DPP) and the Framework.

Landscape

9. Immediately over Bob Dunn Way from the appeal site are large industrial and warehouse buildings, with similar buildings a short distance along Bob Dunn Way toward Dartford that are used for recycling and waste processing. The landscape adjacent to these areas, of which the appeal site forms part, is open and largely flat countryside that provides a context and contrast to that urban development. The appeal site contributes to that open rural character.
10. The Framework states that decisions should contribute to and enhance the natural and local environment, including by recognising the intrinsic character and beauty of the landscape. Policy DP2 of the DPP seeks good design that responds to, reinforces and enhances positive aspects of the locality.
11. The building subject of this appeal is a substantial building with a simple and utilitarian appearance that reflects its agricultural purpose, but also nearby industrial development. Due to its size and appearance, it appears alien within this open and flat landscape, appearing to extend industrial development into the surrounding countryside. As a result, the building harms the landscape character of the surrounding area.
12. For these reasons, I conclude that the appeal building harms the character and beauty of the landscape. As a result, it would be contrary to Policy DP2 of the DPP and the Framework.

Other considerations

13. I note the personal circumstances of the appellant and the importance of the agricultural uses of the land to his circumstances. I have dealt with the need for an agricultural building above such that it does form an other consideration in this appeal.

Alternative design solutions

14. There is power when determining an appeal under s174 of the Act for the Inspector to grant planning permission in respect of the matters stated in the enforcement notice as constituting the breach of planning control, whether in relation to the whole or any part of those matters (s177(1) of the Act). Well established case law confirms that the enforcement procedure is intended to be remedial rather than punitive. I note that the appellant would like me to consider a building of reduced size and with the walls infilled and suggests this would overcome the planning difficulties with less cost and disruption.
15. Reducing the size of the building could be defined as a part of the development. The revised building considered under 18/00248/FUL would contain one fewer bay and enclose the building with walls. The plans indicate

double doors at one end to provide access to the accommodation for animals, with an opening at the other end for access by tractor and other equipment. To the centre would be hay, straw, feed and tack storage. The walls of the building would be infilled with horizontal concrete boards to the bottom section, with vertical hit and miss timber cladding above. Those additional walls are not currently part of the development and, as a result, exceed what I am able to take into account. Consequently, I am unable to consider the alternative scheme put forward.

16. In addition, I note that the Council raised a number of issues regarding the size and style of building and whether it would provide safe and secure storage and welfare space for animals. The appellant appeared to agree that changes would be required to the proposed scheme in order to meet his needs. This adds weight to my conclusion that I should not consider the alternative scheme.
17. I note that s180 of the Act states that where, after the service of an enforcement notice, planning permission is granted the notice shall cease to have effect so far as inconsistent with that permission. Therefore, in this case the more appropriate approach is to consider whether the period for compliance is adequate to enable the planning merits of the alternatives to be thoroughly explored. This I can do under the ground (g) appeal.

Conclusion

18. I have found that the building is larger than necessary for agricultural purposes and is not suitable for the purposes intended. In addition, it does not comprise an appropriate facility for outdoor sport or outdoor recreation. As such, the proposal is inappropriate development that harms the openness of the Green Belt. In addition, it harms the character and beauty of the landscape. I have noted the personal circumstances of the appellant. However, the substantial weight to be given to Green Belt harm and any other harm is not clearly outweighed by those other considerations to demonstrate very special circumstances. Therefore, the proposed development is contrary to Policy CS13 of the CS, Policies DP2 and DP22 of the DPP and the Framework that seek to protect the Green Belt from inappropriate development and protect the character and beauty of the landscape.
19. Given those conflicts with CS and DPP policies, the development does not accord with the development plan as a whole. The appeal on ground (a) therefore fails.

The Appeal on Ground (f)

20. An appeal on this ground is that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach. In this case, the requirements seek to demolish the building, in order to restore the land to its condition before the breach took place. Clearly, therefore, the purpose of the notice requirements is to remedy the breach of planning control.
21. Under the ground (a) appeal I have considered whether to grant planning permission for part of the existing development to remain. I have concluded

that is not open to me in this case. As a result, allowing part of it to remain would not fully remedy the breach of planning control.

22. As a result, I conclude that the requirements of the notice do not exceed what is necessary in order to remedy the breach of planning control. As such, the appeal fails on ground (f).

The Appeal on Ground (g)

23. An appeal on this ground is that the period specified in the notice for compliance falls short of what should reasonably be allowed.
24. The Council have agreed that 28 days is insufficient time to complete the requirements of the notice. During the course of the hearing they accepted that a period of 6 months would be more reasonable given that the land around the building is waterlogged for much of the year and the need to use heavy machinery to complete the requirements. In addition, this would allow time to consider an alternative scheme that would balance the needs of the appellant and the concerns of the Council.
25. For these reasons, I conclude that the appeal under ground (g) should succeed.

Formal Decision

26. It is directed that the enforcement notice is varied by:

the deletion of 28 days and the substitution of six months as the period for compliance.

27. Subject to the variation, the enforcement notice is upheld.

AJ Steen

INSPECTOR