



Appeal Decision

Accompanied site visit made on 13 March 2020

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/G1630/C/19/3224764 & 765

Oaklands, Gloucester Road, Staverton, Cheltenham, GL51 0TF

- 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 1990 Act").
- The appeal is made by Shaun Dean Gorman and Sharon Gorman ("the Appellants") against an Enforcement Notice issued by Tewkesbury Borough Council ("the Council").
- The Enforcement Notice was issued on 7 February 2019.
- The breach of planning control alleged in the Enforcement Notice is failure to comply with Conditions Numbered 4 and 7 of a planning permission Ref 16/00763/FUL granted on 18 August 2016.
- The development to which the permission relates is the erection of a replacement dwelling and associated works including alterations to the residential curtilage boundary. The conditions in question are Nos 4 & 7 which state that:

4. No external lighting, including security lighting, shall be installed other than in accordance with a scheme that shall previously have been submitted to and agreed in writing by the local planning authority.

7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking, re-enacting or modifying that Order), no private car garages, extensions, garden sheds, gates, fences, walls, other means of enclosure, or structures of any kind shall be erected or constructed on the site without the prior express permission of the local planning authority.

- The Enforcement Notice alleges that Condition 4 has not been complied with in that there has been the installation of external lighting on the replacement dwelling.
- The Enforcement Notice alleges that Condition 7 has not been complied with in that at the boundaries of the curtilage of dwellinghouse;

(1) The formation and laying out of a new 'bell-mouth' dual entrance access comprising the construction of bricks walls that incorporate low level spot-lighting, brick piers and the installation of two sets of access gates adjacent to the highway (B4063) and which exceed 1 metre in height.

(2) The construction of brick built walls with brick piers to part of both the east and west boundaries of the residential curtilage.

(3) The construction of close-board fencing to part of both the east and west boundary and entire north boundary of the residential curtilage.

- The requirements of the Enforcement Notice are:
Within the area outlined in red on the plan attached to the Enforcement Notice:

(1) Along the black dashed line indicated on the plan attached to the Enforcement Notice. Remove all the brick walls, brick piers, gates, close board fencing and concrete fence posts.

(2) Remove all external lighting installations from under the eaves, soffit, and fascia roof line of the replacement dwelling.

(3) Remove from the land all resultant debris arising from compliance with Step 1 and 2.

- The period for compliance with the requirements is six months.
- The appeal is proceeding on the grounds set out in Section 174(2)(a), (c), (f) & (g) of the 1990 Act.

Summary of Decision: The appeal is dismissed, and the Enforcement Notice upheld.

Definitions

1. In this Appeal Decision I will refer to:

- a) The Plan attached to the Enforcement Notice as "the Plan".
- b) The land edged red on the Plan as "the Appeal Site".
- c) Planning permission Ref 16/00763/FUL for the erection of a replacement dwelling and associated works including alterations to the residential curtilage boundary granted on 18 August 2016 as "the 2016 Planning Permission".
- d) The dwelling-house that has been erected at the Appeal Site as "Oaklands".
- e) Condition 4 of the 2016 Planning Permission as "Condition 4".
- f) Condition 7 of the 2016 Planning Permission as "Condition 7".
- g) The brick walls, brick piers, gates, close board fencing and concrete fence posts erected approximately in the position shown by the black dashed line on the Plan as "the Means of Enclosure".
- h) The lighting under the eaves, soffit, and fascia roof line of Oaklands as "the External Lighting".
- i) The highway along the frontage of the Appeal Site as "Gloucester Road".
- j) That part of the public footpath that links Gloucester Road with the B4634 and which runs adjacent to the west side and to the rear of the Appeal Site, as "the Public Footpath".

Procedural Matters

2. The land to which the Enforcement Notice relates is described in the Enforcement Notice as "Land at GR123641 (The Land Registry Title) Oaklands, Gloucester Road, Staverton, Cheltenham, GL51 0TF." The description of the land in the heading above accurately reflects the Appeal Site's postal address.
3. The Ground (g) appeal was added by the Appellants at the Statement of Case stage. Whilst the Council object to the late reliance on this ground of appeal I do not consider any injustice arises from this.
4. I have read the Appellants criticisms regarding the lawfulness of the Enforcement Notice as set out in their Statement of Case. The Enforcement Notice was drafted so as to assist the Appellants in achieving permission for deviations between that which has been built and what has been approved by

virtue of Section 173(11) of the 1990 Act. I do not consider that the Enforcement Notice is unlawful or a nullity.

5. The Appeal Site is within the open countryside and the Green Belt.

Reasons - Ground (c) - that there has not been a breach of planning control.

Means of Enclosure

6. The onus of proving that the Means of Enclosure does not amount to a breach of planning control rests with the Appellants. They have to prove this on the balance of probabilities.
7. The Appellants claim that the Means of Enclosure were constructed prior to the implementation of the 2016 Planning Permission. Mr Gorman signed a witness statement stating that he believed that he erected the Means of Enclosure in early 2017. Accordingly, the Means of Enclosure were erected as permitted development and are not contrary to Condition 7.
8. It is clear from photographs that have been submitted that the Means of Enclosure had not been substantially completed by the time Oaklands was being constructed.
9. I am therefore of the view that the Means of Enclosure were not erected prior to the implementation of the 2016 Planning Permission and therefore the Means of Enclosure are in breach of Condition 7. Accordingly, the appeal on Ground (c) therefore fails.
10. The Appellants do not rely on this ground of appeal in respect of the External Lighting.

Reasons - Ground (a) and the deemed planning application – that the conditions concerned ought to be discharged.

Policy

11. The Development Plan for the area includes the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 – 2031 (adopted in December 2017) (“the Joint Core Strategy”). I have been referred to Strategic Objective 4, and Policies SD5 and SD6 of the Joint Core Strategy.
12. I have also been referred to:
 - a) The letter from the Department for Communities and Local Government dated 31 August 2015.
 - b) Paragraphs 11, 15, 58, 130, 133, 134, 143, 144, 145, 146 and 170 of the National Planning Policy Framework (“the NPPF”).
13. The Joint Core Strategy explains, amongst other things, that:
 - a) The Green Belt will be protected from harmful development.
 - b) Development will be limited to those types of development which are deemed appropriate by the NPPF unless very special circumstances can be demonstrated.
 - c) Development will:

- i) Seek to protect landscape character for its own intrinsic beauty.
- ii) Have regard to local distinctiveness.
- iii) Demonstrate how it will protect or enhance landscape character and avoid detrimental effects on types, patterns and features which make a significant contribution to the character of the area.

14. The relevant parts of the NPPF explain that:

- a) Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area. Local planning authorities should also seek to ensure that the quality of approved development is not materially diminished between permission and completion, as a result of changes being made to the permitted scheme.
- b) The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
- c) The purposes of the Green Belt are set out at paragraph 133.
- d) Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
- e) When considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. '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 proposal, is clearly outweighed by other considerations.
- f) The construction of new buildings is inappropriate in the Green Belt. Paragraph 145 specifies exceptions to this. None of the exceptions apply in this case.
- g) Planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital.

The Means of Enclosure

15. The Appellants are of the view that:

- a) The Means of Enclosure along the side boundaries of the Appeal Site could be erected on adjacent land as permitted development.
- b) The front boundary wall which existed prior to the Means of Enclosure could have been retained and that the previous wall should be restored rather than the removal of that part of the Means of Enclosure along the frontage.

Whether the Means of Enclosure is inappropriate development in the Green Belt having regard to the NPPF and the Joint Core Strategy.

16. There is no definition of the term "building" in the NPPF. A "building" is defined at Section 336 of the 1990 Act and includes any structure or erection, and any part of a building, as so defined. Having regard to the statutory definition and my own experience I am of the view that the Means of Enclosure should be

regarded as 'buildings' for the purposes of the NPPF and the Joint Core Strategy.

17. As explained above the construction of new buildings is inappropriate in the Green Belt. As the Means of Enclosure are new buildings, they are inappropriate development in the Green Belt. The Means of Enclosure are also contrary to the relevant parts of the Joint Core Strategy.

What is the effect of the Means of Enclosure on the openness of the Green Belt?

18. The Means of Enclosure along the frontage are highly visible from Gloucester Road. Further, the west side and rear boundary of the Means of Enclosure would also be highly visible from the Public Footpath¹.
19. In my planning judgement the Means of Enclosure has a significant impact on the openness of the Green Belt due to its height and position close to the public domain. I know that the vast majority of dwelling-houses in the open countryside would require boundary treatment so as to define their residential curtilage and also to keep animals out.
20. However, parts of the Means of Enclosure are of a substantial height and in places are about 2.2m above ground level. Further, parts of the Means of Enclosure are built of brick which has a very harsh appearance in this open countryside location.
21. I am of the view that the Means of Enclosure cause substantial harm to the openness of the Green Belt.

The effect of the Means of Enclosure on the character and appearance of the area.

22. I am aware that there is significant built development to the south of Gloucester Road including opposite the Appeal Site. The Appeal Site is located on the north side of Gloucester Road between the roundabout junction of Gloucester Road with the B4634 and the bridge carrying the motorway over Gloucester Road. I will refer to this stretch of Gloucester Road as "the north side of Gloucester Road". The north side of Gloucester Road is relatively rural in its character and appearance. I am aware that there are about two other accesses leading to residential type properties along the north side of Gloucester Road.
23. The frontage boundary treatments along the north side of Gloucester Road comprises mainly hedges (some of which are low with clear views to the open countryside behind) and trees. That part of the Means of Enclosure along the frontage of Gloucester Road has introduced high brick walling and entry gates which are wholly out of character with the open countryside location and this harms the rural appearance of this part of Gloucester Road.
24. I was not referred to any boundary treatment to residential properties in the surrounding area which are comparable to the Means of Enclosure
25. I therefore conclude that the Means of Enclosure materially harms the character and appearance of the area contrary to the Joint Core Strategy and the NPPF.

¹ The Public Footpath was physically obstructed as at the date the Enforcement Notice was issued and remained so at the time of the site visit.

Is the harm by reason of inappropriateness, and any other harm, clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the retention of the Means of Enclosure?

26. The Appellants have referred to the boundary treatment which existed prior to the Means of Enclosure.
27. I have had regard to photographs of the previous frontage boundary treatment along the Appeal Site ("the Former Boundary"). I do not consider that the harm arising from the Former Boundary caused the same levels of harm which are currently caused by that part of the Means of Enclosure along the frontage of the Appeal Site. Generally speaking, the Former Boundary comprised a lower wall than now exists (albeit with high piers) but between the piers were railings through which domestic type landscaping could be seen in front of the former dwelling-house at the Appeal Site.
28. The Former Boundary has been demolished and another boundary of similar design could only be built with the permission of the Council. I do not have sufficient details to require a replica of the Former Boundary to be built as a lesser step to that required by the Enforcement Notice.
29. I have had regard to the Appellants suggestion that they could build the side and rear boundaries of the Means of Enclosure on adjacent agricultural land under permitted development rights. I do not consider this is realistic and in any event such a replica would not be permitted development because at certain points its height would exceed 2m above ground level.
30. Any harm caused by the Former Boundary does not clearly outweigh the harm to the Green Belt and the character and appearance of the area and other considerations do not exist in this case.

The External Lighting

31. The Appellants are of the view that:
 - a) The External Lighting at Oaklands is reasonable.
 - b) Oaklands replaced an earlier dwelling-house which would have benefitted from external lighting.
 - c) All or some of the External Lighting should be allowed to remain.
32. There is no doubt that a level of outside lighting is necessary for Oaklands and its curtilage. Condition 4 merely seeks to control whatever outside lighting the occupiers of Oaklands wish to install so as to protect the Green Belt and the visual amenity of the area. There was no objection to the imposition of Condition 4 at the time the 2016 Planning Permission was granted.
33. I have had regard to the photographs submitted by both parties showing the External Lighting in operation during the hours of darkness. In my view the lighting within the soffits of Oaklands is excessive, intrusive and materially harmful to the character and appearance of the Green Belt and the surrounding area.
34. No details have been provided as to what other lighting has been provided within the Appeal Site or the specific details of the External Lighting within the soffits. I do not consider that I have sufficient detail to approve what has been

installed at the Appeal Site pursuant to Condition 4 and in any event, I would not approve the External Lighting due to the harm which it causes. The External Lighting has a visually detrimental effect on the area. Accordingly, the External Lighting fails to comply with the relevant parts of the Joint Core Strategy and the NPPF.

Reasons - Ground (f) - that the steps required to comply with the requirements of the Enforcement Notice are excessive and lesser steps would overcome the objections.

Means of Enclosure

35. The Appellants are of the view that the Council's objectives would be satisfied by the reduction in height of the Means of Enclosure. Accordingly, they are of the view that the Means of Enclosure could be reduced to permitted development limits.
36. It is clear from the requirements of the Enforcement Notice that its purpose was to remedy the breach of planning control by making the development carried out at the Appeal Site comply with Condition 7 of the 2016 Planning Permission.
37. The reduction in the height of the Means of Enclosure would not make the development carried out at the Appeal Site comply with Condition 7 because it would not have the benefit of an express grant of planning permission from either the Council or myself.

The External Lighting

38. The Appellants stated within the appeal form that the removal of some of the lighting would reduce any impact, but its complete removal is unnecessary.
39. The Appellants have not produced any evidence as to what parts of the External Lighting should be removed or what the impact of that would be.
40. At the Statement of Case stage, the Appellants stated that the requirement should be to permanently disconnect the External Lighting rather than remove it. Disconnecting the External Lighting would leave the Appellants without any external lighting. This is clearly not appropriate. Further, I agree with the Council that their limited planning enforcement resources should not be taken up making sure that the External Lighting remained disconnected. It is in the best interests of the Appellants and the Council that a scheme for lighting within the Appeal Site is agreed with the Council and that such a scheme be installed.

Reasons - Ground (g) that the time given to comply with the Enforcement Notice is too short.

41. The Appellants claim that the period for compliance should be varied due to vagaries of the weather and that a time period of one year should be allowed.
42. I do not agree with that assessment. The Appellants have a period of six months in which to comply with the Enforcement Notice. It may well be that some of the existing Means of Enclosure could be retained or altered if they were to submit a scheme for new boundary treatment to the Council for express consent. Similarly, parts of the External Lighting may be acceptable if

submitted as part of a scheme for the Appeal Site as a whole. I am aware that the current coronavirus crisis could possibly cause some delays, but I have no doubt that if the delay was due in any part to the current crisis the Council, would exercise their powers under Section 173A of the 1990 Act to extend the compliance period. Accordingly, the appeal on Ground (g) fails.

Overall Conclusions

43. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the Enforcement Notice and refuse to discharge Conditions 4 and 7 of the 2016 Planning Permission on the deemed application.

Formal Decision

44. The appeal is dismissed, and the Enforcement Notice is upheld. Planning permission to discharge Conditions 4 and 7 of the 2016 Planning Permission is refused on the application deemed to have been made under Section 177(5) of the 1990 Act.

Tim Belcher

Inspector