



Appeal Decisions

Site visit made on 23 June 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 21 July 2020

Appeal A: ref. APP/W1525/C/18/3218154

Land at Ivy Barn Lane, Margaretting, Ingatestone CM4 0EW

- 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 Act).
 - The appeal is by Mary Lowe against an enforcement notice issued by Chelmsford City Council.
 - The enforcement notice, ref. 16/00563/ENFA, was issued on 13 November 2018.
 - The breach of planning control alleged in the notice is without planning permission the formation of a vehicular access, entrance gates, fencing and creation of a hardstanding.
 - The requirements of the notice are to:
 - (i) Cease the use of the access shown outlined in blue at the approximate location on the plan attached to the notice by motor vehicles.
 - (ii) Demolish the metal entrance gates and piers, close board timber fencing and hard standing associated with the unauthorised vehicular access within the area shown outlined in blue on the plan attached to the notice and remove from the land all materials arising from these works.
 - (iii) Reinstall the boundary hedge adjacent to the highway by planting a mixed native species hedge within the area shown outlined in blue at the approximate location on the plan attached to the notice.
 - (iv) Break-up and scrape clean from the ground the hard standing shown outlined in green at the approximate location on the plan attached to the notice and remove from the land any resulting debris and other waste material arising from these works.
 - (v) Restore the land affected by the works at step (iii) above by filling any resulting (sic).
 - The period for compliance with the requirements is 3 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) 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.
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Appeal B: ref. APP/W1525/W/19/3228807

Land at Ivy Barn Lane, Margaretting, Ingatestone CM4 0EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is by Mary Lowe against the decision of Chelmsford City Council.
 - The application ref. 18/01939/FUL, dated 12 July 2018, was refused by notice dated 15 January 2019.
 - The development proposed is erection of a stable block.
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Decisions

Appeal A: ref. APP/W1525/C/18/3218154

1. I direct that the enforcement notice be corrected by:

DELETION of the words '*...by filling any resulting.*' from Requirement (v), and
SUBSTITUTION of the words '*...to its condition before the breach took place*'.

Subject to this correction 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: ref. APP/W1525/W/19/3228807

2. The appeal is dismissed.

Preliminary matters

3. I made an unaccompanied visit to the site on 23 June 2020 at approximately 1230. There was no access provided, but I was able to see the entire site clearly from the road.
4. Since the appeal was lodged the Chelmsford Local Plan 2013-2036 (the Local Plan) has been adopted. This replaces the Chelmsford City Council Core Strategy Development Plan and Development Control Policies Development Plan Document of 2008. I have had regard to the Local Plan in making my determinations.
5. The Inspector originally appointed to determine this case identified what is clearly a defect in the enforcement notice – that Requirement (v) is incomplete to the extent that it does not specify what is to be done to restore the land affected by the works specified in Requirement (iii). She raised the question of whether the notice was capable of correction by deletion or variation of the requirement with the appellant, and whether this might cause significant injustice. A response was received on 25 June 2020 to the effect that the notice does not make clear what the appellant must do, that any amendment would be unjust to the appellant and the notice should be quashed.
6. Looking at the notice as a whole, it is apparent from other requirements that the intentions are for the alleged unlawful elements and resulting debris to be removed, and for lawful earlier features - such as the boundary hedge - to be reinstated. In my view it can be fairly said the purpose of the notice is to remedy the breach by restoring the land to its condition before that breach took place - in line with the proper formulation of an enforcement notice set out in s.173(4)(a) of the Act.
7. I consider any uncertainty arising from the incomplete Requirement (v) is very minor indeed, and this could be remedied by re-wording the requirement to read '*Restore the Land affected by the works at step (iii) above to its condition before the breach took place*'. The appellant must be readily aware of what that condition was, and this variation would do no more than formalise what is already apparent as the purpose of the notice. I do not consider this variation would cause significant injustice to any party, and that is what I intend to do.

Background

8. The appeal site is an open field of about 1.8 hectares lying to the southern side of Ivy Barns Lane. It lies within the Metropolitan Green Belt. To the west is a house called Four Oaks and to the east the pair of recently re-furbished Greens Cottages. There are numerous mature trees along the road boundary – mainly ash and oak – with the timber fence enforced against standing behind those. The western and southern boundaries are defined mainly by dense belts of trees, and along much of the eastern boundary is the fence to the Greens Cottages site. The site slopes down quite steeply to the south and west. The land itself is predominantly covered in scrubby growth and a few mature trees. There are also two dilapidated touring caravans and a shed.
9. The enforcement action is against the new vehicular access, the entrance gates, fencing and the creation of hardstanding. The planning application is ostensibly for the stables building, but also includes the extended hardstanding and the new vehicular access. To the extent that the elements enforced against and those subject of the planning application are the same I have treated the ground (a) enforcement appeal and the s.78 appeal together and made distinctions between the two cases as necessary.

Appeal A on ground (c)

10. This ground is that there has been no breach of planning control. The appellant argues that planning permission is not required for the boundary fence, which should be regarded as development permitted under Class A of Part 2 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
11. Class A includes the grant of planning permission for the erection or construction of a fence. There are various preclusions to this allowance including at paragraph A.1(a) that development is not permitted where the height of any fence erected or constructed adjacent to a highway used by vehicular traffic would after the carrying out of the development exceed one metre above ground level.
12. The fence runs along the road boundary behind the mature trees and a dry ditch, and effectively defines the barrier between the road and verge and the appellant's land. In my opinion it should be regarded as adjacent to the highway. The appellant does not say what height the fence is, but my estimate is that it is significantly higher than 1 metre - which concurs with the Council's view.
13. I conclude on this ground that on the balance of probabilities the fence does not benefit from permitted development rights. The appeal on ground (c) therefore fails.

Appeal A on ground (a), the deemed planning application, and Appeal B

1. The appeal site lies within the Metropolitan Green Belt in open countryside. Paragraph 133 of the National Planning Policy Framework (NPPF) – 'Protecting Green Belt land' sets out the great importance the Government attaches to Green Belts; that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping the land permanently open, and that the essential characteristics of Green belts are their openness and permanence. One of the

- five purposes the Green Belt serves – set out in NPPF paragraph 134 – is to safeguard the countryside from encroachment
2. NPPF paragraphs 143 and 144 state that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances, and that substantial weight should be given to any harm to the Green Belt, and very special circumstances will not exist unless the harm to the Green Belt, and any other harm, is clearly outweighed by other considerations.
 3. NPPF paragraph 145 states that the construction of new buildings in the Green Belt should be regarded as inappropriate but sets out a number of exceptions including such things as appropriate facilities for outdoor sport and recreation.
 4. NPPF paragraph 146 sets out other forms of development – such as engineering operations – that are not inappropriate in the Green Belt, provided they preserve openness and do not conflict with the purposes of including land within it.
 5. In the light of the foregoing I consider the main issues to be:
 - Whether the development is appropriate within the Green Belt, and its effect upon Green Belt interests in the light of prevailing national and local planning policy.
 - The effect of the development on the character and appearance of the area.
 - The effect of the vehicular access on highway safety for users of Ivy Barn Lane and of the new appeal site access.
 - The effect of the development in terms of potential flood risk.
 - Whether any harm to the Green Belt 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 the development.
 6. The Council accept that the use of the appeal site for keeping horses can be considered as outdoor recreation. The building of the new stable block need not therefore be inappropriate. However, the block itself would be about 17.7 metres long, 3.7 metres wide, and 3.1 metres high to the roof ridge. It would contain 3 loose boxes and a large tack room. The building would be centrally situated between eastern and western boundaries and occupy about half the width of the site at that point. It would be positioned back from the road by about one-third of the depth of the site. It would be prominently visible from the road, particularly from the new access. The deciduous trees on the northern boundary would provide little screening in wintertime. In my opinion it would be visually and spatially intrusive in this undeveloped field and significantly reduce its characteristic openness. The stables cannot be regarded as appropriate development.
 7. The existing hardstanding in the north-west corner of the site is now largely overgrown with weeds. While it is by no means prominent at present, it is proposed to retain and extend it as part of the planning proposals. These together with the new vehicular access can be regarded as engineering operations, which again may not be inappropriate. However, the hardstanding

- would be of significant area, occupy most of the width of the site on the road frontage, and extend back to the stables and across the front of the new building. This would change the natural appearance of the field and harm its rural character. Furthermore, activity on the site would be increased and be particularly evident as a result of the new access, which is in addition to an existing access adjacent to Four Oaks. The metal gates and posts, and the close-boarded fencing create an urban character for the appeal site that has the effect of separating the field from its rural setting.
8. Overall, I find that the existing gates, fence and hardstanding cause significant harm to the openness of the appeal site. It follows they are inappropriate development within the Green Belt. I note that the new access and gates would also remain if the planning appeal were successful, and there is nothing to suggest the fence would be removed or replaced. I also find the stables and additional hardstanding cause significant harm to openness. Furthermore, all elements enforced against and subject to the planning appeal cause some degree of encroachment onto the countryside – contrary to one of the five purposes served by the Green Belt. The developments subject of the enforcement notice and of the planning appeal do not accord with the provisions of the development plan, notably with respect to Local Plan Policies DM6 and DM10 which reflect NPPF policy on Green Belt protection.
 9. Turning to the second main issue, the area generally is undulating open countryside with large arable fields, often bordered with hedging and substantial trees. There is limited and sporadic built development, mainly of farmhouses and cottages.
 10. The new vehicular access is surfaced with loose material leading to decorative steel gates on steel posts set a few metres back from the line of the rather roughly constructed close-boarded timber fence. These elements and the abrupt gap in the roadside tree and hedge cover combine to create an incongruous scene of an effectively urban character within this otherwise rural setting. While the existing hardstanding is by no means prominent, an area of hard surfacing is a further incongruous element in the rural scene. Overall, I find these aspects in both appeals to be of significant harm to the character and appearance of the appeal site and the area in its vicinity.
 11. Furthermore, I consider the size and location of the stables, and the extensive proposed hardstanding would be an intrusive feature in this relatively large and undeveloped field.
 12. Overall, whether taken together or separately, I consider the development enforced against and the other elements of the planning proposal would cause significant harm to the character and appearance of the appeal site and the area in the vicinity. The development would not accord with provisions of the development plan, in particular Local Plan Strategic Policy S11 which seeks to protect countryside interests, and to take account of planning objectives for the Green Belt.
 13. Turning to the issue of highway safety, I saw that visibility from the new access is particularly limited for drivers looking at traffic approaching from the east. The Highway Authority say that from a point 2.4 metres back from the highway edge in the centre of the access visibility on the traffic approach side would be limited to about 20 metres, mainly as a result of obscuring foliage on other properties. On the other side it would be limited to about 190 metres by the

curvature of the road. From what I saw I consider these to be reasonable observations. I also noted that the brow of the hill to the east is relatively close, which exacerbates the potential hazard.

14. Ivy Barn Lane is subject to the national speed limit of 60 miles per hour. The nationally accepted standards for highway visibility are set out in the Department of Transport document 'Design Manual for Roads and Bridges'. This includes the recommendations that a visibility splay of 215 metres in both directions should be provided from a point 2.4 metres back from the highway edge from an access. This should ensure that drivers of emerging vehicles have adequate views of oncoming traffic, and that through traffic has sufficient advance warning of emerging vehicles. In my opinion the highway visibility available is obstructed to a degree that causes significant danger for users of Ivy Barn Lane and of the new appeal site access. In this respect the development does not accord with Policy DM1 of the Essex County Council Development Management Policies 2011. This seeks to protect the highway network for the safe and efficient movement of people and includes aims to ensure highway proposals provide safe and convenient access. Furthermore NPPF paragraph 108(b) advises that applications for development should ensure that safe and suitable access to sites can be achieved by all users.
15. Regarding flood risk, the appellant argues that only the south-eastern part of the appeal site is within flood-zones 2 and 3, and the stable block and hardstanding would be on the upper part, which is within zone 1.
16. The map provided by the Environment Agency (EA) shows the situation for a point towards the northern end of the site, which is clearly within zone 1. However, the application plan shows the stables to be further south and is at a scale such that it is difficult to assess their precise position in relation to the flood zone map, and there are no dimensions or levels shown on the site plan. The advice at NPPF paragraph 164 is that for minor developments – which I consider this to be – the requirements for flood risk assessment set out in Footnote 50 to the paragraph should apply. This includes a requirement to provide a Flood Risk Assessment (FRA) for all developments in Flood Zones 2 and 3, and in Flood Zone 1 for all proposals involving sites of 1 hectare or more. EA have raised a holding objection to the proposals on the basis that no FRA has been submitted and find this sufficient reason for planning permission to be refused.
17. Given the uncertainty about the position of the stables and hardstanding relative to the Flood Zone 3 boundary, and the fact that the site is over 1 hectare, I consider it can be expected that a FRA should be provided, at least as a precautionary measure. In the absence of this information I conclude that significant harm may arise as a result of potential flood risk, and that the proposals do not accord with the relevant advice of the NPPF.
18. Turning to the last main issue, in the enforcement case I have found the fence, gates and hardstanding are inappropriate development in the Green Belt and cause significant harm to openness, as well as to the character and appearance of the appeal site. The appellant argues that a proper access to the site is clearly needed as is the hardstanding, and that even if the planning appeal is dismissed they would still be required to access a mobile stable that might be brought onto the site.

19. However, there is already another access to the site adjacent to Four Oaks, and no particular justification has been put forward regarding the necessity of the hardstanding. If the appellant wants to keep horses on the field there is nothing to prevent her from doing this.
20. I appreciate that properties to either side of the appeal site have accesses onto the Lane, and that there may be no record of accidents. However, that does not justify creation of a new access that fails to provide adequate visibility. It is suggested that highway safety problems could be dealt with by imposition of conditions. However, none have been put forward, and it is difficult to see how the situation could be significantly improved.
21. Taken together, these considerations are not sufficient to outweigh the harm caused by the encroachment onto the countryside, the inappropriate nature of the development and the harm to the character and appearance of the site and surroundings, and do not amount to the very special circumstances necessary to justify the development. The enforcement appeal on ground (a) therefore fails, as does the planning appeal, and I intend to refuse planning permission on the deemed application.

Appeal A on ground (f)

22. This ground is that the steps required by the enforcement notice are excessive and lesser steps would overcome the objections. The appellant claims the requirement to remove the hardstanding is excessive since it was permitted by the Local Planning Authority. However, nothing has been put forward to justify the claim that it was permitted, and in any case this is a matter that should be pleaded and substantiated under ground (c). Nonetheless, removal of the hardstanding is necessary in order to remedy the harm caused to Green Belt interests and cannot be regarded as excessive. The appeal on ground (f) therefore fails.

Appeal A on ground (g)

23. It is claimed that the compliance period is too short since the appellant would require at least 12 months to find alternative accommodation. However, there are no horses on the site at present, or any evidence that there have been. If they are accommodated elsewhere, then there is no need to find an alternative. The 6-month period allowed appears quite adequate to complete the works required. The appeal on ground (g) therefore fails.

Conclusions

24. For the reasons given above I conclude that neither the enforcement appeal nor the planning appeal should succeed. I shall uphold the enforcement notice with the correction noted above and refuse to grant planning permission on the deemed application.

Stephen Brown

INSPECTOR