



Appeal Decision

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: 17 September 2020

Appeal Ref: APP/V1505/C/19/3235342

Land to the east of Orchard Avenue, Ramsden Bellhouse, Billericay CM11 1RL

- 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 Dennis Webb against an enforcement notice issued by Basildon District Council.
 - The enforcement notice, ref. 18/00146/UCO, was issued on 25 July 2019.
 - The breach of planning control alleged in the notice is the erection of two field shelter buildings on the Land shown edged red on the plan attached to the notice.
 - The requirements of the notice are to:
Remove both field shelter buildings (as shown in the photographs at Appendix A to the enforcement notice and the area hatched black on the plans A and B attached to the notice) from the Land including all associated fixtures, fittings and waste materials therefrom.
 - The period for compliance with the requirements is three months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (b), (c), (f) and (g) of the Town and Country Planning Act 1990 as amended. The appeal is exempt from the prescribed fees, and 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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Decision

1. The appeal is allowed insofar as it relates to field shelter Building B, and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for retention of field shelter Building B on Land at the east of Orchard Avenue, Ramsden Bellhouse, Billericay CM11 1RL.
2. The appeal is dismissed, the enforcement notice is upheld, and planning permission is refused in respect of field shelter Building A, on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Costs

3. An application has been made by the Council for a partial award of costs against the appellant. This application is subject of a separate Decision.

Preliminary matters

4. In his appeal form the appellant has indicated he wants to appeal on ground (b) – that there has been no breach of planning control as a matter of fact. In

his statement there is no argument on ground (b) but, rather, an appeal on ground (e). For the purposes of my decision I have dealt first with ground (e), and then briefly with the ground (b) matter.

5. The appellant has argued that the appeal site is incorrectly identified as being east of Orchard Avenue' and should have been described as 'to the rear of The Hyde, Glebe Road'.
6. Looking at the two plans attached to the notice, Plan A appears to identify the appellant's entire holding outlined in red and shows the field shelters cross-hatched in black. The site clearly extends for a great distance to the north of Glebe Road. Plan B, at a larger scale, shows only the southern part of the overall site outlined in red and again showing the position of the field shelters cross-hatched in black.
7. There is no doubt that the site lies to the east of Orchard Avenue, much of it sharing a boundary with the backs of plots there. I accept that part of the site lies behind The Hyde, but that is a relatively small proportion of the whole site. It appears to me that the site might equally well be described as 'Land to the north of Glebe Road'. Either way, the notice very clearly identifies the parcel of land and the position of the field shelters. The notice cannot have left the appellant in any doubt about the relevant piece of land or the buildings referred to. I do not consider he was caused any significant prejudice as a result of the stated site address.
8. The appellant complains that the use of the Orchard Avenue address was a deliberate move by the Council to widen the field of potential objectors to the development. I see that the Council notified a number of nearby property owners/occupiers of the appeal, both in Orchard Avenue and Glebe Road. However there have been no responses from any third party. In the event I consider this complaint was unjustified.

Background matters

9. The appeal site lies within the Green Belt and is outside any area designated for development. It is no longer in agricultural production. The field shelters enforced against stood next to one another close to the southern site boundary. I saw the smaller western one has been largely demolished leaving little more than the ground slab and structural posts. The remaining eastern shelter is open fronted, constructed of timber beams and posts with a corrugated sheet roof and siding, and concrete ground slab. For the purposes of this decision I have referred to the smaller western field shelter as Building A and the larger open shelter to the east as Building B.
10. In 2019 a planning application for retention of 'a shelter and outbuilding for plant equipment in relation to management of land and clay pigeon trap storage' was refused¹. An appeal against this decision was dismissed later that year on the grounds of inappropriateness in the Green Belt, and harm to openness². The shelter and outbuilding in that case are the same as the buildings enforced against.

¹ Decision notice ref. 19/00023/FULL, dated 9 April 2019.

² Appeal decision ref. APPV1505/W/19/3227488, dated 20 September 2019.

The appeal on ground (e)

11. This ground is that copies of the enforcement notice were not served as required by s.172 of the Act. S.172 states that a notice shall be served on the owner and the occupier of the land to which it relates, and on any other person having an interest in the land, being an interest which in the opinion of the Local Planning Authority is materially affected by the notice.
12. The appellant himself has clearly received a copy and has been able to appeal against it. Furthermore, the notice has been served on the owner(s) and occupier(s). The appellant says that another individual has access to the land enforced against. However, that does not demonstrate whether this person is materially affected by the notice, and no evidence has been put in to suggest in what way he might be. On the balance of probabilities I do not consider that any party has suffered substantial prejudice in terms of service of the enforcement notice. The appeal on ground (e) therefore fails.

The appeal on ground (b)

13. This ground is that the breach enforced against has not occurred as a matter of fact. Ground (b) is known as a 'legal' ground in which the burden of proof is on the appellant to show that on the balance of probabilities this is the case.
14. It is very clear that the field shelters have been built. Although I saw that the western one has been largely demolished, the ground slab remains, and it can readily be seen from photographs attached to the notice that it has existed. No planning permission has been obtained for the shelters, nor are they development permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended. It follows that on the balance of probabilities the breach has occurred as a matter of fact. The appeal on ground (b) therefore fails.

The appeal on ground (c)

15. This ground is that there has been no breach of planning control. Again, this is a 'legal' ground.
16. Appeals on ground (c) are commonly made on the basis that a development is permitted under the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO), or that planning permission has been granted for some other reason.
17. The appellant has not put forward any evidence that the shelters benefit from being permitted development, or that planning permission has been granted by any other means. Indeed, the 2019 planning application was refused and dismissed at appeal. I consider that on the balance of probabilities there is no permission for either building. There has therefore been a breach of planning control, and the ground (c) appeal must fail.

The appeal on ground (d)

18. This ground is that the matters enforced against are immune from enforcement action due to the passage of time. Ground (d) is again a 'legal' ground. The principal question here is whether the operational development enforced against was substantially completed four or more years before the notice was issued.

19. The appellant accepts that Building A was built less than four years before issue of the notice. He says about Building B that the sub-base material was laid before 2014, that only the concrete part was laid after that time, and also says it has been in place since 2014-2015. However, this does not provide evidence as to the date of substantial completion – that is, when the entire building including superstructure and roof were completed.
20. It is long-standing advice in appeals on legal grounds that if there is no evidence from the Council or others to contradict or otherwise make an appellant's version of events less than probable, there is no good reason to refuse the appeal, provided the appellant's evidence alone is sufficiently precise and unambiguous to justify the claim on the balance of probability.
21. In a case of this sort I would expect documentary details of such things as dates on which concrete was provided and laid, and on which materials were delivered, receipts for components and for labour provided, and possibly contemporaneous photographs. No such material has been put in. The Council have suggested that the appellant should provide aerial photographs to substantiate his claim, but he has not done so. As noted above, the burden of proof is on the appellant. I do not consider this burden has been discharged.
22. While the Council do not put forward any evidence on this matter, the appellant's evidence is vague and does not address the principal question of the date when the development was substantially complete. I do not regard this as adequately precise to substantiate the claim on the balance of probabilities. The appeal on ground (d) therefore fails.

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

23. This ground is that planning permission should be granted for the development.
24. The appeal site lies within the Green Belt as confirmed in the adopted Proposals Map and is outside any area designated for development. 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.
25. 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.
26. 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 buildings for agriculture or forestry, and appropriate facilities for outdoor sport and recreation.
27. 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.

28. 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.
- 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.

29. I saw that the remaining field shelter was being used for storage of a tractor, two quad bikes and stacked timber. Standing just to the front was a tracked digger. It appears to me that these did not indicate any significant agricultural use but were more connected with land maintenance or construction. There was no significant evidence that there is any connection with the clay pigeon shoot, which might be regarded as a facility of outdoor sport or recreation.

30. The site is an open field that extends out into the rolling countryside. The remaining complete field shelter stands close to the southern boundary of the site which also forms the back boundary of the residential plots along Glebe Road. This makes for a very clear distinction between the open field and the residential development. The field shelter appears as an intrusion into that scene, albeit a minor one. The remaining slab and parts of the structure of the smaller shelter, where another vehicle stood, add to the developed appearance. Had the other shelter remained in entirety the intrusive effect would have been greater.

31. Overall, I consider the development as it was when the notice was issued caused moderate harm to the openness of the Green Belt, both visually and spatially. Furthermore, it results in an encroachment into the countryside, and may also be regarded as an extension of the sprawl of the built-up area – two of the five purposes served by the Green Belt set out in NPPF paragraph 134. However, the development with the retention of Building B only would have no more than a slight impact on openness.

32. The development comprised two new buildings, which must be regarded as inappropriate within the Green Belt (NPPF paragraph 145). It has not been shown that they were any of the exceptions listed in that paragraph. Even if they were intended for the purpose of outdoor sport or recreation, they did not preserve openness, and conflicted with Green Belt purposes. The development does not satisfy the exceptions set out in NPPF paragraph 145 and should not be approved except in very special circumstances.

33. Turning to the second main issue, the open grassy appeal site is very much a part of the countryside and has a distinctly rural character that strongly contrasts with the adjacent residential development. The eastern shelter is a relatively modest building, but of robust construction that is by no means out of place in a rural situation. As the Council's officer says in her report on possible enforcement, the design of the buildings themselves does not cause major concerns.

34. I can see from photographs showing the two shelters before partial demolition, that they presented a quite bulky and somewhat incongruous presence, sufficient to cause harm to the character and appearance of the area. However,

- removal of the western shelter has changed this situation. While I consider the two buildings together caused significant harm to the character and appearance of the area, if the removal of the remnants of Building B were to be completed the remaining building would have a neutral impact on the rural scene.
35. Turning to the third main issue, the appellant argues that there are a barn and stables on another part of the area that provide a precedent. However, I understand these were approved as a hay barn and tractor shed in 2011 when the site was part of a larger holding and still in agricultural use. However, their presence does not justify the impact on openness resulting from the field shelters.
36. As regards the need for training facilities for autistic boys living nearby, there was nothing on the site to indicate the presence of such facilities. Although these activities may take place in the shelter, there is nothing to demonstrate they could not take place elsewhere.
37. The Council's Housing and Economic Land Availability Assessment (HELAA) review of sites not allocated for development says that the land does not retain its full Green Belt status, and regarding capacity says that if access issues could be overcome then this site has the potential for a number of dwellings. It is clear that the area considered in the assessment is very much greater in extent than the appeal site. However, while the assessment provides a general overview, it is by no means definitive as to the status of the land. It may be taken out of the Green Belt in the future, but that is by no means any part of current development plan policy. I give very little weight to the apparent claim that Green Belt policy should be set aside.
38. I can understand there may be a need for at least one of the buildings to protect the land maintenance equipment. The Council suggest this is domestic equipment that could be stored within the residential curtilage of The Hyde. However, storage of a tractor and other equipment to maintain a relatively large site such as this is in my opinion beyond what can count as domestic equipment. I consider this factor weighs in favour of retention of the eastern shelter, particularly in the light of my findings that this element has such a slight impact on openness and a neutral effect on the rural scene.
39. In summary, I give very little weight to the arguments about Green Belt status, the presence of other buildings on the land, and the need for training facilities. However, given the very slight effect on openness, and the neutral effect of Building B on the rural scene I consider the appellant's need for an open storage facility for land maintenance equipment is sufficient to justify retention of Building B.
40. Although I do not consider there are considerations sufficient to justify retention of the two field shelters, I conclude on the third main issue that in respect of Building B the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by another consideration so as to amount to the very special circumstances necessary to justify the development.
41. I therefore intend to allow the appeal on ground (a) insofar as it relates to Building B, and to grant planning permission for its retention, but to uphold the enforcement notice insofar as it relates to Building A and to refuse planning permission for its retention.

The appeal on ground (f)

42. This ground is that the requirements of the notice are excessive, and that lesser steps would overcome the Council's objections. Under this ground the appellant has largely repeated arguments concerning Green Belt status and the need for training facilities. These are essentially ground (a) arguments, and I have not gone on to consider them here. On the material submitted the appeal on ground (f) fails

The appeal on ground (g)

43. This ground is that the compliance period is too short. Again the appellant has not put forward relevant arguments or suggested a more suitable period. However, I do not consider the three month period allowed to be insufficient to remove the remainder of Building A. The appeal on ground (g) therefore fails.

Conclusions

44. For the reasons given above I conclude that the appeal should succeed in part only, and I will grant planning permission for one part of the matter the subject of the enforcement notice, but otherwise I will uphold the notice and refuse to grant planning permission on the other part. The requirements of the upheld notice will cease to have effect so far as inconsistent with the permission which I will grant by virtue of s180 of the Act.

Stephen Brown

INSPECTOR