
Appeal Decision

Site visit made on 30 September 2020

by Mark Harbottle BSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27th October 2020

Appeal Ref: APP/G5180/C/20/3255554

Land at Downe Court Riding Centre, New Road Hill, Downe BR6 7JA

- 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 Miss Paris Sivyver against an enforcement notice issued by the Council of the London Borough of Bromley.
- The enforcement notice, numbered L15 T58.3863, was issued on 8 June 2020.
- The breach of planning control as alleged in the notice is, without planning permission, the erection of a wooden fence between 1.6 metres to 1.7 metres in height for a length of 21 metres adjacent to the highway used by vehicular traffic.
- The requirements of the notice are (1) Remove the unauthorised fencing; (2) Remove all materials associated with (1) above; and (3) Leave the land in a tidy condition.
- The period for compliance with the requirements is within 2 months after the notice takes effect.
- The appeal is proceeding on the ground set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended (the Act).

Summary of decision: The appeal is dismissed, the enforcement notice is upheld with a variation, and planning permission is refused on the application deemed to have been made under section 177(5) of the Act.

Main Issues

1. The main issues are:

- Whether the fence is inappropriate development in the Green Belt, having regard to its effect on the openness of the Green Belt, and to the revised Framework¹ and any relevant development plan policies.
- The effect of the fence on the character and appearance of the area.
- If the fence is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether the fence is inappropriate development

2. The definition of a building in section 336 of the Act includes “any structure or erection” and the fence is therefore a building for the purposes of this

¹

The National Planning Policy Framework, updated 19 February 2019

assessment. The revised Framework regards new buildings as inappropriate in the Green Belt but allows an exception for the provision of appropriate facilities in connection with an existing use of land for outdoor recreation, as long as those facilities preserve the openness of the Green Belt and do not conflict with the purposes of including land within it.

3. The Riding Centre is a form of outdoor recreation and a boundary fence is appropriate to such a use. Furthermore, the notice does not identify any conflict with the purposes of including land within the Green Belt arising from the fence. However, it remains necessary to consider whether it preserves the openness of the Green Belt.
4. New Road Hill is a relatively narrow country road without footways and with only sporadic built development between Holwood Farm and Downe. Although close to the Greater London conurbation, it has a rural character, emphasised by glimpses of fields and paddocks, with trees beyond, through breaks in the dominant roadside trees and hedges.
5. The section of fence identified by the notice and the plan accompanying it is approximately 21m long and comprises solid panels. It runs along the front boundary, in front of a row of trees that was previously the site's dominant roadside feature. Although a relatively minor form of development, with a corresponding limited spatial effect on the openness of the Green Belt, that impact is greater and therefore more harmful than a roadside fence not exceeding 1 metre in height, such as the previous post and rail fence. The visual effect of the fence on openness is more significant because its solid form and height, presented along the road frontage, create a sense of enclosure at odds with the visual characteristics of the Green Belt.
6. For all of the above reasons, I find that the fence constitutes inappropriate development in the Green Belt.

Character and appearance

7. The fence introduces an urban feature into the rural landscape, in harsh contrast with the softer boundaries of trees and hedges prevalent on New Road Hill that allow glimpses of countryside. As such, it fails to positively contribute to the street scene and landscape and is significantly harmful, in conflict with policy 37 of the Bromley Local Plan 2018 (the BLP), which requires development to be of a high standard of design and layout.

Other considerations

8. Reference has been made to burglaries and theft before the fence was erected, which may have been facilitated by the visibility of the site from the road, and thefts from livery yards in the area. It is also stated that there was an arson attack some years ago, but no details have been provided. Criterion h of BLP policy 37 provides support for the inclusion of security and crime prevention measures in development. However, there is no evidence that alternative options such as CCTV, which would cause less harm to the openness of the Green Belt, have been considered. Consequently, and in the absence of details of the events referred to, I can afford only limited weight to this matter.
9. Similar fences are used widely throughout the local area and notably on the highway perimeter of Holwood Farm Shop and Café some 300m away. However, that fence must be viewed in the context of its position at a point of

transition from the built-up area to the countryside. In contrast, the prevailing character of New Road Hill near the appeal site is rural, dominated by roadside trees and hedges rather than fences. Accordingly, I do not afford significant weight to this matter.

10. Aside from the security considerations, the fence obscures views of the car park and stable block, both of which have some effect on the openness of the Green Belt and on the rural landscape. However, these elements have been granted planning permission, with resurfacing of the car park permitted most recently. They must therefore have been determined to not harm the landscape or the openness of the Green Belt, so I do not afford weight to this matter.
11. For the above reasons, very special circumstances to justify the development have not been identified and it is therefore in conflict with policy 49 of the BLP and Part 13 of the revised Framework.

Conclusion

12. The fence is inappropriate development that causes spatial and visual harm to the openness of the Green Belt. This is a matter to which substantial weight is given. The development also fails to achieve a high standard of design and thereby has an adverse effect on the rural street scene and landscape. There is conflict with the development plan and national planning policy outlined above and the arguments advanced in favour carry limited weight. On balance, the considerations advanced in support of the development do not, individually or cumulatively, clearly outweigh the harm identified above.
13. Accordingly, and for the reasons given above, I conclude that the appeal should not succeed. However, the third requirement of the notice invites subjective judgement as to what is "a tidy condition" and creates unacceptable uncertainty as to how to achieve compliance. A variation to require the land to be restored to its previous condition would avoid this and would not cause injustice to either party. I shall therefore uphold the enforcement notice with a variation and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the Act.

Formal Decision

14. It is directed that the enforcement notice be varied in section 5.3 by the deletion of the words "Leave the land in a tidy condition" and the substitution of the words "Restore the land to its condition before the development took place".
15. Subject to this variation the appeal is dismissed, the enforcement notice is upheld, and planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Mark Harbottle

INSPECTOR