



Appeal Decision

Site visit made on 6 October 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 17 November 2020

Appeal Ref: APP/J1535/C/20/3249974

Land at Lodge Park, to rear of 40-62 Hoe Lane, Abridge, Essex RM4 1AU

- 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 James Phillips against an enforcement notice issued by Epping Forest District Council.
- The enforcement notice was issued on 3 March 2020.
- The breach of planning control as alleged in the notice is: Without planning permission: The erection and installation on the Land of electronically operated sliding metal roller gates, supporting piers and brick walls adjacent to the highway, all exceeding 1 metre in height from the adjacent ground levels.
- The requirements of the notice are to:
 - (i) Remove the gates, supporting piers and walls shown in the approximate position marked "A" on the attached plan; OR
 - (ii) Reduce gates, supporting piers and walls shown in the approximate position marked "A" on the attached plan to no more than 1 metre in height, to comply with Class A, Part 2, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO').
 - (iii) Remove the gates, supporting piers and walls shown in the approximate position marked "B" on the attached plan; OR
 - (iv) Reduce gates, supporting piers and walls shown in the approximate position marked "B" on the attached plan to no more than 1 metre in height, to comply with Class A, Part 2, Schedule 2 of the GPDO.
 - (v) Remove the gates, supporting piers and walls shown in the approximate position marked "C" on the attached plan; OR
 - (vi) Reduce gates, supporting piers and walls shown in the approximate position marked "C" on the attached plan to no more than 1 metre in height, to comply with Class A, Part 2, Schedule 2 of the GPDO.
 - (vii) Remove all resultant debris following compliance with the steps above.
- The period for compliance with the requirements is within 2 months after this notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a) and (c) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended falls to be considered.

Summary of decision

1. The appeal succeeds in part and permission for that part is granted, but otherwise the appeal fails, and the enforcement notice is upheld as set out in the Formal Decision.

Background

2. In 2015 approval was granted on appeal, under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO), for the conversion of an existing agricultural building to residential use on land to the rear of Nos 40-62 Hoe Lane.
3. At the time of the decision access to the agricultural building was via what the Inspector described as an unmade path running within the site, parallel to Hoe Lane. Rather than Entrance A, now the larger of the three entrances the subject of the current enforcement notice, the description given at the time suggested that Entrances B and C were those used for vehicular access purposes.
4. The appellant has supplied photographs showing Entrance A as existed before works were first carried out in 2016 to widen and formalise this point of access involving the erection of walling, brick piers and double, sliding, metal gates. Notwithstanding the substantial works undertaken here the former gates at the other two entrance points have also been replaced and associated brick piers erected.
5. In July 2019 the Council, following an application submitted for a lawful development certificate (LDC) relating only to the works undertaken at Entrance A, – the application form describes the development as "*Retaining walls/Brick piers/Electrically operated sliding gate*", and the plan submitted (ref 19/201 01) dated April '19 only addresses Entrance A - determined that the walls, brick piers and gates were beyond the maximum height for development undertaken that is adjacent to a highway. Accordingly, the Council refused to issue the requested LDC.
6. As the above works had already been carried out, along with those undertaken at Entrances B and C, the Council then saw it expedient to issue an enforcement notice relating to the development at all three points.

The Appeal on Ground (c)

7. The ground (c) appeal is that matters alleged in the notice do not constitute a breach of planning control. A breach of planning control comprises the carrying out of development without the required planning permission. Under a ground (c) appeal the onus of proof is on the appellant to show that there has been no such breach; this being on the balance of probability. In this case the appellant submits that the gates, piers and brick walls are permitted development (PD) as he considers they are not adjacent to the highway.
8. Class A, Part 2 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended (GPDO) permits the erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure subject to certain limitations. Paragraph A.1. thereof states that such development is not permitted by Class A if the height of the enclosure adjacent to a highway used by vehicular traffic would, after carrying out the development, exceed one metre above ground level.
9. Both the appellant and the Council have provided measurements relating to all three separate entrances. By and large these sets of stated dimensions only

differ slightly and, from my site visit observations, I am satisfied that they are a reasonably accurate representation of the structures at issue. However, from a purely visual assessment it appeared at my site visit that the gates at Entrance A from the highway were distanced somewhat less than that put forward by the main parties. As the parties, though, are not at odds on this point I shall determine the case, accordingly.

10. Taking the appellant's measurements it is indicated that Entrance A has its two brick piers to a height of approximately 2m from the tarmac base with, it is said, the centre of the gate being set back 7.12m from the edge of the highway. It is indicated that Entrance B has piers to heights of 1.45 and 1.54m respectively, with the gate set back from the highway some 6m, whilst Entrance C has piers to heights of 1.45 and 1.65m respectively, with a set back of approximately 6.7m.
11. The appellant says in paragraph 6.25 of his main Statement that, although the accesses at Entrances B and C have been altered, the gates and walls thereto *"are no higher than previously."* However, I have seen no compelling evidence to substantiate or corroborate this assertion.
12. The question to be determined is whether the gates and the associated piers and walls are adjacent to the highway. There is no definition of the word "adjacent" within the GPDO but it is defined in the dictionary as meaning 'being near or close to, next to, or contiguous.' Contiguous is defined in the dictionary as 'sharing a boundary or touching each other physically, or continuous.' However, case law shows that the meaning of 'adjacent' in the context of the GPDO does not equate to 'contiguous' or 'abutting'. The assessment of what constitutes 'adjacent' must therefore amount to a question of fact and degree, to be assessed in relation to the circumstances involved.
13. Both main parties refer to the judgement in *Simmons v SSE and Rochdale* [1981] but the thrust of case law and appeal decisions on the matter is that gates and their associated structures can be set back from a highway but still be 'adjacent' to it. Being a matter of fact and degree it is also providing that the enclosure is clearly to define the boundary of the property concerned from the highway and, moreover, is perceived to do so.
14. The appellant has brought my attention to previous appeal decisions which he considers gives support to his case. In the Crawley appeal involving a proposal to erect a 2m high close board wooden fence (APP/D3830/X/14/2223956) the Inspector indicated that the appeal turned on the particular facts of the case, stating in paragraph 13 of her decision letter:

"In these circumstances the fence would not have been perceived as a feature defining the boundary of the property with the highway."
15. In the Langlebury appeal (APP/P1940/C/11/2164949), whereby the Council had served an enforcement notice due, amongst other things, to the erection of new fencing, the Inspector stated in paragraph 12 of his decision letter:

"Nevertheless, I accept, based on the variety of decisions on this matter, there is no hard and fast rule as to what amounts to being 'adjacent' to the highway and that the facts of each case must be the primary determining factors when reaching a finding on this matter. There is however some general principles which flow from case law as set out in the EPLP."

16. The paragraph continues with the Inspector highlighting an entry in the Development Control Practice Manual saying that it is also worth noting the comment on 'adjacency' in the extract which states:

"All that is clear is that a wall or fence does not actually have to touch the edge of a highway, and may be some distance back provided it is close enough to have the perceived function of forming a boundary between a highway and a property."

17. Given the particular circumstances of the Langlebury case the Inspector, on the basis that no plan had been produced by the Council showing the extent of the adopted highway and having regard to the width and planted nature of the verge between the fence and the road edge, concluded that he did not consider that it had been shown that the fence has been erected adjacent to a highway used by vehicular traffic.
18. In the current appeal the perception, even to a casual observer, is that the gates and associated features, at all three entrances, form a distinctive boundary between the highway and the appellant's property. This is the case despite the raised grass verge. I therefore conclude, based on fact and degree in this particular instance, that the gates and associated brick built boundary enclosures are positioned adjacent to the highway. As such they do not benefit from the planning permission granted by the GPDO and, as such, constitute a breach of planning control.
19. The appeal on ground (c) therefore fails.

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

Main Issue

20. The site falls within the Metropolitan Green Belt. The main issues are therefore:
- 1) whether, for the purposes of the National Planning Policy Framework, the development is 'inappropriate' within the Green Belt and, if so, the effect on the Green Belt's openness;
 - 2) whether the development has resulted in any other material harm; and
 - 3) if it is inappropriate development whether this and any identified harm is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development and Openness

21. The National Planning Policy Framework (the Framework) indicates that the construction of new buildings in the Green Belt is inappropriate development, unless it is for one of a number of specified purposes, as set out in paragraphs 145 and 146 of the document. The Council is of the view that the works carried out do not fall within any of these categories and, although the appellant considers the works as engineering options which, by reference to paragraph 146 (exception b), might not constitute inappropriate development, the effect on the Green Belt must first be assessed. The crucial factor here is whether the development is harmful to its openness.

22. In the above connection paragraph 144 of the Framework says that substantial weight should be given to any harm to the Green Belt and that '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. The Framework also states that an essential characteristic of Green Belts is their openness and that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land within them permanently open.
23. Here, I find that the development in its entirety, facilitated and seemingly enabled by the raising of the grassed verge in connection with Entrance A – although the enforcement notice does not make mention of any such facilitating works – all combine to have an appreciable effect on the openness of the Green Belt, within which the site lies. On this matter the appointed Inspector for the 2018 appeal decisions, whereby planning permission was granted for the widening and improvement of a former pedestrian access point to involve the creation of a vehicular access at Entrance A (APP/J1535/W/17/3185337 & APP/J1535/W/18/3200076), in commenting on the matter of 'openness', indicated that an enhanced access at Entrance A which, as a consequence, would lessen the previous reliance on Entrances B and C, would thereby allow for views across and through the site to be retained.
24. It follows, therefore, that formalising the accesses located some considerable distance southwards over the field, with the replacement of gates and the erection of four brick piers to heights of between 1.45 and 1.65m, especially when considering the potential for resultant vehicular entry and exit would compound to adversely affect the openness of the Green Belt. Further, it is clear that the development at Entrance A is especially visually prominent, and the red brick walls and piers are more akin to the boundary enclosures of the row of dwellings situated northwards along Hoe Lane.
25. In light of the above I consider that the works carried out are inappropriate development which has had a material impact in both spatial and visual terms, resulting in detriment to the Green Belt. As such, the proposal fails to safeguard the countryside from encroachment, one of the five purposes of the Green Belt, and does not comply with the fundamental aim of Green Belt policy to prevent urban sprawl by keeping land permanently open. This is also contrary to the aims of policy DBE4 of the Epping Forest District Local Plan, 1998 and Alterations, 2006 (LP) and policy SP6 and DM4 of the Epping Forest District Local Plan (Submission Version) 2017 (DLP).
26. I thereby conclude that the proposal is harmful to the openness of the Green Belt, and is also contrary to relevant advice within the Framework.

Other harm

27. Up until the time that the conversion of the former agricultural building for residential purposes was approved at the site, subsequently followed by the approved significant widening of the access and the hardstanding laid on the resultant driveway, the character of the land would have been wholly rural. Indeed, the dwelling at No 62 was then the last dwelling along this stretch of Hoe Lane before the character markedly changed with the presence of agricultural fields. From photographs supplied by different parties there was then no zone of transition, only a sharp cut-off. However, the said planning

permissions subsequently brought about a significant material change in the character of this part of what is a much wider site.

28. Although I did not view the land ringed 'blue' on the location plan submitted with the appeal (drawing no 20/301 01) which lies behind the rear gardens of Nos 40-62 Hoe Lane I did observe the open field immediately to the south of the dwelling's driveway which lies between Entrances A and C. This area of the wider site has largely retained its rural character, although the works carried out to the two, southern access points, and the consequential and potential use of such is inconsistent with and harmful to this rural setting. In contrast, the access point and driveway from Entrance A is located directly next to the residential curtilage of No 62, and the common boundary fence and hedge enclosure dividing the two properties.
29. On this issue I conclude that Entrance A and the works thereto represent an extension of the suburban character alongside and allows for a means of enclosure and security commensurate with the residential use, albeit set back some distance, within the site. With this in mind Entrances B and C are extraneous and unnecessary in the contextual setting described, and their upgrade to encourage their future use is contrary to the aims and objectives of LP policies CP2 and DBE4.

Planning balance

30. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the Development Plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
31. Whilst the development might in itself be of a design functional to its purpose, thereby consistent with the requirements of DLP policy DM9, this does not mean that it is sympathetic to the Green Belt and its rural character, and would meet the objectives of policy LP policy DBE4. However, given the recent planning permissions granted at the site and Entrance A's immediate context I am satisfied that the development at this particular location represents a case in point where other material considerations override the presumption against inappropriate development within the Green Belt. However, by reason of location, this does not apply to the development carried out at Entrances B and C.
32. In reaching my decision on the DPA I have had regard to the various representations made by interested parties and I have also taken into account the appeal decisions produced by the Council whereby the appointed Inspectors found material harm resulting from enclosures erected on land in the Green Belt within Epping Forest District Council's area. Although the Framework is clear as to national Green Belt policy each individual case is still subject to its own particular circumstances and the merits and impacts arising therefrom. In particular, the Buckhurst Hill football club appeal related to sections of steel palisade fencing to a width of between 9 and 11m, which is markedly different to the development at issue in the current appeal. Whilst, therefore, the respective Inspectors dismissed these previous appeals parallels are not easily drawn. Accordingly, I have dealt with the DPA in this instance having taken into account all material considerations, as required.

33. Although the DPA is for the extent of the development enforced against, by way of s177(1)(a) of the 1990 Act as amended, it is open to me 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, or in relation to the whole or any part of the land to which the notice relates.
34. In light of this, and in concluding on this ground, I have drawn a clear distinction between the development undertaken at Entrance A and that carried out at Entrances B and C. In terms of the former, in view of the changed character of this part of the site, facilitated by the planning permissions recently granted, and a recognised need to secure the residential property similar to that of other nearby houses, I am satisfied that very special circumstances arise here to outweigh the harm by reason of inappropriateness and the adverse effect on the Green Belt's openness. However, no such very special circumstances exist in respect of the works to the other two entrances, and, the conflict here with relevant advice in the Framework, reinforced by the failure to meet the objectives and requirements of the local policies I have referred to, means that these elements of the development are unacceptable in planning terms. The enforcement notice provided options for remedying these breaches.
35. The Council has suggested that a condition be imposed requiring that a landscaping scheme be drawn up and submitted to the authority for written approval prior to implementation. Whilst soft planting might screen the wall to the side of Entrance A and potentially soften the development it is not clear to me whether the grassed verge is under the ownership of the local highway authority and outside the control of the appellant. With reference to the site plan (ref 20/301 01, dated March 2020) the above piece of land is outside the 'red' application site and, further, it would also seem that the said strip of land lies outside the wider 'blue' line, and thereby falls outside the appellant's control. In such instances the Council could enforce compliance with the condition only by taking action against the land's legal owner, a party which had gained no benefit from the development. This would clearly be problematic and, being contrary to both government and legal guidance, I shall not impose any landscaping condition.

Overall Conclusion

36. 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 (Entrance A) the subject of the enforcement notice, thereby negating the need for compliance with Requirements i and ii, but refuse to grant planning permission on the other parts; those relating to Entrances B and C.
37. In the above connection s180(1) of the 1990 Act as amended provides that where, after the service of an enforcement notice, planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as it is inconsistent with that permission.

Formal Decision

38. The appeal is allowed insofar as it relates to Entrance A (as shown on the plan attached to the notice) and planning permission is granted on the application

deemed to have been made under section 177(5) of the 1990 Act as amended, for the erection and installation on the Land of electronically operated sliding metal roller gates, supporting brick piers and brick walls adjacent to the highway, all exceeding 1 metre in height from the adjacent ground levels.

The appeal is dismissed and the enforcement notice is upheld insofar as it relates to the works carried out at Entrances B and C (as shown on the plan attached to the notice, and covered by requirements iii, iv, v, vi and vii) and planning permission for these elements of the development is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Timothy C King

INSPECTOR