
Appeal Decision

Site visit made on 27 October 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 December 2020

Appeal Ref: APP/G5180/C/18/3205844

Land adjacent to Hollyhead, Jail Lane, Biggin Hill TN16 3AU

- 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 David Poulton against an enforcement notice issued by the Council of the London Borough of Bromley.
 - The enforcement notice, numbered EN/16/00390/OPDEV, was issued on 18 May 2018.
 - The breach of planning control as alleged in the notice is without planning permission, the construction of a detached timber clad building on the land outlined in red on the attached plan.
 - The requirements of the notice are:
 - Remove the unauthorised building from the land;
 - Remove all associated material from the land.
 - The period for compliance with the requirements is two months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. It is directed that the enforcement notice is varied by deleting 'two' in the period for compliance and substituting with 'six'.
2. Subject to the 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.

Preliminary Matters

3. The reasons for the notice refer to the emerging Local Plan. Since the notice was issued, Bromley Local Plan (BLP) has been adopted in 2019 and has therefore superseded the Unitary Development Plan. The Council has provided a copy of the relevant adopted Policy 49 with its appeal questionnaire.
4. The revised National Planning Policy Framework (NPPF) has also been published since the notice was issued. Therefore, the references to paragraphs 87-89 of the NPPF 2012 in the reasons for issuing the notice have been replaced by paragraphs 143-145 in the 2019 revised version. The Council refers to the revised NPPF 2018 in its statement, but there has been no change to the paragraphs relevant for this case. The appellant has had the opportunity to comment on the Council's statement.

The appeal on ground (a) and the deemed application

5. The ground of appeal is that planning permission should be granted for the breach of planning control as alleged in the notice. The appeal site is a long rectangular area of land fronting Jail Lane. The building is sited towards the rear part of the site, behind a row of conifers. It is accessed by a driveway and separated from the road by close boarded fencing.
6. The NPPF sets out the Government's policy in relation to Green Belts. Inappropriate development is, by definition, harmful and should not be approved other than in very special circumstances. Substantial weight is to be given to any harm to the Green Belt. Very special circumstances to justify inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations.
7. Having regard to the reasons for the notice, the main issues are:
 - Whether the building is inappropriate development in the Green Belt having regard to the NPPF and relevant development plan policies;
 - Other considerations;
 - If the development is inappropriate, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the development.

Whether inappropriate

8. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The construction of new buildings should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 145. BLP Policy 49 broadly reflects the national approach to Green Belt policy set out in the NPPF, while the London Plan 2016 Policy 7.16 policy refers to national guidance.
9. The appellant argues that the building represents limited infilling and is therefore not inappropriate development. Paragraph 145(e) of the NPPF sets out an exception for 'limited infilling in villages'. The terms 'limited', 'infilling' and 'village' are not defined in the NPPF and are a matter of planning judgement for the decision maker. Neither party has stated whether they consider that the site is within a village. It is on the edge of the settlement of Biggin Hill, which is relatively large and provides a number of services including schools and shops, as well as London Biggin Hill Airport. In my view it could be either classified as a large village or a small town. The site is within a ribbon of development along Jail Lane which leads to the main road through Biggin Hill and is part of the settlement. On balance and on the basis of the evidence before me, I consider that the site falls within a village. As a result of the small scale of the development, I agree that it is 'limited'.
10. The consideration of whether the development comprises 'infilling' is a question of fact and planning judgement for the decision maker, having regard to the location of the site and its relationship to other, existing development adjoining it and adjacent to it. The pre-existing site was an area of open land within a row of frontage ribbon development along Jail Lane. The appeal building is set

back in the site, well behind the neighbouring bungalows. It is bordered on one side by commercial development, but to the other side is adjacent to undeveloped back gardens, with open fields or woodland to the rear, while the front of the site is open. It is not surrounded by development as suggested by the appellant. The building does not therefore infill a gap within a developed area. Having regard to its relationship with adjoining and adjacent development, I conclude that the building does not represent infilling and does not therefore benefit from the exception set out in paragraph 145(e) of the NPPF.

11. Paragraph 145(g) of the NPPF sets out a further exception for 'limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development'. The appellant describes the land as a wooded site between existing developed land on both sides. The aerial photographs submitted by the Council indicate that prior to the building and driveway being built, the site was predominantly open grassland, subdivided by a conifer hedge with coniferous and deciduous hedging on some of the boundaries and some individual trees. I have seen no evidence that the site is previously developed land, and the exception in paragraph 145(g) is not therefore applicable.
12. Even if the site were to be considered previously developed land, paragraph 145(g) requires that development does not have a greater impact on the openness of the Green Belt than the existing development. The development has introduced built form where there was previously none and has therefore reduced the openness of the Green Belt in spatial terms.
13. In terms of the visual effect on openness, the site is in a semi-rural area on the edge of the settlement. Development beyond the site is scattered and sporadic, with the exception of four bungalows to the east. The land falls away beyond the site into open countryside, before rising again beyond a public footpath. As a result, the site is seen against the backdrop of open fields and woodland. The building is relatively modest in scale compared with neighbouring development, and is set back from the road behind a close boarded fence and tall conifer trees. It is nonetheless apparent in some glimpsed views from the surrounding area. Regardless of the quality of the design and materials, the building has a visual impact on the openness of the site, which has consolidated the scattered pattern of development in the area and harms the openness of the site in visual terms. It has a greater impact on the openness of the Green Belt than any pre-existing development.
14. The development does not fall within any of the other exceptions in paragraphs 145 or 146 of the NPPF and is therefore inappropriate development. It also reduces the openness of the Green Belt.

Other considerations

15. The appellant argues that the site is well served by the existing access, has ample amenity space creating a generous curtilage in keeping with surrounding residential properties which allows conservation and enhancement of natural features. No specific details of the enhancements to biodiversity have been provided. A lack of harm to the living conditions of neighbouring occupiers is a neutral consideration.

16. The appellant has stated, in relation to their ground (f) appeal, that they live at the site and have a child at the local school. However, the Council has not been advised, in response to its Planning Contravention Notices, that this is the case, and it has a different address in Biggin Hill for the appellant. The appellant has not submitted any clear evidence to demonstrate that it is being used as a dwelling nor that the notice would result in the loss of a home or disruption to education. In any event, the protection of the Green Belt is a well-established and legitimate aim, and I have seen no evidence to demonstrate that an interference with private and family life would not be proportionate.

Green Belt balance

17. The building is inappropriate development in the Green Belt and the Framework establishes that substantial weight should be given to any harm to the Green Belt. In addition, the building has reduced the openness of the Green Belt, and is moderately harmful to the character and appearance of the area. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
18. I give limited weight to the other considerations referred to by the appellant in terms of biodiversity enhancements and the creation of a residential curtilage. I have had regard to the stated personal circumstances of the appellant, but on the basis of the limited evidence before me I give it only moderate weight. Consequently, the substantial weight to be given to Green Belt harm, is not clearly outweighed by the other considerations. The very special circumstances necessary to justify the proposal do not, therefore, exist. Accordingly, it is in conflict with the NPPF, BLP Policy 49 and Policy 7.16 of the London Plan 2016, insofar as they seek to protect the Green Belt from inappropriate development.

Conclusion in relation to the ground (a) appeal

19. For the reasons given above and having regard to all other matters raised, I conclude that the appeal on ground (a) should fail and the deemed application should be refused.

The ground (f) appeal

20. The notice requires the removal of the building, but the appellant argues that it could be retained for a recreational use if the residential use of the building is not acceptable. However, the alleged breach of planning control relates to the building, not its use, and the retention of the building for an alternative use would not remedy the breach of planning control. The appeal on ground (f) therefore fails.

The ground (g) appeal

21. The ground of appeal is that the period for compliance with the notice is unreasonably short. The notice provides a two month compliance period. The appellant requests a period of 12 months in order to find alternative accommodation and to address the welfare and educational needs of the child.

22. I recognise that there is a balance between bringing the identified harm to an end without unnecessary delay, and the interests of the appellant. I consider that two months is insufficient and six months would be an appropriate balance. To this limited extent the appeal on ground (g) succeeds and I shall vary the notice accordingly.

N Thomas

INSPECTOR