



Appeal Decisions

Site visit made on 10 November 2020

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 December 2020

Appeal A Ref: APP/M3645/C/20/3253355

Land at 2 Cromwell Hall Farm, Felcourt Road, Felcourt, Surrey RH19 2JU

- 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 Saif Bharmal against an enforcement notice issued by Tandridge District Council.
- The enforcement notice was issued on 28 April 2020.
- The breach of planning control as alleged in the notice is without planning permission the erection of a building.
- The requirements of the notice are: (i) Demolish the building; and (ii) Remove from the land all building materials and rubble arising from requirement 5 (i) above.
- The period for compliance with the requirements is six 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.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B Ref: APP/M3645/W/20/3252929

Cromwell Hall Farm Cottages, Felcourt Road, Felcourt, Surrey RH19 2JU

- 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 made by Mr Saif Bharmal against the decision of Tandridge District Council.
- The application Ref TA/2019/2170, dated 15 December 2019, was refused by notice dated 10 March 2020.
- The development proposed is described on the application form as "*retrospective application for changes to constructed store building*".

Summary of Decision: The appeal is dismissed.

Preliminary Matter

1. Planning approval was given on 12 April 2017 for demolition of a pre-existing structure and erection of an agricultural store at the appeal site¹. Condition 2 of the approval required the development to be carried out strictly in accordance with the approved drawings.
2. The enforcement notice building has a similar footprint, built envelope and siting to that of the approved scheme. A number of the building's elevational openings also correspond to the positions of those of the approved structure. Nevertheless, as built the elevations contain three additional windows and there is a glazed bifold door at one end. There are also two rooflights and a solar panel array on the roof. The roof treatment incorporates box eaves and

¹ Council Ref: TA/2016/2017.

fascia boards. As a result, the building has a markedly different external appearance compared with that of the approved structure. Also, although the building was not substantially complete when I visited, it has a different internal configuration to the approved scheme, incorporating two rooms at one end with a loft level in the roof space. The above are all material differences to the approved scheme. The differences between what has been built and the approved scheme are likely to have had planning consequences. There was no firm evidence before me to indicate that the building was not erected as one continuous operation.

3. Therefore, based on the available evidence and as a matter of fact and degree, the building is so significantly different from the approved scheme that its erection did not amount to implementing the 2017 approval. It follows that there is nothing wrong in the notice alleging that the building has been erected without planning permission.

Appeal A, Ground (a) and Appeal B

Main Issues

4. The site is in the Metropolitan Green Belt. Therefore, the main issues in these appeals are:
 - Whether the building amounts to inappropriate development in the Green Belt, having regard to the Development Plan and the National Planning Policy Framework (the Framework).
 - The effect on the openness and purposes of the Green Belt.
 - The effect on the character and appearance of the surrounding countryside.
 - Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the building.

Reasons

5. The site contains a detached bungalow and associated residential outbuildings, including an approved granny annexe a short distance from the building.

Whether there has been inappropriate development

6. Policy DP10 of the Tandridge District Local Plan (LP) states that planning permission for inappropriate development in the Green Belt will normally be refused unless there are very special circumstances. LP Policy DP13 states that the construction of a new building is regarded as inappropriate in the Green Belt, the exceptions including a replacement building which is in the same use, is not materially larger and is sited on or close to the structure being replaced. Both policies are consistent with the Framework at paragraphs 143-145.
7. The building is not materially larger than the pre-existing agricultural structure and it has a similar footprint. For the building to be considered as being for the same use as the pre-existing structure and so benefitting from the exception at paragraph 145 (d), it must nevertheless be a building that has been designed for agricultural purposes.

8. The accumulation of windows including the bi-folding door, the roof lights and solar panels, together with the UPVC box eaves, gutters and fascia boards, have all given the building a rather cluttered and more residential appearance. As a result, its external appearance is in marked contrast to the simple lines and functional rural appearance of the pre-existing structure and that of many agricultural buildings. This is also at odds with the external appearance of the approved structure, which would likewise have had simpler lines, with fewer, larger elevational openings more agricultural in character and with none of the roof details described above.
9. During my visit I also saw that the building interior has been dry lined with plasterboard. Along with the loft level formed in the roof space, I observed that provision has been made for installing several electrical power sockets, including a number in the larger area shown on the submitted drawings as an agricultural store. As a result, the fitting out of the building interior is of a high standard and is markedly different from what might normally be expected in an agricultural building. The two rooms described on the submitted drawings as a canteen and a WC take up around a third of the internal floor space, with a corresponding significant reduction in the space available for storage purposes. Accordingly, the fitting out of the building interior is not typical of a structure designed for agricultural use.
10. I am given to understand that the building is required for use by the appellant's staff, who maintain an extensive area of adjacent land. However, few details were provided in respect of the agricultural activities on that land. The appellant did not explain the rationale behind the changes made to the building compared with the approved scheme, including the requirement for a canteen facility, in terms of the needs of the holding.
11. I acknowledge that the design of agricultural buildings can vary according to their function and the needs of the holding. Nevertheless, having regard to the external appearance and internal fitting out of the building and in the absence of a clear explanation regarding the activities it is intended to support, I am not persuaded that the building has been designed for agricultural purposes, being more residential in character.
12. As it is not certain whether the building is intended to be used for the same purpose as the pre-existing structure, the exception for replacement buildings in the Green Belt cannot apply. Therefore, the building constitutes inappropriate development, failing to accord with LP Policy DP10 and LP Policy DP13 and is inconsistent with the Framework at paragraph 145.

Effect on Green Belt openness and purposes

13. The Framework paragraph 133 advises that openness is an essential characteristic of the Green Belt.
14. Given the similarity between the built envelope and footprint of the building and that of the pre-existing structure, there has been no reduction in Green Belt openness in spatial terms. However, relevant case law confirms that openness has a visual, as well as a spatial aspect². The external appearance of the building means that when compared with the unassuming rural appearance of the pre-existing structure or that of the approved scheme, it is viewed as a

² *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466.

more obvious residential built feature in the predominantly rural surroundings. The presence of the building in this context has therefore contributed to an erosion, albeit modest, in the perception of openness in the locality. Although maturing boundary vegetation limits wider views of the building, this adverse effect on openness is apparent from Felcourt Road in the vicinity of the site, as well as from the private drive of Felcourt Grange.

15. Accordingly, the building has had a modest, appreciable adverse effect on the openness of the Green Belt. Moreover, given the more residential appearance of the building and its siting a significant distance from the bungalow, there has also been encroachment into the countryside. This conflicts with one of the purposes of including land within the Green Belt at paragraph 134 of the Framework. In accordance with LP Policy DP10 and consistent with the Framework at paragraph 144, I give substantial weight to the totality of the harm to the Green Belt.

Character and appearance of the countryside

16. The site is located in countryside between the settlements of Felcourt and East Grinstead. There is a similar bungalow with a detached outbuilding to the south of the site. Otherwise, the surroundings are largely made up of land in open uses with tracts of woodland, built development generally being limited to a few scattered dwellings. These factors have given the environs a predominantly rural character and appearance. However, the more residential appearance of the building coupled with its distance from the bungalow has engendered an appreciably more built-up feel in its environs compared with the pre-existing structure and the approved scheme. This is entirely at odds with the rural qualities of the locality and has therefore led to a harmful erosion of the character and appearance of the surrounding countryside.
17. Consequently, the building fails to accord with Policy CSP 18 of the Tandridge Core Strategy (CS), as it is not of a high standard of design that reflects and respects the character, setting and local context. Furthermore, by not conserving the landscape character there is failure to accord with CS Policy CSP 21. Moreover, as the building is not of a high quality design that integrates effectively with the surroundings and reinforces local distinctiveness and landscape character, there is also failure to accord with LP Policy DP7.

Other considerations

18. As the 2017 approval has lapsed, there is no longer a possibility of it being implemented. Accordingly, that approval does not represent a valid fallback position in the event these appeals are dismissed.
19. Reference was made to a recent planning approval granted at appeal for extending the granny annexe³. However, in that case the Inspector found there would be no harm to the Green Belt or the character and appearance of the surrounding area. In any event, that appeal concerned a different form of development. Therefore, that decision does not weigh in favour of permitting the building.

³ Appeal Ref: APP/M3645/D/20/3251404.

Green Belt Balance

20. The building constitutes inappropriate development, adversely affecting the openness of the Green Belt and one of its purposes and also causes unacceptable harm to the character and appearance of the area. The other considerations do not clearly outweigh the totality of the harm to the Green Belt. Accordingly, the very special circumstances necessary to justify permitting the building do not exist.

Conclusion on Appeal A, Ground (a) and Appeal B

21. The building does not accord with the Development Plan and it is inconsistent with the Framework. Therefore, I conclude that the ground (a) appeal in Appeal A together with Appeal B should not succeed.

Appeal A

Ground (f) appeal

22. The ground of appeal is that the requirements of the notice are excessive.
23. At s173 (4), the Act provides that an enforcement notice can have two purposes, namely: (a) remedying a breach of planning control, including by making development comply with the terms of any planning permission granted in respect of the land, or restoring the land to its condition before the breach took place, or; (b) remedying any injury to amenity caused by the breach. The notice does not specify which of the above purposes is relevant in this case. However, the allegation is the erection of a building without planning permission. The requirement is to demolish the building, as opposed to altering it to a point where amenity is no longer adversely affected. Therefore, the purpose of the notice must be to remedy the breach by restoring the site to its condition before the breach took place.
24. As the 2017 approval is no longer capable of being implemented, the notice cannot be varied to make the building comply with its terms. Given that context, the notice requirements are not unreasonable. Any requirements that stopped short of demolishing the building would not remedy the breach and would not achieve the purpose of the notice. It follows that there is no obvious alternative to the notice requirements.
25. Accordingly, the notice requirements are not excessive and the ground (f) appeal fails.

Ground (g) appeal

26. The ground of appeal is that the period for complying with the notice requirements is unreasonably short.
27. I acknowledge that the remedial works are likely to be costly for the appellant. However, six months provides ample time in which to seek and secure any necessary finance and also to find and appoint a suitable building contractor to carry out the works. Demolition of the building and removal of the materials are relatively small-scale operations. It is likely to be a reasonably straightforward matter for any experienced contractor to complete such works comfortably within a couple of months. The compliance period also therefore takes sufficient account of the possibility of a delay in the works whilst waiting for a suitable contractor to become available, or other uncertainty caused by

the COVID-19 pandemic. As a result, extending the time for compliance to twelve months would perpetuate the breach and the associated planning harm.

28. Accordingly, the compliance period is not unreasonably short and the ground (g) appeal also fails.

Conclusion

29. For the reasons given above I conclude that Appeal A should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application. For similar reasons I conclude that Appeal B should be dismissed.

Formal Decisions

30. Appeal A-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.
31. Appeal B-the appeal is dismissed.

Stephen Hawkins

INSPECTOR