



Appeal Decisions

Site visit made on 10 November 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 January 2021

Appeal A Ref: APP/C1950/C/20/3250358

Land situated and known as 21 The Ridgeway, Cuffley, Potters Bar EN6 4BB

- 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 Paul Wilson against an enforcement notice issued by Welwyn Hatfield Borough Council.
 - The enforcement notice, numbered ENF/2018/0334, was issued on 5 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised construction of brick walls, iron gates and brick piers.
 - The requirements of the notice are:
 - (i) Take down and remove from the land the wall, piers and gate as shown in the approximate position by the blue line on the attached plan and as shown by the attached photographs marked A. Remove all materials, debris and waste resulting from compliance with the other requirements of the notice from the land.
 - (ii) Remove from the land all materials, debris, plant and equipment associated with requirement (i) above.
 - 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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Appeal B Ref: APP/C1950/W/20/3256344

21 The Ridgeway, Cuffley, Potters Bar EN6 4BB

- 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 Paul Wilson against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2020/0823/HOUSE, dated 2 April 2020, was refused by notice dated 25 June 2020.
 - The development proposed is the erection of front boundary wall, railings, piers and installation of entrance gate (part-retrospective).
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Decisions

Appeal A

1. It is directed that the enforcement notice is corrected and varied by:
 - Deletion of the second sentence of requirement (i) and the addition of the word 'waste,' after 'debris' in requirement (ii);
 - Deletion of 'two' and substitution of 'six' as the period for compliance.
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2. Subject to the correction and 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.

Appeal B

3. The appeal is dismissed.

Preliminary Matters

4. An application¹ was permitted for a new entrance gate and gate posts. This included double metal gates, brick piers to support the gates, a curved rendered wall framing both sides of the driveway with a further brick pier. The parties agree that this permission has not been implemented and is no longer extant.
5. The walls, piers and gate that have been installed do not reflect those permitted in 2016 and are the subject of the enforcement notice and Appeal A. The wall is white rendered and extends the full width of the plot across the frontage of the site. The gate is of a different design to that permitted and consists of metal railings with a black metal sheet attached which restricts views into the site through the gate. A planning application seeking permission for the wall, piers and gate as built was refused.²
6. A further planning application was submitted and refused for a revised proposal. The main part of the wall would be lowered to 0.75 metres high, with a railing of 0.75 metres on top. The sections of curved wall which frame the driveway would be retained along with the existing gate, although the metal sheeting attached to the gate rails would be removed. This forms the Section 78 appeal under Appeal B. I have taken the description of the development from the Council's decision notice as it is more detailed than the description given on the application form, and I have used this in the banner heading above.
7. The reasons for issuing the notice refer to Policies SADM34 and SP9 of the Welwyn Hatfield Borough Council Local Plan Proposed Submission August 2016. However, having regard to the guidance in paragraph 48 of the National Planning Policy Framework (NPPF) on the weight to be given to emerging plans, I have not been advised as to the extent of unresolved objections to relevant policies or the stage of preparation of the plan, and I therefore give them limited weight.

Matters concerning the Notice

8. I have a duty to try to get the notice in order. Both requirements seek the removal of materials and debris associated with compliance with the requirements. As there appears to be some unnecessary repetition, I shall delete the second sentence of the first requirement, and add 'waste' to the second requirement, in the interests of conciseness. This will not cause injustice to the parties.

¹ Ref. 6/2015/2427/HOUSE

² Ref. 6/2019/0540/HOUSE

Appeal A on ground (a) and the deemed application, and Appeal B

9. Due to the similarities between the issues raised by the two appeals, I have considered them together, concluding for each scheme.
10. The site is a substantial detached dwelling in the Green Belt countryside outside the village of Cuffley. It is within a spacious rectangular plot, in a line of generously proportioned dwellings set a similar distance back from The Ridgeway. Due to the topography, the site is set on higher land than the road, with the front garden sloping up towards the dwelling on the ridgeline.
11. Having regard to the reasons for issuing the notice and the reasons for refusal, the main issues for both of the appeals are:
 - Whether the development is/would be inappropriate development in the Green Belt having regard to the NPPF and relevant development plan policies;
 - The effect of the development on the openness of the Green Belt;
 - The effect of the development on the character and appearance of the area;
 - If the development is/would be 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

12. 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. Policy GBSP1 of the Welwyn Hatfield District Plan 2005 (WHDP) sets out the extent of the Green Belt but does not provide any additional detail for the determination of planning applications.
13. The construction of new buildings should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 145. The term "building" is defined as follows in section 336 of the 1990 Act:

"building" includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building
14. Applying this definition would mean that walls, gates and piers should be regarded as "buildings" for the purposes of the NPPF. I am satisfied that in this case the structure should be regarded as a building for the purposes of applying Green Belt policy. The development is not listed under any of the exceptions under paragraph 145.
15. The appellant argues that the development could be considered under paragraph 145(c) of the NPPF as an extension or alteration to a building, in terms of whether it is disproportionate in relation to the 2016 scheme for

entrance gates and gate posts. However, the appellant acknowledges that the 2016 scheme has not been built and it is not therefore an extension to it.

16. The Council argues that the development cannot be considered as an extension to the main dwelling, due to the distance between the two structures and degree of separation. I agree with this view. Neither of the appeal schemes can be considered as extensions to an existing building.
17. The developments do not fall within any of the exceptions set out in paragraph 145 of the NPPF. The Appeal A and Appeal B developments therefore represent inappropriate development, which by definition is harmful to the Green Belt.

Effect on openness of the Green Belt

18. Paragraph 133 of the NPPF identifies that “the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence”. Openness of the Green Belt has a spatial as well as a visual aspect.
19. The appeal site is located in a semi-rural area, with well-spaced development. The **Appeal A** development is of a substantial height and solid appearance. While it occupies a relatively small physical footprint, it is a visually prominent and substantial feature on the site. It adds additional development within the Green Belt and introduces further urban form to the area which detracts from its openness in both visual and spatial terms.
20. The **Appeal B** scheme would be of a lower overall height, and the upper half of the section parallel to the road would consist of railings, which would allow views through to the garden and house beyond. Furthermore, the gate would consist of open railings which would reduce its visual impact. However, it would still result in a substantial physical development where there was previously none. It would be in a prominent location and would result in additional development that would detract from the openness of the Green Belt. The proposed inclusion of landscape planting to the front of the wall would not diminish the physical effect of the structures on the openness of the Green Belt. Both schemes therefore have a harmful effect on the openness of the Green Belt.

Character and appearance

21. The site is prominently sited due to the natural topography and alignment of the road. It is within an area identified as Northaw Common Parkland Landscape Character Area in the WHDP. This part of The Ridgeway is wide and straight, with houses set well back behind with front gardens generally planted with trees, shrubs and hedges, giving the area a well-established and informal character. Some of the front gardens are open to the road, or have screening provided by vegetation, while others have some elements of walling and fencing.
22. The immediate neighbouring property at No. 19 has a wide frontage, the front boundary of which is marked by a dark stained close boarded fence behind a narrow verge. It is set closer to the road than the appeal developments, and therefore restricts views in the approach to the site from this direction. However, in the approach from the other direction, the site is clearly visible and prominent in views from the bend in the road onwards.

23. The **Appeal A** wall appears as a stark and prominent feature in the street scene, creating a formal, suburban appearance, in contrast with the generally spacious and landscaped appearance of the surrounding area. This effect is not overcome by its siting behind a wide verge, as it is still prominent in the street scene. While it is seen in the context of the rendered wall and rails of No 25 and the brick wall and railings of No 27, I understand from the Council's submissions that the former is unauthorised, while the latter was approved in 2004 and predates the local plan and the NPPF. While the brick wall to the front of No 27 has an urbanising effect on the street scene, it is less prominent than the painted render of the appeal development due to the muted colour of the brick. Nonetheless, the repetition of similar boundary treatments would result in a more formal and enclosed appearance to this part of The Ridgeway.
24. The **Appeal B** development would be more visually permeable than the existing wall and gate. Due to the breaking up of the expanse of light painted render by the use of railings, it would appear less stark than the **Appeal A** development. However, it would still result in an imposing boundary with a formal appearance. The views through it towards the house would not overcome its formalising effect on the site frontage, which would detract from the spacious landscaped appearance of the street scene. While it retains a wide verge, this does not override the harmful effect of its formal and suburbanising appearance.
25. I recognise that there are other walls, railings and gates in the area, including at Nos 23, 18, 38 and 42. I saw on my site visit that those in the immediate vicinity of the site are generally confined to entrance gateways combined with hedges and other shrub planting for the width of the frontage, so that the overall effect is less formal and stark than the appeal developments. The fence to the front of No 19 is dark stained and recessive due to the dense shrubs behind it and roadside trees.
26. Although there is a wide verge, the wall is nonetheless prominent in views from The Ridgeway. While there would be sufficient space for planting in front of the wall, which could help to soften and integrate the development into its surroundings, planting cannot be used to hide a development which is otherwise unacceptable, as it would take some time to establish and its long term retention cannot be assured.
27. I therefore conclude that both the Appeal A and Appeal B developments are/would be harmful to the character and appearance of the area. As a result, they are/would be in conflict with WHDP Policies D1 and D2, which require, amongst other things, that the design of new development is high quality which respects and relates to the character and context of the area. They are/would be in conflict with the Supplementary Design Guidance 2005.

Other Considerations

28. The appellant has provided detailed evidence of the security concerns which led to the need for the wall and gates. While I have sympathy with the appellant's personal circumstances, I have seen no evidence that there are no alternative means of providing adequate security for the property and the occupiers which would have a lesser visual and physical effect on the site. I therefore give this consideration limited weight.

29. The appellant argues that the scheme permitted in 2016 also showed a wall across the entire frontage and that this indicates that the Council considered a similar development to be acceptable. However, the application details do not clearly indicate a wall continuing across the entire width of the frontage, nor how such a wall would be finished. I note that the description of the proposal referred only to the entrance gates and gate posts, and therefore it is not clear to me that the Council had considered the effect of a wall across the full frontage of the site in granting planning permission. I therefore give the 2016 permission limited weight.
30. I note that the Council gave pre-application advice, indicating that a 1.5 metre high boundary treatment comprising of a low wall and railings would be acceptable. However, the response indicated that it should also be set further back into the site to allow a continuous line of hedging directly in front of it. In any event, such advice is given informally without prejudice to any subsequent application, and does not have the weight of a previous planning approval.

Green Belt Balance

31. The Appeal A and Appeal B developments are 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 structure has reduced/would reduce the openness of the Green Belt, and are 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.
32. I give limited weight to the considerations referred to by the appellant. Consequently, the substantial weight to be given to Green Belt harm, and the moderate harm to the character and appearance of the area, are not clearly outweighed by the other considerations. The very special circumstances necessary to justify the developments do not, therefore, exist. They are therefore in conflict with the NPPF and WHDP Policy GBSP1.

Conclusions in relation to the ground (a) appeal and the Section 78 appeal

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

The ground (f) appeal

34. The ground of appeal is that the steps required by the notice to be taken exceed what is necessary to remedy the breach of planning control, or to remedy any injury to amenity which has been caused by the breach.
35. The appellant argues that the requirements are unreasonable and excessive, as they do not take into account the possibility of an alternative development of a 1.5 metre high wall, as suggested in earlier pre-application advice from the Council, or retaining the elements that were subject to the 2016 permission.
36. However, the requirements of the notice are to remove the wall, piers and gates in their entirety, and the purpose of the notice is therefore to remedy the breach. Lesser steps would not achieve the purpose of the notice.

37. There is no permitted alternative scheme that could be implemented, as the 2016 scheme is no longer extant, so there is no obvious alternative to the removal of the development in its entirety. The appeal on ground (f) therefore fails.

The ground (g) appeal

38. The ground of appeal is that the period for compliance with the notice is unreasonably short. The period for compliance is two months. The appellant requests an additional six months, in order to obtain planning permission for a and construct new wall.
39. 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 six months is a reasonable time for the appellant to explore alternatives with the Council and carry out works. To this limited extent the appeal on ground (g) succeeds and I shall vary the notice accordingly.

N Thomas

INSPECTOR